



Marine & Civil Pty Ltd (In Liquidation)
ACN 147 854 635
(Marine & Civil)

Report to Creditors

We refer to:

- our previous correspondence regarding our appointment as administrators of Marine & Civil on 10 July 2018 (**Administrators**), and our subsequent appointment as liquidators on 21 August 2018 (**Liquidators**);
- our Statutory Reports to Creditors dated 21 November 2018 and 8 October 2019 (**Prior Reports**); and
- your rights as a creditor in the liquidation.

The purpose of this report is to:

- provide you with an update in relation to the progress of the liquidation and the ongoing conduct of the Liquidators;
- advise you of the likelihood of a dividend being paid in the liquidation; and
- seek approval of the Liquidators' remuneration.

This report should be read in conjunction with our Prior Reports.

1 Liquidators' DIRRI

In accordance with section 506A of the Corporations Act 2001 (**the Act**) and ARITA Code, a Declaration of Independence, Relevant Relationships and Indemnities (**DIRRI**) was enclosed with our circular to creditors dated 12 July 2018.

The DIRRI was also tabled and discussed at Marine & Civil's first meeting of creditors on 20 July 2018.

We have not previously considered that our prior involvement gave rise to any potential conflict of interest issues. Since our appointment as Liquidators, we have continued to assess whether our prior involvement had caused any potential conflict of interest issues to develop.

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

2 Update on the progress of the liquidation

The Liquidators have completed realising the company's known assets. Overall, proceeds from asset realisations have exceeded previous estimates provided by the Liquidators.

The Liquidators' focus in the past circa six months has been investigating and progressing claims that the company may have against company directors and other third parties. These claims are discussed further in section 3.



2.1 *Estimated assets and liabilities*

The directors completed a Report as to Affairs (**RATA**) setting out Marine & Civil's financial position. A summary of The Liquidators' view on estimated realisable values (**ERV**) as against the RATA is summarised below:

Marine & Civil Pty Ltd (In Liquidation) - Summary of financial position				
\$'000	Reference	RATA	High	Low
Assets				
Cash at bank		132	132	132
Debtors & loans		749	900	900
Retentions	2.1.1.1	409	341	341
Plant and equipment		1,600	1,782	1,782
Other assets	2.1.1.2	50	-	-
Total assets		2,941	3,155	3,155
Liabilities				
Secured creditors		(598)	(624)	(624)
Retention of title		-	(48)	(48)
Priority creditors	2.1.2.1	(1,531)	(1,657)	(1,657)
Unsecured creditors	2.1.2.2	(10,350)	(11,162)	(11,716)
Total liabilities		(12,480)	(13,491)	(14,044)
Estimated deficiency before costs		(9,539)	(10,336)	(10,889)

The Liquidators' view on the ERV's remain largely unchanged since our report dated 8 October 2019. Accordingly, the below detail is limited to areas where there has been a change in ERV from Prior Reports that may be of interest to creditors.

2.1.1 *Assets*

The RATA reported assets of circa \$2.9 million, comprising cash, debtors (including loans receivable), retentions and plant and equipment. As set out above, the Liquidators have now realised circa \$3.2 million. No further asset realisations are anticipated (excluding from the claims discussed in section 3).

2.1.1.1 *Retentions*

Since our last report, the Liquidators have collected a further circa \$65,000 (excluding GST) in pre-appointment retentions, resulting in total collections from head contractors and/or customers of \$340,500, which is materially higher than forecast in our Prior Reports.

2.1.1.2 *Other assets*

Other assets listed in the RATA comprise a term deposit of \$50,000 held with NAB. These funds provide direct "cash backed" security in relation to bank guarantees (of equal value) on issue to Main Roads WA in relation to a partially completed construction project.

The Liquidators are maintaining correspondence with Main Roads WA in relation to the progress of the specific project, and whether the guarantees will be called upon in the future. At this stage, the Liquidators have assumed that the bank guarantees will be called upon in full.

2.1.2 *Liabilities*

2.1.2.1 *Priority creditors*

After the appointment of the Liquidators, former employees were facilitated access to the Department of Jobs and Small Business' Fair Entitlements Guarantee (**FEG**) scheme in relation to unpaid employee entitlements.



The FEG process was completed in April 2019 with (i) the Liquidators reviewing 21 employee claims funded by FEG totalling circa \$1.1 million, and (ii) FEG subrogating their claim in place of employees for the funding provided.

