



McGrathNicol

29 August 2016

**McGrathNicol
Partnership**

ABN 41 945 982 761

Level 6, 171 Collins Street
Melbourne VIC 3000, Australia

GPO Box 9986
Melbourne VIC 3001, Australia

T +61 3 9038 3100

F +61 3 9038 3199

mcgrathnicol.com

**McAleese Limited (Administrators Appointed) ACN 156 354 068
And subsidiaries as listed in Annexure A
(collectively "the McAleese Group")**

Circular to Employees

Joseph Hayes, Jason Preston, Jamie Harris and Keith Crawford were appointed joint and several Voluntary Administrators ("Administrators") of McAleese Limited and each of its wholly owned subsidiaries, with the exception of Sunshine Refuellers Pty Ltd (ACN 600 542 514), on 29 August 2016.

A listing of all of the entities over which the Administrators are appointed is provided at Annexure A.

Background

The appointment of Administrators is an interim measure pending a review of the McAleese Group's affairs and a determination by the McAleese Group's creditors as to the future of the McAleese Group.

The Administrators have assumed control of the McAleese Group's affairs and have entered into possession of its assets. The McAleese Group's position is presently being analysed to determine the best course of action to preserve the businesses.

Employees are asked to continue with their normal duties pending further advice. Wages and entitlements for continued employment during the Voluntary Administration period will be paid by the Administrators.

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

Meeting of creditors

An initial meeting of creditors of the McAleese Group, which includes employees with claims for accrued entitlements, will be held within eight business days of the Administrators' appointment. Separate materials concerning this meeting will be provided in the next few days.

Other matters and contact details

A schedule setting out information for employees of a company in Voluntary Administration is attached for your guidance. All instructions relating to the management of the McAleese Group will now be issued by the Administrators or their authorised personnel. Please refer to your normal line managers in relation to day to day operations.

A copy of the "Insolvency information for directors, employees, creditors and shareholders" information sheet issued by the Australian Securities and Investment Commission ("ASIC") is also enclosed for your information.

C13-160829-MCA-Circular to employees-ROK

In association
with



Liability limited by a scheme
approved under Professional
Standards Legislation

**Advisory
Forensic
Transactions
Restructuring
Insolvency**



A Frequently Asked Questions sheet on operation matters has been prepared and will be updated regularly. This will be distributed internally and displayed on employee notice boards.

If you require any further information, please contact your supervisor/manager in the first instance or email any queries to questions@mcaleesegroup.com.au.

Yours faithfully

McAleese Group (all Administrators Appointed)

Keith Crawford

Joint and Several Voluntary Administrator

Enclosure(s):

Annexure A – McAleese Group – entities over which the Administrators are appointed

Schedule of responsibilities of officers and employees of a company under administration

ASIC "Insolvency information for directors, employees, creditors and shareholders" Information Sheet

ASIC "Voluntary Administration: a guide for employees"

Annexure A: McAleese Group – entities over which the Administrators are appointed

| Company name | ACN |
|--|-------------|
| McAleese Limited | 156 354 068 |
| McAleese Holdco Pty Ltd | 156 339 865 |
| Cootes Transport Group Pty Limited | 112 151 694 |
| McAleese Finance Pty Ltd | 156 099 204 |
| McAleese Investments Pty Ltd | 129 922 541 |
| Harbrew Pty. Limited | 010 601 788 |
| WAFL SPV Pty Ltd | 130 012 887 |
| IES DGM Pty Ltd | 112 151 809 |
| Spotswood Lessee Pty Limited | 112 151 729 |
| McAleese Resources Pty Ltd | 119 899 446 |
| International Energy Services Holdings Pty Limited | 112 063 779 |
| McAleese Subco Pty Ltd | 144 647 870 |
| Jetstyle Express Pty Ltd | 077 984 653 |
| International Energy Services Pty Limited | 112 063 877 |
| Walter Wright Cranes Pty Ltd | 135 952 162 |
| W.A. Freightlines Pty Ltd | 051 918 015 |
| International Energy Services Group Pty Limited | 112 499 573 |
| National Crane Hire Pty Ltd | 101 646 235 |
| Jolly's Transport Services Pty Ltd | 097 891 248 |
| National Crane Service & Repairs Pty Ltd | 091 998 560 |



**McAleese Limited (Administrators Appointed) ACN 156 354 068
And subsidiaries as listed in Annexure A
(collectively "the McAleese Group")**

