NOTICE OF FILING

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	29/09/2025 2:18:45 PM AEST
Date Accepted for Filing:	30/09/2025 10:24:40 AM AEST
File Number:	QUD721/2025
File Title:	KELLY-ANNE LAVINA TRENFIELD AS TRUSTEE OF THE BANKRUPT ESTATES OF ANGELA CECILIA THERESA FRIGGER AND HARTMUT HUBERT JOSEF FRIGGER v ANGELA CECILIA THERESA FRIGGER & ANOR
Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 59

Rule 29.02(1)

Affidavit

No.

Federal Court of Australia

District Registry: Queensland

Division: General

KELLY-ANNE LAVINA TRENFIELD

Applicant

ANGELA CECILIA THERESA FRIGGER and another named in the schedule

Respondents

Affidavit of: **Kelly-Anne Lavina Trenfield**

Address: Level 20, 345 Queen Street, Brisbane, Qld 4000

Occupation: Registered Trustee in Bankruptcy

Date: 26 September 2025

Contents

Document number	Details	Paragraphs	Pages
1.	Affidavit of Kelly-Anne Lavina Trenfield in support of the application filed 26 September 2025, sworn on 26 September 2025	1 – 3.4.2	1 – 32
2.	Annexure KLT-1 being a paginated bundle of documents annexed to this affidavit comprising:		33 - 693

Filed on behalf of (name & role of party) Kelly-Anne Lavina Trenfield, Applicant

Prepared by (name of person/lawyer) Peter A Smith

Ref: D2467

Law firm (if applicable) Johnson Winter Slattery

Tel +61 8 6216 7220 Fax +61 2 8274 9500

Email peter.a.smith@jws.com.au

Address for service (include state and postcode) Level 29, 111 Eagle Street, Brisbane Qld 4000

Document number	Details	Paragraphs	Pages
	Transcript of proceeding WAD 128 of 2023 on 6 March 2024	1.4.1	34 - 47
	Letter from Johnston Winter Slattery (JWS) to the Associate to the Honourable Justice Colvin dated 30 April 2024	1.4.3	48 - 88
	Transcript of proceeding WAD 128 of 2023 on 2 May 2024	1.4.4	89 - 124
	Letter from JWS to Associate to the Honourable Justice Colvin dated 9 May 2024	1.4.7	125 - 128
	Copy of Order of Colvin J in proceeding WAD 128 of 2023 dated 6 June 2025	1.4.8	129 - 141
	Affidavit sworn by me dated 5 August 2024 in proceeding WAD 66 of 2021 (Trustee Report) excluding annexures	2.2.1	142 - 202
	JB Were Portfolio Valuation as at 19 September 2025	2.4.1	203 - 216
	Transaction listing summaries for the Administration Accounts (BOQ account numbers 23267367 and 23039942) as at 19 September 2025	2.4.2	217 - 220
	Cotality valuation reports for the Bayswater Property, Como Property and Applecross Property	2.4.6	221 - 246
	Various notices issued to creditors on 11 September 2025 and 17 September 2025	2.5.1	247 - 415
	Reasons of Jackson J in *Kitay (Liquidator) v Trenfield (Trustee)* [2021] FCA 508	2.5.4	416 - 427
	Minute of proposed further re-amended substituted defence and counterclaim	2.5.5	428 - 516
	Amended Application filed in proceeding WAD 155 of 2025 on 19 September 2025	2.5.7	517 - 520
	Estimated Statement of Position for the Bankrupt Estates as at 21 September 2025	2.6.2	521
	Report to Creditors dated 12 October 2018	3.2.3	522 - 570

Document number	Details	Paragraphs	Pages
	Certification dated 8 November 2018 of resolution approving remuneration for the period 31 August 2018 to 7 October 2018	3.2.4(a)	571 – 580
	Certification dated 8 November 2018 of resolution approving estimated future remuneration in the sum of $109,090.91 (ex GST)	3.2.4(b)	581 - 590
	Certification dated 8 November 2018 of resolution approving internal disbursements for the period 31 August 2018 to 7 October 2018	3.2.4(c)	591 - 600
	Certification dated 8 November 2018 of resolution approving future estimated internal disbursements in the sum of $10,000 (ex GST)	3.2.4(d)	601 - 611
	Report to Creditors dated 7 September 2023	3.2.5	612 - 681
	Certification dated 3 October 2023 of resolution approving remuneration for the period 27 August 2019 to 13 August 2023	3.2.6(a)	682
	Certification dated 3 October 2023 of resolution approving estimated future remuneration in the sum of $375,000 (ex GST)	3.2.6(b)	683
	2025 Remuneration Report	3.3.2	684 – 689
	Table of breakdown of cost (by position) from date of appointment to 31 August 2025	3.4.2	690 - 693

I, Kelly-Anne Lavina Trenfield of Level 20, 345 Queen Street, Brisbane in the State of Queensland say on oath:

1. Introduction

1.1. Background

1.1.1. I am the applicant in this proceeding and the Trustee of the bankrupt estates of the respondents (**Friggers**). The estates (collectively, the **Bankrupt Estates**) comprise:

(a) the individual bankrupt estate of Angela Cecilia Theresa Frigger (**Angela's Estate**);

(b) the individual bankrupt estate of Hartmut Hubert Josef Frigger (**Hartmut's Estate**); and

(c) the joint estates of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (**Joint Estate**).

1.1.2. Shown to me at the time of making this affidavit is a bundle of documents annexed to this affidavit and marked "KLT-1" (**Bundle**). When I refer to a document in this affidavit I do so by reference to the page numbers of the document in the Bundle.

1.1.3. Unless I have stated otherwise, the information in this affidavit is within my own personal knowledge and belief. Where I have obtained facts from other sources, those facts are true to the best of my knowledge, information, and belief.

1.1.4. In this affidavit, I refer to dealings with solicitors and counsel in order to explain work undertaken for which I seek to be remunerated. I do not intend, in doing so, to waive any legal professional privilege that may attach to communications between me and my solicitors or counsel.

1.2. Qualifications and experience

1.2.1. I am a registered trustee in bankruptcy with over 30 years of experience in corporate and personal insolvency. I hold a Bachelor of Business (Accounting) from the Queensland University of Technology and am a fellow of the Australian Restructuring Insolvency and Turnaround Association and a member of the Chartered Accountants Australia and New Zealand.

1.2.2. I became a registered trustee in bankruptcy in 2006, a registered liquidator in 2007 and an official liquidator in 2008.

1.2.3. I am employed by FTI Consulting (Australia) Pty Ltd (**FTI**) as a Senior Managing Director in the Corporate Finance & Restructuring segment. I have held this position since 2 October 2012.

1.3. Defined terms

1.3.1. Throughout this affidavit, I have used the following terms to define the various assets of the Bankrupt Estates:

(a) **Share Portfolio** means the listed securities that were held in a securities trading account portfolio number 270815 in the name of the Friggers administered by CommSec (**CommSec Portfolio Account**) which were subsequently transferred to a share portfolio account managed by JB Were Limited in about January 2024.

(b) **Administration Accounts** means the two Bank of Queensland bank accounts I maintain as Trustee for the administration of the Bankrupt Estates, being account numbers 23267367 and 23039942.

(c) **Applecross Property** means the property known as 29 Gairloch Street, Applecross WA 6153 registered in the name of Mr and Mrs Frigger.

(d) **Baywater Property** means the property known as 2A Union Street, Baywater WA 6053 which is registered in the name of Mrs Frigger.

(e) **Como Property** means the property known as 3/61 Cale Street, Como WA 6053 which is registered in the name of Mrs Frigger.

(f) **Residential Properties** means the Applecross Property, the Baywater Property and the Como Property.

1.3.2. In this affidavit I have used the following terms to define the various court proceedings commenced by the Friggers throughout the course of the administration of the Bankrupt Estates (set out in order of the proceeding commencement dates):

(a) **First Annulment Application** means the proceeding commenced by the Friggers in July 2018 in the Federal Circuit Court against the Official Trustee in Bankruptcy seeking annulment of their bankruptcies (proceeding number PEG 409 of 2018) which was dismissed by Judge Vasta on 25 September 2018.

(b) **Main Proceeding** means the proceeding commenced by the Friggers in March 2019 in the Federal Court against me (proceeding number WAD 141 of 2019) seeking, among other things, various orders in relation to:

(i) the funds held in bank accounts of the Friggers (being money in the Administration Accounts), shares held in the CommSec Portfolio Account and assets in the names of the Friggers (being the Baywater Property and the Como Property) were assets of the Friggers Super Fund and not assets which vested in me as Trustee of the Bankrupt Estates; and

(ii) my removal as Trustee of the Bankrupt Estates.

(c) **Primary Judgment** means the judgment of Jackson J in *Frigger v Trenfield (No 10)* [2021] FCA 1500 delivered on 1 December 2021 dismissing all of

the Friggers' claims in the Main Proceeding. In particular, Jackson J found that:

(i) the relevant assets were not held in the Frigger Super Fund – rather they vested in me and were divisible among the estates' creditors; and

(ii) my removal was not warranted and that the Friggers had not established that I had not faithfully performed my duties or contravened the Act (at [740] to [746] of the Primary Judgment).

(d) **Bank Proceedings** means the following proceedings commenced by the Friggers:

(i) an application against the Bank of Queensland (**BOQ**) seeking the release of the freeze I had placed on the funds held in the Administration Accounts (proceeding number WAD 225 of 2021). I was joined as a respondent by order of Logan J made on 8 December 2021 in *Frigger v Bank of Queensland* [2021] FCA 1667;

(ii) an application against the Commonwealth Bank of Australia (**CBA**) to which I am not a party (proceeding number WAD 227 of 2021); and

(iii) an application against Commonwealth Securities Limited (**CommSec**) seeking orders requiring CommSec to remove all restrictions that were placed on the CommSec Portfolio Account by me, for the return of the securities in the CommSec Portfolio Account to the Friggers, and compensation for losses alleged to have been caused by those restrictions (proceeding number WAD 228 of 2021). I was joined as a respondent by order of Logan J made on 8 December 2021 in *Frigger v Bank of Queensland* [2021] FCA 1667.

(e) **Appeal Proceeding** means the proceeding commenced by the Friggers against the Primary Judgment (appeal proceeding number WAD 278 of 2021). The appeal was dismissed on 24 March 2023 in *Frigger v Trenfield (No 3)* [2023] FCAFC 49 (**Full Court's Decision**).

(f) **Special Leave Application** means the application filed by the Friggers in the High Court of Australia seeking special leave to appeal the Full Court's

Decision. The Special Leave Application was dismissed by the High Court on 3 August 2023 in *Frigger & Anor v Trenfield* [2023] HCASL 110.

(g) **Second Annulment Application** means the proceeding commenced by the Friggers on 25 March 2021 in the Federal Court against me and others seeking, among other things, the annulment of the Friggers' bankruptcies (proceeding number WAD 66 of 2021). The Second Annulment Application was dismissed by Logan J on 13 December 2024 in *Frigger v Trenfield (No 8)* [2024] FCA 1438 (**Second Annulment Judgment**).

(h) **Removal Proceeding** means the proceeding commenced by the Friggers on 7 June 2023 in the Federal Court (proceeding number WAD 128 of 2023) seeking, among other things, orders that I cease to be the Trustee of the Bankrupt Estates, and as a consequence am disentitled to remuneration and the reimbursement of costs associated with the administration of the Estates. The Removal Proceeding was discontinued with the leave of the Court on 6 June 2025, subject to a condition that the Friggers shall not commence any further proceedings in any court against me based upon the allegations or asserting the same causes of action as those that were to be heard (see *Frigger v Trenfield (Application to Discontinue)* [2025] FCA 640).

(i) **Annulment Appeal** means the proceeding commenced by the Friggers on 24 December 2024 in which they appeal from the whole of the Second Annulment Judgment (proceeding number WAD 390 of 2024).

(j) **Annulment Proceedings** means the First Annulment Application, the Second Annulment Application and the Annulment Appeal.

1.4. Reasons for making this application

1.4.1. During a case management hearing in the Removal Proceeding on 6 March 2024, Justice Colvin sought clarification from me of several matters concerning the administration of the Bankrupt Estates including the approval of my remuneration as Trustee. A copy of the transcript of the Removal Proceeding on 6 March 2024 is annexed at pages 34 to 37 of the Bundle.

1.4.2. An extract of relevant parts of the transcript (at page 8 line 42 to page 10 line 42) is set out below:

> HIS HONOUR: There's a further issue as well, and that is that this trustee seems to be charging costs of administration in relation to these proceedings. These proceedings are a

challenge to the trustee's authority to act as trustee, and they are not costs which would ordinarily be costs of the administration. They may be costs which, if the trustee is successful, might ultimately be able to be the subject of an order against the estate, but that would require a Beddoe type order in relation to these proceedings and that has not been sought.

So, I was surprised to see, in relation to the costs that are disclosed and for which approval is sought, that this trustee is seeking to have approval for the costs of defending these proceedings without any order, without any step being taken in relation to that action.

MR MAJTELES: I had understood that the costs of these proceedings and the remuneration in relation to these proceedings are not the subject of the – are not the subject of - - -

HIS HONOUR: Not so.

MR MAJTELES: I will have to seek clarification on that as well, your Honour, because I had understood that the costs and remuneration relate to matters that do not relate to whether or not the trustee should be here, including WAD66 and in relation to these particular proceedings.

...

HIS HONOUR: And then, there is this – so, in circumstances where there is an issue as to whether a substantial part of the estate, there may be a surplus to be returned to Mr and Mrs Frigger, the trustee is pursuing a course of having a very large amount of remuneration approved by creditors; is that right? Well, that's what the affidavit is saying, seeking to do that without convening a meeting of creditors and just having authority signed to approve $1.23 million in remuneration.

MR MAJTELES: I believe that the approval was going to be sought by the court, but I will have to double-check what that says as well. I'm sorry, your Honour, if you could just bear with me for a sec.

HIS HONOUR: Well, it seems to me that the court would need to consider, in the face of these circumstances, whether some form of direction oughtn't be made to require any approval to be sought by the court in relation to remuneration in the circumstances of this administration.

MR MAJTELES: Yes. I'm just wondering if your Honour could draw my attention to where it said that we were going to – that the trustee was going to seek remuneration.

HIS HONOUR: Well, it's just that all of the documents are sent out with the report for the purposes of convening a meeting in relation to the exercise of the statutory powers under the mechanism in section 75 whatever it is, I can't remember, of the Insolvency Practice Schedule to enable convening of meetings in relation – without the need to convene a meeting and the documents are sent out to the creditors to sign and send back.

MR MAJTELES: Yes. I understood in paragraph 41 that the trustee had specifically indicated that approval for remuneration would likely be necessary by a court, but that is certainly something that I will seek clarification on.

...

> HIS HONOUR: Well, I'm not sure that that's what paragraph 41 says at all. That's to say that, "I think my remuneration is reasonable because it's of a kind that would be found to have been justified and proved likely necessary by a court." And it's very unclear in the context of the affidavit because what the affidavit seems to say is, "Anything I do will be tested by Mr and Mrs Frigger." Well, that seems to be a reason why - - -
>
> MR MAJTELES: You would seek approval by a court.
>
> HIS HONOUR: Yes.
>
> MR MAJTELES: Yes, absolutely, your Honour. And then, I think – and I will seek clarification on this – but I believe that there will be approval for – significant remuneration will be sought from the court because otherwise we will be exposed to the sort of complaints that your Honour is talking about.
>
> HIS HONOUR: Yes. Yes. Well, all of those matters, I'm sure you will be able to update the court about on 2 May. ...

1.4.3. On 30 April 2024, I caused my solicitors, Johnson Winter Slattery (**JWS**), to send a letter addressed to the Associate to the Honourable Justice Colvin clarifying a number of matters including the approval of my remuneration as Trustee. A copy of the letter from JWS to the Court dated 30 April 2024 is annexed at pages 48 to 88 of the Bundle.

1.4.4. At the case management hearing of the Removal Proceeding on 2 May 2024, Justice Colvin sought further clarification from me in respect of a number of matters arising from his Honour's consideration of the letter from JWS to the Court dated 30 April 2024. A copy of the transcript of the Removal Proceeding on 2 May 2024 is annexed at pages 89 to 124 of the Bundle.

1.4.5. An extract of the relevant parts of the transcript (commencing at page 31 line 23) is set out below:

> HIS HONOUR: ... Which means we have to deal with the correspondence that has been received from the trustee. Mr Majeteles, that correspondence seems to indicate a different position to that which was articulated 25 by you or – recognising that it was in response to questions from me without notice. Is it the position of the trustee that the trustee is proposing to continue to receive remuneration pursuant to authority said to have been conferred by creditors, rather than by an application to the court? That seems to be what's said in the letter.
>
> MR MAJTELES: Just to clarify, when you say "receive remuneration", do you mean to have her – to pay her approved remuneration or to - - -
>
> HIS HONOUR: Well, I deliberately used the word "receive". There is an existing authority. It's not clear to me how much of that authority has been utilised by appropriating moneys pursuant to that authority. But the authority, now, it seems clear, has come – is said to have come from creditors, whereas I understood at the time that what was – of the last hearing is that that authority was to come from the court. So of course, if there are – if further authority

is required, that is, if there is amounts beyond the authority that has already been obtained, there is a question as to whether that would come from creditors or from the court. There is also a question as to whether the existing authority that has been obtained is planned to be drawn down upon without any authority from the court. And it seems that that is what is planned.

MR MAJTELES: I think the position is clarified in paragraph 19 of the letter.

...

MR MAJTELES: - - - if your Honour was minded. So these are instructions from the trustee:

We're instructed the trustee has not applied any funds of the estates to pay any remuneration or internal disbursements approved to date, nor any expenses the trustee has incurred to defend this proceeding, that is, WAD128.

And, in 20:

We are further instructed that the trustee does not intend to apply any assets of the estates to pay any remuneration or disbursements or expenses already incurred, nor any that will be incurred in the future in defence of these proceedings, unless and until these proceedings are determined, and only then if it is appropriate to do so depending on the outcome.

HIS HONOUR: But that's all about these proceedings.

MR MAJTELES: These proceedings. Yes.

HIS HONOUR: Not about the administration of the estate.

MR MAJTELES: No. So - - -

HIS HONOUR: Well, the upshot of the question is - - -

MR MAJTELES: Is it - - -

HIS HONOUR: - - - whether the trustee is minded to indicate to the court that no payment – no further amounts will be received by the trustee in respect of the administration of the estate without the court's approval, and if the trustee is not minded to do that, I'm minded to ask the trustee to show cause why an order should not be made to that effect.

MR MAJTELES: Yes. I understand that, your Honour. I – and to the extent that that is not clear in respect of the approval of remuneration for matters outside of these proceedings - - -

HIS HONOUR: Yes.

MR MAJTELES: - - - for which approval has been given - - -

HIS HONOUR: Yes.

MR MAJTELES: - - - I can seek – I can provide - - -

HIS HONOUR: You will need to seek - - -

MR MAJTELES: I can get instructions - - -

HIS HONOUR: - - - instructions.

MR MAJTELES: - - - and provide you with clarification on that, your Honour. But I take on board your Honour – your Honour's view that to the extent that the trustee will be applying assets in the payment of her remuneration, that your Honour's view is that it should not be done without court approval.

HIS HONOUR: Well, my view is that the court should be persuaded that that course is appropriate in the current circumstances of this particular estate, where it's – there is the potential for the person with the largest interest to actually be the bankrupt, and so I'm not forming a final view about it. I'm simply saying the trustee ought to either obtain the court's approval or persuade the court why it's appropriate to act on the basis of the creditors' approval.

MR MAJTELES: Yes. I understand, your Honour.

HIS HONOUR: Yes.

MR MAJTELES: There was an explanation as to why the creditor approval process was undertaken and that is because that is what appears to be the usual process for - - -

HIS HONOUR: Well, I've articulated why this is not usual.

MR MAJTELES: Yes, I understand. Thank you.

HIS HONOUR: And I've raised these matters having read the letter.

MR MAJTELES: Yes. I understand.

HIS HONOUR: Yes.

MR MAJTELES: Thank you, your Honour. I appreciate having the opportunity to be able to - - -

HIS HONOUR: So - - -

MR MAJTELES: - - - obtain instructions on that issue.

HIS HONOUR: Yes. And so if there could be a further communication to the court in the light of those matters within the next seven days or so, and then having received that, I will consider whether there should be some hearing convened or how the matter should proceed.

MR MAJTELES: Yes. Appreciate that, your Honour.

1.4.6. On 9 May 2024, I caused my solicitors to send a letter to the Court (**Confirmation Letter**) confirming the following matters:

(a) without the Court's approval, I would not draw down any of the Bankrupt Estates' funds to pay any remuneration or internal expenses, approved or to be approved in the future;

(b) I had not drawn down any funds to pay any part of my remuneration and internal expenses approved to date;

(c) without the Court's approval, I would not draw down any funds to pay external expenses incurred to date and which remain unpaid (or will incur in the future) in respect of my defence of the Removal Proceeding; and

(d) notwithstanding my entitlement to an indemnity in relation to external costs necessarily and properly incurred in dealing with the Second Annulment Application, I would not, without the Court's approval, draw down any funds to pay any further external expenses incurred in the future in respect of my involvement in the Second Annulment Application.

1.4.7. A copy of the Confirmation Letter is annexed at pages 125 to 128 of the Bundle.

1.4.8. The Removal Proceeding was discontinued with the leave of the Court on 6 June 2025, subject to the condition I described at paragraph 1.3.2(h) above. A copy of his Honour's order is annexed at pages 129 to 141 of the Bundle (**Discontinuance Order**). By paragraph 9 of the Discontinuance Order, the Court ordered that I am entitled to pay the reasonable legal costs incurred by me in the conduct of the defence of the Removal Proceeding from the assets of the Bankrupt Estates.

1.4.9. I am informed by Peter Smith of JWS that there was no response from the Court to the Confirmation Letter. However, subject to the approval given pursuant to paragraph 9 of the Discontinuance Order, I have proceeded on the basis indicated in that letter.

1.4.10. Given the confirmations I gave to the Court in the Confirmation Letter, I make this affidavit in support of my application seeking orders that:

(a) pursuant to section 30 of the *Bankruptcy Act 1966* (Cth) (**Act**) the Court authorises me to draw from funds in the Bankrupt Estates (**Funds**) to pay the following:

(i) my remuneration for the period 31 August 2018 to 13 September 2024 up to $1,237,667.50 (excluding GST), approved by creditors of the Bankrupt Estates pursuant to resolutions dated 8 November 2018 and 3 October 2023; and

(ii) my internal expenses for the period 31 August 2018 to the conclusion of the bankruptcy of $323.19 (including GST), approved by Creditors pursuant to resolutions dated 8 November 2018;

(b) pursuant to section 30 of the Act, the Court:

(i) approves my remuneration and internal expenses for the period 14 September 2024 to 31 August 2025 in the amount of $420,712 (excluding GST); and

(ii) authorises me to draw from the Funds to pay my remuneration and internal expenses for the period 14 September 2024 to 31 August 2025 as approved by the Court.

1.4.11. As the Annulment Appeal has not been determined, in this application I do not seek approval to draw from the Funds any amount to pay the expenses incurred in respect of the Second Annulment Application and the Annulment Appeal. By way of clarification, to the extent that any remuneration or expenses related to the Second Annulment Application or Annulment Appeal have been approved by creditors of the Bankrupt Estates pursuant to resolutions dated 8 November 2018 and 3 October 2023 (being $138,983) I:

(a) do not, by this application, seek approval to draw that remuneration from the Funds;

(b) intend to seek approval from the Court for any remuneration or expenses related to the Second Annulment Application and the Annulment Appeal following determination of the Annulment Appeal.

2. Overview of the Administration

2.1. Details of appointment as Trustee

2.1.1. Paul Allen and I were appointed joint and several trustees of the estates upon the estates' creditors passing special resolutions on 31 August 2018, appointing us in place of the Official Trustee pursuant to section 157 of the *Bankruptcy Act 1966* (Cth) (**Act**).

2.1.2. At the time of my appointment, and at all times thereafter, I was and remain a registered trustee in bankruptcy.

2.1.3. Paul Allen ceased to act as Trustee on 19 March 2020. I have been the sole trustee responsible for the administration of the Bankrupt Estates since that date.

2.1.4. The Friggers were discharged from bankruptcy on 26 July 2021 pursuant to section 149 of the Act. Despite the discharge, by reason of section 129AA of the Act, the assets of the Bankrupt Estates remain vested in me.

2.1.5. Since my appointment, in administering the Bankrupt Estates, together with FTI's staff assisting me to administer the estates, I have investigated the financial affairs of the Friggers, secured various assets owned by the Friggers, and assessed claims made by creditors against the Friggers. In doing so, I have encountered challenges and obstacles largely caused by the Friggers' conduct and have had to defend various proceedings commenced by the Friggers against me and other parties which has contributed to the complexity, length and costs of the administration of the Bankrupt Estates.

2.2. Trustee Report

2.2.1. On 5 August 2024, I provided a report to the Court pursuant to rule 7.06 of the *Federal Court (Bankruptcy) Rules 2016* (Cth), in the form of an affidavit filed in proceeding WAD 66 of 2021 (**Trustee Report**). A copy of the Trustee Report (excluding annexures) is annexed at pages 142 to 202 of the Bundle.

2.2.2. The Trustee Report details the administration of the Bankrupt Estates up to the date of the affidavit including:

(a) an overview of the administration highlighting significant events and milestones, including proceedings commenced by the Friggers that I have had to address and defend since my appointment (see section 2 of the Trustee Report);

(b) my investigations into the financial affairs of the Friggers (see section 3 of the Trustee Report);

(c) creditors of the Bankrupt Estates (see section 5 of the Trustee Report);

(d) a summary of the costs of the administration (see section 6 of the Trustee Report); and

(e) an estimated statement of position (see section 7 of the Trustee Report).

2.2.3. In this affidavit I have set out more detail relating to the costs of the administration and various updates that have occurred in the administration of the Bankrupt Estates since the date of the Trustee Report (where relevant to this application).

2.3. Events since Trustee Report

2.3.1. Since the Trustee Report was prepared, the following tasks have been undertaken in the administration of the Bankrupt Estates:

(a) continuing to deal with matters related to the Bank Proceedings;

(b) continuing to assist the Court in respect of the Second Annulment Application;

(c) continuing to defend the Removal Proceeding;

(d) assisting the Court with respect to the Annulment Appeal;

(e) continuing the process of adjudication of the proofs of debt;

(f) establishing online accounts with share registries to better manage the Bankrupt Estates' share portfolio;

(g) monitoring and receipting numerous dividend payments from various shareholdings;

(h) responding to notifications and communications from share registries in respect of securities held in the Share Portfolio, including notices requiring elections in respect of corporate actions, and updating shareholder information as required;

(i) quantifying dividend income received and calculating franking credits obtained in order to comply with taxation reporting obligations;

(j) dealing with the Friggers' attempts to sell the Bayswater Property without my authority;

(k) issuing requests for information to the Friggers in relation to claims against the Bankrupt Estates;

(l) dealing with various queries and requests by the Friggers;

(m) responding to queries and requests by the Liquidator of CAT; and

(n) addressing various queries and requests made by creditors of the Bankrupt Estates.

2.3.2. In addition to the above, I continue to deal with new proceedings commenced by the Friggers against me including proceeding WAD 155 of 2025 whereby the Friggers seek to appeal against alleged decisions made by me in relation to my alleged admission or assessment of certain proofs of debt lodged in the Bankrupt Estates.

2.3.3. A significant proportion of the time spent by me and the FTI staff assisting me has been in relation to the litigation pursued by the Friggers.

2.4. Value of assets in the estates

2.4.1. As at 19 September 2025, the Share Portfolio was valued at $4,543,989.28. Additionally, there is a cash account with JB Were Limited to which dividends from the Share Portfolio are directed that had a balance of $368,264.68 as at 19 September 2025. A copy of the JB Were portfolio summary and holdings information as at 19 September 2025 is annexed at pages 203 to 216 of the Bundle.

2.4.2. As at 19 September 2025, the combined balances of the Administration Accounts was $951,053.89. A copy of the transaction listings for the Administration Accounts as at 19 September 2025 is annexed at pages 217 to 220 of the Bundle.

2.4.3. To obtain estimated valuations of the Residential Properties, I directed FTI's staff to carry out searches using Cotality, a property data, information, analytics and services provider.

2.4.4. As at 21 September 2025, Cotality provided the following estimates:

Property	Value
Bayswater Property	$995,000
Como Property	$595,000
Applecross Property	$3,350,000

2.4.5. The Cotality search for the Como Property provided a valuation range of $595,000 to $850,000. For the purpose of my estimate of the value of the Como Property, I have adopted the valuation at the lower end of the range.

2.4.6. A copy of the Cotality searches carried out by FTI's staff for the properties referred to above are annexed at pages 221 to 246 of the Bundle.

2.4.7. The estimated total value of the assets of the Bankrupt Estates vested in me as at 21 September 2025 is $10,803,307.85.

2.5. Creditor Claims

2.5.1. On 11 September 2025 and 17 September 2025, I issued adjudication notices to creditors of the Bankrupt Estates. A copy of the adjudication notices are at pages 247 to 415 of the Bundle.

2.5.2. A summary of my adjudication is set out below:

(a) I have admitted claims pursuant to s 102(1) of the Act, or made an estimate of the value of the claim pursuant to s 82(4) of the Act, in the amount of $2,329,933.52 (**Admitted Claims**);

(b) claims of $5,426,422 (with respect to CAT) and $2,165,661 (with respect to Mr Kitay) have been deferred due to ongoing litigation (for reasons set out in paragraph 2.5.4 to 2.5.6 below) (**Deferred Claims**); and

(c) claims of $849,537.70 have been rejected (**Rejected Claims**).

2.5.3. All claims other than the Deferred Claims have been adjudicated.

2.5.4. The Deferred Claims concern claims made against the Friggers by CAT and Kitay in Supreme Court of Western Australia proceedings CIV 2765 of 2010 which are being prosecuted with leave granted by Jackson J on 6 May 2021 in *Kitay v Trenfield* [2021] FCA 508 (**Reasons**). A copy of the Reasons is annexed at pages 416 to 427 of the Bundle.

2.5.5. The Deferred Claims were summarised at [6] to [9] of the Reasons and articulated in a minute of proposed further re-amended substituted defence and counterclaim which was filed in proceeding CIV 2765 of 2010, a copy of which is annexed at pages 428 to 516 of the Bundle.

2.5.6. The Deferred Claims are dependent on the resolution of a number of other complex issues of fact and law which Jackson J concluded, at [27] of the Reasons, were an 'undoubtedly provable claim' but not suitable for determination in the administration of the Bankrupt Estates.

2.5.7. In Federal Court proceeding WAD 155 of 2025, the Friggers filed an amended application on 19 September 2025 (**Amended Application**) seeking, among other things, to appeal or review decisions made by the Trustee pursuant to ss 104(2) or 82(5) of the Act in respect of the following creditors:

(a) Clavey Legal Pty Ltd;

(b) Sandra May Banning and Banning Holdings Pty Ltd;

(c) Sandra May Banning and Professional Services of Australia;

(d) Kim Holbrook;

(e) Madgwicks Lawyers;

(f) Mitsui Sumitomo;

(g) Mervyn Kitay;

(h) Murfett Legal Pty Ltd;

(i) Rowe Bristol; and

(j) Evelyn Charlotte Reid.

Annexed at pages 517 to 520 of the Bundle is a copy of the Amended Application.

2.6. Estimated Statement of Position

2.6.1. It is very difficult for me to give a realistic estimate as to the likely net position of the Joint Estate or either of the Bankrupt Estates because:

(a) I am yet to complete my adjudication of the Deferred Claims;

(b) the future fees and costs that will be incurred in the future administration of the Bankrupt Estates are unknown – the majority of those costs are likely to be incurred in continuing to respond to litigation commenced by the Friggers.

2.6.2. However, with the assistance of FTI's staff, I have prepared an estimated statement of position for the Bankrupt Estates as at 21 September 2025 (**ESOP**) based on alternative 'high' (optimistic) and 'low' (pessimistic) scenarios. A copy of the ESOP is annexed at page 521 of the Bundle.

2.6.3. The ESOP is a preliminary estimate only based on the information presently available to me as Trustee, and subject to various assumptions and limitations that are noted in the "Further Notes to ESOP", at paragraph 2.7 below.

2.6.4. As to the estimated net position:

(a) Even in an optimistic scenario (a scenario that would be, in effect, more beneficial to the Friggers in the sense of there being a return of assets to them) there is insufficient cash assets to meet all creditor claims including the trustees remuneration and disbursements and I will need to have recourse to at least some of the share portfolio (which shares in the portfolio would be a matter for consideration in due course); and

(b) On a pessimistic scenario it is possible that even if all of the assets currently vested in me were realised, creditor claims, including my remuneration and disbursements, would not be satisfied in full.

2.6.5. There are a number of variables that will affect the estimated net position. One of those variables is how much time and cost will be incurred in dealing with the present and possible future litigation.

2.6.6. As noted, the Friggers have proved to be highly litigious. Multiple proceedings have been commenced by the Friggers to which I am a party. The legal fees, my time and FTI staff's time in dealing with that litigation has been significant.

2.6.7. If the litigation continues and proliferates it is quite possible that my remuneration and disbursements (including the legal fees incurred and to be incurred) will significantly erode the assets that would otherwise be available to ordinary unsecured creditors of the Bankrupt Estates. In other words, by the Friggers continuing to involve me in litigation and continuing to make allegations (old and new) they are effectively continuing to reduce the assets that might otherwise have been returned to them.

2.6.8. Given the current circumstances, I have provided the best estimates as to the likely net position of the Joint Estates. I have not prepared a separate ESOP for Angela's Estate or Hartmut's Estate as they have limited creditors.

2.6.9. I note also that the optimistic scenario:

(a) assumes that the share portfolio is realised at current market value;

(b) assumes that the Rejected Claims are upheld upon review or appeal;

(c) adopts a 'high end' realisation value for the Real Properties based on searches conducted with Corelogic (noting the higher value has an adverse impact on my liability for CGT and related selling costs);

(d) assumes the Como Property is exempt from capital gains tax (**CGT**) on the basis that it was acquired in 1977 (pre-CGT); and

(e) assumes limited legal fees are incurred, the extent of which is dependent upon ongoing and additional legal proceedings to which I am at party.

2.6.10. Conversely, the pessimistic scenario assumes:

(a) the Deferred Claims are admitted in full;

(b) the Admitted Claims are upheld upon review or appeal;

(c) the share portfolio is realised at 10% less than the current market value;

(d) the Real Properties are realised at low estimates based on searches conducted with Corelogic (noting the lower sale price will reduce my liability for CGT and related selling costs);

(e) the mortgage granted in favour of H. & A. Frigger Pty Ltd over the Applecross Property is valid; and

(f) the Como Property is not exempt from CGT.

2.7. Further Notes to ESOP

Equity in real property

2.7.1. In respect of the mortgage over the Applecross Property referred to at paragraph 2.6.10(e), there are caveats lodged by H. & A. Frigger Pty Ltd against the Residential Properties pursuant to a purported mortgage. The Friggers indicated in their Statement of Affairs the balance of the mortgage over the Applecross Property as at 25 July 2018 was $2,450,050. Given the longstanding Annulment Proceedings, I did not take steps to realise the Residential Properties. However, I have on a number of occasions requested H. & A. Frigger Pty Ltd provide details of the outstanding mortgage. To date, I have not received those details.

