



**ACN 117 214 427 Pty Ltd (In Liquidation)  
(formerly Extrastaff Recruitment Pty Ltd)  
(ESR or Company)**

**Eighth Report to Creditors**

I refer to the appointment of Sam Davies and I as Administrators of ACN 117 214 427 Pty Ltd (In Liquidation) (formerly Extrastaff Recruitment Pty Ltd) on 17 October 2011 and to our subsequent appointment as Liquidators on 21 November 2011. I note that Sam Davies retired as Liquidator of ESR on 23 November 2016 and, as the affairs of ESR are ongoing, I remain as the sole Liquidator of ESR.

I also refer to the previous reports to creditors, namely:

- the Section 439A report to creditors dated 11 November 2011 (**439A Report**) which was discussed at the second meeting of creditors in the voluntary administration held on 21 November 2011;
- the six reports to creditors in the liquidation of ESR issued between 29 June 2012 and 3 February 2017; and
- the seventh report to creditors in the liquidation of ESR, dated 20 March 2018 (**Seventh Report**).

This report should be read in conjunction with the 439A Report and my seven previous reports to creditors. The purpose of this report is to:

- provide creditors with an update in relation to the progress of the liquidation and the ongoing conduct of the Liquidator;
- update creditors on the likelihood of a dividend being paid in the liquidation;
- seek approval of the Liquidator's remuneration incurred to date; and
- convene a meeting of creditors to discuss same.

**1 Meeting of creditors**

A meeting of creditors has been convened for 5 October 2020 at 10:00AM. Important information regarding the meeting is set out below.

<b>Date</b>	<b>5 October 2020</b>
<b>Time</b>	<b>10:00AM</b>
<b>Technical place of meeting</b>	<b>Level 19, 2 the Esplanade, Perth WA 6000</b>
<b>Deadline for return of meeting documents</b>	<b>Close of business, 2 October 2020</b>
<b>Electronic facilities available</b>	<b>Yes – available on request</b>
<b>Meeting enquires</b>	<b>Amber Andre – (08) 6363 7665</b>

A Form 529A 'Notice of Meeting of Creditors' is attached to this report, together with Form 535 'Formal Proof of Claim' and Form 532 'Appointment of Proxy'.

Creditors wishing to attend and participate in voting at the meeting are required to complete and return Form 535 and Form 532 to this office no later than close of business, 2 October 2020. Creditors who have already lodged a proof of debt do not need to complete a new proof but will be required to complete and return a Form 532.

Whilst the technical meeting location will be at the offices of McGrathNicol Perth, Level 19, 2 The Esplanade, Perth WA 6000, the Second Meeting will be held via teleconference and/or webcast only and creditors will not be able to attend in person, given the recent government guidance regarding Covid-19 and social distancing measures. Creditors wishing to attend should contact this office on (08) 6363 7600 to obtain particulars (noting that a completed Form 535 and Form 532 will be required for creditors attending via telephone).



A person, or the proxy or attorney of a person who participates in the meeting by telephone, must pay any costs incurred by them in participating and is not entitled to be reimbursed for those costs from the assets of ESR.

## **2 Declaration of Independence, Relevant Relationships and Indemnities (DIRRI)**

In accordance with Section 436DA of the Act and the Australian Restructuring, Insolvency & Turnaround Association (**ARITA**) Code of Professional Practice, a DIRRI was enclosed with the first communication to creditors.

The DIRRI was also discussed at ESR's first and second meetings of creditors in the voluntary administration and again at the first, second, third and fourth liquidation meetings.

I have not previously considered that my prior involvement gave rise to any potential conflict of interest issues. Since my appointment as Liquidator, I have continued to assess whether my prior involvement had caused any potential conflict of interest issues to develop.

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

## **3 Update on liquidation**

As set out in my previous reports to creditors, the only outstanding matter in the liquidation of ESR is the collection of a potential dividend payment from Solar Shop Australia Pty Ltd (In Liquidation) (**Solar Shop**), a debtor of ESR. I have kept the liquidation of ESR open in anticipation of receiving this dividend since circa 2015, and this has remained the only outstanding matter since that time.

The liquidators of Solar Shop advised that they have settled all preference claims, but are still pursuing some recovery actions / asset realisations. They noted that they will be in a position to make a dividend to creditors of ESR, and adjudication of proof of debts (**POD**) is due to commence shortly. In accordance with the Form 5602 lodged with ASIC by Solar Shop's liquidators, the 'low' expectation of a dividend is 17.5 cents in the dollar. The 'high' expectation has not been released by the liquidators of Solar Shop.