In November 2019, the Liquidators paid an interim distribution from funds on hand to extinguish priority creditor claims pursuant to s556(1)(e) of the Act totalling circa \$159,000, comprising circa (i) \$32,000 directly to employees, (ii) \$41,000 to the ATO in respect of unpaid superannuation, and (iii) \$86,000 to FEG in respect of their subrogated position for unpaid wages.

The Liquidators' current assessment of total priority employee claims is set out below:

Marine & Civil - Priority creditors				
\$'000	Ref.	Total claims	Interim Dividend	Unpaid
Wages	s556(1)(e)	(118)	118	-
Superannuation	s556(1)(e)	(41)	41	-
Annual leave (including leave loading)	s556(1)(g)	(212)	-	(212)
Long service leave	s556(1)(g)	(291)	-	(291)
Pay in lieu of notice (incl. superannuation)	s556(1)(h)	(292)	-	(292)
Redundancy	s556(1)(h)	(704)	-	(704)
Total		(1,657)	159	(1,498)

The above table excludes circa \$1.2m of excluded employee claims, comprising entitlements owed to the directors and former director and their direct relatives (after the statutory cap for excluded employee claims), which will rank as unsecured claims in the liquidation of Marine & Civil (refer 2.1.2.2 below).

A further distribution(s) to priority (employee) creditors will likely occur in due course, but the quantum and extent of future distributions pursuant to s556(1) of the Act are subject to the settlement and/or recovery of Liquidator claims (refer section 3).

2.1.2.2 *Unsecured creditors*

Based on Marine & Civil's management accounts and correspondence with creditors to date, the Liquidators estimate unsecured creditor claims (including statutory creditors) total between circa \$11.2 million and \$11.7 million, categorised as follows:

Marine & Civil - Unsecured creditors		
\$'000	High	Low
Trade creditors	(2,653)	(2,786)
Statutory creditors	(7,191)	(7,550)
Excluded employees	(1,227)	(1,288)
Related party creditors	(92)	(92)
Total	(11,162)	(11,716)

The Liquidators have not adjudicated proofs of debt received from unsecured creditors at this stage, so these amounts may vary.



3 Investigations

The Liquidators' Prior Reports detailed the:

- preliminary investigations undertaken in order to (i) understand the events leading to their appointment, and (ii) identify potential Liquidator recovery actions which may increase the funds available to the creditors; and
- ongoing investigations in relation to potential Liquidator claims against two directors, a former director and other third parties totalling between \$12.2m and \$14.6m (**Claims**), including:
 - Ongoing review of company books and records, including emails, financial accounts and information, director communications and management reporting;
 - Preparing and issuing document production orders to company directors and various third parties, and review and consideration of the documents produced;
 - Preparing for and conducting public examinations of two directors, a former director and an external corporate advisor to the company (**External Advisor**);
 - Liaising with legal representatives and counsel in relation to the merits of potential claims against two directors, a former director and third parties, and the overall legal strategy relative to those claims;
 - Formulating and quantifying the Claims; and
 - Preparation and issuing of letters of demand and a draft writ of summons to the relevant parties subject to the Claims.

For background, the Claims are summarised as follows:

Summary of Estimated Liquidators' Claims

Claim	\$ million
Insolvent trading claims	4.0 to 6.4
Damages claim against the External Advisor	6.4
Voidable transactions (five parties)	1.8

Since our last report, the Liquidators have progressed their investigations in relation to the Claims, discussed in detail below.

Whilst the Liquidators have formed a firm view in relation to the strength of the above claims, and obtained legal advice in relation to the same, the recoverability of these claims may be limited by the capacity of the relevant parties to satisfy any successful claim.

3.1 *Insolvent trading*

As previously outlined to creditors, the Liquidators have:

- formed the view that (i) Marine & Civil was insolvent from at least 1 July 2016, and remained insolvent up to the Administrators' appointment on 10 July 2018, (ii) the quantum of an insolvent trading claim based on this date against the two directors and former director, range from circa \$4.0 million to circa \$6.4 million (based on period of tenure), and (iii) determined that the two directors and former director would have difficulty in establishing any defences against the Claims;
- investigated the personal asset position of the two directors and former director, including under private public examination, and preliminarily determined that it is unlikely the individuals have the capacity to meet the above claims in full; and
- issued letters of demand to the two directors and former director in relation to the insolvent trading claims, and have sought from them (i) a financial offer of settlement, and (ii) written details of their asset and liability position to support the merits of any settlement offer.