2.7.2. My estimates referred to in the ESOP relating to the Residential Properties are the net value derived from current desktop valuations less the following estimated costs:

(a) AFSA realisation charges;

(b) CGT;

(c) the purported mortgage (in respect of the pessimistic estimate); and

(d) selling costs.

Share portfolio

2.7.3. My estimates referred to in the ESOP relating to the share portfolio are the reported market values less the following estimated costs:

(a) AFSA realisation charges;

(b) CGT; and

(c) selling costs.

Professional fees

2.7.4. These costs will depend on which assets would need to be realised, and to what extent.

2.7.5. To date, I have paid legal fees in a sum in excess of $2,077,444.22 (inclusive of GST), being $563,027.38 paid directly from funds held in the Bankrupt Estates, and $1,514,416.84 by way of disbursement funded by FTI. Future legal costs will depend on the progress of the various ongoing proceedings, and whether the Friggers commence any further proceedings.

2.7.6. Furthermore, I anticipate I will require the services of other professionals to assist with the following aspects:

(a) professional advice regarding calculating CGT on assets realised by the Bankrupt Estates, and preparation and lodgement of income tax returns;

(b) publishing and communicating a dividend distribution; and

(c) agent/brokers fees incurred in realising the assets (Residential Properties and Share Portfolio).

Interest and realisation charges

2.7.7. The Australian Commonwealth charge a levy on all realisations made in respect of administrations under the Act. This levy is called the realisations charge. The legislation covering this charge and the related interest charge is set out in the *Bankruptcy (Estate Charges) Act 1997* (Cth).

2.7.8. All further assets realised will incur a 7% realisations charge payable to the Commonwealth and all interest accrued on funds held are similarly payable to the Commonwealth.

2.7.9. My estimates in the ESOP are calculated on interest income and dividends received on the Share Portfolio to date in the year ended 30 June 2026.

2.7.10. The expected interest and realisations charges ultimately payable by the Bankrupt Estates cannot be reliably estimated at this stage as it will depend on the value of assets realised and the interest accrued over the course of the administration. However, estimates have been used in each asset category to determine their net value.

3. Costs of the Administration

3.1. Financial recording

3.1.1. When Mr Allen and I were appointed trustees of the Bankrupt Estates, I caused a file to be opened for the administration of the estates using FTI's computer and software systems. The file is named "Hartmut Hubert Joseph/ Angela Cecilia Frigger – Bankruptcy-2018" and allocated file number 464538.0001. The file name and number are used for the following financial recording and reporting purposes:

(a) to record the time spent by FTI staff and me in the administration of the Bankrupt Estates for which I used Advanced's 'Carpe Diem' time recording software which is licensed to FTI;

(b) to record the internal and external disbursements incurred by me in the administration of the estates for which I use Emburse Enterprise expense management and account payable software which is licensed to FTI (formerly known as Chrome River); and

(c) to record receipts and payments of estate funds in the course of the administration of the Bankrupt Estates, maintain creditors listings, and maintain a general ledger from which I am able to produce financial reports for the file.

3.1.2. Further, in order to enable me to perform my duties and discharge my obligations in my various personal appointments including in my appointment as trustee of the estates, FTI has provided and continues to provide me with, among other things, staff experienced in bankruptcy and insolvency to assist me to perform my work. Those employees report to me and are subject to my direction and control (and no-one else's direction and control) when they are performing work for the administration of the Bankrupt Estates.

3.1.3. FTI staff are required to record their time spent on their professional activities in a computerised time recording system, using 6-minute units.

3.1.4. I instructed FTI staff assisting me when recording their time to allocate their time to particular task areas reflecting the various tasks undertaken throughout the course of the administration of the Bankrupt Estates and separately identify whether any of the work undertaken in that task relates to specific activities of the administration of the Bankrupt Estates (described in more detail in paragraphs 3.3.3 to 3.3.4 below).

3.1.5. From time to time, and generally at the end of each calendar month, I will review the time entries recorded by FTI staff assisting me to administer the Bankrupt Estates in order to be satisfied that:

(a) time recorded is reasonable and commensurate with the nature of the work performed; and

(b) that the time recorded against a particular task or activity is accurate.

3.1.6. If, in the course of that review, I consider that a time entry is not reasonable (for example, because too long has been spent on a particular task, or because work has been performed by a more senior staff member where a more junior staff member could perform the work), I will reduce the time to reflect the reasonable amount that I consider should be charged, based on my experience.

3.2. Remuneration approved by Creditors

3.2.1. To date, I have obtained creditor approval for:

(a) my remuneration for administering the Bankrupt Estates for the period 31 August 2018 to 13 September 2024 in the amount of $1,376,650.50 (excluding GST) pursuant to creditor resolutions dated 8 November 2018 and 3 October 2023; and

(b) my internal disbursements (for services provided to me by FTI) incurred for administering the Bankrupt Estates for the period 31 August 2018 to the conclusion of the bankruptcy in the amount of $11,180.60 (including GST) pursuant to a creditor resolution dated 8 November 2018.

3.2.2. A breakdown of each creditor approval is set out in more detail below.

3.2.3. On 12 October 2018, I issued a report to creditors of the Bankrupt Estates which contained a remuneration approval report dated 12 October 2018 (**October 2018 Remuneration Report**). A copy of the report to creditors dated 12 October 2018 is annexed at pages 522 to 570 of the Bundle.

3.2.4. On 8 November 2018, I obtained creditor approval for:

(a) my remuneration for the period 31 August 2018 to 7 October 2018 in the amount of $24,890.50 (excluding GST). Annexed at pages 571 to 580 of the Bundle is a copy of my certification dated 8 November 2018 of the resolutions I obtained from the creditors of the Bankrupt Estates without

holding a meeting of creditors pursuant to section 75-40 of the Insolvency Practice Schedule (Bankruptcy) (**IPS**) approving this remuneration;

(b) my then estimated future remuneration for the period 8 October 2018 to the conclusion of the administration in the sum of $109,090.91 (excluding GST). Annexed at pages 581 to 590 of the Bundle is a copy of my certification dated 8 November 2018 of the resolution I obtained from the creditors of the Bankrupt Estates without holding a meeting of creditors pursuant to section 75-40 of the IPS approving this remuneration;

(c) my internal disbursements for the period 31 August 2018 to 7 October 2018 in the amount of $164.18 (excluding GST). Annexed at pages 591 to 600 of the Bundle is a copy of my certification dated 8 November 2018 of the resolution I obtained from the creditors of the Bankrupt Estates without holding a meeting of creditors pursuant to section 75-40 of the IPS approving these internal disbursements; and

(d) my then future estimated internal disbursements for the period 8 October 2018 to the conclusion of the administration in the amount of $10,000 (excluding GST). Annexed at pages 601 to 611 of the Bundle is a copy of my certification dated 8 November 2018 of the resolution I obtained from the creditors of the Bankrupt Estates without holding a meeting of creditors pursuant to section 75-40 of the IPS approving these internal disbursements.

3.2.5. On 7 September 2023, I issued a report to creditors of the Bankrupt Estates which contained a remuneration approval report dated 7 September 2023 (**September 2023 Remuneration Report**). A copy of the report to creditors dated 7 September 2023 is annexed at pages 612 to 681 of the Bundle.

3.2.6. On 3 October 2023, I obtained further creditor approval for:

(a) my remuneration for the period 27 August 2019 to 13 August 2023 in the amount of $867,669.09 (excluding GST). Annexed at page 682 of the Bundle is a copy of my certification dated 3 October 2023 of the resolution I obtained from the creditors of the Bankrupt Estates without holding a meeting of creditors pursuant to section 75-40 of the IPS approving this remuneration; and

(b) my then estimated future remuneration for the period 13 August 2023 to the conclusion of the administration in the amount of $375,000 (excluding GST). Annexed at page 683 of the Bundle is a copy of my certification dated 3 October 2023 of the resolution I obtained from the creditors of the Bankrupt Estates without holding a meeting of creditors pursuant to section 75-40 of the IPS approving this remuneration.

3.2.7. I hold no other creditor approval for my remuneration and internal disbursements in relation to the administration of the Bankrupt Estates.

3.2.8. Since my appointment as Trustee of the Bankrupt Estates on 31 August 2018, and despite the approvals referred to above, I have not drawn down any funds of the Bankrupt Estates that I hold, to pay any approved remuneration or internal disbursements.

3.2.9. Although I obtained creditor approval for internal disbursements up to $10,164.18 (see paragraphs 3.2.4(c) and 3.2.4(d) above), as at the date of this affidavit, I have only incurred internal disbursements in the amount of $323.19. Accordingly, by this application, I seek Court approval to draw internal disbursements in the amount of $323.19 only.

3.2.10. In my experience, having knowledge of the complexity of this administration (as detailed in this affidavit) and the work performed by FTI staff and myself for which the remuneration in the October 2018 Remuneration Report and the September 2023 Remuneration Report is claimed, I am satisfied that:

(a) the length of time spent by me, and by FTI's staff, was reasonably necessary for the nature of the work that has been carried out;

(b) all of the work performed was carried out by professional staff who were appropriately qualified and appropriately experienced;

(c) all of the work was carried out in a timely fashion, to a high standard and without unnecessary duplication; and

(d) all of the work performed was reasonably necessary for the proper conduct of the administration of the Bankrupt Estates.

3.2.11. The hourly rates reflected in the October 2018 Report and the September 2023 Report were the hourly rates applicable to FTI's professional staff at the relevant times. In my opinion, the hourly rates are reasonable having regard to the following matters:

(a) the experience and professional qualifications of each staff member;

(b) the work performed in relation to the administration of the Bankrupt Estates;

(c) the nature and complexity of the work performed;

(d) the responsibility of each staff member in relation to the work performed by each of them;

(e) the costs incurred by FTI in performing the work the subject of the Bankrupt Estates;

(f) the rates charged by comparable insolvency practices in Australia.

3.3. Remuneration Report for period 14 September 2024 to 31 August 2025

3.3.1. I have prepared a remuneration approval report for the period 14 September 2024 to 31 August 2025 which contains the following information:

(a) details of the relevant member of our staff (including me) who performed work in relation to the administration of the Bankrupt Estates;

(b) for each task:

(i) a detailed description of the task;

(ii) the time spent on the task; and

(iii) the cost of the task, calculated by reference to the hourly rate of the relevant staff member,

(herein referred to as **2025 Remuneration Report**).

3.3.2. A copy of the 2025 Remuneration Report is annexed at pages 684 to 689 of the Bundle.

3.3.3. The tasks recorded in the 2025 Remuneration Report are the following tasks identified in the Australian Restructuring Insolvency & Turnaround Association (**ARITA**) Code of Professional Practice:

(a) "Assets" which includes the following:

(i) monitoring and receipting dividend income from Share Portfolio; and

(ii) miscellaneous dealings with JBWere in relation to Share Portfolio.

(b) "Creditors" which includes the following:

(i) liaising with creditors and responding to creditor enquiries;

(ii) preparing reports to creditors;

(iii) preparing meetings of creditors; and

(iv) dealing with proofs of debt.

(c) "Investigations" which includes the following:

(i) reviewing books and records;

(ii) time spent on various legal proceedings;

(iii) investigations associated with various proceedings;

(iv) carrying out searches of land titles office, ASIC etc;

(v) assessing bank accounts and providing various notifications to the banks;

(vi) reviewing transactions which may be voidable under the Act; and

(vii) assessing superannuation of the bankrupt.

(d) "Administration" which includes the following:

(i) preparing and issuing general correspondence;

(ii) preparing of and lodgement of Annual Estate Returns with AFSA;

(iii) reviewing and filing emails

(iv) reviewing and updating task lists;

(v) internal team meetings and plannings;

(vi) maintaining internal accounting records, including bank reconciliations;

(vii) periodic review of estimated statement of position

3.3.4. The activities recorded in the 2025 Remuneration Report are activities that are specifically related to the administration of the Bankrupt Estates and provide clarity on the actual work done for each task including:

(a) "Administration" being work relating to the general administration of the Bankrupt Estates, including filing, review of tasks list, team planning and discussions, and periodic review of estimated statements of position;

(b) "Annulment" being work relating to the Annulment Proceedings;

(c) "Banking" being tasks associated with the recording of estate transactions, including receipt of funds and payment of liabilities, reconciliation of bank accounts, and maintenance of bank accounts;

(d) "BOQ Proceedings" being work associated with the Bank Proceedings;

(e) "Correspondence" being work associated with general day-to-day correspondence;

(f) "Creditors" being work associated with liaising and corresponding with creditors, and maintaining creditor lists;

(g) "Disq" being work associated with the Removal Proceeding;

(h) "Friggers" being work associated with liaising and corresponding with the Friggers including, travel requests and production of documents pursuant to requests;

(i) "Income" being work associated requesting details of income, completion of income questionnaire and associated income assessments;

(j) "Investigations" being searches, reviews of books and records, including review of files from AFSA, review of Statements of Affairs, and verification of information by way of third parties ;

(k) "Legal" being works associated with general dealings with lawyers, court applications, and where time entries are not specific or deal with more than one set of proceedings;

(l) "Main Proceedings" being work associated with the Main Proceeding, the Appeal Proceeding and the Special Leave Application;

(m) "PODS" being work associated with the review and assessment of creditor claims and associated legal proceeding;

(n) "Remuneration" being work relating to the maintenance and periodic reconciliation of time and costs of the Bankrupt Estate;

(o) "Reports" being works associated with the drafting and issuing of reports to creditors;

(p) "Risk" being works relating to insurance, quality assurance and statutory compliance of the Bankrupt Estates;

(q) "Shares" being work associated with the Share Portfolio, including investigations, tracing, and general management/maintenance of the portfolio;

(r) "Statutory" being work associated with the reporting and lodgements with AFSA, PACE alerts, including AAR, travel requests, offence referrals and objection to discharge; and

(s) "Tax" being work associated with taxation compliance including dealings and inquiries with the Australia Taxation Office, estimating and calculating tax implications of various realisation scenarios, registration of TFN and considering potential lodgements.

3.3.5. In my experience, having knowledge of the complexity of this administration (as detailed in this affidavit) and the work performed by FTI staff and myself for which the remuneration in the 2025 Remuneration Report is claimed, I am satisfied that:

(a) the length of time spent by me, and by FTI's staff, was reasonably necessary for the nature of the work that has been carried out;

(b) all of the work performed was carried out by professional staff who were appropriately qualified and appropriately experienced;

(c) all of the work was carried out in a timely fashion, to a high standard and without unnecessary duplication; and

(d) all of the work performed was reasonably necessary for the proper conduct of the administration of the Bankrupt Estates.

3.3.6. The hourly rates reflected in the 2025 Remuneration Report are the hourly rates applicable to FTI's professional staff. In my opinion, the hourly rates are reasonable having regard to the following matters:

(a) the experience and professional qualifications of each staff member;

(b) the work performed in relation to the administration of the Bankrupt Estates;

(c) the nature and complexity of the work performed;

(d) the responsibility of each staff member in relation to the work performed by each of them;

(e) the costs incurred by FTI in performing the work the subject of the Bankrupt Estates; and

(f) the rates charged by comparable insolvency practices in Australia.

3.4. Time cost for work done administering the Bankrupt Estates

3.4.1. From the date of my appointment to 31 August 2025, the time cost for all the work performed by FTI staff and me to administer the Bankrupt Estate, calculated using FTI's charge-out rates of its staff from time to time, totals $1,795,671.50 (excluding GST). As noted in the table below, of this amount, $944,525.50 has been incurred to defend the various proceedings commenced by the Friggers.

Task Category	Hours	Charge ($)	%
Administration - Banking	210.90	84,718.50	4.7%
Administration - Bankrupts' requests	69.10	33,983.50	1.9%
Administration - Correspondence	24.50	9,977.00	0.6%
Administration - General	138.20	81,300.50	4.5%
Administration - Initial appointment tasks	20.40	7,063.00	0.4%
Administration - Remuneration	112.10	73,695.50	4.1%
Administration - Risk and Compliance	4.50	3,403.00	0.2%
Administration - Statutory	61.50	29,697.00	1.7%
Administration - Tax	74.70	33,384.00	1.9%
Assets - General	5.90	1,990.00	0.1%
Assets - Income Assessment	33.90	13,407.00	0.7%
Creditor - POD	215.80	115,049.00	6.4%
Creditors - Correspondence	144.80	73,696.00	4.1%
Creditors - Report	132.00	63,511.00	3.5%

Investigations - Bank Accounts	137.70	53,111.00	3.0%
Investigations - Deceased Estate	16.30	8,381.50	0.5%
Investigations - Gathering records	109.90	47,387.50	2.6%
Investigations - Property	35.70	15,573.50	0.9%
Investigations – Shareholdings	192.10	83,836.00	4.7%
Investigations – SMSF	44.90	17,981.50	1.0%
Legal costs – Annulment	389.60	238,946.00	13.3%
Legal costs – BOQ Proceedings	8.00	5,431.00	0.3%
Legal costs – Disqualification Application	288.10	202,677.50	11.3%
Legal costs – General	106.90	57,465.00	3.2%
Legal costs – Main Proceedings	865.40	440,006.00	24.5%
TOTAL (ex GST)	**3,442.90**	**1,795,671.50**	**100%**

3.4.2. Annexed at pages 690 to 693 of the Bundle Is a copy of a table showing a breakdown of cost across staff members (by position) in respect of the various task categories from the date of my appointment to 31 August 2025.

Sworn by the deponent)
at Brisbane)
in Queensland) Signature of deponent
on 26 September 2025)
Before me:)

Signature of witness

Name of witness: SOPHIE ELIZABETH MEI CHING SIA.

An Australian legal practitioner who holds a
current practice certificate.

Schedule

No.

Federal Court of Australia
District Registry: Queensland
Division: General

Second Respondent: HARTMUT HUBERT JOSEF FRIGGER

Certificate identifying annexure

No.

Federal Court of Australia

District Registry: Western Australia

Division: General

KELLY-ANNE LAVINA TRENFIELD

Applicant

ANGELA CECILIA THERESA FRIGGER and another named in the schedule

Respondents

This is the annexure marked **KLT-1** now produced and shown to Kelly-Anne Lavina Trenfield at the time of swearing her affidavit on 26 September 2025.

Before me:

Signature of person taking affidavit.

Sophie Elizabeth Mei Ching Sia



VIQ SOLUTIONS

T: 1800 287 274
E: clientservices@viqsolutions.com
W: www.viqsolutions.com.au

TRANSCRIPT OF PROCEEDINGS

O/N H-1906866

FEDERAL COURT OF AUSTRALIA

WESTERN AUSTRALIA REGISTRY

COLVIN J

No. WAD 128 of 2023

ANGELA CECILIA THERESA FRIGGER and ANOTHER

and

KELLY-ANNE TRENFIELD

PERTH

9.16 AM, WEDNESDAY, 6 MARCH 2024

MS A.C.T. FRIGGER appears in person
MR H.H.J FRIGGER appears in person
MR S.D. MAJTELES appears for the respondent

Copyright in Transcript is owned by the Commonwealth of Australia. Apart from any use permitted under the Copyright Act 1968 you are not permitted to reproduce, adapt, re-transmit or distribute the Transcript material in any form or by any means without seeking prior written approval from the Federal Court of Australia.



VIQ SOLUTIONS

T: 1800 287 274
E: clientservices@viqsolutions.com
W: www.viqsolutions.com.au

TRANSCRIPT OF PROCEEDINGS

O/N H-1906866

FEDERAL COURT OF AUSTRALIA

WESTERN AUSTRALIA REGISTRY

COLVIN J

No. WAD 128 of 2023

ANGELA CECILIA THERESA FRIGGER and ANOTHER

and

KELLY-ANNE TRENFIELD

PERTH

9.16 AM, WEDNESDAY, 6 MARCH 2024

MS A.C.T. FRIGGER appears in person
MR H.H.J FRIGGER appears in person
MR S.D. MAJTELES appears for the respondent

Copyright in Transcript is owned by the Commonwealth of Australia. Apart from any use permitted under the Copyright Act 1968 you are not permitted to reproduce, adapt, re-transmit or distribute the Transcript material in any form or by any means without seeking prior written approval from the Federal Court of Australia.

HIS HONOUR: Mrs Frigger, you appear on your own behalf?

MS A.C.T. FRIGGER: I do, your Honour.

HIS HONOUR: Yes. Mr Frigger.

MR H.H.J. FRIGGER: Yes, I appear on my own behalf, thank you.

HIS HONOUR: Thank you. And Mr Majteles.

MR S.D. MAJTELES: Yes. May it please the court, for the respondent.

HIS HONOUR: Thank you. So, there are a few matters to deal with today. Firstly, the court made an order that any application to amend be filed by a specified time. Mrs Frigger, what has happened is there has been this affidavit filed which is not an application.

MS FRIGGER: Sorry, it's not an application?

HIS HONOUR: No. There needs - - -

MS FRIGGER: I have filed an application.

HIS HONOUR: No, you filed an affidavit. It has got some attachments to it.

MS FRIGGER: Sorry, your Honour. If I can just – I filed an interim application and it has not been accepted for filing yet and it says:

> *Interim orders sought pursuant to rule 8.21(1)(a), (1) the applicants have leave to amend the originating application and amend the summary judgment application; (2) Pursuant to rule 16.53, the applicants have leave to amend the amended statement of claim.*

HIS HONOUR: Yes. Do you have that, Mr Majteles?

MR MAJTELES: I do, your Honour. I think it was accepted for filing yesterday afternoon. I've received a copy of it this morning.

HIS HONOUR: Yes. All right. Well, I have that now, thank you. So, obviously I'm not going to hear argument on that today. I have looked at the documents, and consistently with what I said at the time that this was foreshadowed, I see substantial difficulties with large parts of what's proposed by way of amendment. So, I will just be – Mr Majteles, are these applications opposed or this application opposed?

MR MAJTELES: In its terms, yes. There was a – I'm not sure if the document has made its way to you – there was - - -

HIS HONOUR: I have that. I have your document with a number of objections identified.

MR MAJTELES: Yes. Yes. So, that sets out the basis upon which it's opposed or at least those paragraphs which are opposed.

HIS HONOUR: Well, there are two ways of proceeding. One is, Mr and Mrs Frigger, I can look at the amendments and I can look at the matters that have been raised by Mr Majteles and I can make a ruling in chambers, or I can list the matter for limited argument at a future date.

MS FRIGGER: Yes. We would prefer that, because we actually don't know what's in the objections that have been filed. We only got it late yesterday. I know that everything is objected to, but I don't know the grounds for it, so I haven't been able to obviously formulate what has been said, and neither have I been able to prepare a response. So, I think, your Honour, we should be given a chance to have a hearing.

MR FRIGGER: We don't know the grounds or he didn't give the grounds.

MS FRIGGER: No, the grounds are there, but I just haven't been able to assess the grounds.

HIS HONOUR: So, the matter could come before me on 2 May. What I would propose to do is to limit submissions of each of the oral submissions of each party to half an hour on that occasion, and to provide for any written submissions to be provided. I'm not sure, Mr Majteles, whether you want to file any more, but I will make a timetable for that shortly, unless there's any problem with 2 May.

MR MAJTELES: There's no problem with the availability on 2 May. It's really just the timing, given that this matter – we say this matter is probably otherwise close to be ready to be listed, so - - -

HIS HONOUR: Well, Mr and Mrs Frigger had indicated they did not want to file any further evidence, so the matter is otherwise ready, and we can deal with that at that time as well, that is, arrangements for listing and directions for listing, so depending upon the outcome of the application.

MR MAJTELES: Yes. Yes, your Honour. As an alternative, the respondent would be happy for you to make a decision in chambers, subsequent to receipt of written submissions, but I understand, your Honour, if you want a hearing on it. That day would be suitable.

HIS HONOUR: Yes. So, that's what I will do in relation to that matter, and I will make those orders shortly. So, that deals with the interim application. There's an application for a summary judgment. In relation to that application, it seems to me that it's entirely inappropriate, so I will give you a moment now, Mr and

Mrs Frigger, to explain to me why it would be appropriate to entertain a summary judgment application.

MS FRIGGER: Your Honour, the test under the rules is that a defendant or respondent has no prospect of successfully defending a claim, so basically that's what we are saying, that Mrs Trenfield has no prospect of successfully defending the claim, but if your Honour is anticipating that this matter will be heard very quickly, then - - -

HIS HONOUR: I'm not anticipating that it will be heard quickly.

MS FRIGGER: Sorry.

HIS HONOUR: I've explained to you that that's very much in your hands when this matter is being heard, and the point will be reached where the court, in any event, having regard to the need to deal with these matters and to advance this administration, well, it's going to have to list the matter anyway. We can't keep playing with this case.

MS FRIGGER: We're not. We are certainly not playing, your Honour. This is a very serious matter which has taken us very close in respect of the Australian Taxation Office. It's very, very serious. And so, obviously we are happy for you to list it at 2 – sorry, is it going to be like early in the morning, your Honour, 9.15 or 10 o'clock, or something like that, on Thursday?

HIS HONOUR: On 2 May?

MS FRIGGER: Yes, that's a Thursday, your Honour.

HIS HONOUR: No, it will not be, it will be at 10.15.

MS FRIGGER: 10.15. And you said half an hour each person?

HIS HONOUR: Yes.

MS FRIGGER: Okay. So, yes.

HIS HONOUR: Is there some other commitment you have on that day?

MS FRIGGER: I have in the afternoon on a Thursday, your Honour.

HIS HONOUR: Yes. We will be well and truly finished by then.

MS FRIGGER: We will fine. Thank you. So, as far as the summary judgment application is concerned, that's the ground that we are saying that there's prospect of successful defence, and in those circumstances we say that this matter should not go to a full blown trial, which will be a waste of court resources, where nothing in what

©Commonwealth of Australia

Mrs Trenfield has said provides any sort of the defence to the matters that have been raised.

HIS HONOUR: Well, that's very much a matter in the eye of the beholder, I think.

MS FRIGGER: Yes, absolutely.

HIS HONOUR: So, and the issues are not confined. It just seems to me it's an entirely inappropriate matter for summary judgment and the application is brought late in the day.

MS FRIGGER: Well, we were still getting matters from Mrs Trenfield on 21 December, so before then there were numerous things that we obtained from her and 21 December - - -

HIS HONOUR: But that's not an explanation for delay in bringing a summary judgment application.

MS FRIGGER: Okay. Your Honour, I'm in your hands. If you think that summary judgment is not appropriate, I don't want to argue summary judgment.

HIS HONOUR: Yes.

MS FRIGGER: And I think under case management rules, you can just say, "No, we're not going to have it."

HIS HONOUR: Yes.

MS FRIGGER: So, as I said, from the last hearing you said that it would be inappropriate to have the damages assessed at the same time.

HIS HONOUR: Yes.

MS FRIGGER: So, that's what I've done, and, you know, we will go along with that, but if there's no prospect of having a summary judgment application, then we just withdraw it.

HIS HONOUR: Yes.

MS FRIGGER: But, so that part of my application which is listed for 2 May obviously does not need to be heard. So, the two matters remaining will be the amending the originating application and amending the statement of claim.

HIS HONOUR: Yes. Is there anything you wish to say, Mr Frigger?

MR FRIGGER: Yes. In the last hearing, your Honour said to Mr Majteles that the trustee should go on with the job, and are you expecting some answers today and - - -

©Commonwealth of Australia

HIS HONOUR: Well, I'm not up to that yet, so I will be dealing with that.

MR FRIGGER: I mean, he had four weeks - - -

HIS HONOUR: Yes, but I will - - -

MR FRIGGER: - - - and they had five years to do anything.

HIS HONOUR: Just a moment, just a moment. So, we will get onto that, but in relation to the summary judgment application, nothing further?

MR FRIGGER: No, nothing further, thank you.

HIS HONOUR: Yes, thank you. So, in relation to that application, in a moment I will make an order dismissing that application, which then leaves the issue in relation to – well, the next issue, it seems to me, is the issue in relation to the separate trial. And I take it, Mrs Frigger, from what you've said that you accept that it's appropriate that we will deal with all issues other than quantum at the trial, and determine at a later time, if there's a liability, the loss or damage or compensation or the quantification of the amounts owed.

MS FRIGGER: Your Honour, can I just please ask for some direction from you in respect of that, and I'm confused about it. When you say – sorry, I don't want to be disrespectful – when the court says the quantum will be decided separately, is that including the liability in respect of the quantum or is it – so, the liability for damages will be decided initially, in the first instance?

HIS HONOUR: Yes.

MS FRIGGER: Okay. That's fine. I understand that.

HIS HONOUR: Well, it's a very appropriate question and many lawyers misunderstand the nature of that, but what still is to be determined is whether there should be an order for loss and damage to be paid.

MS FRIGGER: Yes, yes.

HIS HONOUR: And if there is, if it's determined that there should be, then the amount of that loss and damage is the - - -

MS FRIGGER: Will be separate.

HIS HONOUR: - - - issue that will be held over.

MS FRIGGER: So, that means it's very clear to me and that is absolutely appropriate, yes.

©Commonwealth of Australia

HIS HONOUR: Yes. Well, Mr Majteles, that would mean that the order would be expressed in slightly different terms to which you proposed, effectively that all issues as to quantum be determined separately and after the determination of all issues in the proceedings.

MR MAJTELES: Yes.

HIS HONOUR: Which - - -

MR MAJTELES: We would be content with that amendment to that order in those terms. Obviously, the question as to causation needs to be determined as part of the liability, so - - -

HIS HONOUR: Well, I've just made that clear to Mrs Frigger.

MR MAJTELES: Yes.

HIS HONOUR: And that will ensure that all issues are then determined, rather than identified issues. That is to say, the only thing that will be left over is the quantification of loss and damage or compensation or amounts found to be due.

MR MAJTELES: Yes. Which means that we would still need to address your Honour on those heads of – whether or not the claimed heads of loss and damage would fall within the – would need to be assessed.

HIS HONOUR: Well, if you're concerned about whether the order would make clear the – so, issues as to causation will be live and have to be determined. Beyond that, I'm not quite sure what you mean by heads. Are you talking about types of loss?

MR MAJTELES: Well, yes, I'm talking about the types of loss rather than the determination as to the quantum of the types of loss. So, for example, the loss in relation to the amount charged by the German Finance Department.

HIS HONOUR: That will be – there will be an issue then, about whether a loss of that nature ought to be ordered and whether the determination is loss and damage of a particular kind. So, it's just quantum that's being held over.

MR MAJTELES: Yes. Yes. Thank you for the clarification, your Honour.

HIS HONOUR: Yes. Yes. So, I will make orders about that in a moment, which seems to me to deal with all issues. And so, then there's the issue of the affidavit that has been filed, Mr Majteles, by your client. I must say, I'm deeply concerned by what is expressed in that affidavit, because nothing seems to be done and the answer seems to be to be said that because the proofs of debt might be expected to be the subject of challenge, that's a reason why that process should not be advanced.

MR MAJTELES: Your Honour, if that was the impression from the affidavit, then perhaps there needs to be some clarification. I think the reason why there hasn't been time and cost expended in determining whether or not to admit the proof is because there is at the moment an application for annulment and there is at the moment an application for the removal of the trustee. It is not because they might be at some stage later in the day reviewed, there might be an application to review them.

So, there will be time and cost incurred in undertaking that process, and either the estates or the petitioning creditor or the trustee, depending on the outcome of the annulment application and the set aside of the sequestration order application will have to bear those costs.

And so, the point – the question there is, is it – should we be now seeking directions from the court to incur those costs which are, if you like, they're not responsive to the court proceedings, which we have no choice but to incur costs in relation to these, this is the next step. And the question then is, will the court give directions in circumstances where the outcome of that might be the further incurring of costs because of the likely response to that. That was, I think - - -

HIS HONOUR: Well, there is no injunction restraining anything.

MR MAJTELES: No.

HIS HONOUR: The trustee remains under the statutory obligation to undertake the administration with all convenient speed, and there has been nothing done by the trustee to bring any application of the kind that you've identified, and that work is work of a kind which is ordinarily undertaken and will need to be undertaken, and so, whatever happens in relation to the administration, that work will advance the administration.

So, there needs to be something done by the trustee. It can't sit around and make a unilateral decision to suspend the administration of the affairs of the estate. Something needs to be done by the trustee. The trustee either needs to get on and administer this estate, or the trustee needs to come and get some directions to say, "Well, it's justified in not administering this estate in these circumstances." And I would have thought there's going to be real difficulty in the trustee being justified in doing nothing.

MR MAJTELES: Justified in doing so. Yes. Yes, I understand, your Honour. And - - -

HIS HONOUR: There's a further issue as well, and that is that this trustee seems to be charging costs of administration in relation to these proceedings. These proceedings are a challenge to the trustee's authority to act as trustee, and they are not costs which would ordinarily be costs of the administration. They may be costs which, if the trustee is successful, might ultimately be able to be the subject of an

order against the estate, but that would require a Beddoe type order in relation to these proceedings and that has not been sought.

So, I was surprised to see, in relation to the costs that are disclosed and for which approval is sought, that this trustee is seeking to have approval for the costs of defending these proceedings without any order, without any step being taken in relation to that action.

MR MAJTELES: I had understood that the costs of these proceedings and the remuneration in relation to these proceedings are not the subject of the – are not the subject of - - -

HIS HONOUR: Not so.

MR MAJTELES: I will have to seek clarification on that as well, your Honour, because I had understood that the costs and remuneration relate to matters that do not relate to whether or not the trustee should be here, including WAD66 and in relation to these particular proceedings.

HIS HONOUR: Page 50 of the affidavit of the trustee, "Responding as necessary and other dealings with the proceedings in WAD128, responding as necessary and other dealing in proceedings." So, not only – it's both the cost in the past and an ongoing cost in relation to matters relating to these proceedings.

MR MAJTELES: Your Honour, I will have to seek clarification on whether or not there is – that aspect of it needs - - -

HIS HONOUR: Well, that distinction is obviously an important one and needs to be reflected in the way in which the trustee approaches matters concerning this administration.

MR MAJTELES: Important. Yes, absolutely, your Honour.

HIS HONOUR: And then, there is this – so, in circumstances where there is an issue as to whether a substantial part of the estate, there may be a surplus to be returned to Mr and Mrs Frigger, the trustee is pursuing a course of having a very large amount of remuneration approved by creditors; is that right? Well, that's what the affidavit is saying, seeking to do that without convening a meeting of creditors and just having authority signed to approve $1.23 million in remuneration.

MR MAJTELES: I believe that the approval was going to be sought by the court, but I will have to double-check what that says as well. I'm sorry, your Honour, if you could just bear with me for a sec.

HIS HONOUR: Well, it seems to me that the court would need to consider, in the face of these circumstances, whether some form of direction oughtn't be made to

require any approval to be sought by the court in relation to remuneration in the circumstances of this administration.

MR MAJTELES: Yes. I'm just wondering if your Honour could draw my attention to where it said that we were going to – that the trustee was going to seek remuneration.

HIS HONOUR: Well, it's just that all of the documents are sent out with the report for the purposes of convening a meeting in relation to the exercise of the statutory powers under the mechanism in section 75 whatever it is, I can't remember, of the Insolvency Practice Schedule to enable convening of meetings in relation – without the need to convene a meeting and the documents are sent out to the creditors to sign and send back.