**Responsibilities of Officers and Employees
of a Company under Administration**

The duties and responsibilities of 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 name of the company where it first appears on the document.
- When a company is under administration, all the powers of the directors and other officers are suspended. However, under certain circumstances those powers may continue, but only with the consent of the Administrators. Certain obligations of directors continue to apply, for example, the obligation to lodge Company Statements with ASIC.
- The administration of the company is an interim measure pending a review of the company's affairs and a recommendation to the company's creditors as to a course of action.
- In the interim period, the Administrators must preserve the assets of the company. The Administrators may carry on the business and may employ or remove an officer or employee of the company, execute any document in the company's name and do whatever else is necessary for this purpose.
- Without the express written authority of the Administrators:
 - No goods will be accepted by the company from any source whatsoever which are not the subject of a signed order by the Administrator or his or her nominated representative.
 - No credit will be incurred.
 - No payments will be effected.
 - 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.



ASIC

Australian Securities & Investments Commission

Insolvency information for directors, employees, creditors and shareholders

ASIC has 11 insolvency information sheets to assist you if you're affected by a company's insolvency and have little or no knowledge of what's involved.

These plain language information sheets give directors, employees, creditors and shareholders a basic understanding of the three most common company insolvency procedures—liquidation, voluntary administration and receivership. There is an information sheet on the independence of external administrators and one that explains the process for approving the fees of external administrators. A glossary of commonly used insolvency terms is also provided.

The Insolvency Practitioners Association (IPA), the leading professional organisation in Australia for insolvency practitioners, endorses these publications and encourages its members to make their availability known to affected people.

List of information sheets

- INFO 41 *Insolvency: a glossary of terms*
- INFO 74 *Voluntary administration: a guide for creditors*
- INFO 75 *Voluntary administration: a guide for employees*
- 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 43 *Insolvency: a guide for shareholders*
- INFO 42 *Insolvency: a guide for directors*
- INFO 84 *Independence of external administrators: a guide for creditors*
- INFO 85 *Approving fees: a guide for creditors*

Getting copies of the information sheets

To get copies of the information sheets, visit ASIC's website at www.asic.gov.au/insolvencyinfosheets. The information sheets are also available from the IPA website at www.ipaa.com.au. The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.

Important note: The information sheets contain a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. These documents may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.



ASIC

Australian Securities & Investments Commission

INFORMATION SHEET 75

Voluntary administration: a guide for employees

If a company is in financial difficulty, it can be put into voluntary administration.

This information sheet provides general information for employees of companies in voluntary administration. Employees should also read ASIC's information sheet INFO 74 *Voluntary administration: a guide for creditors*.

Who is an employee?

You are likely to be classified as an employee if you are:

- engaged by a company under an award, Certified Agreement, Australian Workplace Agreement, or a contract of employment, and
- paid a salary, wages or commission.

Contractors are not employees. They are ordinary unsecured creditors of the company.

If you are an employee who is owed money for unpaid wages, superannuation, annual leave, sick leave, long service leave, retrenchment pay or other benefits, you are a creditor of the company. You may be entitled to some or all of what you are owed in priority to the company's other creditors.

The purpose of voluntary administration

Voluntary administration is designed to resolve a company's future direction quickly. An independent and suitably qualified person (the voluntary administrator) takes full control of the company to try to work out a way to save either the company or its business.

If it isn't possible to save the company or its business, the aim is to administer the affairs of the company in a way that results in a better return to creditors than they would have received if the company had instead been placed straight into liquidation. A mechanism for achieving these aims is a deed of company arrangement.

A voluntary administrator is usually appointed by a company's directors, after they decide that the company is insolvent or likely to become insolvent. Less commonly, a voluntary administrator may be appointed by a liquidator, provisional liquidator, or a secured creditor.

A secured creditor is someone who has a charge, such as a mortgage, over company assets, to secure a debt owed by the company. Lenders usually require a charge over company assets when they provide a loan.

A company in voluntary administration may also be in receivership: see ASIC information sheet

Important note: This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances. You will need a qualified professional adviser to take into account your particular circumstances and to tell you how the law applies to you.

INFO 55 *Receivership: a guide for employees.*

The voluntary administrator's role

After taking control of the company, the voluntary administrator investigates and reports to creditors on the company's business, property, affairs and financial circumstances, and on the three options available to creditors (including employees). These are:

- end the voluntary administration and return the company to the directors' control
- approve a deed of company arrangement through which the company will pay all or part of its debts and then be free of those debts, or
- wind up the company and appoint a liquidator.

The voluntary administrator must give an opinion on each option and recommend which option is in the best interests of creditors. In doing so, the voluntary administrator tries to work out the best solution to the company's problems, assesses any proposals put forward by others for the company's future, and compares the possible outcomes of the proposals with the likely outcome in a liquidation.

