



## **Minutes of Meeting of Creditors of**

### **And Chill Pty Ltd (Administrators Appointed)**

**ACN 611 286 358 (AC)**

### **And Chill Property Management Pty Ltd (Administrators Appointed)**

**ACN 617 365 456 (ACPM)**

**(Together known as, And Chill or the Companies)**

Meeting held at the Pacific Room, Wesley Conference Centre, 220 Pitt Street, Sydney NSW 2000 on Friday, 2 August 2019 at 2:00pm.

<b>Present</b>	As per the attached register of attendees.
<b>Opening</b>	The Chairperson called the meeting to order and declared the second meeting of creditors of AC and ACPM open at 2:07pm.
<b>Chairperson</b>	Kathy Sozou, the Administrator, took the Chair pursuant to Insolvency Practice Rules (Corporations) (IPR) 75-50.
<b>Introductions</b>	<p>The Chairperson introduced:</p> <ul style="list-style-type: none"><li>▪ Barry Kogan (<b>Mr Kogan</b>), Joint and Several Administrator; and</li><li>▪ Rajiv Goyal (<b>Mr Goyal</b>), Director of McGrathNicol.</li></ul>
<b>Attendance</b>	<p>The Chairperson confirmed all creditors and attendees had signed the Attendance Register and asked any creditors who wished to address the meeting to identify themselves for the minutes.</p> <p>The Chairperson noted that there were observers in attendance in person and on the phone, and asked the meeting if there were any objections to the observers remaining. There were no objections.</p> <p>The Chairperson noted that the teleconference details were provided to the Director of AC, Callum Forbes, and he may be in attendance. There were no objections.</p>
<b>Quorum</b>	The Chairperson declared that a quorum was present for each company pursuant to IPR 75-105.
<b>Time and place of meeting</b>	The Chairperson declared that in accordance with IPR 75-30, the Chairperson is of the opinion that the meeting has been validly convened at a date, time and place most convenient for the majority of persons entitled to receive notice of the meeting. The Chairperson, also noted that teleconference facilities were provided to creditors who could not be in attendance.
<b>Administrators Report</b>	The Chairperson tabled the Administrators Report to creditors dated 26 July 2019.



#### **Proofs of Debt and Proxies**

The Chairperson tabled the attached list of proxies and proofs of debt and advised that the documents were available for inspection. No one present requested to inspect the documents.

#### **Declaration of Independence, Relevant Relationships and Indemnities**

The Chairperson tabled the updated Declaration of Independence, Relevant Relationships and Indemnities (**DIRRI**), as required by section 436DA of the Corporations Act (**Act**), and the Australian Restructuring, Insolvency & Turnaround Association's (**ARITA**) Code of Professional Practice.

The Chairperson noted the DIRRI was updated, as a result of the appointment of McGrathNicol by Fair Trading NSW as Accounts Examiner to carry out further investigations to the benefit of all creditors. The Chairperson noted that McGrathNicol had been provided initial funds of \$80,000 (ex GST) to carry out the investigation.

The Chairperson advised the Administrators remain free of conflict.

#### **Voting**

The Chairperson advised the meeting of the requirements of IPR 75-85, 75-110 and 75-115 as they apply to voting at this meeting.

#### **Concurrent Meeting**

The Chairperson proposed to hold the meetings of AC and ACPM concurrently.

The Chairperson proposed the following resolution:

*"That the meetings of creditors of each of the Companies being:*

- And Chill Pty Ltd (Administration Appointed);*
- And Chill Property Management Pty Ltd (Administrators Appointed)*

*be held concurrently."*

The Chairperson asked if there were any objections.

No objections were raised from the floor. The Chairperson declared the resolution for each of the Companies carried on the voices.

#### **Purpose of meeting**

The Chairperson explained that the purpose of the meeting was to determine the Companies future by resolving that the Companies, either:

- be returned to the Director (AC only);
- enter into a Deed of Company Arrangement (**DOCA**); or
- enter into liquidation.

The Chairperson advised that the meeting could also be adjourned for a period of up to 45 business days.