As set out in our previous reports, ESR lodged a POD in the amount of \$77,704. This would represent \$13,598 received by ESR at 17.5 cents in the dollar. It is forecast that an *interim* dividend (of unknown quantum) will be paid in the next 6 - 9 months.

The liquidation of ESR has remained open for circa 5 years in anticipation of this dividend. I have been required to carry out the following statutory and administrative tasks in that time:

- prepare four annual reports to creditors, being the fourth, fifth, sixth and seventh reports to creditors;
- prepare and lodge Form 524's / Form 5602's for ASIC (receipts and payments returns) every 6 / 12 months;
- prepare and lodge quarterly Business Activity Statements (**BAS**) with the Australian Taxation Office (**ATO**); and
- seek updates from Solar Shop and consider the commerciality of keeping the liquidation open on a regular basis.

I have incurred significant time costs in completing the above, and am seeking approval from creditors for my remuneration for the circa 5 year period 28 February 2015 to 11 September 2020 of \$44,334, as detailed in the attached Remuneration Approval Report. I note the 'low' expectation for the dividend is circa \$13,598. This will not be sufficient to pay this remuneration approval request in full, nor will it be sufficient to enable a second dividend to unsecured creditors.

Accordingly, unless the actual dividend from Solar Shop significantly exceeds the 'low' estimate (i.e. more than 60 cents in the \$), I do not expect to be in a position to make any further dividends to creditors of ESR, based on my outstanding remuneration.



#### **4 Tasks remaining in the liquidation**

The following key tasks are required to finalise the liquidation:

- hold the meeting of creditors convened in this Report;
- monitor the Solar Shop liquidation progress;
- pay my outstanding remuneration; and
- preparation for finalisation of the liquidation including:
  - preparing and lodging the final form 505 and form 5603.
  - preparation and lodgement of statutory documentation with ASIC and the ATO;
  - preparing ongoing receipts and payments returns for the liquidation;
  - lodging a final BAS;
  - cancelling GST registration with the ATO; and
  - lodging deregistration documents with ASIC.

I have not sought approval from creditors for my remuneration for the period from 12 September 2020 to completion of the liquidation (i.e. to complete the above) noting there will be insufficient assets available to meet the cost of finalising the liquidation.

#### **5 Likelihood of a dividend**

A number of factors 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 outlined at section 3, I do not expect to be in a position to make a further dividend to unsecured creditors of ESR.

#### **6 Cost of the liquidation**

I enclose a detailed report on my remuneration, called a Remuneration Approval Report.

In accordance with the Remuneration Approval Report, I am requesting creditor's approval for remuneration of \$44,334 for the period 28 February 2015 to 11 September 2020, being actual time incurred, but not yet approved by creditors. I do not propose to seek any further remuneration approval from creditors at this time, noting there will be insufficient assets available to meeting the costs of finalising the liquidation.

I propose to have my remuneration approved at a creditors meeting, as detailed at section 1 above.

An information sheet on approving remuneration of an external administrator is provided for your information.

#### **7 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 Amber Andre on (08) 6363 7665.



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

Dated: 18 September 2020

Rob Kirman  
*Liquidator*

Enclosures:

- 1 Remuneration Approval Report
- 2 ARITA Information Sheet – Approving remuneration of an external administrator
- 3 Proof of Debt (Form 535)
- 4 Proof of Debt Guidance Notes