A creditors' meeting is usually held about five weeks after the company goes into voluntary administration to decide on the best option. In complex administrations, the meeting may be held later if the court consents. Employees are entitled to vote at creditors' meetings. You should lodge details of your claim with the voluntary administrator before the meeting to enable you to vote.

The voluntary administrator has all the powers of the company and its directors. This includes the power to sell or close down the company's business, or sell individual assets in the lead up to the creditors' decision on the company's future.

Another responsibility of the voluntary administrator is to report to ASIC on possible offences by people involved with the company.

Employee entitlements

If the voluntary administrator continues to trade the business, they must pay out of the assets available to them ongoing wages for services provided and other employee entitlements that arise after the date of their appointment. These payments are treated as an expense of the voluntary administration.

The appointment of a voluntary administrator does not automatically terminate the employment of the company's employees. As a result, unless the voluntary administrator adopts the employment contracts or enters into new contracts of employment with employees, they are not personally liable for any employee entitlements that arise during voluntary administration.

As voluntary administration is an interim form of external administration, employee entitlements that arose prior to voluntary administration are not usually paid during voluntary administration.

How and when these employee entitlements are paid depends on the option passed at the creditors' meeting (i.e. company returned to directors, a deed of company arrangement, or liquidation).

Company returned to directors

If the company is returned to the directors, the directors will be responsible for ensuring that the company pays outstanding entitlements as they fall due. It is only in very rare circumstances that creditors will resolve to return the company to the control of its directors.

Deed of company arrangement

If creditors approve a deed of company arrangement, the priority in which outstanding employee entitlements are paid depends on the terms of the deed. Sometimes the deed proposal is for these entitlements to be paid in the same priority as in a liquidation. Other times, a different priority is proposed.

A deed of company arrangement must ensure that employees' entitlements have the same priority as in

a liquidation unless the eligible employees agree by a majority in both number and value to vary this priority.

This means that unless a variation to priority is agreed to, in a deed of company arrangement employees have the right, if there are funds left over after payment of the fees and expenses of the voluntary administrator and deed administrator, to be paid their outstanding entitlements in priority to other unsecured creditors.

Priority employee entitlements are grouped into classes and paid in the following order:

1. outstanding wages and superannuation
2. outstanding leave of absence (including annual leave and sick leave, where applicable, and long service leave), and
3. retrenchment pay.

Each class is paid in full before the next class is paid. If there are insufficient funds to pay a class in full, the available funds are paid on a pro rata basis (and the next class or classes will be paid nothing).

To find out more, see ASIC's information sheet INFO 46 *Liquidation: a guide for employees*.

Where deed proposal seeks to vary priority for employee entitlements

If a deed proposal seeks to vary the priority for employee entitlements, the voluntary administrator must call a meeting of eligible employees giving at least five business days notice of the meeting. They must give to eligible employees at the same time as the notice of meeting a statement setting out:

- their opinion about whether the proposed variation would result in the same or better outcome for employees than if the company went into liquidation
- their reasons for this opinion, and
- any other information to help them make an informed decision about varying the priority.

Before you make a decision on how to vote at the meeting of eligible employee creditors or the creditors' meeting where the decision is made whether or not to accept the deed of company arrangement proposal, make sure you understand how the deed will affect the priority of payment of your outstanding entitlements.

The General Employee Entitlements and Redundancy Scheme (GEERS)

GEERS is a basic payment scheme designed to assist employees whose employment has been terminated due to the liquidation or bankruptcy of their employer and who are owed certain employee entitlements. GEERS is administered by the Department of Education, Employment and Workplace Relations.

You are not eligible for GEERS assistance if your former employer is a company in voluntary administration or subject to a deed of company arrangement until and unless the company goes into liquidation.

If the company was subject to a deed of company arrangement in the 12 months before the liquidation and:

- the deed had a different priority for payment of outstanding claims, including employee entitlements to that in a liquidation; and/or
- the deed did not provide for the distribution of all of the company's available funds and assets;

this will affect your ability to make a claim under GEERS.

You may wish to seek independent legal advice on whether the terms of a proposed deed will affect your ability to make a claim under GEERS if the company subsequently goes into liquidation.

For more on liquidation, refer to our related information sheets (listed below).

For more on GEERS, visit www.deewr.gov.au/geers or contact the GEERS Hotline on 1300 135 040 or email GEERS@deewr.gov.au.

