



**And Chill Pty Ltd (In Liquidation)**  
**ACN 611 286 358 (AC)**  
**And Chill Property Management Pty Ltd (In Liquidation)**  
**ACN 617 365 456 (ACPM)**  
**(collectively, the Companies)**  
**Statutory Report to Creditors**

Katherine Sozou and I were appointed Joint and Several Administrators of the Companies on 28 June 2019. Subsequently, on 2 August 2019, at the Second Meeting of Creditors, it was resolved that we be appointed Liquidators (**the Liquidators**) of the Companies.

This report is to be read in conjunction with our Administrators' Report to Creditors dated 26 July 2019 (**Administrators' Report**). A copy of the Administrators' Report can be found on our website at: <https://www.mcgrathnicol.com/creditors/chill-pty-ltd/>

The purpose of this report is to provide you with an update on the progress of the liquidation and advise you of the likelihood of a dividend being paid in the liquidation.

## **1 Progress of the Liquidation**

### **1.1 Trading**

As previously advised, the Administrators ceased trading AC and ACPM immediately on their appointment.

Due to the immediate shut down of operations, to realise any value in the intellectual property (i.e. customer list and website), it was necessary to transact quickly.

The sale process was ultimately abandoned as we could not provide accurate records to interested parties and the majority of property owners had already sought alternative arrangements in relation to their properties.

### **1.2 Assets**

The only asset recovered to date in AC has been the sum of \$73,569 received in respect of pre-appointment property management activities. We are attempting to reconcile these receipts which is proving difficult due to the Companies' poor books and records and the lack of information provided by host providers.

No assets have been recovered in ACPM.

Based on our enquiries, searches and preliminary investigations to date, we are not aware of any other tangible assets.

If creditors are aware of any assets belonging to AC or ACPM, they should contact this office immediately.

### **1.3 Liabilities**

The following tables summarise the liabilities disclosed to me in the Report as to Company Activities and Property (**ROCAP**) submitted by the Director and Former Director for AC & ACPM and the Liquidators' estimate of these amounts.



### AC - Liabilities comparison to ROCAP

Category of liability	ROCAPs	Liquidators	
	Estimate (\$)	Count (#)	Estimate (\$)
Priority - employees	36,000	21	136,486
Secured creditors	1,750,000	1	1,750,000
Unsecured creditors	484,000	27	666,462
<b>Total</b>	<b>2,270,000</b>	<b>49</b>	<b>2,552,948</b>

Source: ROCAP, Proof of Debts & Liquidators' investigations

### ACPM - Liabilities comparison to ROCAP

Category of liability	ROCAP	Liquidators	
	Estimate (\$)	Count (#)	Estimate (\$)
Priority - employees	-	-	-
Secured creditors	1,750,000	1	1,750,000
Unsecured creditors	-	61	970,161
<b>Total</b>	<b>1,750,000</b>	<b>62</b>	<b>2,720,161</b>

Source: ROCAP, Proof of Debts & Liquidators' investigations

#### 1.4 Deficiency calculation

Below is an estimate of the deficiency of AC and ACPM.

#### Estimated deficiency

Particulars	AC ERV (\$)	ACPM ERV (\$)
Assets	-	-
Liabilities	(2,552,948)	(2,720,161)
<b>Surplus/(deficiency) *</b>	<b>(2,552,948)</b>	<b>(2,720,161)</b>

Note: The secured creditors claim covers both AC and ACPM

\* The deficiency is subject to the costs of the Liquidations and any liquidator recoveries (discussed below).

## 2 Liquidators' Investigations

### 2.1 Context

As a part of our investigations, we have considered a variety of potential recovery actions available to a liquidator, including:

- unfair preferences;
- uncommercial transactions;
- insolvent transactions;
- unfair loans; and
- voidable transactions.



## 2.2 *Unfair preferences*

We have identified that a creditor received a potential unfair preference payment for c.\$250,000 between the two Companies.

Pursuant to Part 5.7B of the Corporations Act 2001 (**the Act**), a preference payment is a payment made by a company to a creditor of the company in the six month period before the date of the winding up of a company (or, in some circumstances, earlier) which resulted in the creditor being placed in a more favourable position than other creditors who are only entitled to receive a distribution (if any) in the liquidation.

We intend to shortly issue a demand on the creditor for repayment of the preferential payments made by the Companies during the relation back period (in the six months prior to our appointment as Administrators).

## 2.3 *Insolvent Trading*

We are of the view that the Director and Former Director's failure to maintain books and records leads to a presumption of insolvency.

Accordingly, the Director and Former Director may be personally liable for all amounts owed to creditors (including to the secured creditor, employees and unsecured creditors).

We are unfunded to pursue the Director and Former Director and have not identified any real estate assets held in their personal names.