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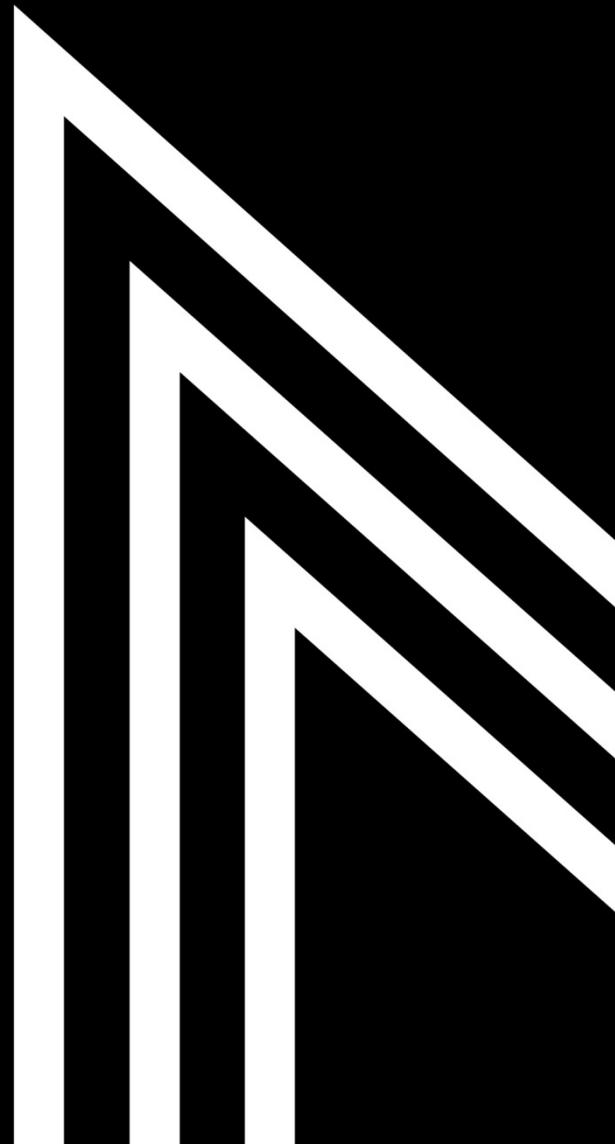
# Remuneration Approval Report

ACN 117 214 427 Pty Ltd (In Liquidation) (formerly  
Extrastaff Recruitment Pty Ltd)

18 September 2020



McGrathNicol



This remuneration approval report provides you with information to assist you to make an informed decision regarding the approval of my proposed remuneration for undertaking the Liquidation of ACN 117 214 427 Pty Ltd (In Liquidation) (formerly Extrastaff Recruitment Pty Ltd).

The report has the following information:

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## 1 Declaration

I, Rob Kirman of McGrathNicol, have undertaken a proper assessment of this remuneration claim for my appointment as Liquidator of ACN 117 214 427 Pty Ltd (In Liquidation) (formerly Extrastaff Recruitment Pty Ltd) (**Extrastaff**) in accordance with the law and applicable professional standards. I am satisfied that the remuneration claimed is in respect of necessary work, properly performed, in the conduct of this matter.

I have reviewed the work in progress report for the liquidation to ensure that remuneration is only being claimed for necessary and properly performed work.

## 2 Executive Summary

To date, remuneration and disbursements, as set out in the table below, have been approved and paid in this administration.

Past approvals	Amount (ex GST)	Paid (ex GST)	Unpaid (ex GST)
Remuneration	\$1,380,090	\$1,372,247	\$7,483
Disbursements	\$56,961	\$56,961	Nil

This remuneration approval report details approval sought for the following remuneration:

Approval sought	Report Reference	Amount (ex GST)
<b>Remuneration</b>		
Retrospective	3.1	\$44,334
<b>Total remuneration</b>		<b>\$44,334</b>

Please refer to the report section reference detailed in the above table for full details of the remuneration approval sought.

## 3 Remuneration

### 3.1 Retrospective remuneration

I will request that the following resolution be passed to approve my retrospective remuneration. Details to support this resolution are included further below.

Retrospective remuneration resolution	Appointment Type	Amount (ex GST)
Resolution 1: 28 February 2015 to 11 September 2020	Liquidation	\$44,334
<b>Total retrospective remuneration resolution</b>		<b>\$44,334</b>

#### Resolution 1: from 28 February 2015 to 11 September 2020

*"That the remuneration for the liquidation for the period 28 February 2015 to 11 September 2020 calculated at hourly rates as detailed in the report to creditors dated 13 February 2015, is determined in the sum of \$44,334 exclusive of GST."*

I will withdraw funds from the administration account in respect of the Liquidator's remuneration immediately upon approval if funds are available. If funds are not available, I will withdraw funds progressively over time as funds become available.

The below table sets out the time charged to each major task area by staff members working on the liquidation for the period 28 February 2015 to 11 September 2020, which is the basis of Resolution 1. More detailed descriptions of the tasks performed within each task area, matching the amounts below, are contained further below.