#### **Meeting Presentation**

The Chairperson, Mr Kogan and Mr Goyal proceeded to provide the meeting the following update, with reference to the meeting presentation slides:

- the Administrators' actions to date;
- the outcome of the sales process run by the Administrators;
- the reasons for the Companies' failure;
- key concerns and the outcome of the Administrators' investigations;
- the creditor claims and the estimated return to creditors;
- details of the Fair Entitlement Guarantee (**FEG**) for employees;



- details of the Property Services Compensation Fund for property owners;
- details of the appointment by the Office of Fair Trading (**OFT**) New South Wales to undertake an investigation into the alleged misappropriation of funds;
- the options available to creditors and the Administrators' recommendation, in accordance with their Report to Creditors dated 26 July 2019.

The Administrators recommended that creditors vote in favour of the Liquidation as there was no DOCA proposed and the Companies were clearly insolvent.

Attached is a copy of the Chairperson's presentation.

### Questions

The Chairperson then opened the meeting for questions.

**Deborah Orme, Property Owner**

**Q: Are there potential recoveries available from the Directors' personal insurances?**

A: The Chairperson advised that the Administrators are not aware of any insurance policies held by the Director personally or in his capacity as a company officer. The Chairperson continued to explain the difficulties in accessing a policy should one be found to exist, whereby the Liquidator, if appointed, would be required to sue and obtain a judgement for any breaches of duties. The Chairperson noted in this instance, should the Companies be placed into Liquidation, the Liquidators would require additional funding from creditors to pursue further actions. The Chairperson suggested that the most effective pathway for property owners to recoup their debts is through the respective Property Services Compensation Fund.

**Eric Wang, Property Owner**

**Q: Do claims with the Property Services Compensation Fund rely on the investigations or evidence provided by individuals?**

A: Mr Kogan explained it is usually a two-step process. Property owners submit a claim with supporting evidence to the Property Services Compensation Fund and the claims are subsequently verified. The role of McGrathNicol as 'account examiner' will be to assist the OFT NSW to accurately verify claims. Mr Kogan advised property owners seeking more information to contact their respective OFT directly, due to their experience in dealing with these matters.

**Mitchell Shaddock, Employee**

**Q: How can the creditors ensure the Directors are held accountable for their actions, in the context where one director resigned a week prior to the Administration of the Companies?**



A: The Chairperson explained that the Corporation Act stipulates that if directors are found to be in breach of their director duties, then directors can be held liable. The Chairperson continued that if directors resign prior to the appointment of Administrators, that this action does not absolve them of their director duties for the period which they were a director. The Chairperson clarified that in the absence of funding and insufficient assets available for recoveries, it becomes a commercial decision as to whether an appointed Liquidator would pursue any potential claims actions. The Chairperson concluded that should the Companies be placed into Liquidation, the Liquidator will comply with statutory obligations to report to ASIC and the OFT around these matters.

**Tal Avia, Property Owner**

**Q: How do the Property Services Compensation Funds work?**

A: Mr Kogan advised that should the Companies be placed into Liquidation, the Liquidators will complete a range of mandatory reporting requirements and support regulatory action should they deem it necessary. Mr Kogan explained that each respective state based Property Services Compensation Fund has a cap and suggested creditors to direct specific enquiries to each respective Property Services Compensation Fund. Mr Kogan also noted their appointment as accounts examiner will assist OFT NSW in the validation of the claims.

**Q: What happens if there isn't enough money to be distributed to creditors?**

A: Mr Kogan responded that the return available to property owners will be dependent on the return available from the respective Property Services Compensation Fund and this would likely be the only distribution available.

**Mitchell Shaddock, Employee**

**Q: How do the Directors set up new entities when they don't have assets?**

A: Mr Goyal informed the meeting that the Administrators investigated the new companies that were brought to their attention at the First Meeting of Creditors. Mr Goyal noted one company, being Vision Unlimited Fund, has had its website recently taken down and that no information in relation to the other alleged entity was available.

Mr Kogan emphasised the involvement of the OFT NSW, who have significant regulatory powers available to them. Mr Kogan stated property owners in particular should take comfort in the involvement of these regulators.

*ATO, Via Telephone*

**Rakesh Sethi**

**Q: How many properties were managed by And Chill?**



A: Mr Goyal, explained as at the date of appointment, ACPM managed circa 100 properties.