If creditors are aware of any material assets held by the Directors or wish to fund litigation, please contact my office immediately.

## 2.4 *Report to ASIC*

We have lodged a confidential report with the Australian Securities and Investments Commission (**ASIC**) pursuant to section 533 (1) of the *Corporations Act 2001* (Cth) (**the Act**) documenting our investigations.

Subsequently, we have received a request from ASIC that a supplementary report (**Supplementary Report**) be prepared pursuant to section 533 (2) of the Act. The purpose of this report is to provide further details around the possible misconduct of the Director and Former Director.

We are currently finalising a response and will lodge this with ASIC as soon as possible.

## 2.5 *Account Examiner appointment*

Together with my forensic Partner, Matthew Fehon, we have separately been appointed by the Office of Fair Trading New South Wales (**OFT**) as Account Examiners over ACPM.

Pursuant to section 182 of the *Property, Stock and Business Agents Act 2002 (NSW)*, our role is to investigate potential breaches and report any breaches to the OFT.

Our investigation will assist the OFT with processing property owner claims against the property compensation fund.

## 2.6 *Further enquiries*

My investigations into AC and ACPM's affairs are continuing and we will provide updates to creditors as the matter progresses.

## **3 Receipts and payment to date**

The below table is a summary of the receipts and payments of AC made within the Liquidation period to date.

There have been no receipts or payments made in ACPM.



## AC receipts and payments - 2 August 2019 to 30 October 2019

### Receipts

Nature of receipt	Amount (\$)
Transfer from administration period (balance of secured funding)	128,866
Cash at bank	73,569
<b>Total receipts</b>	<b>202,435</b>

### Payments

Nature of payment	Amount (\$)
Legal fees	(20,054)
Broker fee	(2,750)
Secured Creditor Funding Return	(50,000)
<b>Total payments</b>	<b>(72,804)</b>
<b>Net receipts / (payments)</b>	<b>129,631</b>

## 4 Likelihood of a dividend

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

- the costs of realising available assets;
- the statutory priority of certain claims and costs;
- the value of various classes of claims including secured, and unsecured creditor claims; and
- the volume of enquiries by creditors and other stakeholders.

The following table sets out the Liquidators' estimate as to the outcome to creditors from the liquidation and the possible likelihood of a dividend being issued:

### Anticipated return to creditors

Particulars	AC		ACPM	
	High (\$)	Low (\$)	High (\$)	Low (\$)
Estimated recovery from preference payments	250,000	-	-	-
Less: Administrators' fees and disbursements	(126,555)	(126,555)	(78,066)	(78,066)
Less: Liquidators' fees and disbursements	(60,000)	(60,000)	(90,000)	(90,000)
<b>Surplus / (shortfall)</b>	<b>63,445</b>	<b>(186,555)</b>	<b>(168,066)</b>	<b>(168,066)</b>
Creditor claims				
Secured creditor	(1,750,000)	(1,750,000)	(1,750,000)	(1,750,000)
Estimated priority creditors	(136,486)	(200,000)	-	-
Sub-total	(1,886,486)	(1,950,000)	(1,750,000)	(1,750,000)
<b>Surplus / (shortfall) to unsecured creditors</b>	<b>(1,823,041)</b>	<b>(2,136,555)</b>	<b>(1,918,066)</b>	<b>(1,918,066)</b>
Estimated unsecured creditors	(666,462)	(800,000)	(970,161)	(1,100,000)
<b>Total surplus / (shortfall)</b>	<b>(2,489,503)</b>	<b>(2,936,555)</b>	<b>(2,888,227)</b>	<b>(3,018,066)</b>
<b>Estimated return to unsecured creditors</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

Source: ROCAP, Proof of Debts & Liquidators' investigations

Based on information available to us at this time, if the preference recovery is made, there will be a distribution available to priority employee creditors.



## **5 Cost of the liquidation**

Total remuneration approved for the liquidation of AC and ACPM is \$60,000 (excl GST) and \$90,000 (excl GST) respectively.

Due to insufficient funds to cover our costs, we will not be seeking further fee approvals at this time.

## **6 What happens next?**

We will proceed with the liquidation, which will include:

- pursuing the potential unfair preference payment;
- completing our investigations into the Companies' affairs;
- preparing the Supplementary Report to ASIC; and
- finalising the liquidation.

If we receive a request for a meeting that complies with the guidelines set out in the initial information provided to you, we will hold a meeting of creditors.

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

The finalisation of the liquidation is subject to the timing of the recovery of the preference payment and completion of our statutory investigations. We expect to have completed this liquidation within the next 12 months.

## **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 Angus Cooke on (02) 9338 2631 or by email [acooke@mcgrathnicol.com](mailto:acooke@mcgrathnicol.com).

Dated: 1 November 2019

Barry Kogan  
*Liquidator*