**Resolution 1: from 28 February 2015 to 11 September 2020**

Employee	Position	\$ /hour (ex GST)	Total actual hours	Total (\$)	Task Area							
					Assets		Creditors		Employees		Administration	
					hrs	\$	hrs	\$	hrs	\$	hrs	\$
Rob Kirman	Partner	570	6.60	3,762	-	-	5.40	3,078	0.30	171	0.90	513
Employee A	Director	460	2.80	1,288	0.70	322	1.40	644	-	-	0.70	322
Employee A	Senior Manager	420	9.00	3,780	1.70	714	3.00	1,260	-	-	4.30	1,806
Employee B	Senior Manager	420	2.90	1,218	0.10	42	2.60	1,092	-	-	0.20	84
Employee C	Assistant Manager	300	55.40	14,765	9.70	2,565	18.00	4,895	0.10	30	27.60	7,275
Employee D	Manager	355	0.80	284	-	-	0.80	284	-	-	-	-
Employee D	Assistant Manager	300	25.90	7,360	1.10	330	11.80	3,345	1.50	450	11.50	3,235
Employee E	Accountant	250	14.00	2,956	-	-	7.10	1,491	-	-	6.90	1,465
Employee F	Accountant	210	4.50	945	-	-	2.70	567	0.60	126	1.20	252
Employee G	Accountant	210	3.10	651	-	-	0.70	147	-	-	2.40	504
Employee H	Undergraduate	190	9.50	1,805	-	-	8.10	1,539	-	-	1.40	266
Employee I	Admin Level 4	160	7.70	1,232	-	-	3.00	480	-	-	4.70	752
Employee J	Admin Level 4	160	22.30	3,568	-	-	0.50	80	-	-	21.80	3,488
Employee K	Admin Level 4	160	4.50	720	-	-	-	-	-	-	4.50	720
<b>Total (ex GST)</b>			<b>169.00</b>	<b>44,334</b>	<b>13.30</b>	<b>3,973</b>	<b>65.10</b>	<b>18,902</b>	<b>2.50</b>	<b>777</b>	<b>88.10</b>	<b>20,682</b>
<b>Average hourly rate</b>				<b>262</b>		<b>299</b>		<b>290</b>		<b>311</b>		<b>235</b>

The below table sets out a detailed description of work undertaken on the liquidation for the period 28 February 2015 to 11 September 2020, which is the basis of Resolution 1.

**Resolution 1: from 28 February 2015 to 11 September 2020**

Task Area	General Description	Includes
Assets 13.3 hours \$3,973	Debtors	Reconcile dividend cheques received. Seek updates from the liquidators of Solar Shop on numerous occasions in relation to the dividend to creditors over the period February 2015 to July 2020. Consider updates and reports provided. Complete proxy to vote in meetings of Solar Shop.
Creditors 65.1 hours \$18,902	Creditor Enquiries, Requests & Directions	Receive and respond to creditor enquiries. Receive and consider PODs from claimants.
	Fourth Meeting of Creditors	Prepare and send meeting notices. Deal with return to sender letters. Prepare meeting file, including chairperson's notes. Provide teleconference details to creditors. Review POD's and proxies received. Attend meeting. Prepare and lodge minutes of meeting with Australian Securities and Investments Commission (ASIC). Respond to stakeholder queries and questions following the meeting.
	Fifth Report to Creditors	Prepare Fifth Report to Creditors dated 10 February 2016, including: <ul style="list-style-type: none"> <li>- preparation of update to creditors;</li> <li>- issuance to all creditors;</li> <li>- arranging lodgement with ASIC; and</li> <li>- dealing with return to sender letters.</li> </ul>
	Sixth Report to Creditors	Prepare Sixth Report to Creditors dated 3 February 2017, including: <ul style="list-style-type: none"> <li>- preparation of update to creditors;</li> <li>- issuance to all creditors;</li> <li>- arranging lodgement with ASIC; and</li> <li>- dealing with return to sender letters.</li> </ul>
	Seventh Report to Creditors	Prepare Seventh Report to Creditors dated 20 March 2018, including: <ul style="list-style-type: none"> <li>- preparation of update to creditors;</li> <li>- issuance to all creditors;</li> <li>- arranging lodgement with ASIC; and</li> <li>- dealing with return to sender letters.</li> </ul>
	Eighth Report to Creditors	Prepare this, Eighth Report to Creditors dated 20 July 2020, including: <ul style="list-style-type: none"> <li>- preparation of update to creditors;</li> <li>- issuance to all creditors; and</li> <li>- dealing with return to sender letters.</li> </ul> Prepare remuneration report. Prepare meeting file.