If the deed provides for your ongoing employment, you may wish to seek advice on how this affects payment of your outstanding entitlements.

Liquidation

If creditors resolve that the company is to be wound up, the priority given to outstanding employee entitlements in a liquidation will apply.

Employees have the right, if there are funds left over after payment of the fees and expenses of the administrator and liquidator, to be paid their outstanding entitlements in priority to other unsecured creditors.

The grouping of outstanding employee entitlements and order of payment in a liquidation is the same as discussed above.

To find out more, see ASIC's information sheet *INFO 46 Liquidation: a guide for employees*.

You may also be entitled to make a claim under GEERS when the company enters into liquidation.

Establishing your claim under a deed of company arrangement

How claims are dealt with under a deed of company arrangement depends on the deed's terms. Sometimes the deed incorporates the *Corporations Act 2001* provisions for dealing with claims in a liquidation.

Regardless of the deed's terms, if the deed administrator must pay outstanding priority employee entitlements, they may advise you beforehand how much they believe you are owed. Contact the deed administrator promptly if you disagree with their calculation.

You may be required to complete an employee entitlement claim form (this is called a 'proof of debt' in a liquidation). In this case, contact the deed administrator's office to agree and settle the amount.

You may need to provide evidence to justify your claim. It is important that you keep your pay records or other records of the terms of your employment. You may also need these records to help you complete your income tax return and establish any entitlement to GEERS if the company proceeds to liquidation.

When submitting a claim, ask the deed administrator to acknowledge receipt of your claim and advise if any further information is needed.

If the deed administrator rejects your claim after you have taken the above steps, you may wish to seek your own legal advice. This should be done promptly. Depending on the terms of the deed, you may have a limited time in which to take legal action to challenge the decision. If you have a query about the timing of the payment, discuss this with the deed administrator.

For details on proving your claim in a liquidation, see ASIC's information sheet *INFO 46 Liquidation: a guide for employees*.

Payment Summaries and Separation Certificates

Most employees require a PAYG Payment Summary (group certificate) to complete and lodge their income tax return. A Separation Certificate may also be required before an employee who loses their job can apply for social security.

If a voluntary administrator or deed administrator pays you any employee entitlements, they must provide you with a PAYG Payment Summary recording the entitlements paid and any income tax deducted. Contact the voluntary administrator or deed administrator to find out if they are going to prepare your PAYG Payment Summary for entitlements paid by the company prior to their appointment, and, if so, what period it will cover.

If you can't obtain a PAYG Payment Summary for any period, contact the Australian Taxation Office on 13 28 61 to find out how to meet your obligations.

A voluntary administrator and deed administrator must prepare a Separation Certificate for any employee whose employment is terminated during the voluntary administration or deed of company arrangement. They are not obliged to prepare one for terminations of employment that occurred prior to voluntary administration.

Contact Centrelink on 13 10 21 to find out what you should do if you can't obtain a Separation Certificate.

Creditors' committee

A creditors' committee may be formed to consult with the voluntary administrator or deed administrator, and receive reports on the conduct of their administration. In a voluntary administration, this committee is called a 'committee of creditors'. While the company is under a deed of company arrangement, it is called a 'committee of inspection'.

Employees may wish to nominate a representative to be on the committee and have a say in matters that may impact on their interests.

Queries and complaints

You should first raise any queries or complaints with the voluntary administrator/deed administrator. If this fails to resolve your concerns, including any concerns about the administrator's conduct, you can lodge a complaint with ASIC at www.asic.gov.au/complain, or write to:

ASIC Complaints
PO Box 9149
TRARALGON VIC 3844

ASIC will usually not become involved in matters of commercial judgement by a voluntary administrator or deed administrator. Complaints against companies and their officers can also be made to ASIC. For other enquiries, contact ASIC's infoline on 1300 300 630 or make an enquiry at www.asic.gov.au/question.

To find out more

For an explanation of terms used in this information sheet, see ASIC's information sheet INFO 41 *Insolvency: a glossary of terms*. For more on external administration, see ASIC's related information sheets at www.asic.gov.au/insolvencyinfosheets:

- INFO 74 *Voluntary administration: a guide for creditors*
- 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 43 *Insolvency: a guide for shareholders*
- INFO 42 *Insolvency: a guide for directors*
- INFO 84 *Independence of external administrators: a guide for creditors*
- INFO 85 *Approving fees: a guide for creditors*

These are also available from the Insolvency Practitioners Association (IPA) website at www.ipaa.com.au. The IPA website also contains the IPA's Code of Professional Practice for Insolvency Professionals, which applies to IPA members.