



**Mackay Consolidated Industries Pty Limited
(Administrators Appointed)
ACN 006 962 401 (MCI)**

Circular to Employees

Keith Crawford and I were appointed joint and several Administrators (**Administrators**) of MCI on 2 November 2022.

Background

As Administrators, we have assumed control of MCI's affairs and have entered into possession of its assets. The Administrators are undertaking an urgent assessment of MCI's operations and intend to maintain operations on a 'business as usual' basis while options for a sale and/or recapitalisation are explored.

All instructions related to the management of MCI will now be issued by the Administrators or by my authorised personnel, through your normal reporting channels.

The key objective of a voluntary administration is to restructure the business or transfer it to a new owner. In these circumstances, it is usually the case that employee entitlements are either transferred to the new owner or dealt with as part of a Deed of Company Arrangement (**DOCA**). However, in the event there are insufficient assets to meet employee entitlements and entities go into liquidation, there is a government scheme called the Fair Entitlements Guarantee scheme which may provide access to some or all of your pre-appointment entitlements.

Wages

Employees are asked to continue their normal duties until advised further. Wages and entitlements for continued employment during the administration will be paid by the Administrators.

Please note that the Administrators do not adopt any employment or other contract you may have with MCI.

Pre-appointment entitlements

Claims against MCI for certain categories of employee entitlements, for the period prior to my appointment, may receive priority payment under the *Corporations Act*. However, there may be other higher-ranking payment priorities.

At this point, we are unable to confirm whether there will be sufficient assets available to meet employees' pre-appointment claims. As soon as the position of prior-ranking claims has been clarified and MCI's asset position determined, you will be advised further.

As stated earlier, in the event this does not occur and MCI goes in to liquidation, there is a government scheme called the Fair Entitlements Guarantee scheme which may provide access to some or all of your pre-administration entitlements.

Moving forward

An initial meeting of creditors of MCI, which includes employees, will be held on 14 November 2022. Notice of the meeting time date will be provided to you by the Administrators shortly.

At the initial meeting, the Administrators will explain the administration process, and creditors will have the opportunity to appoint a creditors committee and nominate an alternative administrator, if they so wish. You are not obliged to attend this meeting in person.

In the future, a second meeting of creditors will be held, at which the Administrators will present the results of our investigation into the financial position of MCI and give our recommendation on the best course of action for MCI.



Other matters and contact details

A schedule setting out the responsibilities of employees of a company under administration is enclosed for your guidance. Our authorised personnel will now issue all instructions concerning the management of MCI. Please refer to your normal line managers in relation to day-to-day operations.

We have included a "Frequently Asked Questions" document which may assist if you have any queries about the process.

A copy of the information sheet, "Insolvency information for directors, employees, creditors and shareholders", issued by the Australian Securities & Investments Commission (**ASIC**) is also enclosed for your information. If you have any queries, please contact the Administrators by email to MCIEmployees@mcgrathnicol.com. For further information about this engagement, please refer to the MCI creditor page of the McGrathNicol website (www.mcgrathnicol.com/creditors).

Thank you in advance for your assistance and cooperation.

Dated: 2 November 2022

Robert Smith
Joint and Several Administrator

Enclosures:

- 1 Schedule of responsibilities of officers and employees
- 2 ASIC "Insolvency information for directors, employees, creditors and shareholders" information sheet
- 3 Frequently Asked Questions



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Responsibilities of Officers and Employees

The duties and responsibilities of the officers and employees of a company under administration are set out below for your guidance.