Task Area	General Description	Includes
Employees 2.5 hours \$777	Other employee issues	Correspond with Child Support. Deal with other employee related issues.
Administration 88.1 hours \$20,682	Document maintenance/file review/checklist	Maintain physical and electronic engagement file. Update checklists.
	Bank account administration	Prepare correspondence to close accounts. Request bank statements. Perform bank account reconciliations. Correspond with bank regarding specific transfers.
	Unclaimed monies	Liaise with ASIC in relation to unclaimed monies.
	ASIC Receipts and Payments report – Form 524	Prepare and lodge six monthly form 524 for the periods ended: - 20 May 2015; - 20 November 2015; - 20 May 2016; - 20 November 2016; and - 20 May 2017.
	ASIC Receipts and Payments report – Form 5602	Prepare and lodge annual 5602 for the periods ended: - 20 November 2017; - 20 November 2018; and - 20 November 2019.
	ATO and other statutory reporting	Prepare quarterly BAS for the period March 2015 to June 2020 (22 individual quarterly BAS's). Respond to surveys.
	Planning/Review	Discuss status of external administration and benefits of keeping appointment active whilst waiting for the finalisation of Solar Shop.
	WIP review	Review WIP for inclusion in the remuneration report
Books and records / storage	Deal with working files and records in storage.	

### 3.2 Total remuneration reconciliation

At this point in time the total remuneration for the liquidation will be \$1,424,424, as shown in the table below.

Notwithstanding I have sought approval for an additional \$44,334 of remuneration from creditors, the quantum of the dividend expected from Solar Shop is not sufficient to pay this in full (as outlined in the Report). Accordingly, I intend to cap my remuneration at the current level of \$1,424,424, and forego any remuneration for the balance of work required to finalise the liquidation (i.e. from 12 September 2020 onwards).

Remuneration type	Amount (ex GST)	Amount (ex GST)
Past remuneration approved (refer to section 2)		\$1,380,090
Current remuneration approval being sought:		

Remuneration type	Amount (ex GST)	Amount (ex GST)
Retrospective remuneration approval (refer to section 3.1)	\$44,334	
Prospective remuneration approval	Nil	
<b>Estimated total remuneration</b>		<b>\$1,424,424</b>

This differs to the estimate provided in the previous Remuneration Approval Report dated 13 February 2015, which estimated remuneration of \$1,380,090 (excluding GST), as a result of delays experienced in receiving the Solar Shop dividend, and the associated costs involved in keeping the liquidation open for a significantly longer time period than initially expected.

### 3.3 Likely impact on dividends

It is both reasonable and appropriate for a professional service provider to be remunerated for their services. An external administrator is entitled to be remunerated for necessary work that is properly performed. That work generates the funds that may be recovered for the benefit of creditors and other stakeholders.

The impact of the approval of the external administrator's remuneration is that the remuneration will then be paid provided sufficient funds are generated to enable it to be paid. The remuneration will be paid from those funds that are generated prior to the payment of most creditors in the external administration.

It is noted that funds would only be available to any stakeholder as a consequence of the work necessarily undertaken by the external administrator.

If a dividend or distribution is to be paid to stakeholders, there is also necessary work that must be undertaken by the external administrator to properly adjudicate on claims and distribute any available funds.

## 4 Summary of receipts and payments

A summary of the receipts and payments for Liquidation for the period 1 February 2015 to 11 September 2020 is set out below:

Receipts and payments for the period 1 February 2015 to 11 September 2020		\$
Opening balance		18,226
<b>Receipts</b>		
Dividend received		2,482
Interest income		54
GST received		1,752
Total receipts		4,288
<b>Payments</b>		
Bank charges		(30)
Document storage		(614)
Liquidators' disbursements		(208)
Liquidators' fees		(21,662)
Total payments		(22,514)
<b>Cash at bank 11 September 2020</b>		<b>-</b>

## 5 Queries

If you have any queries regarding the information in this report, please contact Amber Andre on 08 6363 7665.

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

- ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors); and
- ASIC at [www.asic.gov.au](http://www.asic.gov.au) (search for "fees of insolvency practitioner").

Supporting documentation for my remuneration claim may be viewed if requested, provided sufficient notice is given.

Dated: 18 September 2020



Rob Kirman  
*Liquidator*

# Information sheet: Approving remuneration of an external administrator



If you are a creditor in a liquidation, voluntary administration or deed of company arrangement you may be asked to approve the external administrator's remuneration. An external administrator can be a liquidator, voluntary administrator or deed administrator. The process for approving the remuneration for each of these is the same.

This information sheet gives general information to help you understand the process of approving an external administrator's remuneration and your rights in this process. The following topics are covered in this information sheet:

- About external administrations
- External administrator's remuneration and costs
- Calculating remuneration
- Information you will receive
- Approving remuneration
- Who may approve remuneration
- Deciding if remuneration is reasonable
- What can you do if you decide the remuneration is unreasonable?
- Reimbursement of out of pocket costs
- Queries and complaints
- More information.

