



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

Version 2

**Seawest International Pty Ltd (In Liquidation)**  
**ACN 009 428 004**  
**(Seawest)**

The *Corporations Act* and professional standards require the Practitioner/s appointed to an insolvent entity to make a declaration as to:

- A. their independence generally;
- B. relationships, including
  - a) the circumstances of the appointment;
  - b) any relationships with Seawest and others within the previous 24 months;
  - c) any prior professional services for Seawest within the previous 24 months;
  - d) that there are no other relationships to declare; and
- C. any indemnities given, or up-front payments made, to the Practitioner.

This declaration is made in respect of ourselves, our partners, the firm McGrathNicol, which for the purpose of this declaration includes the McGrathNicol Partnership, the McGrathNicol Advisory Partnership and McGrathNicol Services Pty Ltd.

This is a revision to the DIRRI dated 9 February 2018, and prepared following (i) the entering into a funding agreement with the Deputy Commissioner of Taxation for the Commonwealth of Australia (ATO), which includes an indemnity for any adverse costs incurred in association with certain Court proceedings pursued by the Liquidators in the liquidation, and (ii) the additional appointment of the Liquidators to certain companies within an informal group that Seawest is a member of.

### **A. Independence**

We, Robert Brauer and Robert Kirman, of the firm McGrathNicol have undertaken a proper assessment of the risks to our independence prior to accepting the appointment as liquidators of Seawest in accordance with the law and applicable professional standards. This assessment identified no real or potential risks to our independence. We are not aware of any reasons that would prevent us from accepting nor continuing this appointment.

### **B. Declaration of Relationships**

#### **(i) *Circumstances of appointment***

The liquidation appointment was referred to us by the ATO. On 21 November 2017, we were contacted by the ATO in regards to completing a conflict check and providing a consent to act as liquidators of Seawest. We were subsequently contacted by the ATO on 10 January 2018 in regards to a pending petition to wind up Seawest by alternate creditors, and requested a Consent to Act as liquidators of Seawest. A Consent to Act was subsequently provided on 10 January 2018.

Further correspondence was received from the ATO advising that the winding application had been listed for hearing on 11 January 2018, following which we were appointed liquidators of Seawest.

We believe this referral does not result in a conflict of interest or duty because:

- it is entirely unconditional;



- the ATO refers insolvency engagements to McGrathNicol from time to time, each referral by the ATO in relation to a particular entity is conducted on an entirely separate basis and is commenced only after full regard is given to potential conflicts of interest in relation to all interested parties. No prior engagements have been undertaken by McGrathNicol in relation to Seawest;
- the alternate petitioning creditors, Blair James Michelson and Annadevi Michelson are not known to the Liquidators nor has there been a prior relationship;
- there is no expectation or understanding between the liquidators, the ATO or Blair James Michelson and Annadevi Michelson regarding the conduct of the liquidation; and
- the limited dealings with the ATO and Blair James Michelson and Annadevi Michelson in relation to consenting to act as liquidator of Seawest does not impact on our independence as it does not result in any duty owed to that creditor that would conflict with our duties as liquidators.

**(ii) Relevant Relationships (excluding professional services to the Insolvent)**

Neither we, nor our firm, have, or have had, within the preceding 24 months, any relationships with Seawest, an associate of Seawest, a former insolvency practitioner appointed to Seawest or any person or entity that has security over the whole or substantially the whole of Seawest's property.

**(iii) Prior professional services to the Insolvent**

Neither we, nor our firm, have provided any professional services to Seawest, in the 24 months prior to appointment.

**(iv) No other relevant relationships to disclose**

There are no other known relevant relationships, including personal, business and professional relationships, from the previous 24 months with Seawest, an associate of Seawest, a former insolvency practitioner appointed to Seawest or any person or entity that has security over the whole or substantially the whole of Seawest's property that should be disclosed.

**C. Indemnities and Up-front Payments**

We have been provided with the following indemnity for adverse costs and funding should they be incurred in relation to certain Court proceedings being pursued by the Liquidators.

<b><u>Name</u></b>	<b><u>Relationship with Seawest</u></b>	<b><u>Nature of Indemnity or Payment</u></b>
<b><u>Deputy Commissioner of Taxation for the Commonwealth of Australia</u></b>	<u>The ATO is a material creditor of Seawest.</u>	<u>The ATO has agreed to provide an indemnity that may be used to cover any adverse costs that may be incurred and/or associated with certain Court proceedings currently being pursued by the Liquidators for for the benefit of creditors of Seawest and related entities.</u>  <u>The ATO has also agreed to provide funding in relation the costs of the Liquidators and their legal advisors pursuing the abovementioned proceedings.</u>  <u>There are no conditions on the conduct or the outcome of the liquidation attached to the provision of the indemnity and/or funding.</u>



**D. Appointments to Members of a Corporate Group**

For the sake of transparency, we have set out below an explanation about the infomal group of companies that (i) Seawest is a member of and (ii) our current role in other companies in this group.

Seawest is one of a number of corporate entities that previously operated a marine services business controlled by Mr Glenn Hawes (generally as sole director) which have been wound up in insolvency since the Liquidators' appointment to Seawest. The additional corporate entities have undertaken various aspects of business operations within the same industry as Seawest and/or on behalf of the same director and majority owner, but do not meet the definition of 'associate' in the Corporations Act.

We have been appointed liquidators to other entities within this group, being:

- Villioso Pty Ltd (In Liquidation) (Villioso) on 6 February 2018; and
- Renbec Pty Ltd (In Liquidation) (Renbec) on 14 March 2018.

We believe that our appointment as liquidators to Seawest, Villioso and Renbec does not result in a conflict of interest or duty for the following reasons:

- neither of the appointments were made by the director, in each instance our appointment was made on an application to the Court by an unsecured creditor; and
- as a consequence, there is no professional or other relevant relationship between Glenn Hawes or us as liquidators, nor any known conflict of interest or duty that would arise as a result of the connection with Seawest by way of any common office holder and shareholder.

Given these factors, our independence in acting as Liquidators of Seawest has not been affected.

We are of the view that the appointment to several members of this group of companies is likely to be of benefit to the conduct of the liquidations. This will provide for efficiencies resulting in costs savings and enable a more complete and accurate view to be obtained of the interrelated activities. Evidence of this can be observed in the cost savings associated with concurrently (i) preparing a report to Australian Securities and Investments Commission (ASIC) pursuant to section 533(2) of the Act in relation to Renbec and Seawest, (ii) pursuing related legal claims for the benefit of creditors of Seawest and Renbec, and (iii) conducting investigations and reporting more effectively to creditors and ASIC.

We are aware that there are inter-company transactions within the group, however we are unaware of any potential conflicts of interest arising from the appointments over Seawest, Villioso and Renbec. To the extent it becomes apparent that pre-appointment dealings between Seawest, Villioso and Renbec may give rise to a conflict which may impact the outcome for creditors of either company, we will undertake to disclose any such conflicts to the creditors and, as appropriate, seek Court directions as to the means of resolving the potential conflict.

Dated: 1 April 2022

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**Robert Brauer**

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**Robert Kirman**



Note:

- 1 If the circumstances change or new information is identified, we are required under the Corporations Act 2001 and the ARITA Code of Professional Practice to update this Declaration and provide a copy to creditors with our next communication, as well as table a copy of any replacement Declaration at the next meeting of the insolvent's creditors.
- 2 Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B, C and D of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent.

Please note that the presentation of the above information is in accordance with the standard format suggested by ARITA.