MR MAJTELES: Yes. I understood in paragraph 41 that the trustee had specifically indicated that approval for remuneration would likely be necessary by a court, but that is certainly something that I will seek clarification on.

MS FRIGGER: Your Honour, can I just make an observation?

HIS HONOUR: No, just – no, just a moment, please, Mrs Frigger.

MS FRIGGER: Okay. Sorry.

HIS HONOUR: Well, I'm not sure that that's what paragraph 41 says at all. That's to say that, "I think my remuneration is reasonable because it's of a kind that would be found to have been justified and proved likely necessary by a court." And it's very unclear in the context of the affidavit because what the affidavit seems to say is, "Anything I do will be tested by Mr and Mrs Frigger." Well, that seems to be a reason why - - -

MR MAJTELES: You would seek approval by a court.

HIS HONOUR: Yes.

MR MAJTELES: Yes, absolutely, your Honour. And then, I think – and I will seek clarification on this – but I believe that there will be approval for – significant remuneration will be sought from the court because otherwise we will be exposed to the sort of complaints that your Honour is talking about.

HIS HONOUR: Yes. Yes. Well, all of those matters, I'm sure you will be able to update the court about on 2 May. Now, are there any other matters that you seek to have dealt with at the directions hearing?

MR MAJTELES: On 2nd - - -

HIS HONOUR: No, today.

MR MAJTELES: Sorry, today. No. The only issue – well, I think the issue has fallen away, which is the issue of discovery, because obviously that's going to depend upon the question as to what the amended statement of claim looks like.

HIS HONOUR: Yes. Well, we can deal with case management directions on 2 May. So, I will raise that with Mr and Mrs Frigger now.

MR MAJTELES: Yes.

HIS HONOUR: So, on 2 May, Mr and Mrs Frigger, you should be in a position to indicate any further steps that you seek to have taken in these proceedings, either way. That is to say, if your application is successful, what steps will be taken; if your application is unsuccessful to amend, what steps will be taken.

MS FRIGGER: Your Honour, I can already flag that we will be getting expert evidence in relation to how another bankruptcy trustee would have conducted the administration in - - -

HIS HONOUR: Well, I don't think that expert evidence would be of any relevance at all.

MS FRIGGER: Well - - -

HIS HONOUR: It's not a matter for expert evidence. The question is a legal one as to whether or not the manner in which it has been conducted is consistent with the obligations of the trustee. It wouldn't matter if everybody else in the universe was doing it - - -

MS FRIGGER: The same thing.

HIS HONOUR: - - - a different way or the same way, it would make no difference.

MS FRIGGER: Yes. Okay. So, it's a matter for the court to decide that legal question?

HIS HONOUR: Yes.

MS FRIGGER: Okay. And, well, as far as discovery is concerned, depending on what, if any, amendments are allowed in the statement of claim, then I may need to put in a bit more evidence in relation to our superannuation fund.

HIS HONOUR: Well, I think you will need to be specific about that by 2 May.

MS FRIGGER: Okay.

HIS HONOUR: Don't need to deal with it now.

MS FRIGGER: You don't – not now? No. Okay. Other than that, nothing, your Honour.

MR FRIGGER: Your Honour, this is – this is now again that the defendant didn't bring any documents for proof of debt or anything, so he basically defied your order from – well, it's not a real order, but it was a strong suggestion that they bring something to this court, and the same what's argued in front of original one WA141 that Mrs Trenfield, the trustee, should go on with the proof of debt. Apparently there are 21 months or something where she should do her job – under which law was it?

MS FRIGGER: Bankruptcy Act.

MR FRIGGER: Bankruptcy Act. This was argued many, many times and now Mr Majteles said, yes, he needs to seek clarification. Obviously he doesn't read his own affidavits. And it's not the first time that he says he needs clarification. He doesn't know what's going on. The trustee does what she wants. She always did what she wants, basically take as much money out of our estate as possible and invite every creditor in the whole bloody WA. That's what she did.

HIS HONOUR: Just mind your language, please.

MR FRIGGER: Sorry, sorry. I didn't use – allow – but - - -

HIS HONOUR: Well, there is nothing – there is - - -

MR FRIGGER: - - - Mr Majteles, it's not the first time. He does exactly the same procedure what he's doing today, "I don't know about this, I need clarification," and this was discussed many times even in the original proceedings and he got away with it. I can't believe this court lets the trustee in bankruptcy, an officer of this court, get away with this kind of conduct what she is doing since five years, doing absolutely nothing, spending millions of our money - - -

HIS HONOUR: Well, just a moment, we're not - - -

MR FRIGGER: Yes. But I – this is court - - -

HIS HONOUR: I think these are matters to be dealt with on 2 May.

MR FRIGGER: Yes.

HIS HONOUR: It's very apparent, Mr Frigger, that - - -

MR FRIGGER: Are you - - -

HIS HONOUR: - - - at least this court is making serious inquiries of the trustee as to what is happening, and we will get to the bottom of it.

©Commonwealth of Australia

MR FRIGGER: But are you making these – are you making these orders today that he comes up with something on 2 May?

HIS HONOUR: It's not - - -

MR FRIGGER: Or is it just suggestions?

MS FRIGGER: Your Honour - - -

HIS HONOUR: I have – just a moment – I have raised the matters. This is the appropriate way in which the court will deal with its officer. The court's officer has been dealing with matters appropriately by filing an affidavit. The court will be updated further in relation to the matters that I've raised today at the next hearing. It's not necessary for any orders to be made. It's the way the court deals with its officers.

MR FRIGGER: Okay. Thank you.

MS FRIGGER: Your Honour, can I just quickly say, much of Mr Frigger's comments were made because we didn't even know about the affidavit which you've been discussing with Mr Majteles. We haven't seen it. So, that's probably why we didn't know what was going on.

MR FRIGGER: Mr Majteles didn't know what's going on either.

HIS HONOUR: Just a moment. So, a copy of the affidavit should be provided to Mr and Mrs Frigger.

MR MAJTELES: Yes, of course.

HIS HONOUR: So, the orders today will be these – I will indicate them and then if there are any issues with them, the parties can raise them – first of all, the application for summary judgment, what's the date of that application – just bear with me, 7 February.

(1) The application for summary judgment dated 7 February 2024 is dismissed.

(2) The interim application for leave to amend dated 29 February 2024, excluding the application to amend the summary judgment application, is listed for hearing on 2 May 2024 at 10.15 am.

(3) On or before 18 April 2024, the applicants shall file and serve a written outline of no more than five pages in support of the application.

(4) On or before 26 April, the respondent do file and serve any written outline of submissions of no more than five pages in opposition to the application.

©Commonwealth of Australia

(5) At the hearing, each party will have up to 30 minutes to advance oral submissions on the application.

(6) On or before 26 April, each party to file and serve a minute of proposed – actually, I will do it this way – before that order, I will make this order: all issues as to the quantum of any loss and damage or compensation shall be determined separately and after the determination of all other issues in the proceedings. For the avoidance of doubt, the issue of causation will not be determined separately.

(7) And then, a further order, that on or before 26 April each party do file and serve a minute of proposed orders for the conduct of the trial of issues.

HIS HONOUR: To be clear, Mr and Mrs Frigger, you will need to identify in that minute any precise additional discovery that you seek and you may need to have two versions of the minute, one if your application to amend succeeds, one if your application to amend does not succeed. And have I left anything out?

MR MAJTELES: No, your Honour.

HIS HONOUR: So, Mr and Mrs Frigger, so those will be the orders, and I will see the parties again on 2 May. And what I hope to do at that time, because it's in the interests of all parties for these issues in relation to the trustee to be determined, is that I will seek to set dates for the hearing of those issues.

And to be clear, Mr Majteles, I think the trustee's position in relation to progression of the administration, particularly in relation to proofs of debt and the position in relation to approval of any remuneration, will need to be made clear to the court by 2 May. That need not be done by affidavit, I'm not wanting to be imposing substantial obligations, but it can be done by a communication to the court in appropriately objective terms where that's also provided to Mr and Mrs Frigger.

MR MAJTELES: Yes, thank you, your Honour.

HIS HONOUR: Yes. So, those are the directions today. I will also make a direction:

(8) That a copy of the transcript of today be made available to the parties.

HIS HONOUR: It will be orders in those terms.

Please adjourn the court.

MATTER ADJOURNED at 9.51 am UNTIL THURSDAY, 2 MAY 2024

Partner: Peter Smith +61 8 6216 7220
Email: Peter.Smith@jws.com.au
Our Ref: D2467
Your Ref: D2467
Doc ID: 304169223.1

30 April 2024

The Associate to the Honourable Justice Colvin
Federal Court of Australia
1 Victoria Avenue
Perth WA 6000

BY EMAIL Associate.ColvinJ@fedcourt.gov.au

BY EMAIL frigger@tpg.com.au

Dear Associate

Frigger & Anor v Trenfield - WAD 128/2023 - Clarification of Respondent's position on matters raised at the 6 March 2024 Case Management Hearing

1. At the Case Management Hearing on 6 March 2024, his Honour sought clarification from our client, the **trustee** of the applicants' bankrupt **estates**, of several matters concerning the administration of the estates including the approval of the trustee's remuneration as trustee of the estates.

2. The purpose of this letter is to provide the clarification requested and to further update his Honour on the progress of the administration and the trustee's intended future steps including an anticipated timeline for completion of those steps. A copy of this letter has also been sent to the applicants.

1 Clarification on reasons for trustee's conduct of the administration to 5 March 2024

3. His Honour raised a concern, based on his Honour's review of the trustee's affidavit sworn on 5 March 2024 (**March Affidavit**)[1] that the trustee appeared to have decided to suspend the administration of the estates because of the trustee's expectation that her adjudication of proofs of debt in the estate would be challenged by the applicants.

4. We are instructed that the trustee did not intend to convey that impression to the Court and that the trustee deposed to the matters in paragraphs 24 and 25 of the March Affidavit only to give an indication to the Court that the process of adjudicating the proofs of debt may be costly and time consuming – a matter that might be taken into account were the trustee to seek directions from the Court as to whether the trustee were justified in taking a particular course of action bearing in mind that there remained the possibility that:

   (a) the sequestration order be set aside, or the bankruptcy annulled as per orders sought in proceedings WAD 66 of 2021; and

   (b) the trustee would be removed as per orders sought in these proceedings.

[1] Transcript of 6 March 2024 case management hearing P-7 lines 40-46.

5. The trustee deposed to the impact the various proceedings commenced by the applicants have had on how she has administered the estates in her affidavit sworn on 30 August 2023 (**August Affidavit**) at paragraphs 68, 70, 75 and 76 and having regard to the events described below.

Date	Event
20 July 2018	Sequestration order made against the applicants. Official Trustee appointed as trustee in bankruptcy.
31 July 2018	Applicants commenced the **first annulment proceedings** (PEG 409/2018).
31 August 2018	The trustee and Mr Paul Allen replaced the Official Trustee as joint and several trustees of the applicants' estates.
25 September 2018	The first annulment proceedings were dismissed.
March 2019	Proceedings numbered WAD 141/2019 (**primary proceedings**) were commenced by the applicants. The trustee decided not to take steps to administer the estates until the primary proceedings were determined as the matters in dispute in the primary proceedings were concerned with, among other things, whether the assets now under the control of the trustee were estate assets or assets of the applicants' superannuation fund. The issue as to whether the assets now under the trustee's control were assets of the applicants' superannuation fund was critical to the administration of the estates, as there was not otherwise any readily realisable assets available to her to fund the administration of the estates. Accordingly, the trustee only took steps to preserve the assets of the estates: August Affidavit at [68, 69]. Also in issue in the primary proceedings was whether the trustee should be removed for, among other reasons, failing to take certain steps in the administration of the estates including failing to prove creditor claims.
18 March 2021	The applicants commenced WAD 66 of 2021 seeking to have the sequestration order set aside, alternatively to have their bankruptcies annulled.
13 May 2021	Jackson J published reasons (*Kitay v Trenfield* [2021] FCA 508) for granting leave, pursuant to s 58(3) of the *Bankruptcy Act 1966* (Cth), to Mr Kitay and Computer Accounting & Tax Pty Ltd to proceed with various claims against Mr and Mrs Frigger.
18 August 2021	WAD 66 of 2021 was adjourned to a date to be fixed pending the outcome of the proceedings in the Supreme Court of Western Australia (COR 131 of 2021), in effect, staying WAD 66 of 2021.
1 December 2021	Jackson J delivered reasons in the primary proceedings (***Frigger v Trenfield (No 10)*** [2021] FCA 1500). Those reasons included findings that the trustee had acted reasonably in not investigating and adjudicating on creditor claims, at least as at the date of the judgment: *Frigger v Trenfield (No 10)* at [598] to [612].

Date	Event
13 and 14 December 2021	The applicants commenced WAD 278 of 2021, an appeal against the judgment in WAD 141 of 2019. The applicants also sought an urgent stay of the judgment in WAD 141 of 2019. In effect, by the stay application the applicants sought an injunction restraining the trustee from dealing with the assets including paying any costs or remuneration from the assets that were subject of the dispute in WAD 141 of 2019 and WAD 278 of 2021. In light of the appeal the trustee decided to maintain the position that she had adopted for the primary proceedings for the duration of the appeal proceedings: August Affidavit at [70].
16 December 2021	Urgent hearing before his Honour on the stay application: August Affidavit at [73]. During the course of that hearing, the trustee gave an **undertaking** that she would not take steps to dispose of, transfer or otherwise deal with the securities held by CommSec in the CommSec Portfolio Account without first giving 30 days' prior notice to the applicants: August Affidavit at [74].
17 October 2022	The Court dismissed an interlocutory application filed by the applicants to lift the stay of WAD 66 of 2021 which remains stayed.
24 March 2023	The appeal proceedings were dismissed: *Frigger v Trenfield (No 3)* [2023] FCAFC 49.
13 April 2023	The trustee issued an update to unsecured creditors of the estates and called for proofs of debt from the unsecured creditors. The trustee made this decision following the dismissal of the appeal proceedings because she considered it appropriate and consistent with her duties as trustee to proceed with the quantification of creditor claims in a timely manner: August Affidavit at [75, 76].
20 April 2023	The applicants filed a **special leave application** in the High Court of Australia for leave to appeal the Full Court's decision in the appeal proceedings: August Affidavit at [23].
8 May 2023	The trustee applied to the Court to be released from her undertaking. The applicants opposed the release arguing that the undertaking ought continue.
7 June 2023	The applicants commenced these proceedings.
3 August 2023	The High Court dismissed the special leave application: *Frigger & Anor v Trenfield* [2023] HCASL 110.
7 September 2023	The trustee issued a further update to creditors and sought approval of her remuneration for work done in the period 27 August 2019 to 13 August 2023, and for future remuneration.
24 October 2023	The trustee was released from her undertaking: *Frigger v Trenfield (No 4) (Application for Release from Undertaking)* [2023] FCA 1284.
10 April 2024	Justice Hill delivered judgment in proceedings numbered COR 131 of 2021: *Kitay v Frigger (No 2)* [2024] WASC 113.

6. In short, given the extant proceedings seeking to have the sequestration order set aside (WAD 66 of 2019) and these proceedings seeking the trustee's removal and that until the High Court dismissed the special leave application on 7 September 2023 the trustee did not have finality as to her entitlement to the assets now under her control, the trustee previously sought to exercise caution in relation to the time spent and expenses incurred in administering the estates.

7. The caution exercised by the trustee has not been, and is not, driven by her expectation that the trustee's adjudication of proofs of debt will be challenged by the applicants, although the trustee is mindful that is one of matters that will likely significantly increase the costs of the administration as she identified in her March Affidavit at [24], [25].

8. On 10 April 2024, Justice Hill delivered judgment in proceedings COR 131 of 2021: *Kitay v Frigger (No 2)* [2024] WASC 113. Shortly following the judgment, the Federal Court Registry informed the parties to WAD 66 of 2021 that in accordance with order 2 of the orders made by Justice Logan in that proceeding on 18 May 2023, the proceeding is listed for a case management hearing on 6 June 2024 before Logan J.

2 Conduct of the administration since 6 March 2024

9. The delay in having these proceedings and WAD 66 of 2021 resolved is unfortunate. Both proceedings create an element of uncertainty as to the trustee's future and the party or parties which may ultimately be required to bear the cost of the trustee's remuneration and expenses. The trustee is therefore mindful that there is a need for the administration of the estates to proceed.

10. To that end, the trustee has, since 6 March 2024, progressed the administration of the estates, and in particular the critical task of adjudicating proofs of debt as follows:

    (a) sought and obtained preliminary advice from Johnson Winter Slattery (**JWS**) and counsel as to the appropriateness of obtaining directions from the Court in relation to the progress of the administration of the estates generally and the risks of incurring significant costs in proceeding with the administration of the estates;

    (b) circulated an update to creditors on 27 March 2024 (copy **attached**) notifying creditors of the trustee's intention to adjudicate on proofs and calling for final proofs by no later than 17 April 2024;

    (c) requested, by letter dated 27 March 2024 (copy **attached**), that the applicants provide details and supporting documentation of any alleged counter claims they consider they have against creditors that may be off-set against creditors' claims. The trustee requested a response by 19 April 2024, but at the request of the applicants the deadline was extended to 26 April 2024. The applicants responded to the trustee by serving on JWS an affidavit sworn by Mrs Frigger on 26 April 2024. The trustee is reviewing the affidavit and anticipates that she will need to write to Mrs Frigger for clarification about a number of matters deposed to in the affidavit and seek further documentation;

    (d) responded to queries from creditors in relation to the update to creditors and these proceedings;

    (e) held discussions with various creditors in relation to adjudication process and the documents previously submitted;

    (f) reviewed information previously provided by creditors in support of their proofs of debt;

(g) collated and reviewed all supplementary information provided by creditors subsequent to issuing the update to creditors dated 27 March 2024;

(h) prepared a summary schedule of claims (copy **attached**), outlining:

- the parties involved;
- the nature and attributes of each claim;
- the nature of the evidence provided in support of the proofs; and
- categorised the claims based on costs orders made against the applicants prior to the commencement of the bankruptcies (**costs claims**);

(i) on behalf of the trustee, JWS have engaged an independent, Western Australian based costs assessor to assist the trustee to review the costs claims by estimating the likely amount of the costs that would be allowed on a taxation. The assessor's brief will be prepared after further supporting information requested from creditors is provided to the trustee, including relevant court documents and detailed narrations and time costing information where that information has not already been provided by the relevant creditors;

(j) progressed the adjudication summary in light of additional documents received from creditors and formulating the next steps with regards to each claim, including, outlining whether notices to provide further information will need to be issued to some of the creditors;

(k) provided a copy of a number of the proofs of debt to the applicants to assist them to respond to the request directed to them. The documents were initially provided by access to FTI Consulting's secure file transfer protocol server then subsequently, upon the applicants' request, by provision of an USB containing copies of the relevant documents and sending the same by express post to their mailing address;

(l) held discussions with Mervyn Kitay (**Kitay**) in his capacity as the Liquidator of Computer and Tax Accounting Pty Ltd (In Liquidation) (**CAT**), being the largest claimants in the bankrupt estates, to discuss the proofs of debt and supporting documents submitted by CAT and Mr Kitay under cover of a letter dated 18 April 2024 (copy **attached**) (**CAT and Kitay proofs**); and

(m) issued a request to Kitay, and CAT to provide further details about the claims the subject of their proofs of debt.

11. We are instructed that the trustee estimates that she will have completed the process of adjudicating the proofs of debt (save for the CAT and Kitay proofs discussed further below) by August 2024. This estimate is subject to:

(a) the cooperation and timeliness of creditors in responding to further request by the trustee to provide further information in support of their proofs of debt;

(b) given the age of a number of these claims, the capacity of creditors to provide the further information and documents required to conduct the adjudications;

(c) the volume, nature and complexity of the materials to be provided by the applicants supporting any alleged counterclaims against various creditors;

(d) the capacity of the independent costs assessor to complete the costs order reviews by July 2024 once the brief of evidence is prepared after receipt of supporting documentation from creditors;

(e) the completion of the taxation of Mr Kitay's petitioning creditor's costs and the costs of one supporting creditor who is having its costs taxed. The trustee requested Mr Kitay to have his petitioning creditor's costs taxed in October 2023, but he is yet to commence the process (a follow up request have been made by the trustee), The supporting creditor's taxation of costs is pending; and

(f) any intervening actions by the applicants concerning the adjudication process.

12. In relation to (a) above, the trustee has prepared draft requests to be sent to a number of creditors for further information to support or clarify their proofs of debt. Now that the trustee has received the applicants' initial response for materials to support alleged counterclaims against the creditors (paragraph 10(c) above), the trustee proposes to finalise those requests by 8 May 2024. The trustee will be seeking a response from relevant creditors to the information set out in Mrs Frigger's affidavit to assist her to evaluate alleged counterclaims.

2.1 CAT and Kitay proofs of debt

13. CAT has lodged a proof of debt for $5,536,727 against the joint estates. Mr Kitay has lodged a proof of debt for $2,716.308 against the joint estates, and a proof of debt for $1,000 against Mrs Friggers' estate.

14. As explained on page 2 of Mr Kitay's cover letter, the claims the subject of the proofs of debt fall into two categories:

(a) claims in relation to 26 costs orders made against Mr and Mrs Frigger before the commencement of the bankruptcies, including the petitioning creditor's costs of Mr Kitay. Most of the cost orders have not been taxed;

(b) claims the subject of a counter-claim filed against the applicants by CAT and Mr Kitay in Supreme Court of Western Australia proceedings **CIV 2765 of 2010** which is being prosecuted with leave granted by Jackson J on 6 May 2021 (***Kitay v Trenfield*** [2021] FCA 508). The counter-claims are outlined in Mr Kitay's cover letter. They are also described in paragraphs 6 to 9 of Jackson J's reasons. The trustee understands, on the basis of Mr Kitay's cover letter and the decision of Jackson J, that the primary provable claim of CAT in the applicants' estates is a debt claim against the applicants in respect of a running account between CAT and the applicants, but that the debt claim (the balance of the running account) is dependent on the resolution of a number of other (complex) issues of fact and law in CIV 2765 of 2010 including those identified in paragraphs 7 to 9 of his Honour's reasons.

15. The trustee has requested that Mr Kitay provide a copy of the pleadings in CIV 2765 of 2010 so that the trustee can further consider CAT's and Kitay's claims in the estates including what documents or other evidence it will be necessary to obtain and consider in order to be able to determine the merits of the provable claims. Whilst the trustee has yet to receive the pleadings from Mr Kitay, the trustee understands that the claims are complex and complicated which, according to Jackson J, are not suitable for determination in the bankruptcy administration, noting that in granting leave to CAT and Mr Kitay to continue to prosecute the counterclaim in CIV 2765 of 2010, Jackson J held at [27]:

> *"… I was satisfied that the undoubtedly provable claim in debt which* [CAT/Kitay] *wish to pursue against the Friggers is a substantial part of a complicated web of claims, so that it would be impracticable to try to separate it out. If, for example, leave to proceed was not given, then* [CAT/Kitay] *would need to prove for that claim in the bankruptcy, but quantification*

of that proof may require determination of numerous other non-provable aspects of the counterclaim. The complexity and contestability of many of those aspects make them unsuited to determination as part of the bankruptcy administration and it is likely that they would end up back in court, especially since the bankrupts have a right to apply to the court for review of any decision of the trustee in bankruptcy to admit a proof of debt: s 104(1). That situation would be contrary to the orderly administration of the bankrupt estate…"

16. Once the trustee and JWS have reviewed the current pleadings in CIV 2765 of 2010 and subject to any observations to be made by his Honour at the hearing on 2 May 2024, the trustee proposes to seek further advice as to whether her adjudication of the CAT/Kitay claims should be deferred until after CIV 2765 of 2010 is determined by the Supreme Court of Western Australia and whether specific directions are required from the Court on that course of action in light of the comments by Jackson J in *Kitay v Trenfield*, as set out above.

17. In relation to the timing of the determination of CIV 2765 of 2010, the trustee has sought an update from Mr Kitay as to the anticipated timeframe for resolution of those proceedings now that Hill J has delivered judgment in COR 131 of 2021 which had previously operated to stall proceedings CIV 2765 of 2010.

3 Remuneration approval

18. His Honour also raised concerns regarding the approval of the trustee's remuneration to date, including that the trustee is claiming remuneration for work done (and future work) to defend this proceeding[2].

3.1 Payment of approved remuneration and expenses

19. We are instructed that the trustee has not applied any funds of the estates to pay any remuneration or internal disbursements approved to date (see 3.2 below), nor any expenses the trustee has incurred to defend this proceeding[3].

20. We are further instructed that the trustee does not intend to apply any assets of the estates to pay any remuneration or disbursements or expenses already incurred nor any that will be incurred in the future in defence of these proceedings unless and until these proceedings are determined and only then, if it is appropriate to do so depending on the outcome. That is consistent with the trustee's position as explained in her affidavit sworn on 21 December 2023 at [23] and [24].

3.2 Remuneration approvals

21. On 8 November 2018, in accordance with section 60-10 of the *Insolvency Practice Schedule (Bankruptcy) 2016* (**IPS**), the trustee and Mr Allen obtained creditor approval for their remuneration and internal disbursements for work already completed and future work, as described below. This approval by creditor resolution was obtained utilising the process provided for in section 75-40 of the IPS: August Affidavit at [36], KAT-5, KAT-6.

22. For the period from 31 August 2018 to 7 October 2018, the trustee and Mr Allen sought and obtained creditor approval for:

- remuneration of the trustees from 31 August 2018 to 7 October 2018 in the amount of $27,379.55 (incl. GST); and
- internal disbursements in the amount of $180.60 (incl. GST).

[2] Transcript pp 9-10.

[3] As noted in paragraph 20 of her affidavit sworn on 21 December 2023, on 20 September 2023, the trustee reimbursed FTI Consulting Pty Ltd for the amounts of $756,442.94 and $68,805.24 (exclusive of GST) referred to in paragraphs 40 and 41 of her affidavit sworn on 30 August 2023 (being external disbursements paid on the trustee's behalf by FTI, not including external disbursements incurred to defend these proceedings).

23. For future work, the trustee and Mr Allen obtained creditor approval for:

    - remuneration up to an initial capped amount of $120,000 (incl. GST); and
    - internal disbursements in the amount of $11,000 (incl. GST).

24. In summary, on 8 November 2018, the trustee received approval from creditors for remuneration in the sum of $133,981.40 (excl. GST) and internal disbursements in the sum of $10,164.18 (excl. GST): August Affidavit at [36]. The approved remuneration for future work was exhausted on 26 August 2019.

25. After the dismissal of the applicants' special leave application, the trustee sought creditor approval in accordance with s 60-10 of the IPS using the process in section 75-40 of the IPS. On 7 September 2023, the trustee obtained creditor approval for her remuneration[4] utilising that process for the following periods:

    - for 27 August 2019 to 13 August 2023, in the amount of $867,669.09 (excl. GST); and
    - for 14 August 2023 to the conclusion of the bankruptcy, in the amount of $375,000.00 (excl. GST).

26. Approval was sought in the manner described above as we understand that is (and has been since the 1996 amendments to s 162 of the *Bankruptcy Act 1966*), the usual process adopted by trustees in bankruptcy for seeking remuneration approval.

27. A significant proportion of the time spent by the trustee and the FTI staff assisting her has been in relation to the litigation pursued by the applicants in which the trustee was successful. Those proceedings concerned whether the assets vested in the trustee, as well as whether the numerous complaints raised by the applicants about the trustee's conduct and competency were justified and warranted her removal: August Affidavit at [19], [20], [34].

28. His Honour correctly identified that the approved remuneration of $867,669.09 includes some work done by the trustee in relation to this proceeding. The approved amount in respect of that work is $29,665 (excl. GST). But the approval does not change the trustee's position, set out in section 3.1 above, as to the application of assets or the payment of such remuneration.

29. Further, if the Court requires additional comfort, the trustee is prepared to undertake to the Court not to apply any of the estates' assets to pay the amount of $29,665 and not to seek approval for any further remuneration in respect of work done in relation to this proceeding unless and until this proceeding is determined and only then if it is appropriate to do so depending on the outcome[5].

30. The trustee also confirms that the trustee will not reimburse **FTI** Consulting Pty Ltd for any external disbursements already incurred by the trustee (or to be incurred) in the future to defend this proceeding, that have been or will be paid by FTI, unless and until this proceeding is determined and only then if it is appropriate to do so depending on the outcome.

[4] This was consistent with the trustee's previously stated intention to seek remuneration approval from creditors or the Court: August Affidavit at [39].
[5] Noting the decisions in *Pantzer v Wenkart* (2006) 153 FCR 466; [2006] FCAFC 140 at [40] to [46]; *Maxwell-Smith v Donnelly [2007] FCA 1005* at [3] – [4]; *Maxwell-Smith v Donnelly* [2007] FCAFC 180; *Fewin Pty Ltd v Prentice* (No 2) *[2017] FCA 102* at [26] to [32].

Please let us know if there is any further information or any clarification that the Court requires on the matters set out in this letter or more generally in the administration.

Yours faithfully



Johnson Winter Slattery

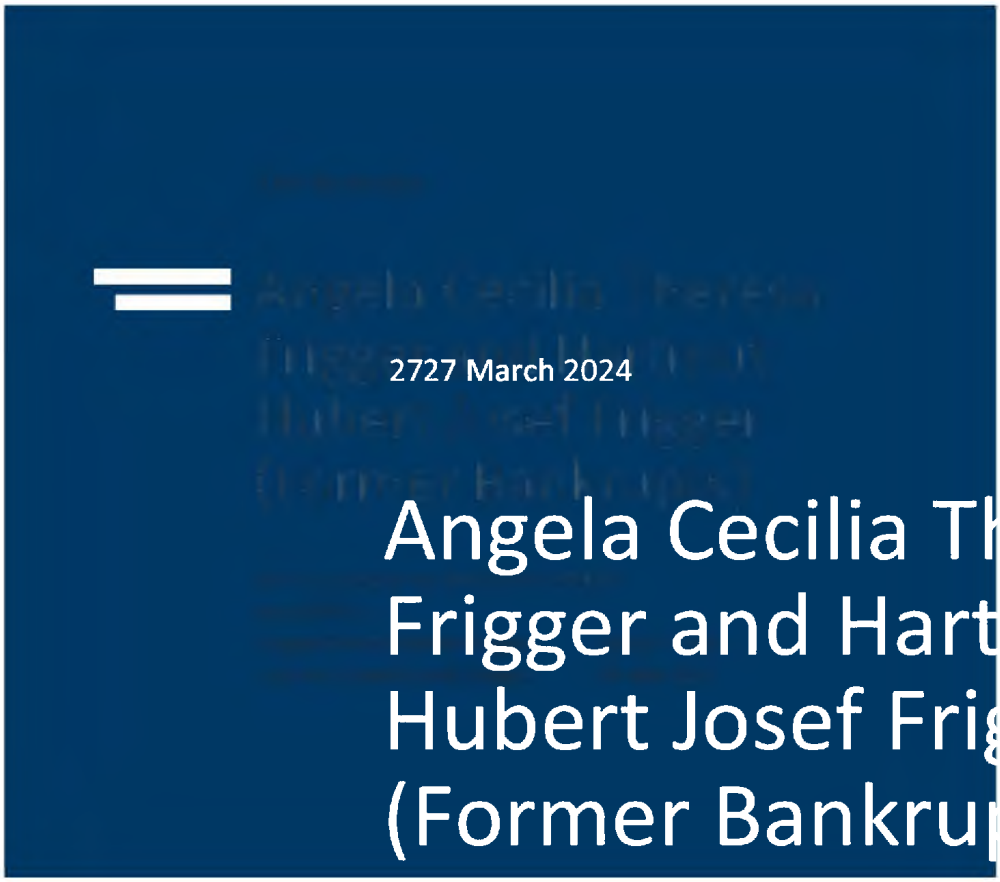

2727 March 2024
Angela Cecilia Th
Frigger and Hart
Hubert Josef Frig
(Former Bankru

Table of Contents

1. Update to Creditors 3
1.1. Matter Updates as at 20 March 2024 3
1.2. Next Steps 4
2. Call to Submit Formal Proofs of Debt 4
3. Your Rights as a Creditor 4
4. Information from Creditors 5

UPDATE BY TRUSTEE

The purpose of this circular is to provide a brief update on the administration of the Bankrupt Estates since my reports to creditors were issued on 7 September 2023.

1. Update to Creditors

1.1. WAD 128 of 2023 – Frigger v Trenfield

As previously advised, the former Bankrupts had filed proceedings against me, in my personal capacity as Trustee, in WAD 128 of 2023 (**Disqualification Application)**. The claim centers on the applicants' view, as an employee of FTI Consulting (Australia) Pty Ltd, I have allegedly surrendered my independence to FTI and consequently, would not be qualified to act as a Trustee in Bankruptcy.

As creditors are aware, I have been vigorously defending these proceedings.

In the course of defending the Disqualification Application, the court had expressed and echoed my desire to continue administering the Bankrupt Estates, despite the unanswered annulment application and the ongoing proceedings.

On this basis, I intend to finalise my adjudication of creditor claims and Proofs of Debts regardless of the current legal proceedings on foot. Please refer to Section 2 below in this regard.

1.2. Other Matter Updates as at 20 March 2024

Since issuing my last report on 7 September 2023, I have also attended to the following:

1. Drawn reimbursements totaling $825,248.18 for the out-of-pocket costs incurred over the past approximately five (5) years of administering the Bankrupt Estate;
2. Monitored and receipted numerous dividend payments from various shareholdings;
3. Issued notices to the solicitors of the petitioning creditor, and supporting petitioning creditors to:
   a. Inform them that monies held from asset realisations may be sufficient to enable payment of their clients' costs associated with the creditors' petition; and
   b. Requesting they seek their clients' costs be taxed to enable payment.
4. Issued a notice to the Australian Financial Security Authority (**AFSA**) to provide the particulars of the Official Trustee's unpaid remuneration and expenses for their tenure as Trustee of the Bankrupt Estate;

1.3. Next Steps

As previously noted, it remains my intention to take steps to administer the Bankrupt Estates as much as possible given the unanswered annulment application and the Disqualification Application.

As creditors will note from Section 1.2 of this Report, I have already begun taking additional steps to progress the administration of the Bankrupt Estates.

Furthermore, and as expressed by the court during the Disqualification Application, it is my intention in the near term, to finalise my quantification and adjudication of creditors claims and Proofs of Debts against the Bankrupt Estate.

a P s

2. C ll to Submit Formal roof of Debt

Take notice creditors of the former Bankrupts, whose debts or claims have not already been admitted, should now prove their debts or claims and to establish any title they may have to priority.

Please take note, **it is now my intention to finalise** my adjudication of all claims made against the estate and so this is one of your last opportunities to submit a Proof of Debt form (**POD**) (**attached** as **Annexure A).**

Should they wish, creditors who have previously submitted a POD are also welcome to update or revise their claim, provided they have valid grounds to do so and supply the necessary supporting documentation.