## About external administrations

If a company goes into liquidation, voluntary administration or enters into a deed of company arrangement, an independent person is appointed to oversee the administration. They are called an external administrator and include a liquidator, voluntary administrator and deed administrator, depending on the type of administration involved. In this information sheet they are simply referred to as an external administrator.

The duties of an external administrator are specified in legislation and they must adhere to certain standards while conducting the administration.

All external administrators are required by law to undertake certain tasks which may not benefit creditors directly (e.g. investigating whether any offences have been committed and reporting to the Australian Securities and Investments Commission (ASIC)).

## External administrator's remuneration and costs

External administrators are entitled to be paid for the necessary work they properly perform in the administration.

An external administrator is entitled:

- to be paid reasonable remuneration, for the work they perform, once this remuneration has been approved,
- to be paid for internal disbursements they incur in performing their role (these costs do need approval), and
- to be reimbursed for out-of-pocket costs incurred in performing their role (these costs do not need approval).

Common internal disbursements are stationery, photocopying and telephone costs.

Commonly reimbursed out-of-pocket costs include:

- legal fees
- a valuer's, real administration agent's and auctioneer's fees
- postage costs
- retrieval costs for recovering the company's computer records, and
- storage costs for the company's books and records.

Creditors have a direct interest in the amount of an external administrator's remuneration and costs, as these will generally be paid from the administration before any payments are made to creditors.

Remuneration and internal disbursements must be approved in accordance with the Corporations Act and Insolvency Practice Rules (Corporations) before it can be paid.

If there is a shortfall between the external administrator's remuneration and the assets available from the administration, in certain circumstances the external administrator may arrange for a third party to pay the shortfall. As a creditor, you will be provided details of any such arrangement.

If there are not enough assets to pay the external administrator's remuneration and costs, and there is no third party payment arrangement, the external administrator remains unpaid.

## Calculating remuneration

An external administrator may calculate their remuneration using one (or a combination) of a number of methods, such as:

- on the basis of time spent working on the administration, according to hourly rates
- a quoted fixed fee, based on an estimate of the costs
- a percentage (usually of asset realisations), or
- a contingent basis on a particular outcome being achieved.

Charging on the basis of time spent is the most common method used. External administrators have a set of hourly rates that they will seek to charge. These rates are set to reflect the seniority, skills and experience of staff and, where applicable, the complexity and risks of the bankruptcy. They cover staff costs and overheads.

If remuneration is being charged on a time basis, the external administrator must keep time sheets noting the number of hours spent on the tasks performed.

Creditors have a right to question the external administrator about the remuneration and the rates to be charged. They also have a right to question the external administrator about the fee calculation method used and how the calculation was made. The external administrator must justify why the chosen fee calculation method is appropriate for the administration.

## Information you will receive

There are different types of remuneration reports that you may receive during the course of an external administration. The following table details the reports and when you might receive them.

Document	Information it contains	When you will receive it
Initial Remuneration Notice (IRN)	<ul style="list-style-type: none"> <li>• A brief explanation of the types of methods that may be used to calculate fees.</li> <li>• The external administrator's chosen fee calculation method(s) and why it is appropriate.</li> <li>• Details of the external administrator's rates, including hourly rates if time spent basis is used.</li> <li>• An estimate of the external administrator's remuneration.</li> <li>• The method that will be used to calculate disbursements.</li> </ul>	<p>Voluntary Administration – with the notice of first meeting.</p> <p>Creditors' voluntary liquidation – within 10 business days of appointment.</p> <p>Court liquidation – within 20 business days of appointment.</p>
Remuneration Approval Report (RAR)	<ul style="list-style-type: none"> <li>• A summary description of the major tasks performed, or likely to be performed.</li> <li>• The costs associated with each of those major tasks and the method of calculation.</li> <li>• The periods at which the external administrator proposes to withdraw funds from the administration for remuneration.</li> <li>• An estimated total amount, or range of total amounts, of the external administrator's remuneration.</li> <li>• An explanation of the likely impact of that remuneration on the dividends (if any) to creditors.</li> <li>• Where internal disbursements are being claimed, the external administrator will report to creditors on the amount and method of calculation of these disbursements.</li> </ul>	<p>Sent at the same time as:</p> <ul style="list-style-type: none"> <li>• the notice to creditors of the meeting at which approval of remuneration will be sought; or</li> <li>• the notice to creditors of the proposal without a meeting by which approval of remuneration will be sought</li> </ul> <p>If approval of remuneration is not being sought, a RAR will not be provided.</p>

## Approving remuneration

The meeting of creditors (or committee of inspection) gives a chance for those participating to ask questions about the external administrator's remuneration. Fees are then approved by a vote of the creditors. Alternatively, the external administrator may seek approval of remuneration via a proposal without a meeting. Whichever method is used, the external administrator must provide the same report to creditors about their remuneration (Remuneration Approval Report).