- All documents issued by the company must have "(Administrators Appointed)" after the company name where it first appears on the document.
- When a company is placed under administration, the powers of the directors and other officers are suspended. However, under certain circumstances, and only with the consent of the Administrators, those powers may continue. Some obligations of the directors will continue to apply, for example the obligation to lodge Annual Statements with ASIC.
- The Administrators may carry on the business and may employ or remove an officer or employee for this purpose.
- Without the express written authority of the Administrators:
 - No order for goods or services will be placed that has not been signed personally by the Administrators, or a person nominated by the Administrators.
 - No goods will be accepted by the company from any source whatsoever that are not the subject of an order signed by the Administrators, or the nominated representative of the Administrators.
 - No credit will be incurred.
 - No payments will be made.
 - No goods will be returned to any supplier.
- All cash and cheques received will be passed to the Administrators.
- No assets of the company will be removed from the company's custody without the written approval of the Administrators.
- All assets are to be secured against theft, under lock and key.
- The entire assets and undertaking of the company are under the express and sole control and custodianship of the Administrators and may only be dealt with by the Administrators.

If you have any queries, please contact the Administrators by email to MClemployees@mcgrathnicol.com.



ASIC
Australian Securities &
Investments Commission

Insolvency information for directors, employees, creditors and shareholders

This information sheet (INFO 39) lists ASIC's information sheets for directors, employees, creditors and shareholders affected by a company's insolvency.

We have produced these with endorsement from the Australian Restructuring Insolvency & Turnaround Association (ARITA).

The information sheets give a basic understanding of the three most common company insolvency procedures – liquidation, voluntary administration and receivership – as well as the independence requirements for external administrators and approving external administrator remuneration. There is also a glossary of commonly used insolvency terms.

List of information sheets

- [INFO 41](#) Insolvency: A glossary of terms
- [INFO 42](#) Insolvency: A guide for directors
- [INFO 43](#) Insolvency: A guide for shareholders
- [INFO 45](#) Liquidation: A guide for creditors
- [INFO 46](#) Liquidation: A guide for employees
- [INFO 54](#) Receivership: A guide for creditors
- [INFO 55](#) Receivership: A guide for employees
- [INFO 74](#) Voluntary administration: A guide for creditors
- [INFO 75](#) Voluntary administration: A guide for employees
- [INFO 84](#) Independence of external administrators: A guide for creditors
- [INFO 85](#) Approving fees: A guide for creditors

Where can I get more information?

Further information is available from the [ARITA website](#). The ARITA website also contains the [ARITA Code of Professional Practice for Insolvency Practitioners](#).

This is **Information Sheet 39 (INFO 39)** updated on 1 September 2017. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.



**Mackay Consolidated Industries Pty Limited
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Circular to Employees

Employee Frequently Asked Questions

2 November 2022

Robert Smith and Keith Crawford were appointed joint and several Administrators (**Administrators**) of MCI on 2 November 2022 following a resolution of their boards of directors.

The purpose of this document is to answer some frequently asked questions that employees may have about the Administration. The Administrators will update employees regularly on the status of the Administration and their employment, particularly in the early phases while the Administrators urgently undertake a financial and operational assessment of MCI.

Employees should direct any additional questions to their supervisor/manager in the first instance, who will then feed questions to the Administrators' representatives. The Administrators will add to this document as required and updated versions may be accessed on the MCI creditor page of McGrathNicol's website www.mcgrathnicol.com under "Creditors".

In this document, any reference to wages includes employees paid either on hourly-based or salary-based wages.

The Administrators act as agents of MCI. By issuing this information sheet, the Administrators are not adopting any contract of employment that exists, or may have existed, between any employee of MCI.

What happens to my employment?

Your employment will continue as normal and employees are asked to continue with their usual duties unless instructed otherwise.

Whilst the Administrators do not personally adopt your employment contract, the Administrators will pay wages in accordance with your current contract, award, Enterprise Bargaining Agreement or other industrial instrument.

The Administrators are personally responsible for paying employee wages for work completed after the time of their appointment (for most employees, this is for work completed on or after 2 November 2022).

The funds will be drawn from the Administrators' bank account and wages paid by the Administrators will refer to 'Administrators Appointed' on payslips.

How certain is my continued employment?