I require that all new and revised POD forms be submitted by no later than **close of business, 17 April 2024.**

g as a

3. Your Ri hts Creditor

Pursuant to Sections 70-40 and 70-45 of the *Insolvency Practice Schedule (Bankruptcy) 2016* (the IPS), creditors may request information from the Trustees regarding the Bankrupt Estate. Please note the *Insolvency Practice Rules (Bankruptcy) 2016* may prescribe circumstances in which it is, or it is not, reasonable for a Trustee to comply with a request made under the above sections.

Creditors are also entitled, by resolution, to give directions to the Trustees in relation to the administration of the Bankrupt Estate pursuant to Section 85-5 of the IPS. Creditors should note the Trustees are not

4. Information from Creditors

If you have any information which may assist me in the administration of this Estate, please furnish details or contact Nick Hawthorne of this office on (07) 3225 4971 or Nick.Hawthorne@fticonsulting.com.

Please remember to keep us informed at all times of your current postal or addresses.

Should you have any queries regarding the above, please contact Nick Hawthorne on (07) 3225 4971 or Nick.Hawthorne@fticonsulting.com.

Yours faithfully

Kelly-Anne Tofield

Trustee

Our Ref: PYP_464538.0001-M-18-9-6-r6

FTI CONSULTING

Our Ref: 464538.0001-M-18-9-6-I1

27 March 2024

Angela and Hartmut Frigger

29 Gairloch Street

APPLECROSS WA 6153

By Email:
frigger@tpg.com.au

Dear Sir and Madam

RE: Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6
Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6
(Former Bankrupts)

Please find ***attached** a copy of my latest update to creditors.

I am currently seeking to finalise my quantification and adjudication of creditors' claims against the Bankrupt Estate. ***Attached** is a copy of my preliminary adjudication register that I produced in my affidavit dated 5 March 2024 in WAD 128 of 2023.

I understand you may consider that you have counter-claims against many, if not all, of the creditor claims listed. To ensure these counter-claims are taken into account during my adjudication process, I kindly request you provide me with details and supporting documentation for any counter-claims you may have against each creditor. It is critical that you brief me with all relevant facts and the evidence to prove those facts and the quantum of the counter-claims, as I must consider whether those counter-claims can be established and offset against the creditors' claims.

Please submit this information and copies of all relevant documents by **19 April 2024.** From this time, I will proceed with the adjuidcation of claims based on the information available to me.

U e ure Cr d`tor

Creditor Name	Nature of claim	Nature of evidence	Volume of evidence	Amount Clai ($)	Amount Admitted ($)	Amount requiring further evidence ($)	Amount potentially rejected ($)
BBV Legal Pty Ltd	Legal fees outstanding in court matter CIV 1741/2010 in Supreme Court of Western Australia for the Computer Accounting & Tax Pty Ltd ("CAT").	Retainer agreement, legal correspondence, bill of costs, court judgments	66 pages of documents	403,979.00	373,186.35		30,792.65
Clavey Legal Pty Ltd	The Bankrupts instituted proceedings against Clavey Legal in 2011. The debts relate to costs associated with these proceedings.	Correspondence, table of costs	8 pages of documents (additional documents to be requested)	580,491.44		580,491.44	
Donald Campbell-Smith, Sandra May Banning & Banning Holdings Pty Ltd (CIV 1727 of 2009)	This claim has arisen as a consequence of the proceedings in the matter of CIV 1727 of 2009	Correspondence, court orders, certificates of taxations, bill of costs, and interest calculations	16 pages of documents	102,852.29	102,840.75		11.54
Evelyn Charlotte Reid	Relates to costs order awarded against Angela Frigger in the matter of CIV 1760/2017	Correspondence, certificate of taxation, various email exchanges, court judgment and excerpts of other legal documents	15 pages of documents	3,749.85	3,749.85		
Kim David Holbrook	Legal fees relating to the proceedings CACV 24 of 2013, CACV 2265 of 2006, CIV 1846 of 2015 and CACV 23 of 2013	Civil judgment, bill of costs, court orders, correspondence	26 pages of documents	167,948.96		26,764.07	141,184.89
LAW MUTUAL WA	No claim submitted	No claim submitted	No claim submitted				
Madgwicks Lawyers	Legal fees relating to the proceedings PER/CTC/3252/2016 and S CI 2017 02420	Bill of costs, invoices, correspondence and court order	12 pages of documents	12,313.49	12,313.49		
Mervyn Kitay	Relates to various judgment amounts, and costs orders made in the matter of CIV 2765/2010. There may be additional claims in regards to the bankrupts' roles associated with CAT.	Still to be provided	Unknown	2,656,844.00		2,656,844.00	
Mitsui Sumitomo Insurance Underwriting at Llyods, insurer of Graeme Trevor Lean	Claims made in relation to costs order the matters of: CIV 1727 of 2009, CACV 27 of 2011, CIV 2265 of 2006, CIV 2408 of 2014, CACV 65 of 2015	Correspondence, certificate of taxation, tax invoices, court judgment and excerpts of other legal documents	58 pages of documents	341,339.73	341,339.73		
Murfett Legal Pty Ltd	Relates to costs orders awarded in the matter of GCLM 803/2013 and APP 4 of 2016	Costs orders, interest calculations, correspondence	13 pages of documents (additional documents to be requested)	85,952.56	85,952.56		
ROWE BRISTOL LAWYERS PTY LTD	Relates to unpaid legal fees and counsel costs owed by the Friggers	Tax invoices, correspondence, WIP Entries	16 pages of documents	17,068.78	12,156.28	4,912.50	
Sandra May Banning & Professional Services of Australia Pty Ltd (CACV 118 of 2008)	Relates to costs orders made in CACV 118/2008	Costs certificates, correspondence, court orders	14 pages of documents	21,893.28	21,936.30		43.02
Sandra May Banning & Professional Services of Australia Pty Ltd (CACV 2265 of 2006)	Relates to costs orders made in CACV 2265/2006	Bill of costs, correspondence, court orders, interest calculations, probate, certificate of taxation	67 pages of documents	294,760.98	228,643.66	62,865.95	3,251.38
Sandra May Banning & Professional Services of Australia Pty Ltd (CACV 23 of 2012)	Relates to costs orders made in CACV 23/2012	Bill of costs, interest calculations, correspondence, court orders, certificate of taxation	20 pages of documents	178,155.00	178,121.53		33.47
Sandra May Banning & Professional Services of Australia Pty Ltd (CACV 24 of 2013)	Relates to costs orders made in CIV 24/2013	Bill of costs, correspondence, court order, interest calculations	11 pages of documents	34,404.04	34,399.55		4.49
Sandra May Banning & Professional Services of Australia Pty Ltd (CACV 76 of 2008)	Relates to costs orders made in CAV 76/2008	Bill of costs, correspondence, court order, interest calculations, court documents, interest calculations	23 pages of documents	39,229.78	34,123.21	5,101.73	4.84
Sandra May Banning, Professional Services of Australia Pty Ltd &	Relates to costs orders made in WAD 178/2017	Bill of costs, correspondence, court order	14 pages of documents	19,659.74	19,659.74		

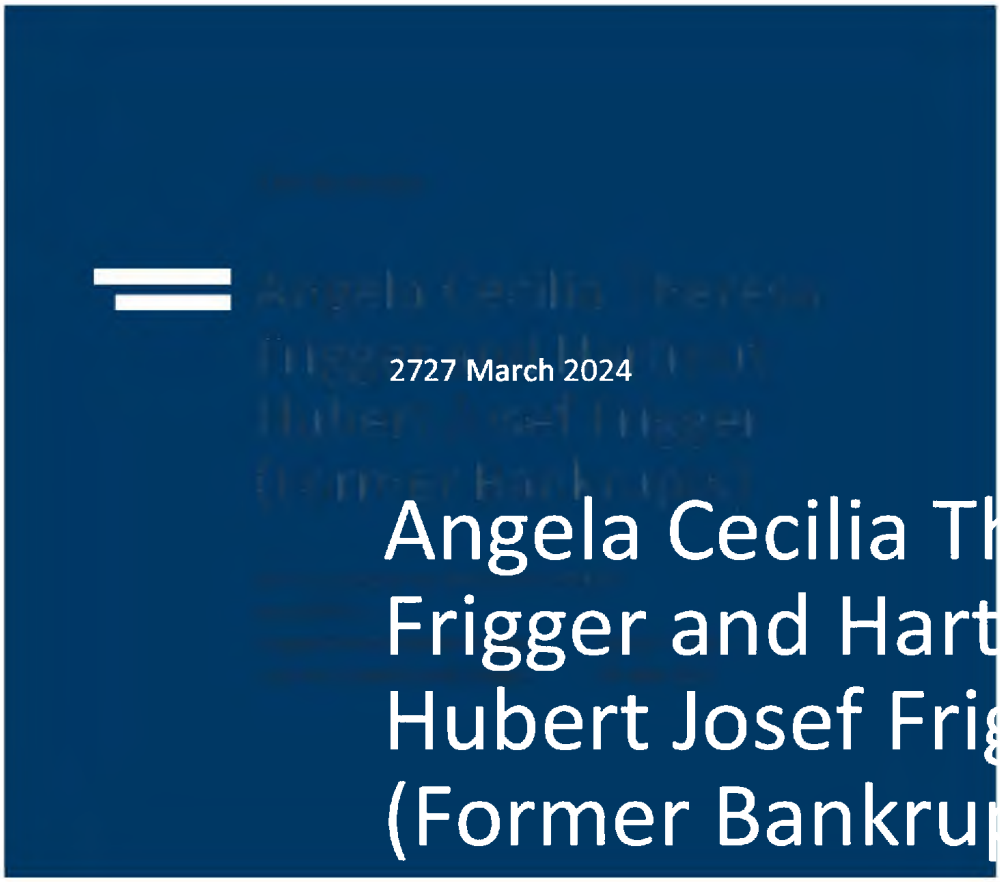

2727 March 2024
Angela Cecilia Th
Frigger and Hart
Hubert Josef Frig
(Former Bankru

Table of Contents

1. Update to Creditors 3
1.1. Matter Updates as at 20 March 2024 3
1.2. Next Steps 4
2. Call to Submit Formal Proofs of Debt 4
3. Your Rights as a Creditor 4
4. Information from Creditors 5

UPDATE BY TRUSTEE

The purpose of this circular is to provide a brief update on the administration of the Bankrupt Estates since my reports to creditors were issued on 7 September 2023.

1. Update to Creditors

1.1. WAD 128 of 2023 – Frigger v Trenfield

As previously advised, the former Bankrupts had filed proceedings against me, in my personal capacity as Trustee, in WAD 128 of 2023 (**Disqualification Application)**. The claim centers on the applicants' view, as an employee of FTI Consulting (Australia) Pty Ltd, I have allegedly surrendered my independence to FTI and consequently, would not be qualified to act as a Trustee in Bankruptcy.

As creditors are aware, I have been vigorously defending these proceedings.

In the course of defending the Disqualification Application, the court had expressed and echoed my desire to continue administering the Bankrupt Estates, despite the unanswered annulment application and the ongoing proceedings.

On this basis, I intend to finalise my adjudication of creditor claims and Proofs of Debts regardless of the current legal proceedings on foot. Please refer to Section 2 below in this regard.

1.2. Other Matter Updates as at 20 March 2024

Since issuing my last report on 7 September 2023, I have also attended to the following:

1. Drawn reimbursements totaling $825,248.18 for the out-of-pocket costs incurred over the past approximately five (5) years of administering the Bankrupt Estate;
2. Monitored and receipted numerous dividend payments from various shareholdings;
3. Issued notices to the solicitors of the petitioning creditor, and supporting petitioning creditors to:
   a. Inform them that monies held from asset realisations may be sufficient to enable payment of their clients' costs associated with the creditors' petition; and
   b. Requesting they seek their clients' costs be taxed to enable payment.
4. Issued a notice to the Australian Financial Security Authority (**AFSA**) to provide the particulars of the Official Trustee's unpaid remuneration and expenses for their tenure as Trustee of the Bankrupt Estate;

1.3. Next Steps

As previously noted, it remains my intention to take steps to administer the Bankrupt Estates as much as possible given the unanswered annulment application and the Disqualification Application.

As creditors will note from Section 1.2 of this Report, I have already begun taking additional steps to progress the administration of the Bankrupt Estates.

Furthermore, and as expressed by the court during the Disqualification Application, it is my intention in the near term, to finalise my quantification and adjudication of creditors claims and Proofs of Debts against the Bankrupt Estate.

a P s

2. C ll to Submit Formal roof of Debt

Take notice creditors of the former Bankrupts, whose debts or claims have not already been admitted, should now prove their debts or claims and to establish any title they may have to priority.

Please take note, **it is now my intention to finalise** my adjudication of all claims made against the estate and so this is one of your last opportunities to submit a Proof of Debt form (**POD**) (**attached** as **Annexure A).**

Should they wish, creditors who have previously submitted a POD are also welcome to update or revise their claim, provided they have valid grounds to do so and supply the necessary supporting documentation.

I require that all new and revised POD forms be submitted by no later than **close of business, 17 April 2024.**

g as a

3. Your Ri hts Creditor

Pursuant to Sections 70-40 and 70-45 of the *Insolvency Practice Schedule (Bankruptcy) 2016* (the IPS), creditors may request information from the Trustees regarding the Bankrupt Estate. Please note the *Insolvency Practice Rules (Bankruptcy) 2016* may prescribe circumstances in which it is, or it is not, reasonable for a Trustee to comply with a request made under the above sections.

Creditors are also entitled, by resolution, to give directions to the Trustees in relation to the administration

4. Information from Creditors

If you have any information which may assist me in the administration of this Estate, please furnish details or contact Nick Hawthorne of this office on (07) 3225 4971 or Nick.Hawthorne@fticonsulting.com.

Please remember to keep us informed at all times of your current postal or addresses.

Should you have any queries regarding the above, please contact Nick Hawthorne on (07) 3225 4971 or Nick.Hawthorne@fticonsulting.com.

Yours faithfully

Kelly-Anne Tofield

Trustee

Our Ref: PYP_464538.0001-M-18-9-6-r6

Bankrupt Estate of Hartmut & Angela Frigger
Schedule of Claims as of 29 April 2024

Creditor	Parties	Nature of claim / basis of fees	POD Amount $	Legal Fees Amount $	Interest	Adverse Costs Amount $	Other Claims Amount $	Taxed Bill of Costs?	Referral to Assessor $	Costs Orders/Judgments
BBV Legal Pty Ltd	A & H Frigger - Directors of CAT and Defendants in Unpaid Legal Fees Claim Computer Accounting & Tax Pty Ltd Bowen Buchbinder Vilensky BBV Legal Pty Ltd - Acted for CAT	Legal fees - BBV Legal Acted for CAT -- the former Bankrupts had provided a directors' guarantee.	403,979.00	252,489.47	151,489.53	-	-	**Yes** – Amount Claimed	-	No
Clavey Legal Pty Ltd	A & H Frigger - Plaintiffs/Applicants Clavey Legal Pty Ltd MDS Legal Lawyers (Acted Clavey Legal)	Adverse costs - Clavey acted for A & H Frigger and who subsequently commenced legal actions against them. Clavey were successful in defending these actions and were awarded costs.	580,491.44	-	-	580,491.44	-	**No** There were no supporting documents provided apart from an Estimate of Costs of $10,417.57 of the total $580,491.00 claim	580,491.44	No *Letter from MDS claims there were Cost Orders made, however no supporting Court documents provided*
Computer Accounting and Tax Pty Ltd (In Liquidation)	A & H Frigger - Plaintiff A & H Frigger ATF Frigger Super Fund - 2nd Plaintiff Mervyn Kitay - 1st defendant Computer Accounting and Tax Pty Ltd (In Liquidation) - 2nd defendant	Mixed - Combination of claims in CIV 2765/2010 (being CAT's claims against A & H Frigger and various costs orders made in WAD 40/2021 and CIV 2765/2010 arising as a result of the Bankrupt's various unsuccessful intervening applications and actions over the course of the main proceedings. Inclusion of potential priority costs and non-provable claims subject to legal review. **NOTE: There is a duplication of claims and costs orders between this claim and the one submitted by Mervyn Kitay. Presently, duplicated costs orders and claims that are present in this proof of debt have been removed from the KItay proof to avoid double proof.**	5,536,727.00	-	-	110,305.00	5,426,422.00	Partial - Refer to Annexure CAT1	97,142.00	Yes
Donald Campbell-Smith, Sandra May Banning & Banning Holdings Pty Ltd (CIV 1727 of 2009)	A & H Frigger - Plaintiffs Eastwood Legal - Acted for the parties below: Donald Campbell-Smith Sandra May Banning Banning Holdings Pty Ltd Graeme Trevor Lean	Adverse costs - Eastwood acted for the creditors who were sued by A & H Frigger. The creditors were successful in defending these actions and were awarded costs.	102,852.29	-	30,073.29	72,779.00	-	**Partial** – Amount Claimed $102,852.29 $93,273.69 Taxed (Costs Order) $5,337.51 Taxed (Costs Order) $2,385.14 Untaxed (PSSO Costs not agreed upon) $731.19 Untaxed (Order of Extension of PSSO) $1,124.76 Untaxed (Order of Extension of PSSO)	4,241.09	Yes
Kim David Holbrook	A & H Frigger - Plaintiffs Hotchkin Hanley - Acted for defendant Kim Holbrook - Defendant	Adverse costs - Hotchkin Hanley acted for Kim Holbrook in a legal action commenced by A & H Frigger. They were successful in defending these actions and were awarded costs.	167,948.96	-	-	167,948.96	-	Partial – Amount Claimed $167,948.98 (includes approximations) $19,662.24 Taxed $58,286.72 Taxed $25,000.00 Untaxed (approximate) $65,000.00 Untaxed (approximate) *The approx. $25,000 has detailed listing but respective Taxed Bill of Costs is not signed*	90,000.00	Yes
LAW MUTUAL WA			-	-		-	-			
Madgwicks Lawyers	A & H Frigger - Claimants Madgwicks Lawyers - Defendants	Adverse costs - Madgwicks acted for A & H Frigger who later commenced legal action against them. Madgwicks were successful in defending these actions and were awarded costs.	12,313.49	-		12,313.49	-	**Yes** - Amount Claimed $12,313.49 (plus "unknown" amount where no further information was provided)	-	Yes
Mervyn Kitay	A & H Frigger - Plaintiffs Mervyn Kitay - 1st defendant Computer Accounting and Tax Pty Ltd (In Liquidation) - 2nd defendant	Mixed - Combination of numerous costs orders made in favour of Mervyn Kitay against A & H Frigger in various legal proceedings and alternate formulation of claims against A & H Frigger in the alternative scenario to those claims being available for pursuit by CAT. Inclusion of potential priority costs and non-provable claims subject to legal review. **NOTE: There is a duplication of claims and costs orders between this claim and the one submitted by CAT. Presently, duplicated costs orders and claims that are present in the CAT proof have been removed from this proof of debt to avoid a double proof.**	440,342.49	-	35,398.06	404,944.43	-	**Partial** - refer to Annexure MJK 1.xlsx	379,943.90	Yes
Mitsui Sumitomo Insurance Underwriting at Lloyds, insurer of Graeme Trevor Lean	A & H Frigger - Applicants/Plaintiffs Mitsui Sumitomo Insurance (Insurers) GT Lean & Associates (the Insured) DLA Piper Australia (representing Mitsui)	Adverse costs - DLA Piper acted for Mitsui in their capacity as insurers for GT Lean. A & H Frigger commenced various proceedings against them and were unsuccessful. Several Costs orders were awarded to Mitsui.	341,339.73	-	70,012.86	271,326.87	-	**Partial** - Amount Claimed $341.339.73 $26,073.51 Taxed (CACV 27/2011) $44,918.25 Untaxed (CACV 65/2015) *[Not specified from Court Order & no Signed Bill of Costs]* $47,523.20 Taxed (CIV 1727/2009) $132,329.83 Untaxed (CIV 2265/2006) *[Not specified from Court Order & no Signed Bill of Costs*] $59,397.95 Untaxed (CIV 2408/2014) *[Not specified from Court Order & no Signed Bill of Costs]*	236,646.03	Yes
Murfett Legal Pty Ltd	A & H Frigger (Applicants) Murfett Legal Pty Ltd (Respondents)	Adverse costs - Background is unclear based on limited documents provided. However, searches online suggests Murfett Legal acted for A & H Frigger and were subsequently sued by them. Based on costs orders obtained against the Bankrupts, Murfett were successful in defending the claims against them.	85,952.56	-	5,857.74	80,094.82	-	**No**	80,094.82	No *Court order referred to in 'Attachment A', however not provided.*
ROWE BRISTOL LAWYERS PTY LTD	A & H Frigger - Clients Rowe Bristol Lawyers - Represented A & H Frigger	Legal fees - Rowe Bristol acted for the Bankrupts against Kitay. Their invoices were never paid.	17,068.78	17,068.78		-	-	**No** – Amount Claimed $17,068.78	17,068.78	No *Not provided*
Sandra May Banning & Professional Services of Australia Pty Ltd (CACV 118 of 2008)	A & H Frigger - Appellants Professional Services of Australia Pty Ltd (First Respondent) Donald Campbell-Smith/Sandra May Banning as Executor of the Deceased Estate of Martin Banning (Second Defendant) Eastwood Law - representing the respondents	Adverse costs - Eastwood acted for the respondents in relation to legal appeals brought by A & H Frigger. The creditors were successful and were awarded costs orders. Of the amounts awarded, $18,000 was deducted given security for costs held at the time. POD balance is net after the deduct of the amounts received from the secured amounts.	21,893.28	-		21,893.28	-	**Yes** – Amount Claimed is $21,893: $9,322.11 Taxed (Bal of Costs Order) $2,512.32 Taxed (amount Fixed in Costs Order) $10,058.85 Taxed (Costs Certificate)	-	Yes

Bankrupt Estate of Hartmut & Angela Frigger
Schedule of Claims as of 29 April 2024

Sandra May Banning & Professional Services of Australia Pty Ltd (CACV 2265 of 2006)	Computer Accounting & Tax Pty Ltd (Plaintiff) A & H Frigger - Intervenors Professional Services of Australia Pty Ltd (First Defendant) Donald Campbell-Smith/Sandra May Banning as Executor of the Deceased Estate of Martin Banning (Second Defendant) Kim Holbrook (then, Administrator of PSA) Eastwood Law - representing the defendants	Adverse costs - Eastwood acted for the respondents in relation to legal proceedings commenced by CAT. In the course of the proceedings, A & H Frigger intervened in various ways and as a result of the dismissal of their various applications, costs orders were made against them.	294,760.98	-	56,332.00	238,428.98	-	*Note – 2 PODs Lodged* POD 1: **Partial** – Amount Claimed $294,225.63 $12,307.94 Untaxed (Costs Order) $45,528.89 Taxed (Costs Order) $67,696.39 Fixed Costs (Enforcement) $168,692.41 Untaxed (Costs Order) POD 2: **No** $535.36 Untaxed [no evidence supporting otherwise] (Costs Order) *Includes Bill of Costs (not signed) relating to Legal Fees of $168,692.41 (including interest)*	181,535.71	Yes
Sandra May Banning & Professional Services of Australia Pty Ltd (CACV 23 of 2012)	A & H Frigger - Appellants Professional Services of Australia Pty Ltd (First Defendant) Donald Campbell-Smith/Sandra May Banning as Executor of the Deceased Estate of Martin Banning (Second Defendant) Kim Holbrook (then, Administrator of PSA) Eastwood Law - representing the defendants	Adverse Costs - Eastwood acted for the respondents in relation to legal appeals sought by A & H Frigger. As a result of the failure of their various appeals and reviews, various costs orders were made against them.	178,155.00	-	34,459.84	143,695.16	-	**Partial** – Amount Claimed $178,155.00: $4,720.51 Taxed (Cost Order) $3,071.46 Taxed (amount specified in Costs Order) $1,846.19 (Costs Order) $168,516.84 Not Taxed (Costs Order)	168,516.84	Yes
Sandra May Banning & Professional Services of Australia Pty Ltd (CACV 24 of 2013)	A & H Frigger - Appellants Professional Services of Australia Pty Ltd (First Defendant) Donald Campbell-Smith/Sandra May Banning as Executor of the Deceased Estate of Martin Banning (Second Defendant) Kim Holbrook (then, Administrator of PSA) Eastwood Law - representing the defendants	Adverse Costs - Eastwood acted for the respondents in relation to legal appeals sought by A & H Frigger. The Bankrupts were unsuccessful in their actions and costs orders were awarded against them.	34,404.04	-	7,035.25	27,368.79	-	**No** – Amount Claimed $34,404.04 *Bill of Costs provided but not signed/taxed*	34,404.04	Yes
Sandra May Banning & Professional Services of Australia Pty Ltd (CACV 76 of 2008)	Computer Accounting & Tax Pty Ltd (Plaintiff) A & H Frigger - Intervenors Professional Services of Australia Pty Ltd (First Defendant) Donald Campbell-Smith/Sandra May Banning as Executor of the Deceased Estate of Martin Banning (Second Defendant) Kim Holbrook (then, Administrator of PSA) Eastwood Law - representing the defendants	Adverse costs - Eastwood acted for the respondents in relation to legal proceedings commenced by CAT. After CAT was placed into liquidation, A & H Frigger sought to intervene in various ways and as a result of the dismissal of their various applications, costs orders were made against them.	39,229.78	-	4,621.64	34,608.14	-	**No** – Amount Claimed $39,229.78 $5,101.73 Untaxed (Costs Order) $34,128.05 Untaxed (Costs Order) *Bill of Costs provided, not signed*	34,608.14	Yes
Sandra May Banning, Professional Services of Australia Pty Ltd & Banning Holdings Pty Ltd (WAD 178 of 2017)	A & H Frigger - Applicants Sandra May Banning as Executor of the Deceased Estate of Martin Banning (Respondent) Eastwood Law - representing the respondent	Adverse costs - Eastwood acted for the respondent in relation to proceedings commenced by A & H Frigger. The proceedings were dismissed and an indemnity costs order was made in favour of their clients against A & H Frigger. This debt relates to a bill of costs associated with that order which has yet to be taxed.	19,659.74	-		19,659.74	-	**No** - $19,659.74 Untaxed (Costs Order) *Detailed itemization (Bill of Costs) provided – however not signed*	19,659.74	Yes (WAD178/2017 Para 3)
Sandra May Banning, Professional Services of Australia Pty Ltd & Banning Holdings Pty Ltd (WAD 607 of 2017)	A & H Frigger - Applicants Eastwood Law representing: Sandra May Banning Ann Marion Campbell-Smith Professional Services of Australia Pty Ltd Banning Holdings Pty Ltd	Adverse costs - Eastwood acted for the respondent in relation to proceedings commenced by A & H Frigger. The proceedings were unsuccessful and various costs orders were made in favour of their clients against A & H Frigger. There is $60k held in court as security for costs which has not yet been released. The POD is net of this amount.	125,000.00	-		125,000.00	-	**No** – Amount Claimed $125,000.00 $125,000.00 Untaxed (Costs Order) *Bill of Costs provided (Not signed)*	125,000.00	Yes (WAD607/2015 Para 2)
Sandra May Banning, Professional Services of Australia Pty Ltd & Banning Holdings Pty Ltd (WAD 616 of 2017)	Mervyn Jonathan Kitay Computer Accounting and Tax Pty Ltd - Applicants A & H Frigger - Respondents Ann Marion Campbell-Smith Professional Services of Australia Pty Ltd (First Supporting Creditor) Sandra May Banning (Second Supporting Creditor) Banning Holdings Pty Ltd (Third Supporting Creditor) Donald Campbell-Smith (Fourth Supporting Creditor) Clavey Legal (Fifth Supporting Creditor)	Petitioning Creditors Costs - Eastwood acted for numerous supporting creditors. They supported CAT/Kitay in the creditors' petition against A & H Frigger. This debt relates to Eastwood client's costs in supporting the creditors' petition. An application for taxation has been filed.	21,866.50	-			21,866.50	**No** – Amount Claimed $21,866.50 $21,866.50 Untaxed (Costs Order)	-	Yes (WAD617/2017 Para 2)
		Total Value	**8,423,985.06**	**269,558.25**	**395,280.21**	**2,310,858.10**	**5,448,288.50**		**2,049,352.53**	

Bankrupt Estate of Angela Frigger
Schedule of Claims as of 29 April 2024

Creditor	Parties	Nature of claim / basis of fees	POD Amount $	Legal Fees Amount $	Interest	Adverse Costs Amount$	Other Claims Amount $	Taxed Bill of Costs?	Referral to Assessor	Costs orders/Judgments?
Evelyn Charlotte Reid	A Frigger - Plaintiff Evelyn Reid (First Defendant) Register of Titles (Second Defendant) HLB Lawyers - Acted for the defendants	Adverse costs - HLB Lawyers acted for the administrators of Evelyn Reid's estate. Mrs Frigger commenced legal action against the estate. The executors were successful in defending these actions and were awarded costs.	3,749.85	-	-	3,749.85	-	**Yes** - Amount Claimed - $3,749.85 *Certificate of Taxation provided*	-	Yes
Mervyn Kitay	A Frigger Mervyn Kitay	Insufficient supporting documents to confirm the nature of the claim/basis of fees. Cover letter indicates the existence of an indemnity costs order dated 17 July 2018 in relation to an unknown matter, which costs have not been taxed.	1,000.00	-	-	1,000.00	-	**No**	1,000.00	Yes
		Total Value	**4,749.85**	**-**	**-**	**4,749.85**	**-**		**1,000.00**	

18 April 2024

File Number: 31654
Kylie Kissell
08 9318 4902
kylie.kissell@worrells.net.au

Ms Kelly Trenfield
Senior Managing Director
FTI Consulting
Central Plaza CP1
345 Queen Street
Brisbane QLD 4000

Sent by Email: kelly.trenfield@fticonsulting.com
CC: paris.parasadi@fticonsulting.com
raj.singh@fticonsulting.com

Dear Ms Trenfield

The Former Joint Bankrupt Estate of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger Estate No. WA 1272 of 2018/6 ("the Joint Estate")

I refer to your formal request calling for Proof of Debts ("POD") in the Estates of Mr and Mrs Frigger and also in Joint Estate, and our earlier POD submitted for voting purposes.

I confirm your advice that you require separate PODs from myself (ie as liquidator of Computer Accounting and Tax Pty Ltd (In Liquidation) ("CAT") and also from CAT. As discussed, this gives rise to some overlap, as certain of the claims against the Joint Estate made are made jointly by myself and CAT (which joint claims are explained further at 5 below). I acknowledge that even though the joint claims appear in each of the POD for CAT and the POD lodged by me as liquidator, only one claim can be paid.

I provide three revised PODs as set out below (together with detailed particulars and supporting documents):

Creditor	Estate	$
Computer Accounting & Tax Pty Ltd (In Liquidation)	Joint Estate	5,536,727
Mervyn Jonathan Kitay as liquidator of CAT	Joint Estate	2,716,308
Mervyn Jonathan Kitay as liquidator of CAT	Estate of Angela Frigger	1,000

*I note that these claims are subject to change

With regards to the above claims, I put you on notice that certain of the information set out in this letter, and the supporting documentation enclosed herewith, relate to ongoing legal proceedings and/or outstanding issues which may arise in those proceedings. As a consequence, if certain of these materials were provided to external parties, such as Mr and Mrs Frigger (who are the other parties to the proceedings), such provision is likely to cause detriment to CAT or myself and to be prejudicial to the future conduct of such proceedings. As a result, this information and supporting documentation is being provided to you on a confidential basis and may also be subject to legal professional privilege.

The claims the subject of the PODs fall into two categories as follows:

(a) claims in relation to costs orders which have been made against Mr and Mrs Frigger (or in one case, against Mrs Frigger only). A number of the costs orders in question have not been taxed or otherwise quantified by an order of the Court. In those cases, I have provided my best estimate as to the likely quantum of the claim the subject of those costs orders. In due course, once it is clear that a dividend will be paid to myself and CAT, I intend to arrange for those unquantified costs orders to be taxed; and
(b) a claim in proceedings against Mr and Mrs Frigger in the matter CIV 2765/2010 ("Proceedings"). In the Proceedings, CAT and I (as liquidator) have filed a defence and counterclaim in which certain monetary and other claims are made against Mr and Mrs Frigger. Notwithstanding the bankruptcy of Mr and Mrs Frigger, CAT and I have been given leave to pursue these claims in the Proceedings (see *Kitay v Trenfield [2021 FCA 508])*

I acknowledge that it is not for the Trustee to resolve the claims in the Proceedings referred to at (b) above, and that no dividend can be paid regarding those claims until the Proceedings have been determined by the Court.

I note that, due to the fact that:

- the claims in the Proceedings are both for title to assets, and also for money/damages, often in the alternative;
- claims for title to assets cannot be the subject of a POD; but
- success in a claim for title to an asset will impact upon the quantum of the claim for money/damages,

there is real complexity in quantifying the claims for the purpose of preparing the PODs for the Joint Estates. In these circumstances, for the purpose of assessing the possible quantum of the claims in the Proceedings (ie. if successful) against the Joint Estate, I have set out below the outcomes in the various scenarios/permutations of possible outcomes, so as to enable you to understand the quantum of the highest possible claim against the Joint Estate. Of course, until a determination has been made by the Court in relation to the Proceedings, the final outcome remains uncertain.

I set out below an explanation of each of the claims in the Proceedings, and a detailed explanation as to the various permutations that may arise.

Assets the Subject of Claims in the Proceedings

To assist in understanding the analysis below, I have summarised below the assets which are the subject of the Counterclaim (a copy of the current version of which is attached):

(a) the **East Perth Property,** which is an asset registered in the name of CAT, but which Mr and Mrs Frigger allege is an asset of the Frigger Super Fund (**FSF**).
(b) the **Armadale Property** and the associated **Service Station Business** which assets have been realised, and the cash proceeds of $1,070,000 (plus GST) (Armadale Property) and $1,330,000 (plus GST) (Service Station Business) are held in jointly controlled accounts, pending the outcome of the Proceedings.
(c) the **Judgment Sum** of $1,165,661.54 (or $900,000) paid to CAT as a consequence of the outcome of CIV 2265 of 2006, but which sum was then paid by CAT to Mr and Mrs Frigger. The position alleged in the Proceedings with respect to the Judgment Sum is that the payment of these funds to Mr and Mrs Frigger:

(1) was a transaction on the running account, being a loan account between Mr and Mrs Frigger and CAT (**Running Account)**, alternatively

(2) was an unfair preference payment to Mr & Mrs Frigger in breach of section 588FA of the *Corporations Act*, or an uncommercial transaction in breach of section 588FB of the *Corporations Act*, **(Antecedent Transaction)** which is liable to be repaid by Mr and Mrs Frigger to CAT, pursuant to an order made on my application as liquidator, under section 588FF of the Corporations Act;

(d) the sum of $999,999, which amount was paid from an account with ING in the name of CAT (**ING Funds**) to Mr and Mrs Frigger. Similarly to the Judgment Sum, the allegation in the Proceedings in relation to the ING Funds is that the payment of these funds to Mr and Mrs Frigger:

(1) was a transaction on the Running Account; or, alternatively

(2) was an Antecedent Transaction, which is liable to be repaid to CAT pursuant to an order made on my application as liquidator under section 588FF of the *Corporations Act*.

Claim by CAT in the Proceedings

CAT's claim against the Joint Estate, to the extent that it arises in the Proceedings, is essentially a claim for the amount due on the Running Account between Mr and Mrs Frigger and CAT.