Creditors may be asked to approve remuneration for work already performed and/or remuneration estimate for work not yet carried out. If the work is yet to be carried out, the external administrator must set a maximum limit (cap) on the future remuneration approval. For example, 'future remuneration is approved, calculated on hours worked at the rates charged (as set out in the provided rate scale) up to a cap of \$X'.

If the remuneration for work done then exceeds this figure, the external administrator will have to ask the creditors to approve a further amount of remuneration, after accounting for the amount already incurred.

If an external administrator can't get the creditors' approval, an application can be made to the Court to determine their remuneration.

When there are limited funds available in the administration, or the external administrator's remuneration is below a statutory threshold, an external administrator is entitled to draw a one-off amount of up to that threshold plus GST, without creditor approval. This amount is currently \$5,000 (indexed).

## Who may approve remuneration?

### Committee of inspection approval

A committee of inspection will generally only be established where there are a large number of creditors and/or complex matters which make having a committee desirable. Committee members are chosen by a vote of all creditors and work with the external administrator to represent the creditors' interests.

If there is a committee, the external administrator will ask it to approve the remuneration. A committee makes its decision by a majority in number of its members present in person at a meeting, but it can only vote if a majority of its members attend.

In approving the remuneration, it is important that committee members understand that they represent all the creditors, not just their own individual interests.

### Creditors' approval

Creditors approve remuneration by passing a resolution at a creditors' meeting. Creditors may vote according to their individual interests.

To approve an external administrator's remuneration, a resolution is put to the meeting to be decided on the voices or by a 'poll' (if requested by the external administrator or a person participating and entitled to vote at the meeting). A poll requires a count of each vote and its value to be taken and recorded for each creditor present and voting.

A proxy is a document whereby a creditor appoints someone else to represent them at a creditors' meeting and to vote on their behalf. A proxy can be either a general proxy or a special proxy. A general proxy allows the person holding the proxy to vote how they want on a resolution, while a special proxy directs the proxy holder to vote in a particular way.

A creditor will sometimes appoint the external administrator as a proxy to vote on the creditor's behalf. An external administrator is only able to vote on remuneration if they hold a special proxy.

There are provisions for a resolution to be passed by creditors without a meeting. This still requires a majority in value and number of creditors voting to vote in favour of the resolution. Creditors representing at least 25% in value of those responding to the external administrator's proposal can object to the proposal being resolved without a meeting of creditors.

## Deciding if remuneration is reasonable

If you are asked to approve an external administrator's remuneration, your task is to decide if the amount of remuneration is reasonable, given the work carried out in the administration and the results of that work.

You may find the following information from the external administrator useful in deciding if the remuneration claimed is reasonable:

- the method used to calculate remuneration
- the major tasks that have been performed, or are likely to be performed, for the remuneration
- the remuneration/estimated remuneration (as applicable) for each of the major tasks
- the size and complexity (or otherwise) of the administration
- the amount of remuneration (if any) that has previously been approved
- if the remuneration is calculated, in whole or in part, on a time basis:
  - the period over which the work was, or is likely to be performed
  - if the remuneration is for work that has already been carried out, the time spent by each level of staff on each of the major tasks
  - if the remuneration is for work that is yet to be carried out, whether the remuneration is capped.

ARITA's Code of Professional Practice ('the Code') outlines the steps external administrators should take to make sure they fulfil their responsibilities to creditors when asking creditors to approve remuneration, including when those creditors are acting in their capacity as committee members. The Code is available on the ARITA website at [www.arita.com.au](http://www.arita.com.au).

If you need more information about remuneration than is provided in the external administrator's report, you should let them know before the meeting at which remuneration will be voted on.

## What can you do if you think the remuneration is unreasonable?

If you think the remuneration being claimed is unreasonable, you should raise your concerns with the external administrator. It is your decision whether to vote in favour of, or against, a resolution to approve remuneration. You may also choose to not vote on the resolution (abstain).