**Q: How many creditors are there?**

A: Mr Goyal explained that based on the books and records and proofs of debt submitted, the secured creditor, Partners for Growth, was owed \$1.8 million, approximately 13 AC employees were owed \$126,000 in entitlements and unsecured creditors were owed approximately \$1.3 million.

**Deborah Orme, Property Owner**

**Q: What potential recoveries would be available, should the Property Services Compensation Fund be insufficient?**

A: Mr Kogan advised that the Property Services Compensation Fund would likely be the only financial recourse available to property owners at this stage given the financial position of the Companies.

**Mitchell Shaddock, Employee**

**Q: Can property owners still lodge a claim with the Property Services Compensation Fund should the Companies' records be inadequate?**

A: Mr Kogan explained that the respective Property Services Compensation Funds have experience with circumstances where the company records are inadequate. Mr Kogan informed the meeting that McGrathNicol will work with OFT NSW to accurately verify the extent of the misappropriation.

*Via telephone*

**Jason Burnett**

**Q: It was mentioned that the OFT NSW and OFT QLD have been actively engaged with the matter, can you comment on comparable statutory bodies in other states?**

A: Mr Kogan explained he couldn't specifically comment on each individual state based Property Services Compensation Fund. Mr Kogan explained should the Companies be placed into liquidation, the Liquidators will attempt to update the relevant information to creditors to include other states and encouraged property owners to contact their individual state based departments.

The Chairperson confirmed there were no further questions from those in attendance in Sydney or via teleconference.



## Resolutions

The Chairperson put the following resolution to the meeting for each entity:

*"That And Chill Pty Ltd, enter into Liquidation with Barry Kogan and Kathy Sozou being appointed as the Joint and Several Liquidations."*

The Chairperson declared the resolution passed on the voices.

*"That And Chill Property Management Pty Ltd, enter into Liquidation with Barry Kogan and Kathy Sozou being appointed as the Joint and Several Liquidations."*

The Chairperson declared the resolution passed on the voices.

The Chairperson put the following resolution to the meeting for each entity:

*"That the remuneration of the Voluntary Administrators of And Chill Pty Ltd (In Liquidation), for the period 28 June 2019 to 19 July 2019 is approved for payment in the sum of \$111,554.63, plus GST (reflecting a reduction in professional time costs based on time spent calculated at the hourly rates as detailed in the circular dated 3 July 2019), and the Voluntary Administrators may pay the remuneration immediately from funds on hand, funds held as an indemnity, as funds become available or as otherwise determined by the Voluntary Administrators."*

The Chairperson declared the resolution passed on the voices.

*"That the remuneration of the Voluntary Administrators of And Chill Property Management Pty Ltd (In Liquidation), for the period 28 June 2019 to 19 July 2019 is approved for payment in the sum of \$63,065.93, plus GST (reflecting a reduction in professional time costs based on time spent calculated at the hourly rates as detailed in the circular dated 3 July 2019), and the Voluntary Administrators may pay the remuneration immediately from funds on hand, funds held as an indemnity, as funds become available or as otherwise determined by the Voluntary Administrators."*

The Chairperson declared the resolution passed on the voices.

The Chairperson put the following resolution to the meeting for each entity:

*"That the remuneration of the Voluntary Administrators of And Chill Pty Ltd (In Liquidation), for the period 20 July 2019 to 2 August 2019, is approved for payment in the sum of \$15,000, plus GST, and the Voluntary Administrators may pay the remuneration immediately from funds on hand, funds held as an indemnity, as funds become available or as otherwise determined by the Voluntary Administrators."*

The Chairperson declared the resolution passed on the voices.

The Chairperson put the following resolution to the meeting for each entity:

*"That the remuneration of the Voluntary Administrators of And Chill Property Management Pty Ltd (In Liquidation), for the period 20 July 2019 to 2 August 2019, is approved for payment in the sum of \$15,000, plus GST, and the Voluntary Administrators may pay the remuneration immediately from funds on hand, funds held as an indemnity, as funds become available or as otherwise determined by the Voluntary Administrators."*

The Chairperson declared the resolution passed on the voices.

The Chairperson put the following resolution to the meeting for each entity:

*"That so far as necessary for the beneficial winding up of And Chill Pty Ltd (In Liquidation), the Liquidators are hereby authorised pursuant to subsections 506(1A), 477(2A) and 477(2B) of the Corporations Act 2001 to comprise any debts greater than the prescribed amount (currently \$100,000)."*



The Chairperson declared the resolution passed on the voices.