During the time in which Mr and Mrs Frigger were directors of CAT, they did not cause CAT to operate a company account. Rather, they managed the financial operations of CAT through the Frigger's personal bank account. There were therefore various transactions on that personal bank account, reflecting transactions effected in the course of running the business of CAT, which gave rise to debits and credits on the loan account between Mr and Mrs Frigger and CAT, thus giving rise to the Running Account. These transactions (amongst others) are set out in "Annexure CAT1" .I note that the transactions set out in "Annexure CAT1" differ somewhat from the transactions recorded as transactions on the Running Account in the attached Counterclaim, as a consequence of further analysis I have undertaken in relation to the Running Account since the Counterclaim was filed in 2017. In due course, the Counterclaim will be updated to reflect "Annexure CAT1".

In addition to the various debits and credits reflecting the transactions incurred in running the business of CAT, there are a number of substantial entries on the Running Account relating to the various assets referred to above. As there has not yet been a determination by the Court as to the ownership of those assets, I have set out below the consequences on the Running Account of the possible findings in relation to the assets referred to above, which has various permutations.

It is noted that the quantum of the claims set out below does not include interest nor any allowance for legal costs incurred but not awarded prior to the date of the commencement of the bankruptcy.

1. East Perth Property

The various permutations in relation to the East Perth Property as set out in the table below:

Permutation	
1	If CAT is successful in its allegation that the East Perth Property is an asset of CAT, then CAT has no claim against the Joint Estate with respect to the East Perth Property and there is no adjustment to the Running Account. It should be noted that an entitlement for rent in relation to the East Perth Property has not yet been included in the Running Account. If an adjustment for rental income is made in due course, this would result in an increase to the Running Account.
2	If CAT is unsuccessful in its claim that it always had title to the East Perth Property, then CAT alleges that the original purchase price of the East Perth Property should not be included in the Running Account, with the consequence that the balance of the Running Account increases by $452,000.
3	If it is determined that the East Perth Property was originally owned by CAT, but was transferred by CAT to the benefit of Mr and Mrs Frigger (meaning CAT is unsuccessful in claiming title to the East Perth Property), then there would be an increase to the Running Account, reflecting the value of the East Perth Property of no less than $800,000.

2. Armadale Property and associated Service Station Business

As noted above:

- the Armadale Property and associated Service Station Business have been realised; and
- the cash proceeds received from the sale of the Armadale Property of $1,177,000 and cash proceeds of $1,463,000 relating to the sale of the Service Station Business are held in jointly controlled accounts pending the outcome of the Proceedings.

In the table below I set out the various permutations in relation to these assets:

Permutation	
1	If CAT is successful in its allegation that the Armadale Property and Service Station Business are assets of CAT, then there no claim against the Joint Estate with respect to the Armadale Property and/or Service Station Business and there is no adjustment to the Running Account.
2	If CAT is unsuccessful in its claim that it always had title to the Armadale Property and associated Service Station Business, then it is alleged in the Proceedings that the original purchase price of the Armadale Property and associated Service Station Business should not be included in the Running Account, with the consequence that the balance of the Running Account increases by $701,850
3	If it is determined that the Armadale Property and Service Station Business were originally owned by CAT, but were transferred by CAT to the benefit of Mr and Mrs Frigger (meaning that CAT is unsuccessful in retaining title to the Armadale Property and Service Station Business), then there would be an increase to the Running Account reflecting the value of the Armadale Property of no less than $1,177,000 and value of the Service Station Business of no less than $1,463,000, being a combined total of $2,640,000

3. The Judgment Sum

It is claimed in the Proceedings that the Judgment Sum was a transaction on the Running Account, however, this issue is not yet resolved in the Proceedings.

As a result, I consider the following permutations arise:

Permutation	
1	If it is determined that the payment of the Judgment Sum to Mr and Mrs Frigger was a transaction on the Running Account, this would result in an increase to the Running Account in the amount of $1,165,661.54.
2	If it is determined that the payment of the Judgment Sum to Mr and Mrs Frigger was not a transaction on the Running Account, then CAT would not have a claim against the Joint Estate for the Judgment Sum (ie as part of the Running Account claim). Rather, in that scenario, as liquidator of CAT I would make claim against Mr & Mrs Frigger (ie the Joint Estate) for an Antecedent Transaction as a breach of section 588FA Unfair Preference and/or a breach of section588FB Uncommercial Transaction, and/or a breach of section 588FDA Unreasonable Director Related Transaction

4. ING Funds

As noted above, the ING Funds are the sum of $999,999 which was held in an account with ING styled in the name of CAT Pty Ltd ("ING Funds"), which amount was paid to Mr and Mrs Frigger.

Similar to the Judgment Sum, the two permutations in relation to the ING Fund are as follows:

Permutation	
1	If it is determined that the payment of the ING Funds to Mr and Mrs Frigger is a transaction on the Running Account, this would result in an increase to the Running Account in the amount of $999,999.
2	If it is determined that the payment of the ING Funds to Mr and Mrs Frigger was not a transaction on the Running Account, then CAT would not have a claim against the Joint Estate for the ING Funds (ie as part of the Running Account). Rather, in that scenario, as liquidator of CAT I would make claim against Mr & Mrs Frigger (ie the Joint Estate) for an Antecedent Transaction as a breach of section 588FA Unfair Preference and/or a breach of section588FB Uncommercial Transaction, and/or a breach of section 588FDA Unreasonable Director Related Transaction

5. Joint Claims/Cost Orders

In addition to CAT's claim against the Joint Estate in in the Proceedings, in relation to the Running Account as set out above, CAT also makes a claim against the Joint Estate in relation to:

- various cost orders which have been made in the Proceedings, jointly in favour of CAT and myself as the other Respondent; and
- a costs order made by Jackson J in WAD40 of 2021, also jointly in favour of CAT and myself.

Whilst not all of the costs the subject of the costs orders have been taxed, they have been estimated at $110,305. These costs are set out in "Annexure CAT2"

Whilst there are other permutations and possible outcomes, for the purposes of CAT's POD against the Joint Estate I have calculated the permutation which I believe is the maximum claim that CAT could have against the Joint Estate, noting that it is contrary to CAT's preferred outcome in the Proceedings (which preferred outcome in the Proceedings is that title to the assets referred to above remains with CAT).

The maximum claim of CAT against the Joint Estate is **$5,536,727** as set out in "Annexure CAT1".

Claim by Mervyn Jonathan Kitay as liquidator of CAT against the Joint Estate

As liquidator of CAT, I have a claim against the Joint Estate comprising of:

A Costs in relation to various legal matters between me, CAT and Mr and Mrs Frigger

Set out in "Annexure MJK1" is an summary of costs awards in my favour totalling $476,342.38, which is made up of taxed or quantified costs, costs yet to be taxed (and therefore estimated) and in some circumstances, interest. I note that although some of the costs orders are made in favour of myself and CAT, as a consequence of the decision of Colvin J in *Kitay , in the matter of Frigger (No 2)* [2018] FCA 1032 at 1032 at [34], [83], [89] – [90], [181] – [182] (see also *Frigger v Kitay* [2017] FCA 1278]) these claims are not made jointly by CAT and myself.

In addition to the costs awards set out in 'Annexure MJK1" the joint costs awards referred to at 5 above were also made in my favour and are the subject of my POD.

The total of all of these costs awards in my favour is $550,647.35.

B Potential claims against Mr and Mrs Frigger for Antecedent Transactions

As contemplated above, in circumstances where it is determined by the Court that the Judgment Sum and ING Funds were not transactions on the Running Account, the claim in the Proceedings is that these transactions give rise to a claim against the Joint Estate for an Antecedent Transaction for breach of section 588FA and/or Section 588FB and/or 588FDA of the *Corporations Act*. It is at least arguable that the claim for an Antecedent Transaction is a claim by me as the liquidator (perhaps jointly with CAT as the company in liquidation).

In this regard, such a claim by me as liquidator against the Joint Estate would be for an amount of up to $1,165,660.54 plus $999,999 (being the Judgment Sum and the ING Funds). I note that in such a scenario, CAT's claim in relation to the Running Account would reduce by an equivalent amount.

For the purpose of this proof of debt, I have calculated what I believe is the maximum claim that I would have as liquidator of CAT against the Joint Estate to be **$2,716,308** which includes the costs referred to at A above.

Claim by Mervyn Jonathan Kitay against The Bankruptcy Estate of Angela Frigger

In addition to my claim against the Joint Estate, I also have a small claim against the Bankrupt Estate of Angela Frigger relating to an indemnity cost order dated 17 July 2018, which costs have not been taxed but for the purposes of this proof of debt have been estimated at **$1,000**.

Should you have any queries with regards to this the claims set out above, please contact my office.

Yours faithfully



Mervyn Kitay
Liquidator

FEDERAL COURT OF AUSTRALIA

Kitay (Liquidator) v Trenfield (Trustee) [2021] FCA 508

File number:	WAD 40 of 2021
Judgment of:	**JACKSON J**
Date of judgment:	6 May 2021
Date of publication of reasons:	13 May 2021
Catchwords:	**BANKRUPTCY AND INSOLVENCY** - application for leave under s 58(3) of the *Bankruptcy Act 1966* (Cth) to continue Supreme Court proceedings - provable claims linked with other claims - complex facts and law - leave granted
Legislation:	*Bankruptcy Act 1966* (Cth) ss 58, 60, 82, 104
Cases cited:	*7Steel Building Solutions Pty Ltd v Wright* [2011] FCA 328 *Ashala v Featherstone* [2016] QSC 121; [2017] 2 Qd R 1 *Auto Group Ltd v England* [2008] NSWSC 402 *Commissioner of Taxation v Yeo (Trustee)* [2018] FCA 635 *Commissioner of Taxation v Yeo (Trustee) (No 2)* [2019] FCA 1188 *Cummings v Claremont Petroleum NL* (1996) 185 CLR 124 *Fraser v Deputy Commissioner of Taxation* (1996) 69 FCR 99 *Free v Ma* [2020] FCA 226 *Frigger v Kitay (Liquidator)* [2020] FCA 482 *Health Services Union v Jackson (No 3)* [2015] FCA 694 *Hudson v Sigalla* [2015] FCAFC 140; (2015) 235 FCR 122 *Kattirtzis v Zaravinos* [2001] FCA 1158 *Mango Media Pty Ltd v Velingos* [2008] NSWSC 202; (2008) 216 FLR 176 *Melnik v Melnik* [2005] FCAFC 160; (2005) 144 FCR 141 *Mercedes Holdings Pty Ltd v Waters (No 5)* [2011] FCA 1428 *Otvosi v Ferella* [2008] FMCA 1250; (2008) 219 FLR 472 *Pedersen v Delaveris* [2010] FCA 536 *Re McMaster; Ex parte McMaster* (1991) 33 FCR 70 *Re Rose; Ex parte Devaban Pty Ltd* [1994] FCA 1082

	Re Sharp; Ex parte Tietyens Investments Pty Ltd (in liq) [1998] FCA 1367 *SBA Music Pty Ltd v Hall (No 2)* [2014] FCA 1116 *Taylor (liquidator) v Trustee, bankrupt estate of Heading, in the matter of Heading* [2020] FCA 1450 *Van Dyke v Lo Pilato, in the matter of Sidhu* [2016] FCA 1347 *Westpac Banking Corporation v Victor Warren Ollis* [2007] FCA 1194 *Wilson v Sellers* [2016] FCCA 1425 *Zervas v Burkitt* [2019] NSWCA 112
Division:	General Division
Registry:	Western Australia
National Practice Area:	Commercial and Corporations
Sub-area:	General and Personal Insolvency
Number of paragraphs:	29
Date of hearing:	6 May 2021
Counsel for the Applicants:	Mr BW Ashdown
Solicitor for the Applicants:	Lenhoff & Hotz
Counsel for the First and Second Respondents:	The first and second respondents filed submitting notices
Counsel for the Third Respondent:	The third respondent appeared in person
Counsel for the Fourth Respondent:	The fourth respondent did not appear

ORDERS

WAD 40 of 2021

BETWEEN:	**MERVYN JONATHAN KITAY IN HIS CAPACITY AS LIQUIDATOR OF COMPUTER ACCOUNTING & TAX PTY LTD (ACN 009 470 490) (IN LIQ)** First Applicant
	COMPUTER ACCOUNTING & TAX PTY LTD (ACN 009 470 490) (IN LIQ) Second Applicant
AND:	**KELLY-ANNE TRENFIELD AS TRUSTEE OF THE PROPERTY OF ANGELA CECILIA THERESA FRIGGER, A BANKRUPT** First Respondent
	KELLY-ANNE TRENFIELD AS TRUSTEE OF THE PROPERTY OF HARTMUT HUBERT JOSEF FRIGGER, A BANKRUPT Second Respondent
	ANGELA CECILIA THERESA FRIGGER, A BANKRUPT Third Respondent
	HARTMUT HUBERT JOSEF FRIGGER, A BANKRUPT Fourth Respondent
ORDER MADE BY:	**JACKSON J**
DATE OF ORDER:	**6 MAY 2021**

THE COURT ORDERS THAT:

1. If and to the extent that leave is necessary under s 58(3) of the *Bankruptcy Act 1966* (Cth), the applicants have leave to take all and any further steps in connection with the prosecution of the counterclaim in Supreme Court of Western Australia proceedings CIV 2765 of 2010, and all or any interlocutory applications and steps, including as against the bankrupt estates of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger.

2. The applicants' costs of this application are costs, jointly and severally, in and are to be paid from the bankrupt estates of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger and are to be assessed.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

JACKSON J:

1 This is an application for leave under s 58(3) of the *Bankruptcy Act 1966* (Cth) to take further steps in the prosecution of a counterclaim against two bankrupt persons in an action in the Supreme Court of Western Australia. The applicants were Computer Accounting and Tax Pty Ltd (**CAT**) and its liquidator, Mervyn Kitay. The respondents were the bankrupts, Angela and Hartmut Frigger, and their trustee in bankruptcy, Kelly-Anne Trenfield.

2 Mrs Trenfield neither opposed nor consented to leave to proceed and she filed a submitting notice. But one of the bankrupts, Mrs Frigger, sought leave to be heard in opposition. Despite having named the bankrupts as respondents, the applicants submitted that Mrs Frigger had no right to be heard.

3 At the hearing on 6 May 2021 I made orders allowing the application. These are my reasons for having done so, as well as my reasons for determining that Mrs Frigger had no right to be heard on the application.

The Supreme Court proceeding

4 Mrs Frigger commenced the Supreme Court action against Mr Kitay and CAT in 2010. The present issues are defined by an amended substituted statement of claim (**SOC**), a further re-amended substituted defence and counterclaim (**DAC**), and an amended substituted reply and defence to counterclaim.

5 The Friggers were directors of CAT and say that they are trustees of their self-managed superannuation fund, the Frigger Super Fund (**FSF**). Mr Kitay became liquidator of CAT on 6 May 2010. CAT is the registered proprietor of real property in Perth and real property in Armadale. It is common ground that CAT was trustee of the FSF at material times (it claims that it is and has been the only trustee). The Friggers made claims, among others, that they contributed the Perth and Armadale properties to the FSF as *in specie* contributions to be held on trust by CAT or that, in other ways, CAT came to hold the properties on trust on the terms of the FSF.

6 The DAC is a long and involved document and it would be a substantial task to describe fully all of the different claims made in it. There are claims that CAT owns the Perth land in its own right and is entitled to the proceeds from the sale of the Armadale land,

which are held in an escrow account. There are also claims to the proceeds of the sale of a business conducted on the Armadale land, claims of estoppel, claims to rights of indemnity out of assets as trustee, claims about the identity of trustees and members of the FSF at certain times and claims of breach of fiduciary duty and voidable transactions. But it is not necessary to go into detail about these, because for reasons that appear below it is sufficient in this application to focus on a claim based on an alleged loan account between CAT and the Friggers, and the manner in which that claim is dependent on other issues of fact and law in the Supreme Court action.

7 The DAC claims a declaration that the Friggers owe CAT $2,600,801, alternatively $2,356,283, as the balance of the loan account. The loan account is said to be comprised of a large number of transactions; it is only necessary to focus on the most material ones here. The first of these is an amount of $435,000 which the Friggers are said to have provided to CAT for the purchase of the Perth property. The second is a sum of $665,000 which they are said to have provided to CAT for the purchase of the Armadale property. The DAC pleads that both of these advances are properly characterised as loans by the Friggers to CAT. The third is a sum of $80,000 which Mrs Frigger is said to have paid to St George Bank to secure a bank guarantee needed for the service station business operated on the Armadale land. This too is said to be a loan from Mrs Frigger. (Note, the DAC has a schedule which appears to contain all alleged transactions concerning the loan account. There are discrepancies between the figures in that schedule and corresponding figures in the body of the pleading, but they are not material for present purposes.)

8 The fourth transaction material to the loan account was an alleged transfer by CAT to the Friggers, in January 2009, of a sum of $999,999 which CAT had on deposit with ING Direct Bank. The fifth material transaction is an alleged payment by CAT to the Friggers, on or about 30 June 2009, of the entire amount of a sum paid to CAT pursuant to judgment in different Supreme Court proceedings, alternatively $900,000 of that judgment sum. These are both pleaded (as one of many alternative pleas) to be unsecured loans by CAT to the Friggers.

9 However these transactions are not the only matters potentially material to the balance of the loan account that are pleaded in the DAC. For example there are allegations raised in the alternative that, when alleged *in specie* contributions of the real property were made to the FSF, they occurred via transfers of the land from CAT to the Friggers, in return for the

reduction of money which at that time CAT owed to the Friggers, so that the Friggers could then personally contribute the land to the FSF. The reductions of CAT's debt to the Friggers are claimed to have taken place at a time when CAT was insolvent, and so to have been unfair preferences or otherwise voidable. If that allegation is made good, it may result in the effective reversal of the decreases in moneys owing to the Friggers, and so will affect the ultimate balance of the loan account. Allegations are also made that the alleged payment to the Friggers of the ING amount of $999,999 in January 2009, and of some or all of the judgment sum on 30 June 2009, are both voidable transactions. If those claims are established, that will also affect the balance of the loan account.

10 Mrs and Mr Frigger became bankrupt by order of this court on 20 July 2018. On 1 November 2018, Mr Kitay's solicitor gave notice under s 60(3) of the *Bankruptcy Act* effectively requiring Mrs Trenfield to elect within 28 days whether to prosecute or discontinue Supreme Court action CIV 2765 of 2010. She did not make that election within that time so, Mr Kitay asserts, pursuant to s 60(3) she is deemed to have abandoned the claims made in the SOC. But if that is so, it does not directly affect the status of the counterclaim; although it could conceivably require amendment, the counterclaim remains a distinct claim which (subject to s 58(3)) remains on foot: see *Frigger v Kitay (Liquidator)* [2020] FCA 482 at [27]-[28].

Whether Mrs Frigger had a right to be heard on the application for leave to proceed

11 Section 58(3) of the Act provides that:

> Except as provided by this Act, after a debtor has become a bankrupt, it is not competent for a creditor:
>
> (a) to enforce any remedy against the person or the property of the bankrupt in respect of a provable debt; or
>
> (b) except with the leave of the Court and on such terms as the Court thinks fit, to commence any legal proceeding in respect of a provable debt or take any fresh step in such a proceeding.

12 In *Commissioner of Taxation v Yeo (Trustee) (No 2)* [2019] FCA 1188 at [30]-[44] (***Yeo No 2***), Anderson J discussed the principles as to whether a bankrupt must be heard on an application for leave under s 58(3). His Honour did so in the context of an application by a bankrupt to set aside orders giving leave under the section which had been made in his absence. The application was dismissed, due to 'the fundamental feature of bankruptcy law, as reflected in the *Bankruptcy Act* ... that, upon a sequestration order, a bankrupt is divested

of both his or her interest in his or her property and liability for his or her provable debts': see [3], [30], relying on *Cummings v Claremont Petroleum NL* (1996) 185 CLR 124 at 136.

13 I respectfully agree with Anderson J's views on the question. To summarise those views:

(1) The consequence of the fundamental feature of bankruptcy just mentioned is that 'a bankrupt has no right to bring or prosecute proceedings to protect, enhance or add to the property of which he has been divested on bankruptcy': at [35], quoting *Cummings* at 136.

(2) The policy of s 58(3) is to stay proceedings in the absence of leave of the court, so that the bankrupt may be freed from any claims in respect of the period before the bankruptcy, the trustee in bankruptcy may deal with the claim through the proof of debt process along with all other claims on the estate so that assets are in due course divided among creditors, and the trustee is not put to the expense of defending proceedings. The Act does, however, contemplate that the court will grant leave in appropriate cases; this permits the bankruptcy court to screen claims: at [39], relying (ultimately) on *Re Rose; Ex parte Devaban Pty Ltd* [1994] FCA 1082 (Hill J); and see also *Fraser v Deputy Commissioner of Taxation* (1996) 69 FCR 99 at 114 (Beaumont J); and *Mango Media Pty Ltd v Velingos* [2008] NSWSC 202; (2008) 216 FLR 176 at [13] (Barrett J).

(3) It is not necessary for the bankrupt to be heard on an application for leave to proceed in respect of a provable claim: see [10]. The bankrupt being named as a party is not itself a sufficient basis to grant standing: at [38].

(4) The trustee in bankruptcy, acting in the interests of the creditors as a whole, may oppose an application for leave under s 58(3): at [42]. But such an application is not a matter in which the bankrupt has sufficient interest in the requisite sense: at [43].

14 The effective stay for which s 58(3) provides, and the court's power to except a given claim from that stay, are matters that concern provable claims from which the bankrupt will be released and the property divisible among creditors of the estate in which the bankrupt no longer has any interest. The bankrupt has no right to be heard on those matters. It is true that Anderson J was considering the question specifically through the prism of whether the bankrupt was a 'person who has a sufficient interest in the proceeding' within the meaning of r 1.40(b) of the *Federal Court Rules 2011* (Cth) to make an application under r 39.05 for the order giving leave to be set aside. But the same conclusion follows in cases where leave has not yet been granted or refused, and the bankrupt seeks to be heard. That is reflected in a

number of cases, including: *Kattirtzis v Zaravinos* [2001] FCA 1158 at [5] (Gyles J); *Commissioner of Taxation v Yeo (Trustee)* [2018] FCA 635 at [3] (Moshinsky J; *Yeo No 2* was a sequel to this case); ***Free v Ma*** [2020] FCA 226 at [13] (Abraham J).

15 Mrs Frigger sought to distinguish *Yeo No 2* and *Free v Ma* on the basis that in those cases, the bankrupts were overseas. But that is not a relevant distinction; a person has a right to be heard, or not, regardless of his or her location. She also relied on a number of cases in which, she submitted, the court had permitted the bankrupt to be heard. In three of these, the bankrupt appears to have been heard in relation to a question of leave under s 58(3), but in none of them does it appear that the bankrupt's right to be heard was raised as an issue: *Taylor (liquidator) v Trustee, bankrupt estate of Heading, in the matter of Heading* [2020] FCA 1450; *Westpac Banking Corporation v Victor Warren Ollis* [2007] FCA 1194; *Otvosi v Ferella* [2008] FMCA 1250; (2008) 219 FLR 472. In three of the other cases on which Mrs Frigger relied, it appears that orders had been made for the service on the bankrupts of the application for leave, but none of the decisions indicate why that was thought to be necessary or appropriate: *Van Dyke v Lo Pilato, in the matter of Sidhu* [2016] FCA 1347 at [16]; *Wilson v Sellers* [2016] FCCA 1425; *7Steel Building Solutions Pty Ltd v Wright* [2011] FCA 328 at [5]. In the final case on which Mrs Frigger relied, *Pedersen v Delaveris* [2010] FCA 536, there was simply no appearance by the bankrupt.

16 I therefore do not accept Mrs Frigger's submission that these cases show that the law on whether a bankrupt must be heard is unsettled. The law is settled as set out in *Yeo No 2*. It may be that in other cases the court considers it appropriate to exercise a discretion to permit the bankrupt to be heard. But Mrs Frigger's submissions advanced no reason why any such discretion should be exercised in her favour in the present case. Instead, her written submissions traversed the question of whether the counterclaim in CIV 2675 of 2010 was complex and other matters said to be relevant to whether leave under s 58(3) should be given, and the underlying merits of the counterclaim. None of these matters are relevant to the preliminary issue of whether Mrs Frigger must or should be heard in opposition to the application.

17 For those reasons I determined that Mrs Frigger was not to be heard in the present application.

Application for leave to proceed - principles

18 In *Hudson v Sigalla* [2015] FCAFC 140; (2015) 235 FCR 122 at [25] the Full Court set out the purposes of the requirement for leave to proceed under s 58(3) of the *Bankruptcy Act* as:

> to assist in the orderly administration of the insolvent estate by protecting a bankrupt, and the property of the erstwhile debtor (as now vested in the trustee), against the enforcement of remedies. This is done by enabling the court to supervise the handling of claims through the procedure of proof of debt (administered by the trustee or liquidator), by ensuring that the assets of the estate are not expended on costs in a multiplicity of litigation, and by ensuring that no one creditor gets an advantage over the others …

And see also [13(2)] above.

19 For leave under s 58(3) to be necessary, the claim must be 'in respect of a provable debt'. The phrase 'in respect of' in s 58(3)(b) has a wide meaning: *Melnik v Melnik* [2005] FCAFC 160; (2005) 144 FCR 141 at [34]-[35] (Spender, Hill and Finn JJ), citing *Re McMaster; Ex parte McMaster* (1991) 33 FCR 70 (Hill J).

20 Whether a liability is a provable debt or not is determined by reference to s 82(1) of the *Bankruptcy Act*, which provides that:

> … all debts and liabilities, present or future, certain or contingent, to which a bankrupt was subject at the date of the bankruptcy, or to which he or she may become subject before his or her discharge by reason of an obligation incurred before the date of the bankruptcy, are provable in his or her bankruptcy.

21 Section 82(2), however, provides that demands 'in the nature of unliquidated damages arising otherwise than by reason of a contract, promise or breach of trust are not provable in bankruptcy'. So it will not always be clear what is a provable debt; there is, for example, uncertainty about whether a claim for damages for breach of statutory directors' duties falls within s 58(3): see ***SBA Music*** *Pty Ltd v Hall (No 2)* [2014] FCA 1116 at [23]-[24] (Wigney J).

22 The discretion conferred on the Court by s 58(3) is unfettered: ***Health Services Union*** *v Jackson (No 3)* [2015] FCA 694 at [17] (Tracey J). The relevant factors affecting the exercise of the discretion to grant leave to proceed cannot be stated exhaustively: see *Zervas v Burkitt* [2019] NSWCA 112 at [16].

Consideration

23 I am satisfied that there is at least one claim made by the applicants in the Supreme Court counterclaim which makes it a 'legal proceeding in respect of a provable debt'. That is the claim to the balance of the loan account which, straightforwardly enough, is a claim for debt.

24 The status of other claims as claims in respect of provable debts is less certain. For example, it may be doubted whether the claims for breach of fiduciary duty are claims for 'breach of trust' within the meaning of s 82(2), so that even if they are claims to unliquidated damages, they are still provable debts: see *Re Sharp; Ex parte Tietyens Investments Pty Ltd (in liq)* [1998] FCA 1367 at 4; and *Health Services Union* at [15]; but, contra, ***Auto Group** Ltd v England* [2008] NSWSC 402 at [21]; and *Mercedes Holdings Pty Ltd v Waters (No 5)* [2011] FCA 1428 at [158]. It may be that a claim for breach of fiduciary duties can be provable if it can be characterised as a claim for an equitable debt: see *Auto Group* at [4], [23]. Similarly, as I have already indicated by reference to *SBA Music*, there is doubt about whether claims for damages for breach of statutory directors' duties are provable. There are similar doubts about unfair preference claims: see e.g. *Ashala v Featherstone* [2016] QSC 121; [2017] 2 Qd R 1 at [2]-[8]. But it is not necessary for the court on an application for leave to finally determine complex questions of fact and law which may thus arise; it is appropriate for the court to proceed on the assumption that leave is required: *SBA Music* at [24].

25 If the claim in debt were a minor or severable part of the counterclaim, that would point against exercising the discretion in favour of granting leave to proceed. But, to the contrary, the claim is a significant part of the overall claims, and is entangled with the factual and legal issues that arise in other aspects of the counterclaim. The quantum of the claim in debt is substantial. And the description of the issues I have given above shows the entanglement of that claim with other issues. To quantify the claim requires characterisation of the first two transactions mentioned in [7] above as loans to CAT for the acquisitions of the real property, or not. That directs attention to the circumstances surrounding those acquisitions which will bear on the (non-provable) claims that CAT owns or owned the properties in its own right. For example, one alternative pleaded is that the correct conclusion is that CAT acquired the properties, not in its own right, but on resulting trust for the Friggers. If so, then the moneys they are said to have contributed would not be accounted for as a loan to CAT, but would simply be the payments which gave rise to resulting trusts in

their favour. That would affect the balance of the loan account. Similarly, resolution of the dispute about ownership of the St George Bank account of $80,000 may affect whether that amount was a loan from Mrs Frigger to CAT and so may affect the balance of the loan account.

26 Further, the circumstances of the alleged payments of part or all of the judgment sum and the $999,999 held in the ING account may determine whether those should be treated as amounts owing by the Friggers to CAT. And I have already described how the outcome of the claims that those payments were unfair preferences or otherwise voidable may affect the balance of the account. A link can also be seen between the factual and legal issues that need to be determined in relation to those claims and aspects of the claims for breach of fiduciary or statutory directors' duties; for example, the question of whether CAT was insolvent at the time of the payments of the judgment sum and the ING amount, or became so as a result of those payments, may be relevant to both the preference claims and the claims that the Friggers breached duties in connection with them.

27 It is not necessary to multiply the examples further. I was satisfied that the undoubtedly provable claim in debt which the applicants wish to pursue against the Friggers is a substantial part of a complicated web of claims, so that it would be impracticable to try to separate it out. If, for example, leave to proceed was not given, then the applicants would need to prove for that claim in the bankruptcy, but quantification of that proof may require determination of numerous other non-provable aspects of the counterclaim. The complexity and contestability of many of those aspects make them unsuited to determination as part of the bankruptcy administration and it is likely that they would end up back in court, especially since the bankrupts have a right to apply to the court for review of any decision of the trustee in bankruptcy to admit a proof of debt: s 104(1). That situation would be contrary to the orderly administration of the bankrupt estate, would in the end have little or no effect in protecting the estate from costs and a multiplicity of claims, and would be likely to produce delay.

28 It is also relevant to the exercise of the discretion that the Supreme Court proceedings have been on foot for more than 10 years and it is likely to add to waste of time and cost if further aspects of them are permanently stayed. The uncertainty I have noted about whether other claims are provable is likely to compound that cost considerably if leave is not granted.

Conclusion

29 For those reasons, I determined that it was appropriate to grant CAT and Mr Kitay leave to proceed with the counterclaim in the Supreme Court Action, if and to the extent that such leave was necessary under s 58(3) of the *Bankruptcy Act*.

I certify that the preceding twenty-nine (29) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Jackson.

Associate:

Dated: 13 May 2021

VIQ SOLUTIONS

T: 1800 287 274
E: clientservices@viqsolutions.com
W: www.viqsolutions.com.au

Ordered by: Trent Candy
For: Johnson Winter & Slattery (QLD)
Email: trent.candy@jws.com.au

TRANSCRIPT OF PROCEEDINGS

O/N H-1922977

FEDERAL COURT OF AUSTRALIA

WESTERN AUSTRALIA REGISTRY

COLVIN J

No. WAD 128 of 2023

ANGELA CECILIA THERESA FRIGGER and ANOTHER

and

KELLY-ANNE TRENFIELD

PERTH

10.17 AM, THURSDAY, 2 MAY 2024

MS A.C.T. FRIGGER appears in person
MR H.H.J. FRIGGER appears in person
MR S.D. MAJTELES appears for the respondent
MR S. GUTHRIE appears for FTI Consulting (Australia) Pty Ltd

Copyright in Transcript is owned by the Commonwealth of Australia. Apart from any use permitted under the Copyright Act 1968 you are not permitted to reproduce, adapt, re-transmit or distribute the Transcript material in any form or by any means without seeking prior written approval.

HIS HONOUR: Mrs Frigger.

MS A.C.T. FRIGGER: Your Honour, I appear for myself, and I seek leave to remain seated whilst addressing the court today.

HIS HONOUR: Yes, certainly.

MS FRIGGER: Thank you, your Honour.

HIS HONOUR: Mr Frigger.

MR H.H.J. FRIGGER: Hartmut Frigger, I appear for myself.

HIS HONOUR: Yes, thank you. Mr Majteles.

MR S.D. MAJTELES: Yes, may it please the court, for the respondent.

HIS HONOUR: Thank you. Mr Guthrie.

MR S. GUTHRIE: Yes, may it please the court, your Honour, I appear on behalf of the recipient of the subpoena issued by the applicants, FTI Consulting (Australia) Pty Ltd.

HIS HONOUR: Well, you will need to remind me what the position is in relation to the subpoena.

MR GUTHRIE: Yes, your Honour. On 15 February 2024, your Honour made an order that FTI be at liberty to apply for its costs of complying with the subpoena and as to the issues of confidentiality – that is order 4 of your order of 15 February 2024. In light of that order, FTI then made an application in respect of which it has filed certain affidavits and written submissions, your Honour, in relation to the liberty to seek costs. And the application in relation to cost of that subpoena was listed for hearing today.

HIS HONOUR: What is the date of the application again, sorry?

MR GUTHRIE: Yes. The interlocutory application filed 21 March 2024.

HIS HONOUR: Yes, for some reason, these documents in my folder will not open, which is a problem. So if my associate could arrange to create a new folder in relation to the FTI Consulting Costs of Subpoena application. Yes, well, I understand, thank you, Mr Guthrie. So in relation to the order of matters today, we have the cost of the subpoena, we have the application to amend, and we have the correspondence that has been provided by the solicitors acting for the trustee. I would propose to deal with them in that order unless anyone has any objection? Very well. Are there any other matters that are on the agenda? I suppose there is case management, more generally.

MS FRIGGER: Your Honour, there's one outstanding – and that depends on the result of my application to amend – and that is the discovery application.

HIS HONOUR: Very well. Well, we will make that number 4, and then case management, number 5. So, Mr Guthrie, bearing in mind – just bear with me for a moment. I still can't open that folder. Is there a – so, Lily, do you know what's happening? Is your folder opening? Well, mine's getting an error message. Just bear with me, I will close and reopen and see if that helps.

MS FRIGGER: Your Honour, may I assist? I have copies that perhaps your associate could use.

HIS HONOUR: I think I will persist, thank you. I'm going to adjourn for a short time. Please adjourn the court.

ADJOURNED **[10.20 am]**

RESUMED **[10.33 am]**

HIS HONOUR: My apologies for that delay. We're now ready to go. Mr Guthrie, your submissions on the application in relation to subpoena costs.

MR GUTHRIE: Thank you, your Honour. We – I formally read the interlocutory application filed 21 March 2024, and three affidavits filed – sworn and filed by me on 11 December 2023, 15 January 2024 and 21 March 2024. The applicant for costs has also filed written submissions, in relation to the issue of costs, which were accepted for filing by the court on 25 March 2024. Your Honour those - - -

HIS HONOUR: Dated 21 March. They're dated 21 March.