As at the date of this report, the Liquidators:

- have not received acceptable financial offers of settlement from the two directors;
- have received a financial offer of settlement from the former director which the Liquidators consider inadequate having regard to (i) the quantum of the claim, (ii) no net return would occur following the costs to document and execute any terms of settlement, and (iii) assets possibly available to the former director; and
- consider a legal recovery strategy in relation to the insolvent trading claims is the only way to now progress and resolve these claims.

The Liquidators are currently considering issuing a combined statement of claim against the two directors and former director in respect of insolvent trading.

ARITA has issued an "Offences, Recoverable transactions and Insolvent trading" information sheet providing general information for creditors about insolvent trading and voidable transactions. This information sheet is available from the ARITA website (<http://www.arita.com.au>). If you are unable to access this website, please contact Amber Andre on (08) 6363 7665 to obtain a copy.

3.2 *Damages claim against External Advisor*

Since our last report to creditors dated 8 October 2019, the Liquidators have further investigated the role of the External Advisor in relation to the purported \$8 million cash injection and the underlying source of the proposed funds, which was pending settlement of a separate international transaction (or transactions) that a director of Marine & Civil, and subsequently Marine & Civil itself was purportedly party to (**Transaction**).

As previously advised, a letter of demand was issued to the External Advisor in relation to a damages claim on account of breach of contract, negligence and/or misleading or deceptive conduct arising from matters related to the Transaction, this letter was dated 20 September 2019 and also offered a settlement invitation. Since that date, the Liquidators and their lawyers have corresponded with the External Advisor's lawyers and responded to a number of information requests in relation to the claim, including in relation to the External Advisor's professional indemnity insurance policy.

The Liquidators' most recent correspondence dated 18 March 2020 offered a final opportunity to commence discussions with regard to a reasonable settlement of the claim without Court proceedings. In the absence of a favourable response from the External Advisor in relation to settlement discussions (or any response at all), the Liquidators are currently considering issuing proceedings in relation to the claim.

3.3 *Voidable transactions*

Preliminary investigations identified five creditors that may have received preferential payments totalling circa \$1.8 million during the period six months prior to the winding up application being lodged for Marine & Civil (**Relation Back Period**), being 30 November 2017.

After carrying out further investigations, the Liquidators have:

- considered the circumstances of the payments, communications surrounding the payments, and fundamentals of the debtor/creditor relationship between various trade creditors and Marine & Civil;
- written to and are currently in dialogue with the ATO regarding preferential payments it received from Marine & Civil during the Relation Back Period totalling circa \$0.56 million. Based on information currently to hand, the Liquidators consider the prospect of success of this claim is strong; and
- determined the further four creditors that may have received preferential payments during the Relation Back Period that are of a material value and merit further action.

Notwithstanding the existence of the above identified preferential payments, due to their complexity the estimated recoverable value of these claims at this stage is unknown.

The Liquidators shortly intend to prepare and issue letters of demand to these remaining preference recipients.



Per our last report, the Liquidators have investigated and issued a letter of demand to the relevant director regarding a related company loan account totalling \$0.25 million, which is deemed to be an uncommercial and/or unreasonable director related transaction pursuant to the Act.

To date, the relevant director has advised they do not have the means to repay the loan. The Liquidators are considering the relevant director's capacity to repay the loan and the merits in further pursuing the outstanding liability. An option being considered is to join this action with the before mentioned insolvent trading claim against the relevant director.

4 Receipts & payments

Receipts and payments for the liquidation of Marine & Civil from 28 September 2019 (since our last report) to 14 April 2020 are set out in the table below.

Receipts and Payments - 28 September 2019 to 14 April 2020	
Ind. GST	\$
Cash at bank	1,083,777
Receipts	
GST Received	28,742
Interest Income	2,715
Retention	71,688
Total receipts	103,146
Payments	
Bank Charges	(243)
First priority dividend	(158,978)
Document Storage	(780)
Legal Fees	(18,521)
Liquidators' fees	(212,436)
Total payments	(390,957)
Cash at bank	795,966

Per above, the liquidation of Marine & Civil is currently holding cash on hand of circa \$0.8 million, before professional fees sought by the Liquidators, which is the subject of the enclosed remuneration report (also refer below).