The Administrators' review of staffing requirements will be ongoing and subject to their obligation to endeavour to maximise the realisations from MCI's assets. Further communications will be provided to staff as and when there is greater clarity around options available to the Administrators and as the strategy evolves.

What happens to my entitlements?

Claims against MCI for certain categories of employee entitlements, for the period prior to the Administrators' appointment, may receive priority under the *Corporations Act 2001 (Cth)*.



The Administrators are presently undertaking an urgent review of the asset position of MCI to determine if there are sufficient realisable assets to meet employees' pre-administration claims. As soon as the position of prior-ranking claims has been clarified and MCI's asset position determined, the Administrators will advise you further.

In the event there are insufficient assets to meet employees' pre-administration claims, employees may be able to make a claim through the Federal Government's Fair Entitlements Guarantee Scheme (**FEG**). Further details in relation to this scheme are provided below. Please note that this scheme is only available in a liquidation scenario, and is not available to employees who are not permanent residents of Australia.

Will my outstanding wages be paid up to date?

Payroll will be processed in the normal course. Employees will be informed should a delay arise due to the change in MCI's banking facilities.

Will I continue to be paid my wages?

Yes. While the Administrators do not personally adopt your employment contract whilst employed, the Administrators will pay wages in accordance with your current contract, award, Enterprise Bargaining Agreement or other industrial instrument for the period from their appointment.

Will my superannuation be paid?

The Administrators will deduct superannuation as usual from your wages and make payment to your nominated superannuation fund for the period following the date of their appointment.

Any deductions from your wages for superannuation that were not remitted to your superannuation fund by your employing entity for the period prior to the Administrators' appointment will form part of the claim you have against MCI. The Administrators are presently assessing this and will communicate with you further as soon as possible.

Will other deductions continue to be made from my wages such as private health, child support, salary sacrifice, and novated lease payments?

Yes, the Administrators will deduct payments and remit to third parties for the period following the date of their appointment. Any deductions that were not remitted to third parties from your wages by MCI prior to the Administrators' appointment will form part of the claim you have against MCI.

What will happen if I have to make child support payments?

All scheduled child support payments will be processed in the normal payment structure that was in place prior to the Administrators' appointment.

Can I claim an employee reimbursement?

Employees should not be incurring any out of pocket expenses during the administration period without prior consent of the Administrators.

Outstanding pre-appointment out of pocket expenses will be assessed by the Administrators prior to a decision being made on employee reimbursements.



What do I do if I need to travel?

If you need to arrange travel or accommodation, please speak with your manager prior to booking.

Any requests to book travel will be assessed on a case-by-case basis.

Will I continue to accrue leave?

Yes, during the Administration you will continue to accrue annual, long service and sick leave and other entitlements.

Can I still take sick leave?

Leave should be applied for in the normal course for consideration by your supervisor or manager, who should then consult with the Administrators. Any new applications for leave will be considered on a case by case basis.

I have been approved to take leave after 2 November 2022. Can I still take leave and will it be paid?

Pre-appointment leave will be assessed by the Administrators on a case by case basis.

I would like to take leave in the future but have not put in a leave request form. What should I do?

Leave should be applied for in the normal course for consideration by your supervisor or manager, who should then consult with the Administrators.

What happens to my pre-appointment leave balances?

You will have a claim against MCI for entitlements that accrued before the Administrators' appointment. This includes your pre-administration leave accruals (including long service leave and annual leave).

How you claim or get access to your pre-administration entitlements will depend on the ultimate outcome of the Administration and value recovered from assets.

The Administrators are likely to attempt to sell MCI as a going concern. In this case, there may be an opportunity for ongoing employment and transfer of your pre-administration entitlements to a purchaser. Alternatively, a Deed of Company Arrangement (**DOCA**) or DOCAs may be received by the Administrators that may propose transfer of employment and pre-administration entitlements.

In the event there are insufficient circulating assets to meet employee entitlements and your employing entity goes into liquidation, there is a Government scheme called the Fair Entitlements Guarantee scheme which may provide access to some or all of your pre-administration entitlements.