MR GUTHRIE: Yes - - -

HIS HONOUR: Yes.

MR GUTHRIE: That's correct, your Honour. Yes.

HIS HONOUR: So the affidavits will be – there be no objection. The affidavits will be taken as read.

MR GUTHRIE: Thank you, your Honour. In addition to the written submissions, there are only a few matters I wish to take your Honour to. At paragraph 10 of my affidavit filed 21 March 2024, I list there the costs that have been incurred by the applicant FTI in compliance with the subpoena. And those costs have been separated

between the costs incurred up to the first return date of the subpoena and the costs incurred thereafter, those costs – those later costs being an amount of slightly more than $13,000. Your Honour, our submission is most of those latter costs were entirely unavoidable, both by the applicant and the parties to these proceedings. And there are three pieces of correspondence that I wish to take your Honour to. The first is exhibit SDG5 to my affidavit, filed 11 December 2023.

HIS HONOUR: Well, just a moment. I think you said "entirely unavoidable". Do you mean entirely avoidable?

MR GUTHRIE: That's – yes. Entirely avoidable. Thank you, your Honour. Yes, I do.

HIS HONOUR: So you're taking me now to SDG11. SD - - -

MR GUTHRIE: No. So SDG5, which is an exhibit to my affidavit filed on 11 December 2023.

HIS HONOUR: Just a moment. Yes, I have that. Thank you.

MR GUTHRIE: Yes. And that's a letter to the applicants who, of course, obtained leave to issue the subpoena, and in effect, what that correspondence proposes is that FTI will produce the document subject to the minutes of a proposed order, which included a confidentiality undertaking, and that was before an appearance before Registrar Trott four days later on 11 December 2023.

The orders – the proposed orders and confidentiality undertaking that the applicant proposed – the applicant, being FTI, proposed to the applicants in these proceedings, Mr and Mrs Frigger – were effectively – I – the – identical to the orders that your Honour made on 15 February 2024, some three months later, in respect of both the production of documents and, more importantly, the confidentiality undertaking. In fact, on my analysis, your Honour, the confidentiality undertaking that you made in your orders of 15 February 2024 are identical to those proposed by FTI to the applicants on 7 December 2023. If I could then refer your Honour to my affidavit sworn – sorry, filed on 15 January 2024, and I wish to take your Honour to two pieces of correspondence, the first being marked SDG6, which is at page 5 of the exhibits.

HIS HONOUR: Yes, I have that.

MR GUTHRIE: And that is another letter to the applicants, although this time copied into the ..... for the respondents, which again seeks the applicants' agreement to, effectively, the proposal that had been put to them only the week before, although this correspondence post-dates the appearance before Registrar Trott. Your Honour will see that at SDG7, which is page 11, the applicants responded to the effect that they needed to see submissions as to why the confidentiality orders ought to apply, and then at page 15, being SDG9, an email is sent to the applicants in these

proceedings, copied into the respondents' lawyers, effectively indicating that if the parties could agree to a regime which was ultimately ordered by your Honour, it would avoid the costs and expense associated with compliance with the subpoena and arguments about the confidentiality undertakings.

I take your Honour to that correspondence to demonstrate that FTI gave the applicants three opportunities to avoid substantial costs associated with the confidentiality undertaking, in respect of which, obviously, submissions were required to be made by FTI given the applicants' refusal to agree to a protocol. And given that the protocol eventually approved of by your Honour and as recounted and recorded in your orders of 15 February 2024 – it's FTIs position that the costs incurred, certainly from December 2023, were in effect entirely unnecessary, as the outcome is an outcome that FTI proposed before substantial costs were incurred, not only by it but by the applicants, in relation to this issue of the subpoena.

And for those reasons, the applicants seek an order that their costs be fixed in the amount of $17,000, and although not expressed in the affidavit, the submission is, effectively, that the costs that are incurred after the first return date ought to be treated as one might in – treat an application for indemnity costs for the reasons that I've just articulated, and then add to that roughly a little more than half of the costs incurred before that date.

And our – as our submissions indicate, your Honour, quoting from other Federal Court authority, particularly at pages – paragraphs 14 and 15 of those submissions, it has long been recognised by judges of this court that the recipient of a subpoena is entitled to be paid their costs, not only in respect of the production of documents, but associated advice as to the request, any privilege issues that might arise, and specifically as it applies to this application, and that is bolded at paragraph 15, advice in relation to aspects of confidentiality. For those reasons, your Honour, FTIs principal position is that it ought to be awarded its costs. It seeks a fixed costs order under the rules in the amount of $17,000, but if your Honour is not minded to make such an order, it seeks a costs order in the ordinary course.

HIS HONOUR: Yes. Thank you. Ms Frigger.

MS FRIGGER: Your Honour, just yesterday in the Federal Court in Sydney, Lee J said of the Lehrmann matter that people that get a subpoena shouldn't assume they are entitled to legal costs. Now, FTI – primary position is that it is not a party to this proceeding and by various authorities it has been – as a non-party, it has been harassed by my husband and I in relation to the subpoena. We say that is a false submission. FTI is listed as an interested party in this proceeding and Thomson Geer is listed - - -

HIS HONOUR: What do you mean it's listed as an interested party?

MS FRIGGER: Interested person or interested party. I'm not – can't remember the exact terms. But anyway, it's listed under the – on the website where the – it says "parties".

HIS HONOUR: Well, that's a consequence of it being the subject of a subpoena.

MS FRIGGER: Okay. I wasn't aware of that. I thought it had been listed prior to that. I say it is an interested party anyway and the court should treat it as such. As soon as Mr John Park filed an affidavit in support of Ms Trenfield's defence to this proceeding, way back in August 2023, FTI clearly – it became an interested party. And in those circumstances, the ordinary authorities, which says that a party does not involved in the proceeding and is being harassed by someone – a party to the proceeding should get its costs. The subject of the subpoena itself is extremely important and it has not been addressed by Mr Guthrie, although we addressed it in our written submissions. We were forced to issue a subpoena to FTI Consulting because Ms Trenfield had referred to her professional indemnity insurance in an affidavit in support of her defence.

Now, in ordinary circumstances and under the rules of this court, when a person refers to a document in an affidavit, then we are entitled to have that document produced. When we asked for the production of that document, Ms Trenfield said, "No, no. It's not in my possession. It's in possession of FTI Consulting." Now, the – schedule 2 of the bankruptcy rules clearly says that a person who is registered as a trustee must have professional indemnity insurance and must have – what's the other type of insurance. I – I've forgotten the word that's used. But basically, the second type of insurance is to insure against any – anything that an employee of the trustee does wrong and their – somebody incurs losses. It is obvious that Ms Trenfield does not have that insurance. In fact, she is covered for that insurance under FTIs insurance policy. She is covered as an employee. She is not covered as a trustee. We were entitled for that document to be discovered if Ms Trenfield had obeyed - - -

HIS HONOUR: Well, this is not the costs of you pressing for a discovery application. It's not – occasion for submissions as to why discovery should be given. This is the costs of the subpoena.

MS FRIGGER: Yes, that's correct, your Honour.

HIS HONOUR: And FTI - - -

MS FRIGGER: And I – in my - - -

HIS HONOUR: Just a moment. And FTI, although named in your original application as someone against whom you should – you wanted relief, and thereby giving rise to an issue whether it should be a party, you now propose by your amended application to remove any attempt to seek orders against FTI. So it's not a party or an interested party in the sense that it is the subject of any of the relief that you seek in these proceedings.

MS FRIGGER: And coincidentally, your Honour, the reason why we decided, even though your Honour highlighted that matter the last time we were in front of you on 15 February – the reason why we decided to remove a claim for relief against FTI is for the very reason that the insurance policy that has been produced by FTI covers Ms Trenfield as an employee, and it is clear from everything that has been discovered by Ms Trenfield, attached to various affidavits, that she has been running the administration of our estates as an employee of FTI. So we got comfort from that fact and the authority which I referred your Honour to, where the court could treat a cost of a subpoena as costs of discovery, is the City of Swan v Lehman Brothers Limited.

You know, we can't just ignore that Ms Trenfield herself referred to the insurance policy. We didn't. We didn't ask for it. We didn't refer to it in anything. It was her who referred to it in her affidavit. And in those circumstances, if Ms Trenfield actually had the insurance which she is required to have under the rules, then she would have had to produce it. And in those circumstances, under the City of Swan v Lehman Brothers authority, the production under the subpoena should be a – should be costs of production as a discovery. And in those circumstances, we say that the costs of the subpoena should be deferred until the proceedings have been resolved and it is worked out who is the successful party in this proceeding.

And in those circumstances, we say the claim for costs – although your Honour invited an application, the claim for costs should not be resolved now. It should be resolved after the proceeding has been fully heard and resolved, and then there will not be anything to stop FTI from claiming its costs. But we say that this is a distraction. We cannot – we have no evidence about what the $17,000 is made up of. If there is to be the cost – FTI should be awarded its costs, it should go to a taxation and all of the discovery and all of the matters that should be produced to us in such a taxation, we can make various submissions about it. But to bring this application now in the middle of where we are, obviously trying to get this matter to a trial, is a complete distraction and we simply – it should not be decided at this stage. The fact that FTI is now saying they are applying for indemnity costs after 23 November is a surprise to us.

HIS HONOUR: Well, they're not saying indemnity costs. They're saying that having regard to what has occurred, there shouldn't be any discount, in effect, from the costs that they've actually incurred.

MS FRIGGER: Well, we have no evidence of what is actually incurred, your Honour, other than a – an assertion in an affidavit.

HIS HONOUR: Well, it's not an assertion. It's a – an affidavit that deposes to that position.

MS FRIGGER: Your Honour, as far as – I – if that's the case, I will address you on the matters that were brought to your attention. At the hearing in front of Registrar

©Commonwealth of Australia

Trott, our position was we don't know whether this insurance policy contains confidential and commercially sensitive matters, and until we know that, we don't know what we were agreeing to, because, in fact, this policy - - -

HIS HONOUR: Well, it's common every day for parties to agree to the confidentiality orders, look at the document and then say, well, we want to maintain that it – the confidentiality order should not extend. It's just a – an oppositional way of dealing with issues.

MS FRIGGER: Yes. I – your Honour, obviously, that is something that maybe lawyers know, but we didn't know that. And - - -

HIS HONOUR: Well - - -

MS FRIGGER: - - - all we said – we don't know what is confidential in the policy and we don't believe that if the policy was in Ms Trenfield's name, it will be confidential, because she has to provide it to AFSA as part of her application as trustee – to be registered as trustee and as – every three years for renewal. So the document itself – and then we're allowed to obtain that document under the freedom of information laws.

So all of that, we simply weren't in a position to agree to something which we didn't know what we were agreeing to, and so our – we say that our conduct, and saying, "Well, give us the submissions. Let us see what exactly are – we are asking – be asked to agree to", was not unreasonable, and it was not entirely unavoidable, because, in fact, your Honour, your Honour himself – you yourself asked for them to file submissions in relation to why they were asking for the confidentiality orders. And so we say that the costs that were incurred were not entirely avoidable. I'm just looking from my – obviously, your Honour, I – sorry. I rely on my written submissions, which is dated – whenever. It's March, I think it was. So we say that it would – at paragraph 11, it would be possible for injustice to occur if the court were obliged to - - -

HIS HONOUR: Please, don't read out your submissions. I have them, and I have read them.

MS FRIGGER: Okay. To – for FTI to benefit from it being a non-party, where it – clearly, it has interests in this matters, its employee is the - - -

HIS HONOUR: Well, I've heard these submissions.

MS FRIGGER: Sorry, your Honour. Okay. I won't repeat it. We say that FTI have – is playing an active role in the proceeding. It has filed affidavits – or several affidavits now, of course, and it is in a position as an active party, even if it is not named as an active party, and in those circumstances, we say the costs of the subpoena should be deferred. The application should not be dismissed, obviously. It should – it could just remain there and be deferred until this proceeding is resolved,

and I say, a company with the status and financial clout of FTI will not be prejudiced if the application is deferred when we have a proper chance to make submissions in relation to whether those costs should be awarded to FTI.

HIS HONOUR: Mr Frigger, do you have any further submissions you wish to make?

MR FRIGGER: Yes. I just want to – at this point of time, FTI Consulting comes here and are asking for costs. I think its audacity of it is just unbelievable. Mrs Trenfield is just an employee. She lied in her ..... she is not a trustee. Mrs Trenfield should be removed - - -

HIS HONOUR: Well, that's - - -

MR FRIGGER: Should be removed - - -

HIS HONOUR: That's what the case - - -

MR FRIGGER: - - - right now - - -

HIS HONOUR: Just a moment.

MR FRIGGER: - - - as a trustee - - -

HIS HONOUR: Just a moment. When I'm speaking, please, stop. That – you're now wanting to say things about the claim that you advanced a substantive claim.

MR FRIGGER: No, no. It has to do with FTI conduct in these proceedings. That's – they sent the employee out to freeze money, to do illegal things in the public domain as a trustee when she is not a trustee, and FTI knows about this, and they let her be. They let her be, and they have the audacity now to come and ask for money – and for asking for costs in the subpoena – it's just unbelievable. They are – she is an officer of the court. She lied in her .....

HIS HONOUR: Please - - -

MR FRIGGER: FTI Consulting knows about it. Mr Majteles knows about it. She should be removed now before more damage is being done. This is .....

HIS HONOUR: This is not a hearing of an application to remove. I am going to bring those submissions to an end.

MR FRIGGER: No. Just – I talked about this in regards to the costs – that they have the audacity to asking for costs at this point of time. My wife, Angela, she said it should be deferred. That's the minimum they could ask for. To ask for costs right now is – I call it criminal, what they do. FTI Consulting should go back to where

they come from, to America. They have no standing here in Australia as a trustee - - -

HIS HONOUR: Mr Frigger, this is not an opportunity - - -

MR FRIGGER: - - - in bankruptcy.

HIS HONOUR: Just a moment. This is not an opportunity for you to grandstand and just - - -

MR FRIGGER: But it's the truth.

HIS HONOUR: - - - shout things out.

MR FRIGGER: The facts are clear.

HIS HONOUR: Sit down.

MR FRIGGER: There is no defence.

HIS HONOUR: It down, please.

MR FRIGGER: Sorry, there is no defence to it.

HIS HONOUR: I've heard your submissions. Sit down.

MR FRIGGER: There's no defence.

HIS HONOUR: Mr Guthrie, anything you wish to say in reply, particularly as to whether this application should be deferred until the outcome of the proceedings is known?

MR GUTHRIE: Other than the obvious point, your Honour, which is that FTI Consulting is not a party to these proceedings. It was subject to a process of the court with which it was required to comply, with which it did comply, with which it incurred costs, and which the rules and the law clearly indicate it's entitled to seek, and it's not acting unreasonably in seeking those costs, your Honour.

HIS HONOUR: Thank you. In this matter, I propose to reserve my decision. My reasons will be made available to the parties when I'm in a position to do so, and the orders will be made at that time. There will be no need for the parties to attend when the decision is published. Mr Guthrie, do you need leave to withdraw?

MR GUTHRIE: Yes, please, your Honour. I seek that leave.

HIS HONOUR: Yes. Thank you. You may do so. So I now - - -

MR GUTHRIE: Thank you, your Honour.

HIS HONOUR: I now turn to dealing with the second matter for today, which is the application by the applicants to amend their statement of claim and the application. Mrs Frigger, just to be clear, I just want to identify precisely the documents in respect of which the application is being pursued. I understand that the terms in which you now seek to amend the statement of claim are those that are amended to your written submissions in support of the application. Is that right?

MS FRIGGER: That's correct, your Honour. Because I've added the particulars that were requested.

HIS HONOUR: Yes. And in relation to the terms in which you seek to amend the application, that is set out in your affidavit of 29th of – let me just see. I thought I had it to hand. No. Bear with me. 29 February 2024, the proposed amended originating application that's at page – I think the pages are numbered, but that is exhibit AF1 to that affidavit?

MS FRIGGER: Correct, your Honour.

HIS HONOUR: And you don't seek to exercise the leave that you've already been given to amend the application.

MS FRIGGER: Well, I will address you on that matter, because, when you gave me leave on 15 February to file that amended statement of claim, we - - -

HIS HONOUR: Amended application, you mean?

MS FRIGGER: Yes, yes, yes. Sorry, your Honour. I don't want to be disrespectful. The directions were that we needed to consider whether we leave FTI as an entity against whom we were claiming compensation. And subsequent to that, we received the PI policy from FTI. And based on inspecting that document, we were assured that we could remove FTI from the proceeding entirely, and therefore the amended application which we had been given leave to file needed to get more amendments.

HIS HONOUR: Well, that's just a long-winded way of agreeing with what I said. You don't seek to - - -

MS FRIGGER: Sorry, your Honour. That's - - -

HIS HONOUR: - - - exercise the leave.

MS FRIGGER: That's - - -

HIS HONOUR: Yes. Thank you. So now is your opportunity for both of you to make submissions in accordance with my direction in support of the application. I

have the written submissions, and I've read those as well as the proposed amendments that are sought. So between you, I think there's a half an hour now for you to make any oral submission.

MS FRIGGER: Thank you, your Honour. Before I commence, I received two written submissions from the respondent, and some of it seems to contradict each other. And I was wondering if you could direct Mr Majteles to indicate exactly which amendments to the originating application is opposed, and which amendments to the statement of claim is opposed. And then I would have to address, I would then assume, that if something is not opposed, your Honour will give us leave. And so I won't waste the court's time, because you've given us a very limited time to make oral submissions. So if – you know, and I have to say, your Honour, as well, as far as the submissions from the respondents are concerned, it seems that at least a third of the submissions are contained in footnotes in tiny font, which is makes it very, very difficult to read and understand. So I would ask the respondent in future to make all the submissions in the body of the document and not in footnotes. However - - -

HIS HONOUR: Well, I think - - -

MS FRIGGER: Sorry, your Honour.

HIS HONOUR: - - - I might decide about whether that happens or not. I think the document is perfectly able to be comprehended, and I think it makes clear what paragraphs are objected to because the subsequent submission makes clear what is – effectively overtakes what was identified in the earlier submission.

MS FRIGGER: So – sorry.

MR MAJTELES: Your Honour, I had – last night, in preparing, I had prepared a very short schedule which deals with the original paragraphs, the new paragraphs and what the position is based on the submissions. It's nothing more than a - - -

HIS HONOUR: A schedule. Yes. Thank you for that.

MR MAJTELES: - - - a schedule, save for one tiny issue that I will draw your attention to, but I – if that would assist - - -

HIS HONOUR: Well, can you - - -

MR MAJTELES: - - - both your Honour – it might assist your Honour in terms of the orders that might be made.

HIS HONOUR: Yes. If you could provide that, and we will - - -

MR MAJTELES: And – yes. And I – sorry I did not provide this earlier, but it was - - -

MS FRIGGER: Thanks.

MR MAJTELES: I think that's what you were after.

MS FRIGGER: Yes. Yes.

MR MAJTELES: Just to briefly explain, your Honour, the very first paragraph is the reference to the current accepted filing version of the statement of claim, which is the amended statement of claim on – dated 6 December 2023. And the column which is the new paragraphs is a reference to the version that's appended to the submissions of the applicants that were filed on 19 April, which, I believe, based on your exchange, is the version that we're now all working off.

HIS HONOUR: Yes.

MR MAJTELES: Thank you, your Honour.

HIS HONOUR: So, effectively, the red highlighted parts are what we need to focus on.

MS FRIGGER: Yes .....

MR MAJTELES: I think so, your Honour.

HIS HONOUR: Yes.

MR MAJTELES: I mean, of course, your Honour has to remain satisfied that the – otherwise the amendments – but - - -

HIS HONOUR: Well, what I'm going to do is I'm just going to adjourn for a few minutes so that Mr and Mrs Frigger just have an opportunity to look at that - - -

MR MAJTELES: Yes.

HIS HONOUR: - - - so that everyone is clear where we're – where we're at. So the court will – sorry.

MR MAJTELES: Your Honour, I'm sorry. There was – perhaps, if we're going to adjourn, there was that one change that I had indicated that was in here that might not be in the submissions - - -

HIS HONOUR: Yes.

MR MAJTELES: - - - which I was going to separately address. It is the – in relation to former paragraph 9, new paragraph 56, the written submissions object to the inclusion of the references to paragraphs 10, 33 and 36 of that paragraph. But the

written submissions don't object to the additional words "KordaMentha Queensland". The reason that was just missed in the submissions – it follows, effectively, from the fallout of a paragraph that's referred to earlier. I'm – it's not – I didn't – I don't want to take anyone by surprise in relation to this, and it's just something that - - -

HIS HONOUR: Yes, well, I'm sure Mrs Frigger – Mr and Mrs Frigger have heard that now, so - - -

MR MAJTELES: Yes.

HIS HONOUR: The objection is expanded to include those additional words.

MR MAJTELES: Yes. Thank – thank you, your Honour.

HIS HONOUR: Thank you. The court will adjourn for five minutes. Please adjourn the court.

ADJOURNED **[11.04 am]**

RESUMED **[11.10 am]**

HIS HONOUR: Mrs Frigger.

MS FRIGGER: Thank you, your Honour. Your Honour, I conferred with Mr Majteles whilst – during the adjournment in relation to the originating application itself. And the only thing that apparently is now opposed on the amended originating – re-amended, sorry, would be re-amended originating application – is paragraph 5, which is that the respondent shall remove caveats lodged over the applicant's real estate. That, of course, we had already been given leave to amend on 15 February. So what I will do is, rather than address you on that, I will allow Mr Majteles to address you on the reasons for opposition now, and then I can respond. So I - - -

HIS HONOUR: Yes.

MS FRIGGER: I just leave it at that for now. Thank you, your Honour. As far as the amended statement of claim is concerned, the amendments are necessary to accurately reflect the evolving nature of the factual and legal landscape since the original filing. These amendments are crucial to the just resolution of the matter. The power to allow amendments to pleadings are broad, with the remedial aim of ensuring that any defects and the pleading is cured. This serves the purpose of ensuring that the real questions in the action are properly agitated, and encourages the avoidance of multiple actions. It accords with the overarching purpose of section 37M.

A court's general approach is that leave to amend should be granted, unless the proposed amendments are futile, such that the issue sought to be added is unlikely to succeed, or the amendment is likely to be struck out, for the amendment would cause substantial prejudice or injustice that cannot be compensated by costs. The starting point is that all amendments should be made and allowed, that are necessary to enable the real questions and controversy to be decided. An amendment will be permitted where its purpose is to tidy up the pleadings, to ensure the issues are clearly defined and well understood, and not raise a new issue.

Leave to amend should be given, where the amendment merely brings the formal pleadings into conformity with evidence that has been adduced. So, obviously, what Mr Majteles handed to the court and myself helps an awful lot. And so we go to paragraph 10, the first one. So, your Honour, as I understand the overarching submission of Mrs Trenfield, is that Mrs Trenfield understood that our claim for loss of opportunity and resulting compensation was somehow related to her disqualification to be a trustee, and has nothing to do with her conduct of the administration. And we say that that is the very reason why amendments should be allowed in statements of claim to clear up those kinds of misunderstandings

HIS HONOUR: Where in the statement of claim, as it's currently expressed, is there a complaint that opens up issues about the manner in which the administration is being conducted or the property or the entitlement to legal costs - - -

MS FRIGGER: Yes, your Honour.

HIS HONOUR: - - - are subject to the proceedings before Justice - - -

MS FRIGGER: The original paragraph 16 - - -

HIS HONOUR: I'm not finished yet.

MS FRIGGER: Sorry, your Honour. I apologise.

HIS HONOUR: Are the subject to the costs orders made by Justice Jackson.

MS FRIGGER: Yes. In the original statement of claim, at paragraph 16, I said:

> *In the circumstances of the matters in paragraphs 13, 14 and 15, see above, Trenfield contravenes section 60 – 20 and 60 – 20(2)(c) Insolvency Practice Schedule, by deriving or attempting to derive - - -*

HIS HONOUR: Just a moment. You're reading out to me from – I made the mistake of looking at the amended pleading.

MS FRIGGER: Yes. Your Honour, you will find that paragraph under the proposed paragraph 28.

©Commonwealth of Australia

HIS HONOUR: Yes. Yes.

MS FRIGGER: So we clearly plead there that:

> *Mrs Trenfield has attempted to derive a profit or advantage from the administration of the applicant's bankrupt estates for FTI as a related entity.*

And we say that in itself says that her conduct of the administration was to profit her employer. And obviously the conduct is an evolving matter by Mrs Trenfield herself, producing evidence – sorry, discovering evidence in various affidavits as to that conduct which caused the losses and deriving a profit or advantage for her employer. And everything flows from that, your Honour, because we never said that our losses were related to her disqualification as the trustee. We've always said that our losses are related to the way she has administered our estates.

HIS HONOUR: Well, I must say I don't see how you've always said any such thing.

MS FRIGGER: Well, that's the paragraph we rely on.

HIS HONOUR: So 16 is what you rely on?

MS FRIGGER: Yes.

HIS HONOUR: Okay. Thank you.

MS FRIGGER: So that has – you know, obviously if Mrs Trenfield was not disqualified, we could still claim losses based on her administration of the estate because she was attempting or deriving a profit or advantage for her employer. And that has got absolutely nothing to do with her – you know, we are saying – we are alleging she was disqualified, of course, at this stage until the court makes such a finding. And so it is unrelated, and we clearly, in our originating application, we identified two separate causes of action. One of them was for her removal. And the second one was for a claim for compensation. And so what we have now put into this latest version of our statement of claim is basically that conduct which we say shows that she was deriving or attempting to derive a profit or advantage, and that conduct has caused us loss. And so in paragraph 10, the new paragraph – now I will go through – and if I've misunderstood what the overarching submission is or the overarching opposition then I will wait to hear from Mr Majteles and then respond in a different way if necessary.

In paragraph 10, we refer to the letter that Mrs Trenfield composed on KordaMentha letterhead signed by Mr Park who was, I think, the owner of that business, and forwarded as supporting her application to be registered as trustee. And as I understand, the opposition to that paragraph is that she, Mrs Trenfield, will need to get some evidence from KordaMentha in relation to that matter. But we say there is

absolutely no need to get anything from KordaMentha. Of course, KordaMentha is simply the new FTI Consulting. It was purchased by FTI Consulting, so it's the same business, just under another name.

But the fact that Mrs Trenfield has never obtained an Australian Business Number or registered for GST ever is enough to prove that the arrangements between her and KordaMentha were exactly the same arrangements as is between her and FTI Consulting. And that's basically, we say, right from the word go when she was registered as a trustee. She deceived the Commonwealth's insolvency and service by that letter, which says that there were arrangements in place for her income to be hers, owned by her, and obviously it was never owned by her. And paragraph – well, I've just answered paragraph 10 and 11. And we say that just that goes – that matter goes to her state of mind in obtaining registration as a bankruptcy trustee. It does not go to our claim for compensation.

The next paragraph opposed is paragraph 33. That paragraph 33 – let me just have a look to see. In the amended statement of claim, paragraph 15(f), we pleaded that judgments and orders in Trenfield's favour in the actions listed above were obtained by fraud, are null and void, and are liable to be set aside. So we already had pleaded that matter. And paragraph 33 is simply a particularisation of why we say that those judgments and orders should be set aside, and are null and void. And we were able to put in this matter only after the ATO completed its investigation late last year. And my affidavit, which I sent to your associate today, explains all of that. I haven't filed the affidavit yet.

HIS HONOUR: Well - - -

MS FRIGGER: Sorry.

HIS HONOUR: - - - that affidavit is not before the court.

MS FRIGGER: No. Well, as I say, I wanted to put it before the court because your Honour had directed that I do so, but we received yet more material yesterday from Mrs Trenfield, which apparently she had already had since 18 April, but which she didn't give to us until yesterday. And so I want to put in one complete affidavit with all of the matters that we will rely on in the trial.

HIS HONOUR: I don't understand that. Do you mean matters that you will rely upon if you are allowed to amend?

MS FRIGGER: Well, your Honour, the – even if I'm not allowed to rely on – if you don't give me leave to include paragraph 33, those matters, I can put in that material in respect of paragraph 34. You know, that is absolutely allowed. That is a pleading that was already there, which cannot be opposed.

HIS HONOUR: Well, you previously informed the court that you would filed the affidavit material that you rely upon in respect of matters as presently pleaded, but

you're going to seek to – I mean, there seem to be a number of problems with this affidavit, but it's not before me on the present application. If you want to make submissions by reference to it, you will have to seek leave to rely upon it, otherwise I'm not going to have regard to it.

MS FRIGGER: I seek leave to have regard to my affidavit, which was dated the 30th. The affidavit was complete. I intended to file it by 1 May, because your direction had been that I should file those matters in relation to the Frigger Super Fund prior to today's hearing.

HIS HONOUR: What direction are you referring to now?

MS FRIGGER: There was a direction – you know, your Honour, you circulated the transcript to us, and there was a direction on 15 February, where you said, "Make sure that you get that material to us before the hearing on the fifth of – before the hearing on 2 May." In fact, I'm pretty sure I can tell you exactly which paragraph that appears in.

HIS HONOUR: Are you talking about the transcript of the hearing on 6 March?

MS FRIGGER: Yes. Sorry. Was it 6 March? Sorry. Yes. The last case management hearing, your Honour. And there was a clear direction from you, "Make sure you get that material to the court before the hearing on 2 May."

HIS HONOUR: Well, you better tell me where that is.

MS FRIGGER: Okay. I'm happy to look for it now, your Honour. At page 11 of the transcript, in around about line 40, 41 and 42.

HIS HONOUR: Well, that certainly does not seem to be what you just said it is. So that's to deal with the discovery application, which is here and to be the subject of directions depending upon what happens. And what I'm saying is that you will need to be specific about what the evidence is that you need and the position in relation to discovery by today.

MS FRIGGER: Well, Your Honour, what I said was depending on what amendments are allowed in the statement of claim, that I may need to put in a bit more evidence in relation to our superannuation fund. And then you said, "Well, I think you will need to be specific about that by 2 May." And I understood that to mean if we're going to put in more evidence in relation to the superannuation fund, then we need to do that by 2 May. That's how I read that, your Honour.

HIS HONOUR: Well, that doesn't – I mean, I'm leaving to one side whether that's what you thought that required – that's not a direction and it's not a statement about the filing of further evidence. It's a statement about if you are going to want to put on more evidence, you will need to be specific about what that is.

MS FRIGGER: Well - - -

HIS HONOUR: But - - -

MS FRIGGER: Sorry. Sorry.

HIS HONOUR: What you are trying to do now is rely upon this affidavit for the purposes of the application to amend. And you're seeking leave to do that. Why should I let you rely upon this affidavit? Not for the purposes of discovery.

MS FRIGGER: No.

HIS HONOUR: For the purposes of your application for leave to amend.

MS FRIGGER: For amendment. Correct, Your Honour. Basically, I said depending on what amendments are allowed, I may need to put in some more evidence. The affidavit was – I did not swear the affidavit because, as I say, we got yet more material from Mrs Trenfield yesterday. But I wanted to send it to your Honour, through your associate, so that I can show what is the information that I'm going to be putting in in relation to the ATOs regulation of our superannuation fund. And that is the evidence that I will rely on eventually in the trial as well.

HIS HONOUR: So if you're given leave to amend, this is the evidence that you will seek to adduce.

MS FRIGGER: Correct, your Honour. That's it. And there will be - - -

HIS HONOUR: All right.

MS FRIGGER: No. That's it. That's it.

HIS HONOUR: Well, you say this is all of the evidence that will be sought to be adduced if the amendments are granted?

MS FRIGGER: In relation to paragraph 33, yes.

HIS HONOUR: Well, I will receive the affidavit – well, subject to anything that might be raised by you Mr Majteles. But I propose to receive the affidavit solely for the purposes that has just been explained by Ms Frigger. That is, not as evidence on the application, but to identify the nature of the evidence that would sort to be advanced if the amendment to paragraph 33 was allowed. Do you have any submission to make about that?

MR MAJTELES: Well, it's not sworn so it's not an affidavit. But if it's just a document – if it's accepted as a document which indicates – then we wouldn't have an objection.

HIS HONOUR: It's a way of articulating the submission. That is - - -

MR MAJTELES: Yes. But, of course there would be – yes. That's not to say anything about - - -

HIS HONOUR: Yes. It's not – to be clear, it's not being received as evidence.

MR MAJTELES: Yes.

HIS HONOUR: It's not being received as an affidavit opposing to any fact. It is simply a way of Mrs Frigger making her submission as to what she would seek to – the type of evidence she would seek to lead if the amendment to paragraph 33 was allowed.

MR MAJTELES: Yes I understand that - - -

HIS HONOUR: Yes.

MR MAJTELES: No objection here is being received on that basis.

HIS HONOUR: Thank you. Mrs Frigger.

MS FRIGGER: Thank you, your Honour. Now, the next one is paragraph 34. And the only objection is inclusion of the reference to paragraph 27 is opposed. And paragraph 27, if we go back – I'm assuming the paragraph is the paragraph – what is now number 27. So I will just rest on that. But that is a paragraph that was already there in the amended statement of claim. And I don't understand the opposition – why I cannot refer to that paragraph. So I will wait for Mr Majteles to make it more clear why that is opposed. Paragraph 35 to 54 are also opposed. And I can probably make an overarching submission in relation to – well not overarching, because there's two matters there, two different issues. The issue in 35 and 36 relates to communications from AFSA to the applicants, where they indicate:

> *...and in this share of FTI administering the applicant's estates would be communications have been sent on FTI letterhead for and on behalf of FTI.*

That's exactly what we plead, and the evidence has already been put in in my affidavit of 17 January 2024, that just about every single written communication we received was on FTI letterhead, and it was signed by a person who indicated their status or their job title or whatever as an FTI employee, including, sometimes, Mrs Trenfield herself. And therefore, we say that is an important issue that the court can take into account in deciding whether – what was the relationship between Mrs Trenfield and FTI. And we say it should not be disallowed. It is actually the government department that – that's their opinion. And so we should be allowed to rely on that. So I don't understand what the opposition is to that, your Honour.

And it relates to our first course of action for Mrs Trenfield's removal. Then from 37 to 54, all of that relates to the cause of action of Mrs Trenfield attempting or deriving a profit or advantage for her employer. It relates to how she handled or mishandled funds which she took under her control, and relates to the compensation that we seek that the losses of which were caused by Mrs Trenfield's handling of assets which she took under her control. So it is directly related to our claim for compensation and her liability, if the court so finds. I don't think – there was just one paragraph that perhaps, your Honour, we could omit, and that is the paragraph 45. I think that is probably something that we shouldn't have the court – ask the court to, you know, make a finding on, because we don't have enough evidence about that. So I'm quite happy to remove that paragraph 45.

HIS HONOUR: Yes.

MS FRIGGER: But everything else from 37 to 54 is in relation to Mrs Trenfield's conduct of the administration.

HIS HONOUR: Yes.