5 Likelihood of a dividend

A number of factors will affect the likelihood of a dividend being paid to creditors, including:

- the size and complexity of the liquidation;
- the amount of assets realisable and the costs of realising those assets;
- the outcome of detailed investigations and recovery proceedings, together with ability of defendants to satisfy any liquidator recovery claims;
- the statutory priority of certain claims and costs;
- the value of various classes of claims including priority and unsecured creditor claims, and
- the volume of enquiries by creditors and other stakeholders.

The Liquidators are not in a position to provide a detailed estimated return to creditors for the liquidation of Marine & Civil at this time due to the uncertainty of (i) the outcome (net of costs) of the potential liquidator recovery actions summarised in section 3 of this report, (ii) the willingness and ability of the potential defendants to engage in commercial settlement discussions, and (iii) potential defendant's ability to satisfy the claims against them.



As previously advised above, in late November 2019 the Liquidators paid an interim distribution from funds on hand to satisfy priority creditor claims pursuant to s556(1)(e) of the Act. A further distribution(s) to priority (employee) creditors is in our opinion likely, the quantum of which however is subject to recoveries made from Liquidator claims.

The prospect of a dividend to unsecured creditors with admitted claims in the liquidation remains unknown at this stage, but is unlikely absent material recoveries from the liquidator recovery actions summarised in section 3 of this report.

If a dividend is to be paid, you will be contacted before that happens and, if you have not already done so, you will be asked to lodge a proof of debt. This formalises the record of your claim in the liquidation.

6 Cost of the liquidation

We enclose a detailed report on the Liquidators' remuneration, called a Remuneration Report.

We propose to have our remuneration approved by a proposal and without a meeting. Information about passing resolutions without holding a creditors meeting, and voting forms with regard each resolution is enclosed.

In accordance with our enclosed Remuneration Report, the Liquidators are seeking approval of their remuneration totalling \$130,588 (excluding GST) for the period from 21 January 2020 to 31 July 2020, comprising (i) retrospective (actual) remuneration for the period from 21 January 2020 to 13 April 2020 totalling \$50,588, being time costs incurred by the Liquidators over and above that previously approved by creditors for the period to 13 April 2020, and (ii) prospective remuneration for the period from 14 April 2020 to 31 July 2020 totalling \$80,000.

The key tasks comprising the Liquidators' remuneration request is set out in detail in the enclosed Remuneration Report. The Liquidators' prospective remuneration is based on undertaking the following key tasks prior to 31 July 2020:

- progressing identified liquidator claims to settlement with the directors, former director and External Advisor without the commencement of substantive Court proceedings;
- absent settlement of the identified director/former director and External Adviser claims with the relevant defendants, prepare for and if considered appropriate commence legal proceedings;
- progressing recovery in relation to preference payments received by the ATO during the relation back period; and
- finalise investigations and issue relevant correspondence in relation to identified voidable transactions and pursue recovery of these claims on a commercial basis, and consider commencement of Court proceedings as necessary.

Should substantive Court proceedings be required to resolve the identified liquidator claims, it is likely these claims will take longer to resolve and at further cost. The progress of the liquidator claims will be communicated further with creditors in due course.



7 What happens next?

We will proceed with the liquidation, which will include:

- completing our statutory investigations into Marine & Civil's affairs pursuant to the Act;
- pursuing liquidator claims identified in section 3 of this report, for the benefit of creditors; and
- completing our reporting obligations to the corporate insolvency regulator, the Australian Securities and Investments Commission (**ASIC**), as necessary.

The timing of the completion of the liquidation will be dependent on several factors, including the time that may be required to carry out our investigations and pursue the identified Liquidator claims.

8 Where can you get more information?

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

- ARITA at www.arita.com.au/creditors.
- ASIC at www.asic.gov.au (search for "insolvency information sheets").

If you have any queries, please contact Amber Andre on (08) 6363 7655.

Dated: 20 April 2020

Rob Kirman
Liquidator

Enclosures:

- 1 Proof of Debt (Form 535)
- 2 Proof of Debt Guidance Notes
- 3 Remuneration Report
- 4 Notice of Proposal – Retrospective fees
- 5 Notice of Proposal – Prospective fees
- 6 ARITA Information Sheet – Offences, Recoverable Transactions & Insolvent Trading
- 7 ARITA Information Sheet – Approving remuneration of an external administrator
- 8 ARITA Information Sheet – Proposals without meetings