What is the Fair Entitlements Guarantee scheme?

In the event that your employing entity goes into liquidation, there is a Government scheme called the Fair Entitlements Guarantee Act (**FEG**). FEG assists eligible employees who have lost their employment due to the liquidation of their employer and who are owed certain employee entitlements.

FEG covers up to 13 weeks unpaid wages, annual leave, long service leave, up to five weeks payment in lieu of notice and up to 4 weeks redundancy pay for each year completed plus a pro-rata for each part year, subject to



certain income limits. Please note, FEG is only applicable in the event of liquidation and is only applicable to eligible employees. The Administrators will provide more information on FEG in due course.

Please note that the eligibility of each claim is determined by the Attorney-General's Department (**Department**).

Are there any claim thresholds under the FEG scheme?

In the event your employing entity is placed into liquidation, the Department can pay what is owed to you under your existing terms and conditions of employment under the five basic entitlements, summarised below:

- wages – capped at 13 weeks
- annual leave
- long service leave
- payment in lieu of notice – capped at five weeks
- redundancy – capped at four weeks per full year of service

When calculating the amount of FEG assistance payable, the FEG maximum weekly wage if applied. The current indexed maximum weekly wage cap is \$2,529. This means that if you earn more than \$2,529 per week, your FEG assistance can only be calculated based on a weekly wage rate of \$2,529 per week.

For further information on the FEG scheme, including the claim process, please visit their website via <https://www.jobs.gov.au/fair-entitlements-guarantee-feg>.

Will I be entitled to a redundancy payment if my employment is ultimately terminated?

Some employees may be entitled to redundancies in the event their employment is terminated if provided for in their contracts or relevant industrial awards. If terminated, any redundancy payment forms a pre-administration claim against your employing entity. Please see question "*What happens to my entitlements*" above for further information in this regard.

What happens if I find another job or resign?

You will not be entitled to any redundancy payment if you resign.

What is the first meeting of creditors?

The Administrators are required to hold a meeting of creditors within eight business days of their appointment. This meeting will be convened for 14 November 2022.

Employees will receive formal notification of the meeting by 7 November 2022.

At the meeting, creditors are given the opportunity to replace the Administrators with alternative administrators and to form a committee of inspection. A committee of inspection may be formed, following a vote of creditors, to consult with the Administrators and receive reports on the conduct of the administration. A committee of inspection can also approve the Administrators' fees.

What is the second meeting of creditors?

The Administrators are required to hold a second meeting of creditors within approximately one month of their appointment, unless otherwise extended by Court order.



You will receive formal notification of the meeting details ahead of that time.

The purpose of this meeting is predominantly for creditors to determine the future of MCI. The options available to creditors can include returning control of MCI back to its directors; executing a Deed of Company Arrangement if one is proposed; or, placing MCI into liquidation.

Should I attend the creditor meetings?

As creditors, employees are entitled to attend the meetings of creditors. However, as the meetings will take place on a business day, the Administrators request that employees attend to their usual duties and ask a representative to act as their proxy, being another employee or a union representative.

A proxy form will be provided to you together with notice of the meeting and there will be further communications in this regard.

What is the role/authority of the Company's directors? Do we take direction from them or from the Administrators?

The Administrators make all financial and strategic decisions relating to MCI and have ultimate executive control. The duties of directors of the Company are suspended while the relevant entity of which he/she is a director is in Administration.

The Administrators continue to work with the Company's management and employees should continue to report to their supervisor/operations managers.

Where can I get information in relation to the administration?

Employees should direct any additional questions to their supervisor in the first instance. Additionally, employees can contact the Administrators via email to MCIemployees@mcgrathnicol.com.

The Administrators will also add to this document as required and updated versions may be accessed on the MCI creditor page of the McGrathNicol website (www.mcgrathnicol.com) under "Creditors".