*"That so far as necessary for the beneficial winding up of And Chill Property Management Pty Ltd (In Liquidation), the Liquidators are hereby authorised pursuant to subsections 506(1A), 477(2A) and 477(2B) of the Corporations Act 2001 to comprise any debts greater than the prescribed amount (currently \$100,000)."*

The Chairperson declared the resolution passed on the voices.

The Chairperson put the following resolution to the meeting for each entity:

*"That so far as necessary for the beneficial winding up of And Chill Pty Ltd (In Liquidation), the Liquidators are hereby authorised to enter any agreements on behalf of And Chill Pty Ltd (In Liquidation) involving a term or obligations extending for more than three months."*

The Chairperson declared the resolution passed on the voices

*"That so far as necessary for the beneficial winding up of And Chill Property Management Pty Ltd (In Liquidation), the Liquidators are hereby authorised to enter any agreements on behalf of And Chill Property Management Pty Ltd (In Liquidation) involving a term or obligations extending for more than three months."*

The Chairperson declared the resolution passed on the voices

The Chairperson put the following resolution to the meeting for each entity:

*"That the future remuneration of the Liquidators of And Chill Pty Ltd (In Liquidation) for the period of the liquidation, calculated at the hourly rates as detailed in the circular to creditors dated 3 July 2019, is approved up to a capped amount of \$60,000 plus GST, and the Liquidators may pay the remuneration as incurred, from funds on hand, as funds become available or as otherwise determined by the Liquidators."*

The Chairperson declared the resolution passed on the voices.

*"That the future remuneration of the Liquidators of And Chill Property Management Pty Ltd (In Liquidation) for the period of the liquidation, calculated at the hourly rates as detailed in the circular to creditors dated 3 July 2019, is approved up to a capped amount of \$90,000 plus GST, and the Liquidators may pay the remuneration as incurred, from funds on hand, as funds become available or as otherwise determined by the Liquidators."*

The Chairperson declared the resolution passed on the voices.



## Committee of Inspection

The Chairperson noted that under Insolvency Practice Schedule (Corporations) (IPS) 80-10, creditors may, by resolution, determine whether there is to be a committee of inspection.

The Chairperson noted that the role of a committee of inspection is to:

- consult with the Liquidators about matters relating to the Liquidations; and
- receive and consider reports by the Liquidators.

The Chairperson noted that under IPS 60-10, a committee of inspection also has the power to approve the Liquidators remuneration.

The Chairperson, advised that whilst there was no immediate need, it may be beneficial that a committee of inspection be formed to be consulted on unforeseeable matters that may arise throughout the Liquidation.

The Chairperson, suggested that the committee represent a cross section of creditors, to ensure all interests were being represented.

The Chairperson, noted at this stage of the Liquidation it would be sufficient for a committee of inspection for And Chill Pty Ltd (In Liquidation) to be formed.

Tal Avin, Deborah Orme, Jacqueline Kwok and Mitchell Shaddock volunteered to be part of a Committee of Inspection for And Chill Pty Ltd (In Liquidation)

The Chairperson put the following resolution to the meeting:

*"That a Committee of Inspection for And Chill Pty Ltd (In Liquidation) be formed and that:*

*Tal Avin representing himself,  
Deborah Orme representing herself,  
Jacqueline Kwok representing herself, and  
Mitchell Shaddock representing himself*

*be appointed to the Committee of Inspection."*

The Chairperson declared the resolution passed on the voices.

The Chairperson advised the meetings that one more resolution had to be passed, being:

*"That despite the operation of IPS 80-55, members of And Chill Pty Ltd (In Liquidation) committee may directly or indirectly derive a profit or advantage from the external administration of the company if the profit or advantage is derived in the ordinary course of trading the business."*

The Chairperson declared the resolution passed on the voices.



**Conduct of the Meeting**

The Chairperson invited creditors to advise of any objectives they have regarding the convening and conduct of the meeting to be recorded in the minutes. No such matters were raised.

**Closure**

The Chairperson declared the meeting closed at 3:22pm.

Signed as a trust and correct record.

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Chairperson