MS FRIGGER: Then we go to paragraph 55. And the inclusion of references to 10 and 35 is opposed. Well, this, I suppose, it relates to the issue in relation to the ..... letter sent to AFSA. So one will depend on the other. And paragraph – what's the other paragraph? 35. It's the same thing, your Honour. It relates to the communications from AFSA in relation to an ..... about FTI's role. So basically, if 10 and 35 is allowed, then the opposition falls away. Then we go to 56. Actually, this is a very valuable document. I have to say thank you, Mr Majteles. So 10 is opposed. Same problem as I've already indicated. 33 – sorry, just a moment. Your Honour, 33 will depend if that matter is allowed, if the pleading is allowed. And 36. Okay. Sorry. 33 and 36, that's the same – same opposition. So it's actually the – the – the 55 and 56 are only opposed insofar as referring to paragraphs that your Honour may not allow.

HIS HONOUR: Yes.

MS FRIGGER: Otherwise, they're not opposed. Number 57. What's 57?

HIS HONOUR: Well, that's--

MS FRIGGER: Yes, that remains. 58, I think the same problem arises, that if you disallow 33 and the 37 to 34, then that – those references will fall away.

HIS HONOUR: Yes.

MS FRIGGER: 59 to 68. These are the – these are the pleadings in relation to the CommSec – well, again, it is in relation to funds handling. It is in relation to Ms Trenfield attempting or deriving a profit or advantage for her employer in the way she handled assets, which she took under our control. Specifically, your Honour,

though, where we are claiming loss of opportunity, the authorities say that we must plead loss of opportunity to do something. And we must plead that those opportunities were available, and that we were denied the opportunity to take up those – those opportunities – that we were denied the ability to take up those opportunities to invest, or – or do different things with – you know, in – in different circumstances.

And so we must plead that those matters, which is, basically, 63, 65, 66, 67, and 68. Those – those matters must be pleaded, and if we were denied the opportunity to plead exactly what the authorities say we must plead in relation to the compensation we claim for losses incurred – caused by Ms Trenfield's conduct, then, you know, basically we – we cannot – we cannot actually claim anything. So we must be allowed to plead those matters that the authorities say we must plead in relation to loss of opportunity. And as Ms Trenfield has said now to us this morning, that she does not oppose the amendment in paragraph 6 of the originating application, which is underlined. And I'll just read it out to you, your Honour, "Compensation for loss and damage caused by the respondent's conduct." Those pleadings directly relate to that claim.

And, of course, part of those pleadings relate to Ms Trenfield's handling of the share portfolio. Which the evidence in support of that has been evolving, and we – we – also our discovery application relies on. We still don't know where our shares are. We don't know what has happened to them. And we need to know what has happened to them so that we are – we are able to make proper submissions and – in the trial – in the proceeding. And, of course, the fact that – and your – your Honour is looking at my affidavit, which I will – I will eventually file. The fact that we are holding that share portfolio, still, in the Friggers Super Fund, and it is – it is a loss, because the – the share portfolio has been frozen.

And so we – the – and the rest of the pleading is the fact that I – I didn't plead that – that loss of opportunity matters that needed to be pleaded, simply from my own ignorance. So I ask the Court's indulgence to be allowed to add those – those pleadings which the authorities say must be pleaded when a loss of opportunity claim is made. And, of course, your Honour, the affidavit of 17 January clearly shows that that is exactly what we are pleading – that is exactly what we are claiming. So it's not a surprise that – to Ms Trenfield – for these matters to be pleaded now.

MR FRIGGER: Where are the shares now, do you know?

MS FRIGGER: Just a moment. Just one moment. I just said we don't – your Honour, my husband just asked me the question. We don't know where the shares are. It used to be it was held up to the end of December with CommSec, and we were able to view the shares – the share of a portfolio – but we were not able to do any transactions. But that has disappeared now, so we don't know where it is.

And the last one, 69A, is opposed. Your Honour, that – that amendment, I don't know why it's opposed, because that amendment was already there, which was

accepted. So is this a new application to – to – there was no opposition to 69A when the amended defence was filed. So I don't know why that is now being opposed. That was already there. That's not a – an - - -

HIS HONOUR: Where do you – well, you better show me where you say it already was – it's already there in the pleading. Because it's underlined; it seems to be added. So - - -

MS FRIGGER: No. The current amendments have got the double underlining, but the single underlining was the amendment which we are entitled to do under the rules without leave.

HIS HONOUR: Yes. Very well.

MS FRIGGER: And the defence – an amended defence was filed in relation to 69A, but there was no application to set aside our without leave amendments.

HIS HONOUR: Yes.

MS FRIGGER: So I – as I say, I don't know - - -

HIS HONOUR: I understand.

MS FRIGGER: - - - if – what the problem is there. So, your Honour, this, as I say, this is a very helpful document I've received. It is clear that the main thing is that we are pleading matters that have come about because of evidence that has been adduced or discovered during the course of this proceeding, specifically in relation to the funds handling of the assets that were taken under Mrs Trenfield's control. And we say we lost the opportunity to trade those funds in the Australian Stock Exchange.

And we say, without those pleadings, actually, it would be contrary to the court's – anything that should be pleaded needs to be pleaded, so that we don't take Mrs Trenfield by surprise, and the court's overarching position – everything that needs to be decided in the one – one hearing or one trial should be all done at the same time.

MR FRIGGER: Yes.

HIS HONOUR: Yes. Mr Frigger, I think all the time has been used up, but if there's something very brief - - -

MR FRIGGER: Just very shortly.

HIS HONOUR: Yes.

MR FRIGGER: Very shortly. I just want to emphasise why we should be allowed to claim the compensation. And I just want to use this very simple example. If you contract an electrician from a big company and he rewires your house, and then you

find out once he – once – after you think it's – house has been rewired, this person is not an electrician; he is just a handyman or whatever. She – he has no clue about electrical wiring. And so what would be the result of this? The result of it would be – in a blue-collar world – this electrician has to be removed straight away, compensation being paid, the wiring has to be taken out and mostly has to be totally rewired. And this electrician, who is not an electrician, should be removed straight away.

But here, it's different. We are in the white-collar world. Mr Majteles is still defending a trustee, which is not a trustee. The defence is clear that Ms Trenfield is not a trustee. So we should be allowed to claim for compensation here for all what she did during this time. She had a different motive to do what she did. That was greed, to get – maximise the money for her, for her lawyers and for her company, FTI Consulting. That was her motive to run this – this bankruptcy trustee, and nothing else.

So in the blue-collar world, clearly, the electrician has to be removed. No way anybody would accept a house being rewired by a non-electrician. That's not allowed. It's not allowed. It's dangerous. And he should be removed. And Mr Majteles should – I put him on notice – he should advise his client, Mrs Trenfield, as a trustee, to remove herself immediately. Thank you.

HIS HONOUR: Yes. Thank you. So, Mr Majteles, I need to hear you about these paragraphs. Paragraphs 10, 11, 34, 35 and 36 and 69(a), noting that some of the other objections are consequential on some of those matters.

MR MAJTELES: Yes.

HIS HONOUR: Yes. Thank you.

MR MAJTELES: Understood, your Honour. Can I just start by picking up on the analogy that Mr Frigger used, because, in this case, to date, the issue has really been fought on the question as to whether or not Mrs Trenfield ought be a trustee of this estate, or registered as a trustee, by virtue of the nature of her employment arrangement, and whether or not she has complied with the particular provisions in the Insolvency Practice Schedule that deal with her renewal of registration. And so to the extent that claims are being advanced in respect of losses suffered, the respondent has always understood those losses are only those that flow as a consequence of those matters.

So to use the analogy, we're not here looking at all of the individual work that the electrician, who shouldn't have been an electrician, has done during the course of it to determine whether or not aspects of it were not done in accordance with duties of an electrical contractor. Looking at the question as to what flows from the circumstance of the unqualified electrician. Of course, that says nothing about whether or not Ms Trenfield is qualified or otherwise. That's a matter that - - -

HIS HONOUR: Well, this is the trouble with analogies.

MR MAJTELES: It is.

HIS HONOUR: And I'm not sure that that issue is one of the issues that I've invited you to make submissions about. They are paragraphs 10, 11, 34, 35 and 36 and 69(a).

MR MAJTELES: Yes. So in respect of 10 and 11, your Honour, 10 and 11 are effectively seeking to bring into play – well, sorry. The first thing to say is that Mrs Frigger submitted, in respect of paragraph 10, that two things; firstly, that KordaMentha Queensland is now simply FTI; and secondly, that the fact that Mrs Trenfield has never obtained an ABN or registered for GST is enough for the applicants to succeed in relation to their allegation that Mrs Trenfield should never have been registered in the first place. On that basis, then it's not sure why paragraphs 10 and 11 need to be included.

But the real reason why – sorry – the reason why this is opposed is because it opens up, firstly, for the need for there to be evidence in relation to the initial registration process and the circumstances and arrangements pursuant to which the partners of or employees of KordaMentha Queensland came to be employed with or form part of the FTI Consulting Group. And it doesn't concern matters that relate to Mrs Trenfield's appointment as trustee of these particular estates. It predates that. So it's going to require additional evidence, and it's, we say, largely irrelevant. The - - -

HIS HONOUR: Well, hasn't it always been part of these proceedings that one of the complaints about Ms Trenfield is that she – this is an allegation – that she made false statements as part of obtaining her registration? And isn't this just to say that there were false statements made?

MR MAJTELES: Well we understood the claim to be false statements in respect of the renewals at the time that she was appointed as a trustee of the applicant's estate, not going all the way back to 2006 when she was first registered. So that does represent a shift.

HIS HONOUR: So, where in the pleading did you, from what part of the pleading did you form that understanding?

MR MAJTELES: If we have a look at the amended statement of claim, the current version of the amended statement of claim, we have - - -

HIS HONOUR: The renewals are added in.

MR MAJTELES: We have 5A, 5B and 5C. 5B talks about the renewal of the registration and then 5C deals with Ms Trenfield not being a member of FTI and informing the secretariat that she registered as a registered trustee as a member of

FTI. This is to do with her employment with and her relationship with FTI, not her relationship with - - -

HIS HONOUR: Where will I find 5C now?

MR MAJTELES: 5C in the new version, you will find at page – sorry, underneath the new 13.

HIS HONOUR: Yes.

MR MAJTELES: So the allegations are all relating to her arrangements with FTI, not her arrangements with Cordinates for Queensland, which is an altogether different inquiry that needs to be made and will need to be the subject of evidence.

HIS HONOUR: Well, doesn't 5B currently talk about the circumstance in which she was first registered?

MR MAJTELES: Well, there is, but there's no complaint about the circumstances of the initial registration, the complaint is made in respect of the renewal, because the renewals cover the period of time during which Ms Trenfield was employed by FTI. Because really, the number is the complaint, and the way this complaint initially was - - -

HIS HONOUR: Was about the arrangements with FTI.

MR MAJTELES: FTI, yes.

HIS HONOUR: I understand, so assuming you're right as to that, why can't a complaint, what's the difficulty with adding a complaint about the statement that was made? Yes, because it's been overtaken by events, it's not a statement, it's not an allegation that there was some statement to the effect that this is what would always be in place or.

MR MAJTELES: Yes, and the way that this matter has progressed, I mean we're already at close of pleadings, all the evidence has been exchanged on a number of occasions, and we're now, potentially, on this particular issue, need to now canvass and obtain evidence in relation to a different set of circumstances that we say are, they don't really relate to this particular, they don't relate to this bankruptcy. That is an issue, the initial registration will not affect this bankruptcy, this administration of this bankruptcy at all. It's matter for our AFCA if it wants to take it up, as to what might have happened at the very beginning.

HIS HONOUR: Yes.

MR MAJTELES: And really, in a sense, it's those two paragraphs that see outside the remainder of the submissions, which are really related to this question about whether or not these proceedings should involve an examination of the conduct

during the administration or not, and I appreciate your Honours doesn't want to hear about that because you've asked for comments on 34, 35, 36, 69(a), so if I turn to 34 - - -

HIS HONOUR: Well not 34, that seems to be just about the reference to 27 being included.

MR MAJTELES: Yes, one of the reasons why some of these paragraphs are objected to is because they find their way into these later paragraphs that set up the notion of judgments being obtained by fraud are null and void, and being liable to being set aside. They change the nature of the claim in respect of those aspects. So it's no trifling matter that paragraph 27, for example, is included in paragraph 34. And it's no trifling matter that paragraphs, you know, 33 and 37 onwards are referred to - - -

HIS HONOUR: I understand.

MR MAJTELES: Yes. I'm sorry, your Honour. Do I note down the number?

HIS HONOUR: 35 and 36.

MR MAJTELES: 35 and thirty – well, 35 and 36 don't seem to relate to any cause of action at all. It seems to be perhaps evidence in support of an allegation that is already pleaded in respect of the FTI in fact acting as the trustee. The fact that AFSA has communicated - - -

HIS HONOUR: They become part of 55 and 56. So that's the way to look at them, really. They're being added as matters that support those claims. And the allegation is only that people wrote on FTI letterhead.

MR MAJTELES: Yes. And therefore – so the allegation there that all communications related to administration on FTI letterhead from ..... I mean, that potentially opens up a question as to what evidence is required in response to that and in relation to that. But that itself, the fact that communications might have been sent on FTI letterhead doesn't - - -

HIS HONOUR: Well, that's to argue. I mean, this is the case that's said to be significant. It's being disclosed as part of the case. Doesn't this relate to what's already in issue and clarifies that significance is said to attach to - - -

MR MAJTELES: Look, in a sense, it probably doesn't matter that those two paragraphs stay in. We don't say that connected to any particular – that those particular allegations are connected to a cause of action, but it's not – not going to die in a ditch over those paragraphs being included. And I appreciate that they're not – that doesn't offend the overarching issue about whether or not we're analysing conduct during the administration, or even though it is conduct during the administration, it tends to suggest that there was - - -

HIS HONOUR: So the last matter is 69(a).

MR MAJTELES: Yes. So 69(a) wasn't offensive until – it's not offensive in circumstances where the reason for the relief that's being sought that - - -

HIS HONOUR: Does not include - - -

MR MAJTELES: - - - doesn't - - -

HIS HONOUR: - - - all of the claims about - - -

MR MAJTELES: Yes, correct. That's correct. So, really, it needs - - -

HIS HONOUR: It stands or falls with that objection.

MR MAJTELES: Yes, correct. Yes. So 33, for example - - -

HIS HONOUR: So if they're not amended and not included, then there's no objection to 69(a), as there was no objection at the time when it was added before.

MR MAJTELES: That's correct, your Honour. That's why – yes. And I should say, your Honour, that's the same issue there that exists in relation to the addition of paragraph 5 in the originating process, which is the addition of the caveat. Sorry, the addition of orders - - -

HIS HONOUR: Yes, understand. You say that in your written submissions.

MR MAJTELES: Yes.

HIS HONOUR: This is now problematic only if it's now to be supported by what you say is considerable expansion of the nature of the case.

MR MAJTELES: Yes, that's correct, your Honour.

HIS HONOUR: Yes.

MR MAJTELES: I take it that your Honour doesn't want me to address your Honour - - -

HIS HONOUR: No.

MR MAJTELES: - - - on any of those other paragraphs at all that are certainly dealt with in written submissions. Well, then, I've – I will – that would be it then, your Honour.

HIS HONOUR: Thank you. Anything in reply to those matters of oral submissions, Mrs Frigger?

MS FRIGGER: Yes. Your Honour, you in fact highlighted that in the original paragraph 5(b), we did refer to Mrs Trenfield's first registration. But we were not able to know what happened when she was first registered, and it is only Mrs Trenfield who has voluntarily produced the letter of support from Mr Park that we make the paragraphs 10 to 11. I'm not sure if Mr Majteles has actually conceded that 10 and 11 should simply remain there.

HIS HONOUR: No, he has not.

MS FRIGGER: Yes. Okay. So then I say, we did refer to her first registration. We didn't say at the time. We didn't complain about the first registration, because we didn't know. And we now know what was done, and it is a pattern of conduct that has continued in her employment with FTI and we say that it is significant in relation to the – her appointment as the trustee of our estates and we say that we should be allowed to refer and to plead that the first registration was also obtained by making a false statement to AFSA. That's all that does. It's – it goes to the first cause of action for removal ab initio. It doesn't go to our claim for damages.

HIS HONOUR: Yes.

MS FRIGGER: As far as paragraph 34 is concerned, that only relates to paragraph 27. But of course, paragraph 27 was already there, so I really – I'm struggling to try and understand what the - - -

HIS HONOUR: So what have you moved onto now? Paragraph 34.

MS FRIGGER: 34.

HIS HONOUR: Yes.

MS FRIGGER: It only – the submission – sorry, the opposition is only if we refer to paragraph 27. But both of those paragraphs were already in the amended statement of claim. So I don't understand why a – such an opposition could stand. If it was already there, it's too late to oppose that. The – you know, the complaint was made that we should put in the paragraphs rather than saying – plead it in the statement, so we've done that. So I don't – I really cannot take it any further than that, your Honour.

HIS HONOUR: Yes.

MS FRIGGER: As far as the other ones are concerned, 35 and 36, again - - -

HIS HONOUR: Well, I think they're – really, they're not opposed now.

MS FRIGGER: They're not opposed.

HIS HONOUR: That's - - -

MS FRIGGER: Okay. And then, 69(a), again, it was already there. And now there's an opposition to it. So I think that the opposition should not be allowed.

HIS HONOUR: Yes.

MS FRIGGER: Thank you, your Honour.

HIS HONOUR: Anything further in reply, Mr Frigger?

MR FRIGGER: No, thank you.

HIS HONOUR: Yes. Thank you. In relation to the application for – for the applications to amend the - - -

MS FRIGGER: Your Honour, before you forget – if – sorry. I didn't understand – in relation to the originating application, where the only opposition is to paragraph 5, which has already – we have already been given leave to file, do I need to renew my application for – to allow that amendment or – I don't know how the court works as far as that is concerned. Because if that is a consequential order that would be made if Ms Trenfield is no longer the trustee. She – nothing rests in her. She hasn't - - -

HIS HONOUR: So the way I understand it is the amendment you seek to the application is now an amendment to make those claims to relief relate to all of the allegations in your proposed new statement of claim. So that's the application that you make. So in a way, the things are tied up and the position of Mr Majteles is if large parts of your statement of claim are not allowed, then he does not oppose the amendment to the application. But if they are all – but as part of opposing all of that, he opposes using paragraph 5 to support the additional claims that are added into your statement of claim. So they stand or fall together. That is the submissions in relation to the statement of claim – flow through into the application to amend the application.

MS FRIGGER: Okay. So I – what I didn't understand then – if – in paragraph 5, the claim for relief in paragraph 5 – what part of the proposed amendments relate to that paragraph. I don't know.

HIS HONOUR: I don't know what you're saying.

MS FRIGGER: Sorry, your Honour. Because there is no – sorry. There is no specific paragraph in the proposed statement of claim which directly refers to removal of the caveats.

HIS HONOUR: So - - -

MS FRIGGER: That is simply – will come about. That will be consequence if Ms Trenfield is removed. That's - - -

HIS HONOUR: And that's as the matter currently is without any amendment, and that – if – that nature of the application is not opposed. What is opposed if you say, well, we should have the caveats removed for the other reasons that we now want to add into our pleading.

MS FRIGGER: Okay. I understand it now. I do understand it.

HIS HONOUR: Yes.

MS FRIGGER: And - - -

HIS HONOUR: So I don't think any more submission needs to be made about that.

MS FRIGGER: Yes. Thank you, your Honour.

HIS HONOUR: Yes. So in relation to those applications to amend the originating application and the statement of claim, I will reserve my decision and it will be delivered in open court when I'm in a position to do so and the parties need not attend, and orders will be pronounced at that time. Which means we have to deal with the correspondence that has been received from the trustee. Mr Majeteles, that correspondence seems to indicate a different position to that which was articulated by you or – recognising that it was in response to questions from me without notice. Is it the position of the trustee that the trustee is proposing to continue to receive remuneration pursuant to authority said to have been conferred by creditors, rather than by an application to the court? That seems to be what's said in the letter.

MR MAJTELES: Just to clarify, when you say "receive remuneration", do you mean to have her – to pay her approved remuneration or to - - -

HIS HONOUR: Well, I deliberately used the word "receive". There is an existing authority. It's not clear to me how much of that authority has been utilised by appropriating moneys pursuant to that authority. But the authority, now, it seems clear, has come – is said to have come from creditors, whereas I understood at the time that what was – of the last hearing is that that authority was to come from the court. So of course, if there are – if further authority is required, that is, if there is amounts beyond the authority that has already been obtained, there is a question as to whether that would come from creditors or from the court. There is also a question as to whether the existing authority that has been obtained is planned to be drawn down upon without any authority from the court. And it seems that that is what is planned.

MR MAJTELES: I think the position is clarified in paragraph 19 of the letter.

HIS HONOUR: I don't have the letter in front of me. Just - - -

MR MAJTELES: I could read out the relevant paragraph - - -

HIS HONOUR: Yes.

MR MAJTELES: - - - if your Honour was minded. So these are instructions from the trustee:

> *We're instructed the trustee has not applied any funds of the estates to pay any remuneration or internal disbursements approved to date, nor any expenses the trustee has incurred to defend this proceeding, that is, WAD128.*

And, in 20:

> *We are further instructed that the trustee does not intend to apply any assets of the estates to pay any remuneration or disbursements or expenses already incurred, nor any that will be incurred in the future in defence of these proceedings, unless and until these proceedings are determined, and only then if it is appropriate to do so depending on the outcome.*

HIS HONOUR: But that's all about these proceedings.

MR MAJTELES: These proceedings. Yes.

HIS HONOUR: Not about the administration of the estate.

MR MAJTELES: No. So - - -

HIS HONOUR: Well, the upshot of the question is - - -

MR MAJTELES: Is it - - -

HIS HONOUR: - - - whether the trustee is minded to indicate to the court that no payment – no further amounts will be received by the trustee in respect of the administration of the estate without the court's approval, and if the trustee is not minded to do that, I'm minded to ask the trustee to show cause why an order should not be made to that effect.

MR MAJTELES: Yes. I understand that, your Honour. I – and to the extent that that is not clear in respect of the approval of remuneration for matters outside of these proceedings - - -

HIS HONOUR: Yes.

MR MAJTELES: - - - for which approval has been given - - -

HIS HONOUR: Yes.

MR MAJTELES: - - - I can seek – I can provide - - -

HIS HONOUR: You will need to seek - - -

MR MAJTELES: I can get instructions - - -

HIS HONOUR: - - - instructions.

MR MAJTELES: - - - and provide you with clarification on that, your Honour. But I take on board your Honour – your Honour's view that to the extent that the trustee will be applying assets in the payment of her remuneration, that your Honour's view is that it should not be done without court approval.

HIS HONOUR: Well, my view is that the court should be persuaded that that course is appropriate in the current circumstances of this particular estate, where it's – there is the potential for the person with the largest interest to actually be the bankrupt, and so I'm not forming a final view about it. I'm simply saying the trustee ought to either obtain the court's approval or persuade the court why it's appropriate to act on the basis of the creditors' approval.

MR MAJTELES: Yes. I understand, your Honour.

HIS HONOUR: Yes.

MR MAJTELES: There was an explanation as to why the creditor approval process was undertaken and that is because that is what appears to be the usual process for - - -

HIS HONOUR: Well, I've articulated why this is not usual.

MR MAJTELES: Yes, I understand. Thank you.

HIS HONOUR: And I've raised these matters having read the letter.

MR MAJTELES: Yes. I understand.

HIS HONOUR: Yes.

MR MAJTELES: Thank you, your Honour. I appreciate having the opportunity to be able to - - -

HIS HONOUR: So - - -

MR MAJTELES: - - - obtain instructions on that issue.

HIS HONOUR: Yes. And so if there could be a further communication to the court in the light of those matters within the next seven days or so, and then having received that, I will consider whether there should be some hearing convened or how the matter should proceed.

MR MAJTELES: Yes. Appreciate that, your Honour.

HIS HONOUR: I mean, it - - -

MR MAJTELES: Did your Honour have any other questions in relation - - -

HIS HONOUR: No.

MR MAJTELES: - - - to the matters.

HIS HONOUR: So I think that deals with the correspondence. I think the issue in relation to discovery, because I'm reserved on the amendment application, will have to remain pending.

MR MAJTELES: Yes. Can I just say there has been some submissions filed in relation to that and in the respondent's view, even if the amendments – well, perhaps we should deal with that separately, but there have been submissions already filed in respect of that discovery application. They might need to be short – they might need to be very briefly updated to the extent that there are amendments in the statement of claim that require a reference.

HIS HONOUR: Well, the discovery application has been squarely linked by Ms and Mr Frigger to the amendments. So you would think that once that outcome is known - - -

MR MAJTELES: Yes. Yes. The only – I'm sorry. I – perhaps – I imagined your Honour was going to deal with the programming, but I understand that's likely going to have to need to await - - -

HIS HONOUR: Well, the only issue, then, is whether there ought to be any effort to find dates for this – the hearing of this matter. I think the difficulty is knowing how small or large it will be. So maybe I should withdraw what I said earlier and I think I will convene a case management hearing at the time I publish the reasons in relation to the amendment application so that the parties can make submissions as to what should happen in the case. So they will know that – and Mr and Ms Frigger, this applies to you as well – that either all of the amendments will be allowed or some of them will be allowed or none of them will be allowed, and we know the scope of the amendments, so you should come along being ready to tell the court what direction should be sought depending on what the outcome is, so that this matter doesn't keep going. I'm inclined at that point to try, whatever the outcome, to set aside a hearing date so the matter can be – can proceed.

MR MAJTELES: It's – your Honour, I'm not sure whether it might assist that process if the case management conference was perhaps listed two or three days, or a day at least, after publish your judgment, just so that we could give some thought as to, firstly, what – whether or not additional - - -

HIS HONOUR: Yes. I think there's some sense in that, Mr and Ms Frigger. So I will revise my position again. I will publish the reasons and at the time of doing so, convene a case management hearing a few days later.

MS FRIGGER: Thank you.

MR MAJTELES: I'm grateful.

MS FRIGGER: Your Honour, can I just address you on a couple of points that were made before.

HIS HONOUR: Yes. I think – well, I think - - -

MS FRIGGER: It's in relation to the correspondence that was received by the court. There's one point that seems to be overlooked by Ms Trenfield, and that is this: I know she got approval for a certain amount very early in the piece, I think it – by the end of 2018, for about $100,000 for remuneration. And there is a process now in the rules where, notwithstanding the creditors may have approved remuneration, she has to give us notice that she intends to withdraw those funds and we are entitled to ask for a review. So she cannot, at any stage, without giving us that notice, withdraw funds from anywhere for her remuneration.

HIS HONOUR: Well, if you have applications you wish to make or matters you wish to raise in relation to the remuneration, you should raise them directly. This communication that I am dealing with is by way of supervision. It's not the – not an application. It's a communication by the court with its own officer. That's why I didn't call on you - - -

MS FRIGGER: Yes.

HIS HONOUR: - - - to make any submissions. If you - - -

MS FRIGGER: Your - - -

HIS HONOUR: - - - have things that you want to do in relation to the remuneration and you want to have some application or you want to raise some concerns with the trustee, you should do that in the usual way: raise it first by way of correspondence and then, if you think there is some order that you want to ask the court to make, you should make an application.

MS FRIGGER: Your Honour, I just – please, hear me out for a couple of seconds. The process when there's a creditor approval is that the review would not be by the court. It would be by AFSA. And actually - - -

HIS HONOUR: Well, that's all the more reason why it's - - -

MS FRIGGER: Shouldn't bring it to you.

HIS HONOUR: - - - it should be – yes.

MS FRIGGER: Okay. Understood.

HIS HONOUR: Yes. So I think that deals with all of the matters in our agenda and the court's decision on the applications has been reserved as indicated. Please adjourn the court.

MATTER ADJOURNED at 12:17 pm INDEFINITELY

©Commonwealth of Australia

Partner: Peter Smith +61 8 6216 7220
Email: Peter.Smith@jws.com.au
Our Ref: D2467
Your Ref: D2467
Doc ID: 304203127.6

9 May 2024

The Associate to the Honourable Justice Colvin
Federal Court of Australia
1 Victoria Avenue
Perth WA 6000

BY EMAIL Associate.ColvinJ@fedcourt.gov.au

BY EMAIL frigger@tpg.com.au

Dear Associate

Frigger & Anor v Trenfield - WAD 128/2023 - Clarification of Respondent's position on matters raised at the hearing on 2 May 2024

1. At the **hearing** on 2 May 2024, his Honour sought further clarification from our client, the trustee of the applicants' bankrupt estates, of a number of matters arising from his Honour's consideration of **our first letter** to the court dated 30 April 2024.

2. The purpose of this letter is to provide the further clarification requested. In this letter we adopt the terms defined in our first letter. A copy of this letter has also been sent to the applicants.

Further clarification on trustee's position regarding further amounts to be received in respect of the administration of the estates

3. At the hearing his Honour asked whether the trustee is minded to indicate to the court that no further amounts will be received by the trustee in respect of the administration of the estates without the court's approval.[1]

4. Below are our instructions regarding the trustee's position on the application of funds in the estates to pay her remuneration and other expenses incurred in the administration of the estates, noting the distinction between the trustee's remuneration and internal expenses and the external costs and expenses incurred by the trustee in the administration of the estates.

Remuneration & internal expenses

5. The trustee confirms that she will not draw down any of the estates' funds to pay any remuneration or internal expenses, approved or to be approved in the future, without the court's approval.

6. To date, the trustee has not down any funds to pay any part of her remuneration and internal expenses approved to date.

[1] **Transcript** of 2 May 2024 hearing P-32 lines 30-36.

External expenses for the removal proceedings

7. Without the court's approval, the trustee will not draw down any funds to pay external expenses she has incurred to date and which remain unpaid (or will incur in the future) in respect of her defence of these proceedings - WAD 128 of 2023 (**removal proceedings**).

Other administration external expenses

8. The trustee has already drawn, from the estates' funds, amounts sufficient to pay (by way of reimbursement to FTI) her *external expenses* incurred in the administration of the estates (save for the external disbursements incurred in defending the removal proceedings) for the period up to 25 August 2023.[2]

9. The vast majority of the external disbursements incurred by the trustee were incurred in defending WAD 141 of 2019 (the **main proceedings**) and the appeal from those proceedings (WAD 278 of 2021). A relatively small amount has been incurred in relation to dealing with WAD 225 of 2021 and WAD 227 of 2021.

10. An amount of approximately $42,080.42 (GST incl) in external disbursements has been paid from the estates' funds (also by way of reimbursement to FTI) in dealing with WAD 66 of 2021 (**second annulment proceedings**). Those disbursements, being solicitor and counsel fees, were incurred as follows:

    (a) $10,413.62 (GST incl) between May 2021 and April 2023 (of which $7,764.17 (GST incl) was incurred by counsel) in relation to the preparation for and attendance at numerous case management hearings before Logan J and an interlocutory application before Feutrill J; and

    (b) $31,666.80 (GST incl) (of which $8,401.80 (GST incl) was counsel fees) in relation to an interlocutory application filed by the applicants' in April 2023 seeking orders that the trustee remove the freeze applied in respect of the securities held in the Commsec account, alternatively to restrain the trustee from dealing in those securities[3], which was programmed by the exchange of evidence and submissions and heard by Logan J on 18 May 2023: *Frigger v Trenfield (No 7)* [2023] FCA 654.

11. In respect of the expenses incurred in the main proceedings, it is noted that Jackson J made an order, after hearing argument, that the trustee was entitled to reimburse her costs of the main proceedings from the estates' assets which Jackson J said '*merely expresses the orthodox approach*' that a '*trustee in bankruptcy is entitled as of right to a full indemnity out of the trust estate against all costs, charges and expenses properly incurred*'[4]. Jackson J further stated that, *'as a general proposition,* [the trustee's] *legal costs of defending this proceeding were properly incurred by her in the course of trust business…. and the applicants have advanced no cogent reason why* [the trustee] *is not entitled to obtain reimbursement (recoupment) or exoneration out of… the bankrupt estates*'[5].

12. The same reasoning should apply in relation to the appeal proceedings and in relation to any costs incurred in relation to WAD 225 of 2021 and WAD 228 of 2021[6].

13. As to WAD 66 of 2021, the external costs incurred identified in paragraph 10(b) above were incurred in protecting trust assets (i.e. assets held in the estates). The remainder of the costs were incurred as a necessary incident of the trustee's role, noting that the trustee is required to

[2] See paragraphs 40, 41 of the trustee's affidavit sworn 30 August 2023 in the removal proceedings (**August Affidavit**) and paragraph 20 of the trustee's affidavit sworn on 21 December 2023 in the removal proceedings (**December Affidavit**).
[3] A small amount of $176 was incurred by counsel in considering an application filed by the applicants in April 2023 to amend their originating process.
[4] *Frigger v Trenfield (No 11)* [2022] FCA 326 at [90].
[5] *Frigger v Trenfield (No 11)* [2022] FCA 326 at [92], [93].
[6] See August Affidavit at [24] to [30].

be a party to WAD 66 of 2021, particularly where the trustee will be required to provide a report pursuant to r 7.06 of the *Federal Court (Bankruptcy) Rules 2016.* Whether the liability for such costs is ultimately to be borne by the estates or the petitioning creditor will of course depend on the outcome of WAD 66 of 2021.

14. Notwithstanding the trustee's entitlement to an indemnity in relation to external costs necessarily and properly incurred by her in dealing with WAD 66 of 2021, the trustee will not, without the Court's approval, draw down any funds to pay any further external expenses she will incur in the future in respect of her involvement in the second annulment proceedings.

15. As to other external expenses, as set out in our first letter,[7] consistent with her duties as trustee of the estates, the trustee has been adjudicating proofs of debts submitted to her and lodged in the estates. The adjudication of proofs of debt is continuing.

16. In order to continue to discharge her duties the trustee will necessarily incur further external expenses (again, as foreshadowed in our first letter[8]), including:

    (a) to engage and brief an independent, Western Australian based costs assessor to review the costs claims by estimating the likely amount of the costs that would be allowed on a taxation; and

    (b) to obtain legal advice to adjudicate the proofs of debt including further assessment of the CAT and Kitay proofs.

17. The trustee proposes to apply some of the estates' funds she presently holds to pay these external expenses and any other external expenses that are required to be incurred to enable her to administer the estates in accordance with her duties as trustee. As noted above, this excludes any expenses incurred in relation to the removal proceedings or the second annulment proceedings.

18. At the hearing, his Honour observed that if the trustee was not minded to indicate that no further amounts would be received by her in respect of the administration of the estates without court approval, his Honour was minded to ask the trustee to show cause why an order should not be made to that effect.[9]

19. The trustee respectfully submits that she should not be required to incur potentially significant *external expenses* to continue to administer the estates in discharge of her duties (even if such expenses are, in effect, paid for in the first instance by FTI Consulting[10]) in circumstances where she does not have ready access to the funds to enable her to pay the expenses in accordance with the payment terms with her advisors, despite being in control of adequate funds to pay the expenses.

20. Furthermore, if the trustee is required to seek a direction from the court before paying external expenses (which is not an obligation imposed on trustees under the *Bankruptcy Act 1966* (Cth), including the *Insolvency Practice Schedule*), it will place a further costs burden on the trustee, the creditors of the estates, and as his Honour noted at the hearing, the applicants.[11]

21. Please let us know if there is any further information or any clarification that the court requires on the matters set out in this letter or more generally in the administration.