You also have the power to put a resolution to the meeting. For example, you could put forward a resolution to change the way the external administrator charges for remuneration, or the periods at which the external administrator may withdraw funds. Any amending resolution must occur before the vote being taken on the resolution to approve remuneration. If the amended proposal is passed, the resolution is binding on the external administrator. However, such an amendment may result in the external administrator seeking to be replaced by another external administrator.

If the external administrator is seeking approval of remuneration via a resolution without a meeting and more than 25% in value of the creditors responding object using the form provided by the external administrator, the proposal will not pass. If the external administrator wants the proposal passed, a meeting will need to be convened and any creditor entitled to participate in the meeting has the right, before the vote is taken, to put a resolution to the meeting as mentioned above.

A creditor may apply to Court for a review of an external administrator's remuneration. Creditors also have the power to appoint, by resolution, a reviewing liquidator to review any remuneration approved within the six months and any disbursements incurred in the 12 months before the reviewing liquidator's appointment. The cost of a reviewing liquidator is paid from the assets of the external administration. An individual creditor may also appoint a reviewing liquidator with the external administrator's consent. An individual creditor seeking the appointment of a reviewing liquidator must pay the cost of the reviewing liquidator.

### Reimbursement of out-of-pocket costs

An external administrator should be very careful incurring costs that must be paid from the administration; as careful as if they were incurring the expenses on their own behalf. Their report on remuneration sent to creditors must also include information on the out-of-pocket costs of the administration (disbursements).

Where these out-of-pocket costs are internal disbursements paid to the external administrator's firm (for example photocopying and phone calls) the external administrator must request creditor approval of these amounts. The external administrator may also ask for approval of internal disbursements in advance. If they do so, they will set the rates for those disbursements and a cap on the maximum amount that can be drawn.

If you have questions about any of these costs, you should ask the external administrator and, if necessary, bring it up at a creditors' or committee meeting. If you are still concerned, you have the right to seek the appointment of a reviewing liquidator (refer above).

### Queries and complaints

You should first raise any queries or complaints with the external administrator or their firm.

If this fails to resolve your concerns, including any concerns about their conduct, you can lodge a complaint with ARITA at [www.arita.com.au](http://www.arita.com.au) or with ASIC at [www.asic.gov.au](http://www.asic.gov.au). ARITA is only able to deal with complaints in respect of their members.

### More information

The [ARITA website](http://www.arita.com.au) contains the ARITA Code of Professional Practice which is applicable to all its members. ARITA also provides general information to assist creditors at [www.arita.com.au/creditors](http://www.arita.com.au/creditors).

ASIC includes information on its website which may assist creditors. Go to [www.asic.gov.au](http://www.asic.gov.au) and search for 'insolvency information sheets'.

**Important note:** This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.

**FORM 535**

Corporations Act (2001)

**FORMAL PROOF OF DEBT OR CLAIM  
(GENERAL FORM)**

To the Liquidators of ACN 117 214 427 Pty Ltd (In Liquidation) (formerly Extrastaff Recruitment Pty Ltd)

1. This is to state that the company was on 17 October 2011, and still is, justly and truly indebted to:

*(full name and address of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor) for \$ \_\_\_\_\_ and \_\_\_\_\_ cents.*

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. I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.
- \*3. I am the creditor's agent authorised in writing to make this statement in writing. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

.....  
Signature  
Occupation:  
Address

Dated

**Proof of Debt Reference:**

\*Do not complete if this proof is made by the creditor personally.



## **Proof of Debt Guidance Notes**

(Please read carefully before filling in Form 535 or Form 536)

It is a creditor's responsibility to prove their claim to our satisfaction.

When lodging claims, creditors must ensure:

- the proof of debt form is properly completed in every particular; and
- evidence, as set out under "Information to support your claim", is attached to the Form 535 or Form 536.

### **Directions for completion of a Proof of Debt**

1. Insert the full name and address of the creditor.
2. Under "Consideration" state how the debt arose, for example "goods sold to the company on \_\_\_\_\_".
3. Under "Remarks" include details of any documents that substantiate the debt (refer to the section "Information to support your claim" below for further information).
4. Where the space provided for a particular purpose is insufficient to contain all the information required for a particular item, please attach additional information.

### **Information to support your claim**

Please note that unless you provide evidence to support the existence of the debt, your debt is not likely to be accepted. Detailed below are some examples of debts creditors may claim and a suggested list of documents that should accompany a proof of debt to substantiate the debt.

#### **Trade Creditors**

- Invoice(s) and statement(s) showing the amount of the debt; and
- Advice(s) to pay outstanding invoice(s) (optional).

#### **Guarantees/Indemnities**

- Executed guarantee/indemnity;
- 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.