[7] At [9] – [12].
[8] At [10(i)], [16].
[9] Transcript P-32 lines 36-38.
[10] See August Affidavit at [43].
[11] Transcript P-33 lines 18-19.

Yours faithfully



Johnson Winter Slattery

Federal Court of Australia

District Registry: Western Australia Registry

Division: General No: WAD128/2023

ANGELA CECILIA THERESA FRIGGER
First Applicant

HARTMUT HUBERT JOSEF FRIGGER
Second Applicant

KELLY-ANNE LAVINA TRENFIELD
Respondent

ORDER

JUDGE: Justice Colvin

DATE OF ORDER: 6 June 2025

WHERE MADE: Perth

THE COURT NOTES THAT:

A. The applicants seek leave to discontinue these proceedings.

B. The respondent contends that leave should only be granted on conditions being (a) the applicants not commence any further proceedings based on the allegations made in these proceedings or asserting the same causes of action; and (b) there be appropriate orders requiring the applicants to bear the costs of the proceedings.

C. The applicants seek leave to discontinue without any such conditions but if the Court is minded to impose such conditions upon the grant of leave, still seek leave to discontinue.

D. The proceedings are listed for final hearing for five days commencing on 9 June 2025.

THE COURT ORDERS THAT:

1. There be leave to the applicants to discontinue these proceedings on the terms of these orders.

2. Rule 26.14 of the *Federal Court Rules 2011* (Cth) shall not apply to the discontinuance.

3. The applicants shall not commence any further proceedings in any court against the respondent based upon the allegations or asserting the same causes of action as those that were to be heard and determined commencing 9 June 2025, being those the subject of the minute of proposed amended application and the minute of proposed re-amended statement of claim as were ordered on 2 July 2024 to stand as the amended application and re-amended statement of claim respectively (copies of which are appended to these orders).

4. Save to the extent already ordered, the applicants do pay the respondent's costs of the proceedings including any reserved costs.

5. The quantum of the costs the subject of order 4 shall be assessed on a lump sum basis by a registrar acting as referee after receiving written submissions and any affidavits from the parties in accordance with a timetable set by the registrar.

6. The registrar shall provide a copy of the referee report prepared pursuant to order 5 to the parties.

7. Any application under r 28.67(1) of the *Federal Court Rules* shall be filed and served within 21 days of the registrar providing a copy of the referee report as provided for by order 6.

8. Any further question as to whether the indemnity principle has been met in relation to the costs the subject of the referee report shall not be considered by the registrar and shall be determined at the time of considering whether to adopt the referee report.

9. The respondent is entitled to pay the reasonable legal costs incurred by the respondent in the conduct of the defence of these proceedings from the assets of the bankrupt estates of the applicants.

10. The filing of a notice of discontinuance is dispensed with.

11. By operation of these orders, the proceedings are discontinued.

12. The final hearing dates in these proceedings listed to commence on 9 June 2025 are vacated.

Date orders authenticated: 6 June 2025

Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

Form B2
Rules 2.01; 6.01; 14.03

Minute of proposed Amended Application

No. WAD 128 of 2023

Federal Court of Australia
District Registry: Western Australia
Division: General

In the matter of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger

Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger

Applicants

Kelly-Anne Trenfield
Respondent

To the Respondent
of Level 20, 345 Queen Street, Brisbane QLD 4000

Application and Court hearing

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time, date and place shown in the Notice of Filing and Hearing attached.[Note: The Court will insert the Notice of Filing and Hearing as a coversheet when this application is accepted for filing.] If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file and serve a notice of appearance (Form B4) in the Registry before attending Court or taking any other steps in the proceeding.

Details of claim

On the grounds stated in the re-amended statement of claim, the Applicants claim:

1. Pursuant to section ~~90-15(3)(b) Insolvency Practice Schedule 2~~ 30 Bankruptcy Act 1966 an order that the respondent's appointment as trustee ~~cease to be trustee~~ of the applicants' bankrupt estates be rescinded ab initio.

Filed on behalf of (name & role of party) Angela & Hartmut Frigger, Applicants
Prepared by (name of person/lawyer) Angela Frigger
Law firm (if applicable)
Tel 0422124343 Fax
Email Frigger@tpg.com.au
Address for service (include state and postcode) 29 Gairloch Street, Applecross WA 6153

[Form approved 1 April 2021]

SEAL OF THE FEDERAL COURT OF AUSTRALIA
AUSTRALIA

2. Pursuant to section 90-15(3)(f) an order that the respondent and the respondent employer FTI Consulting (Australia) Pty Ltd are not entitled to be reimbursed remuneration or income from the applicants' bankrupt estates.

3. Pursuant to section 30 Bankruptcy Act 1966 an order that the respondent ~~and the respondent's employer FTI Consulting (Australia) Pty Ltd are~~ ~~personally~~ is liable for all costs of:

   (a) WAD141/2019
   (b) WAD278/2021
   (c) WAD225/2021
   (d) WAD227/2021
   (e) WAD228/2021
   (f) WAD66/2021
   (g) High Court Special Leave Application P10/2023

4. Pursuant to section 90-15(5)(b) an order that the respondent and the respondent's employer FTI Consulting (Australia) Pty Ltd are not entitled to be reimbursed the costs of the proceedings in paragraph 3 above from the applicants' bankrupt estates.

5. Pursuant to section 30 Bankruptcy Act 1966 the respondent shall remove caveats lodged over the applicants' real estate.

6. Pursuant to section 30 Bankruptcy Act 1966 ~~90-15(3)(e)~~ an order that the respondent ~~and the respondent's employer FTI Consulting (Australia) Pty Ltd~~ make good losses that the applicants estates have sustained because of a breach of duty by the respondent.

7. Any further order that this honourable court considers appropriate.

8. Costs.

Applicant's address

The Applicant's address for service is:

Place: 29 Gairloch Street, Applecross WA 6153

Email: frigger@tpg.com.au

The Applicant's address is 29 Gairloch Street, Applecross WA 6153.

Service on the Respondent

It is intended to serve this application on all Respondents.

Date: ~~7 June 2023~~ 12 February 2023

Signed by Angela & Hartmut Frigger
Applicants

Form 17
Rule 8.05(1)(a)

Minut of proposed Re-Amended Statement of claim

No. WAD 128 of 2023

Federal Court of Australia

District Registry: Western Australia

Division: General

Angela Cecilia Theresa Frigger and another

Applicants

Kelly-Anne Trenfield

Respondent

1. The first applicant is a retired accountant and has at all relevant times been a regulated debtor pursuant to an order of this court in WA616/2017 dated 20 July 2018.

2. The second applicant is a retired engineer and has at all relevant times been a regulated debtor pursuant to an order of this court in WA616/2017 dated 20 July 2018.

3. The respondent (**Trenfield)** is:

   (a) ASIC Registered Liquidator

   (b) Registered Trustee in Bankruptcy

   (c) Chartered Accountant

   (d) Justice of the Peace (qualified)

4. Trenfield was appointed trustee of the applicants' bankrupt estates by creditors resolution on 30 August 2018.

5. Pursuant to her legal obligation to provide a Declaration of Independence Relevant Relationships and Indemnities (**DIRRI)** to the applicants' creditors, Trenfield provided a DIRRI that contained false statements:

   Particulars

   Trenfield's knowledge that the DIRRI was false is to be imputed by:

   (a) The matters pleaded in [7] below;

   (b) She stated she was not aware of real or potential risks to her independence, notwithstanding she was aware that she had not complied with her Obligations contained in AFSA's Practice Statement No 13 which non-

Filed on behalf of (name & role of party) Angela & Hartmut Frigger, applicants
Prepared by (name of person/lawyer) Angela Frigger
Law firm (if applicable)
Tel 0422124343 Fax
Email frigger@tpg.com.au
Address for service (include state and postcode) 29 Gairloch Street, Applecross WA 6153

[Form approved 01/08/2011]

SEAL OF THE FEDERAL COURT OF AUSTRALIA
AUSTRALIA

compliance constituted a conflict between her duty as employee and her duty as trustee.

(c) She stated that FTI Consulting is her firm, notwithstanding she has never been a shareholder or a partner.

(d) She stated the DIRRI was made in respect of herself, her partners and FTI Consulting, but FTI Consulting is indirectly wholly owned by FTI Consulting Inc, a significant American global entity; there are no partners in FTI Consulting and Trenfield has no partners in FTI Consulting or at all and is an employee of FTI Consulting.

6. In the above circumstances Trenfield obtained appointment as trustee of the applicants' estates by deceiving the official trustee whom she replaced and the creditors. In the circumstances of her deceit Trenfield's appointment is null and void.

REGISTRATION AS BANKRUPTCY TRUSTEE

7. ~~6.~~ At all relevant times Trenfield has been employed by FTI Consulting (Australia) Pty Ltd (ACN 160 397 811) (**FTI**):

Particulars

At the trial of Federal Court action WAD141/2019 on 1 September 2020 during her cross-examination Trenfield stated on oath:

(a) She is not a shareholder of FTI.

(b) She is not entitled to income or profits of FTI.

(c) She is an employee of FTI.

(d) Her employment remuneration is a fixed salary.

8. ~~5A.~~ In the circumstances of the matters in [7] above, Trenfield is not a member of the firm known as FTI Consulting (Australia) Pty Ltd within the meaning of sections 15-1 and 70-35(3) *Insolvency Practice Rules (Bankruptcy) 2016*.

9. ~~5B.~~ On 3 July 2006 Trenfield was first registered as a bankruptcy trustee by the ~~Inspector General,~~ Insolvency and Trustee Service, ~~which registration was renewed during her FTI employment on 3 July 2015, 3 July 2018 and 3 July 2021.~~

10. In support of her initial registration Trenfield composed a letter to the Insolvency and Trustee Service which falsely stated that she and her employer (**Korda Mentha Qld**) had arranged that fees earned by Trenfield as bankruptcy trustee shall belong to her and would be her sole property.

Particulars

Trenfield's knowledge that the Korda Mentha Qld letter was false is to be imputed by:

(a) Trenfield was aware of the general law relating to her and her employer's obligations as found by this court in *Re Tracy Joy Dare; Ex Parte Tracy Joy Dare Art [1992] FCA 509* and *Re Hurt; Ex parte Hurt (1988) 80 ALR 236* because the Korda Mentha Qld letter used the same words relating to the required arrangements that are contained in those judgments.

(b) Trenfield's fees was never her property nor owned by her as pleaded in [16-22] below.

(c) Trenfield never declared trustee fees in her personal income tax returns.

(d) Trenfield never obtained an Australian Business Number or registered for GST as pleaded in [16] below.

11. In the above circumstances Trenfield obtained registration as bankruptcy trustee by deceiving the Commonwealth's Insolvency and Trustee Service.

REGISTRATION RENEWAL

12. In October 2012 Korda Mentha Qld was purchased by FTI Consulting Inc and Trenfield and FTI executed an employment agreement.

13. At no time did Trenfield and FTI enter a written agreement as required by Inspector-General's "Obligation of a trustee who is an employee rather than a sole proprietor or a partner in a firm":

Particulars

The Obligation is contained in Inspector-General's Practice Statement No. 13

~~5C. Notwithstanding Trenfield is not a member of FTI, Trenfield informed the Inspector General that she is practising as a registered trustee as a member of FTI, and pursuant to section 15-1(e) Insolvency Practice Rues (Bankruptcy) 2016, FTI is included as Trenfield's firm in the Register of Trustees.~~

14. Had Trenfield informed the Inspector General that she had failed to comply with the Obligation, she would have been found not a fit and proper person to be registered bankruptcy trustee.

Particulars

Trenfield's knowledge that she had failed to comply with the Obligation is to be imputed by:

(a) After the commencement of this action, Trenfield spoke to John Park Director of FTI, who provided Trenfield with a letter dated 30 June 2023 purporting to contain an agreement required by the Obligation.

15. In the above circumstances, Trenfield obtained renewal of her registration in 2015, 2018 and 2021 by deception.

REMUNERATION AND DISBURSEMENTS ARE FTI'S INCOME

16. ~~6.~~ At no time since her registration as bankruptcy trustee in July 2006 ~~employment with Korda Mentha Qld, and FTI commenced in September October 2012~~ has Trenfield operated a separate business as a bankruptcy trustee and/or obtained an Australian Business Number and/or registered for Goods & Services Tax.

17. ~~7.~~ In the circumstances of the matters in paragraphs ~~5, 5F and 6~~ 12 - 14 above, Trenfield's terms of employment does not entitle her to carry on a business of acting as a trustee and keeping the fees of the administration of the applicants' bankrupt estates ~~for her own benefit~~ as her sole property.

18. ~~13.~~ On or about 15 February 2023 in WAD66/2021 Trenfield stated on oath:

    (a) She is entitled as trustee to remuneration of $917,000.00 (excluding GST)

    (b) On 8 November 2018 she obtained creditor approval for her remuneration of $133,981.40 (excluding GST) and internal disbursements of $10,164.18 (excluding GST)

    (c) External disbursements of $756,442.94 (excluding GST) majority of which are legal fees, were paid by FTI.

19. In this proceeding Trenfield stated on oath in an affidavit dated 21 December 2023 that the reason why she had added GST to FTI's legal costs paid from the applicants' BOQ funds is because the applicants' estates are not registered for GST.

20. Each of Trenfield's statements in [18] and [19] above were false. Trenfield's knowledge that her sworn statements were false is to be imputed from the following.

21. In FTI's accounting records, Trenfield personally recorded:

    (a) a contract between FTI and a fictitious client/customer "Worrells Solvency and Forensic Accountants" in respect of FTI's claims in [18] above.

    (b) the transactions in paragraph [18] above as "time and materials" contract income charged to Worrells in a fictitious project described as "Hartmut H Frigger"

    (c) Failed to issue tax invoices to Worrells but nevertheless recorded GST liabilities in respect of FTI's claims in [18] above and remitted the GST to the ATO.

    (d) In its audited General Purpose Financial Report dated 31 December 2022 (**GPFR**) FTI reported the claims in [18] above as contract income from its fictitious client Worrells in the fictitious project "Hartmut H Frigger".

22. ~~14.~~ In the circumstances of the matters in paragraph ~~5, 5A and 6~~ [21] above, Trenfield's purported remuneration in paragraph ~~13(a) and 13(b)~~ [18] above is in truth and reality income of FTI.

~~15. In the circumstances of the matters in paragraphs 5, 5A and 6 [22] above, legal fees paid by FTI in paragraph 13(c) [20] above is a business expense of FTI incurred in deriving the income in paragraph 19 above.~~

PROFIT AND ADVANTAGE FOR RELATED ENTITY

23. Trenfield is entitled "senior managing director" of FTI in her employment agreement and accordingly FTI is a related entity of Trenfield within the meaning of s 5 *Bankruptcy Act 1966*.

24. Paragraph 2.15(3) Practice Statement 13 requires Trenfield to reimburse FTI appropriate portion of salaries of staff, including Trenfield, used in administration of the applicants' estates.

    (a) Staff hourly rates in Brisbane are approximately: administration staff $26.10, junior accountant $35, accountant $46, senior accountant $60 = average hourly rate of $41.77

    (b) The claim in [18a, b] above equates to ~$460.00 per hour for 2,131.20 hours totalling $917,000 plus GST

    (c) In the above circumstances the claim in [18a, b] above constitutes a profit to FTI of approximately $830,000 contrary to s 60-20 IPS and Practice Statement 13

25. ~~15A.~~ Pursuant clause 28 employment agreement ~~dated 2 October 2012 between Trenfield and FTI,~~ Trenfield is not required to repay legal fees advanced by FTI.

26. ~~15B~~. During this action, on 20 November 2023, in response to a subpoena issued by the applicants to FTI, a sworn statement by lawyer Scott Guthrie on behalf of FTI, confirmed there exists no separate litigation funding agreement between Trenfield and FTI.

27. ~~15C.~~ In the circumstances of the matters in ~~28(d), 32 and 33~~ [25] and [26] above, cost orders obtained by Trenfield against the applicants in the actions in [31-32] below breached the indemnity principle.

28. In the circumstances of the matters in [25]-[27] above, the payment of FTI's legal fees from the applicants BOQ funds constitute a profit or advantage to a related entity contrary to s 60-20 IPS.

~~16. In the circumstances of the matters in paragraphs 13 and 14 and 15C above, Trenfield contravened section 60-20(1) and 60-20(2)(c) *Insolvency Practice Schedule 2* by deriving, or attempting to derive, a profit or advantage, from the administration of the applicants' bankrupt estates in circumstances where FTI is a related entity of Trenfield.~~

PROFESSIONAL INDEMNITY AND FIDELITY INSURANCE

~~15D. In further response to November Subpoena, Guthrie stated on oath that during the period of her employment with FTI Trenfield was covered as employee for liability insurance under FTI Inc's Group liability insurance policies pursuant to clause 28 employment agreement dated 2 October 2012 and Trenfield did not take out or maintain professional indemnity and fidelity insurance in compliance with section 20-35 Insolvency Practice Schedule 2 (Bankruptcy)~~

29. In her applications for renewal of registration as trustee, Trenfield produced evidence to the Inspector-General in purported compliance with s 20-30 IPS:

Particulars

(a) For the period from 2 October 2012 to 31 August 2019 policy 13648525 issued by Acord to FTI and its employees for professional liability insurance

(b) For the period from 1 September 2019 until 1 September 2023 policy 47-ZEP-308775-04 to FTI and its employees for professional indemnity insurance

(c) During the period from 2 October 2012 until the present property insurance policy 014168416 issued by Acord to FTI Consulting Inc for coverage *inter alia* loss of client assets.

30. In the above circumstances Trenfield never had adequate and appropriate professional indemnity and fidelity insurance as a bankruptcy trustee and her registration renewal was obtained by falsely stating that she had complied with the obligation to obtain such insurance.

~~15E. In the circumstances of the matters in 5A-5C and 15D above, Trenfield obtained renewal of registration as bankruptcy trustee on 3 July 2015, 3 July 2018 and 3 July 2021 by fraud.~~

JUDGMENTS OBTAINED BY FRAUD

31. ~~11.~~ The applicants named Trenfield as respondent in Federal Court actions WAD141/2019, WAD66/2021, WAD278/2021, WAD85/2022 and High Court special leave application P10/2023 being actions in relation to the administration of the applicants' bankrupt estates.

32. ~~12.~~ Trenfield was joined as respondent on her own applications in Federal Court actions WAD225/2021, WAD227/2021 and WAD228/2021 being actions in relation to the administration of the applicants' bankrupt estates.

33. ~~15F.~~ In the circumstances of the matters in paragraphs 5, 6, 8, 10, 11, 13, 14, 15, 29 and 30 ~~in 15E~~ above all judgments and orders in Trenfield's favour in the actions ~~listed~~ in ~~[31]-[32] above 8(d) below~~ were obtained by fraud, are null and void, and are liable to be set aside.

COMMUNICATIONS FROM FTI

34. Trenfield and other FTI staff prepared and sent all communications relating to administration of the applicants' estates on FTI letterhead for and on behalf of FTI.

35. On or about May 2023 AFSA found that such communication is an indicium that FTI acted as trustee of the applicants' estates.

36. ~~8.~~ In the circumstances of the matters in paragraphs ~~5, 5F and 6~~ 7 – 17 above, as an employee of FTI Trenfield does the work attached to her duties of being a trustee as part of and subject to the control of FTI including the decisions she makes and how and when she performs the work attached to the trusteeship as though the performance of

that work stood in no different a class from her ordinary work as an employee, with the fees from the administration of the applicants' bankrupt estates being paid directly to FTI and Trenfield's remuneration being at a fixed salary.

37. ~~9.~~ In the circumstances of the matters in paragraph ~~8~~ 7 – 17 above, on becoming an employee of FTI in September 2012 Trenfield surrendered her independence from her employer FTI and is not regarded as qualified to act as a trustee and is ground for the cancellation of her registration as a trustee.

38. ~~10.~~ In the above circumstances there exists a clear conflict of interest between Trenfield's duties as trustee and her duties as an employee of FTI, in contravention of s 40-42 *Insolvency Practice Rules*. In those circumstances Trenfield is not a fit and proper person to be registered as a trustee and not qualified to act as a trustee.

39. ~~17.~~ In the circumstances of the matters in paragraphs ~~10-16~~ 7 – 28 above, the applicants' ~~estates~~ have suffered, or are likely to suffer, loss or damage caused by Trenfield's action or failure to act in compliance with the *Bankruptcy Act* and *Insolvency Practice Rules*.

40. ~~18.~~ The applicants pray for judgment against Trenfield as follows:

(a) Pursuant to Federal Court Rule 39.05(b) all judgments and orders in actions listed in [40(d)/(a)-(f)] below in favour of Trenfield be set aside.

(b) Pursuant to section ~~90-15(3)(b) Insolvency Practice Schedule 2~~ section 30 Bankruptcy Act 1966 an order that Trenfield's ~~cease to be~~ appointment as trustee ~~of the applicants' bankrupt estates.~~ be rescinded ab initio.

(c) Pursuant to section 90-15(3)(f) an order that Trenfield and FTI Consulting (Australia) Pty Ltd are not entitled to be reimbursed remuneration from the applicants' bankrupt estates.

(d) Pursuant to section 90-15(5)(a) an order that Trenfield and FTI Consulting (Australia) Pty Ltd are personally liable for all costs of:

(a) WAD141/2019
(b) WAD278/2021
(c) WAD225/2021
(d) WAD227/2021
(e) WAD228/2021
(f) WAD66/2021
(g) High Court Special Leave Application P10/2023

8

(e) Pursuant to section 90-15(5)(b) an order that Trenfield ~~and FTI Consulting (Australia) Pty Ltd are~~ is not entitled to be reimbursed the costs of the proceedings in paragraph 40(d) above from the applicants' bankrupt estates or from the applicants personally.

(f) Pursuant to section ~~90-15(3)(e)~~ 30 Bankruptcy Act 1966 an order that Trenfield ~~and FTI Consulting (Australia) Pty Ltd~~ make good losses that the applicants' estates have sustained because of a breach of duty by the respondent.

(g) Any further order that this honourable court considers appropriate.

(h) Costs.

Date: Signature

A. Frigger H. Frigger

Signed by Angela & Hartmut Frigger
Applicants

Date: 9 June 2024

This pleading was prepared by the applicants.

SCHEDULE

Hartmut Hubert Josef Frigger Second Applicant

NOTICE OF FILING

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	5/08/2024 2:37:15 PM AWST
Date Accepted for Filing:	5/08/2024 2:37:23 PM AWST
File Number:	WAD66/2021
File Title:	ANGELA CECILIA THERESA FRIGGER & ANOR v KELLY-ANNE TRENFIELD & ANOR
Registry:	WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 59

Rule 29.02(1)

Affidavit

No. WAD 66 of 2021

Federal Court of Australia

District Registry: Western Australia

Division: General

ANGELA CECILIA THERESA FRIGGER and another named in the schedule

Applicants

KELLY-ANNE LAVINA TRENFIELD and another named in the schedule

Respondents

Affidavit of:	**Kelly-Anne Lavina Trenfield**
Address:	Level 20, 345 Queen Street, Brisbane, Qld 4000
Occupation:	Registered Trustee in Bankruptcy
Date:	5 August 2024

Contents

Document number	Details	Paragraph	Page
1	Affidavit of Kelly-Anne Lavina Trenfield sworn on 5 August 2024 and filed in accordance with the order of Logan J made on 6 June 2024	1.1.1 – 8.2.1	1 - 60
2	KAT-15: Paginated bundle of documents	1.1.3	1 - 1367
3	Curriculum vitae of K Trenfield	1.3.3	1
4	Declaration of Independence and Relevant Relationships and Indemnities dated 31 August 2018	1.4.7	2 - 4
5	Bundle of certificates of title and caveats regarding the Applecross Property, the Bayswater Property and the Como Property.	2.2.3	5 - 14
6	Affidavit sworn by Ty Maher dated 19 September 2018 and filed in proceeding no. PEG409 of 2018	2.2.5	15 - 186

Document number	Details	Paragraph	Page
7	Order of Judge Vasta made on 25 September 2018 in proceeding no. PEG409/2018	2.3.2	187 - 188
8	*Frigger v Trenfield (No 10)* [2021] FCA 1500	2.4.4	189 - 414
9	The Friggers' completed Statements of Affairs lodged with and accepted by AFSA on 25 July 2018	3.1.1	415 - 454
10	Letter from the Official Trustee to the Friggers dated 6 August 2018	3.1.4	455 - 458
11	Letter from the Friggers to the Official Trustee dated 12 August 2018	3.1.5	459 - 460
12	Letters from K Trenfield to the Friggers dated 31 August 2018	3.1.6	461 - 482
13	Bundle of file notes prepared by the Official Trustee's staff and provided to FTI, dated 26 July 2018, 27 July 2018, and 30 August 2018 (x 2)	3.1.8(c)	483 - 487
14	Letter from Mervyn Kitay to Timothy Bate dated 25 July 2018	3.1.8(d)	488 - 490
15	Email from A Frigger to K Trenfield dated 28 September 2018	3.1.9	491 - 494
16	Letter from K Trenfield to the Friggers dated 9 October 2018	3.1.10	495 - 496
17	Email from A Frigger to K Trenfield dated 9 October 2018 and attachments	3.1.10	497 - 501
18	Email from A Frigger to K Trenfield dated 15 October 2018	3.1.11	502 - 504
19	Letter from P Allen to the Friggers dated 18 October 2018	3.1.12	505 - 518
20	Bundle of emails from the Friggers to FTI dated 24 October 2018, 25 October 2018 and 7 November 2018	3.1.13	519 – 522
21	Bundle of letters between Morgan Alteruthemeyer Legal Group and FTI dated 12 and 14 December 2018, and 14 and 18 January 2019	3.1.15	523 - 530
22	Diagram of Bank Accounts	3.2.6	531

Document number	Details	Paragraph	Page
23	Bank statements provided by the Friggers	3.2.9	532 - 540
24	Affidavit sworn by A Frigger on 5 March 2019 and filed in the Main Proceedings	3.3.1	541 - 745
25	CommSec financial year summary for the year ending 30 June 2018 provided by Just SMSF Audits	3.3.2	746 - 771
26	Letter from FTI to CommSec dated 28 August 2019	3.3.3	772 - 774
27	Bundle of CommSec account opening form and CHESS sponsorship form dated 1998	3.3.4	775 - 777
28	Caveat lodged over the Real Properties dated 21 September 2018	3.4.1	778 - 780
29	Declarations of Trust annexed to affidavit sworn by A Frigger in the Main Proceedings	3.4.3	781 - 782
30	Historical and current company search of H & A Frigger Pty Ltd together with a copy of ASIC document number 7E962585	3.5.1	783 - 802
31	Letter from FTI to H & A Frigger Pty Ltd dated 14 April 2023	3.5.5	803 - 816
32	Letter from FTI to H & A Frigger Pty Ltd dated 10 August 2023	3.5.6	817 - 818
33	Letter from the Friggers in their capacity as directors of H & A Frigger Pty Ltd to K Trenfield dated 11 August 2023	3.5.7	819 - 820
34	Email from K Trenfield to the Friggers in their capacity as of H & A Frigger Pty Ltd dated 18 August 2023 and attachment	3.5.7	821 - 824
35	Email chain ending in email from K Trenfield to A Frigger dated 23 May 2024	3.6.3	825 - 829
36	Letter from the directors of H & A Frigger Pty Ltd to K Trenfield dated 7 June 2024	3.6.4	830 - 831
37	Bundle of emails between the directors of H & A Frigger Pty Ltd and K Trenfield between 10 and 11 June 2024, including attachments	3.6.5	832 - 844
38	Email chain between K Trenfield and CS Legal dated 17 July 2024 and attachment	3.6.6	845 - 872

Document number	Details	Paragraph	Page
39	Letter from CS Legal to A Frigger dated 18 July 2024 enclosing notice of termination	3.6.7	873 - 875
40	Statutory declaration of A Frigger made on 30 August 2008	3.6.10	876 - 885
41	Bankwest bank statement received on 4 March 2014	3.6.11	886 - 890
42	Qualified audit report dated 16 March 2019	3.7.4	891 - 900
43	File note of call from B Mullavey of Computershare on 28 September 2020	4.3.2	901
44	Bundle of letters from FTI to share registries dated 29 September 2020	4.3.3	902 - 911
45	Email from BOQ to FTI dated 10 August 2021 and attachment	4.3.4	912 - 916
46	Email from CommSec to FTI on 16 August 2021 (without attachments)	4.3.6	917 - 920
47	Letter from K Trenfield to Commonwealth Securities Limited dated 18 August 2021	4.3.7	921 - 922
48	Letter from K Trenfield to BOQ dated 18 August 2021	4.3.8	923 - 924
49	Letter from K Trenfield to A Frigger dated 25 October 2021	4.4.3	925 - 926
50	Letter from K Trenfield to A Frigger dated 8 November 2021	4.4.4	927 - 928
51	Letter from A Frigger to K Trenfield dated 8 November 2021	4.4.4	929
52	Letter from K Trenfield to A Frigger dated 10 November 2021	4.4.5	930 - 941
53	Email from A Frigger to K Trenfield dated 10 November 2021	4.4.6	942 - 944
54	Emails between FTI and the Friggers ending in email from A Frigger to FTI dated 29 August 2019	4.5.4	945 - 947

Document number	Details	Paragraph	Page
55	Letters from FTI to the Friggers dated 16 July 2020	4.5.5	948 - 967
56	Email chain between FTI and the Friggers ending in email from the Friggers dated 24 August 2021	4.5.5	968 - 989
57	Email chain between FTI and the Friggers ending in email from FTI to Mrs Frigger dated 13 August 2020	4.5.6	990 - 991
58	Bundle of letters from K Trenfield to the Friggers dated 29 November 2019	4.5.9	992 - 993
59	Email chain between FTI and A Frigger dated 16, 17, 20, 28 and 29 January 2020	4.5.11	994 - 1001
60	Letter from K Trenfield to the Friggers dated 27 March 2024	4.6.2	1002 - 1008
61	Letter from K Trenfield to the Friggers dated 7 May 2024	4.6.3	1009 - 1011
62	Email chain ending in email from K Trenfield to A Frigger on 10 June 2024	4.6.4	1012 - 1017
63	Email from A Frigger to K Trenfield dated 15 June 2024 and attachments	4.6.5	1018 - 1045
64	Report to creditors of the Bankrupt Estates dated 27 March 2024	5.1.1	1046 - 1050
65	*Kitay v Trenfield* [2021] FCA 508	5.1.9(b)	1051 - 1062
66	Minute of proposed re-amended substituted defence and counterclaim filed in the CAT Proceeding	5.1.10	1063 - 1151
67	Order of Archer J made on 18 July 2024 in the CAT Proceedings	5.1.13	1152
68	Summary of creditor claims prepared by K Trenfield as at 10 July 2024	5.2.1	1365 - 1367
69	Certification of resolution dated 8 November 2018 regarding past remuneration for the period 31 August 2018 to 7 October 2018	6.1.3(a)	1153 - 1162
70	Certification of resolution dated 8 November 2018 regarding future remuneration for the period 8 October 2018 to the conclusion of the Bankruptcies	6.1.3(b)	1163 - 1172

Document number	Details	Paragraph	Page
71	Certification of resolution dated 8 November 2018 regarding past internal disbursements for the period 31 August 2018 to 7 October 2018	6.1.3(c)	1173 - 1182
72	Certification of resolution dated 8 November 2018 regarding future internal disbursements for the period 8 October 2018 to the conclusion of the Bankruptcies	6.1.3(d)	1183 - 1193
73	Certification of resolution dated 3 October 2023 regarding past remuneration for the period 27 August 2019 to 13 August 2023	6.1.4(a)	1194
74	Certification of resolution dated 3 October 2023 regarding future remuneration for the period 13 August 2023 to the conclusion of the Bankruptcies	6.1.4(b)	1195
75	Letter from JWS to the Associate to Colvin J dated 9 May 2024	6.1.7	1196 - 1199
76	Report to creditors of the Bankrupt Estates dated 12 September 2018	2.1.1	1200 - 1220
77	Report to creditors of the Bankrupt Estates dated 12 October 2018	2.1.1	1221 - 1269
78	Report to creditors of the Bankrupt Estates dated 13 April 2023	2.1.1	1270 - 1294
79	Report to creditors of the Bankrupt Estates dated 7 September 2023	2.1.1	1295 - 1364

Table of Contents

1.	**Introduction**	**8**
1.1.	Background	8
1.2.	Purpose of affidavit	8
1.3.	Qualifications and experience	9
1.4.	Details of appointment	9
2.	**Overview of the Administration**	**12**
2.1.	Summary	12
2.2.	Actions by the Official Trustee before my appointment	14
2.3.	Annulment and related applications	15
2.4.	Main Proceedings, Appeal Proceedings and Special Leave Application	16
2.5.	Removal Application – WAD 128 of 2023	19
3.	**My Investigations and my dealings with the Friggers**	**20**
3.1.	Statement of Affairs	20
3.2.	Bank Accounts	23
3.3.	Share Portfolio	24
3.4.	Real Properties	26
3.5.	H & A Frigger Pty Ltd mortgage	27
3.6.	Attempted sale of the Bayswater Property	29
3.7.	Audit Report, Financial Statements, and Trustee Declarations	30
3.8.	Lodgement of outstanding tax returns for the Bankrupt Estates.	33
3.9.	Voidable Transactions	34
4.	**The Friggers' conduct**	**35**
4.1.	Generally	35
4.2.	False or manipulated evidence	35
4.3.	Attempts to retake control of assets	36
4.4.	Failure to account for deceased estate distribution	37
4.5.	Failure to provide information and documents for income assessment	38
4.6.	Failure to provide information necessary to adjudicate creditors' proofs of debt	39
5.	**Creditors of the Bankrupt Estates**	**40**
5.1.	Proofs of Debt the subject of adjudication	40
5.2.	Current assessment of the proofs of debt	43
6.	**Costs of the Administration**	**44**
6.1.	Remuneration Approvals	44
6.2.	Time cost for work done administering the Bankrupt Estates	45
6.3.	External Disbursements – legal costs	46
6.4.	Payment of remuneration, and disbursements	47
7.	**Estimated Statement of Position**	**48**
7.1.	Introduction	48
7.2.	ESOP	51
7.3.	Notes to ESOP	52
8.	**Next Steps**	**58**
8.1.	Required tasks	58
8.2.	Timing	58

I, Kelly-Anne Lavina Trenfield of Level 20, 345 Queen Street, Brisbane in the State of Queensland say on oath:

1. Introduction

1.1. Background

1.1.1. I am the first respondent in these proceedings and the Trustee of the bankrupt estates of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (**Friggers**). The estates (collectively, the **Bankrupt Estates**) comprise:

(a) the individual bankrupt estate of Angela Cecilia Theresa Frigger (**Angela's Estate**);

(b) the individual bankrupt estate of Hartmut Hubert Josef Frigger (**Hartmut's Estate**); and

(c) the joint estates of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (**Joint Estate**).

1.1.2. This is the third affidavit I have sworn in this proceeding. My first affidavit was sworn on 7 October 2022. My second affidavit was sworn on 15 May 2023.

1.1.3. Shown to me at the time of making this affidavit is a bundle of documents exhibited to this affidavit and marked **KAT-15** (**Bundle**). When I refer to a document in this affidavit I do so by reference to the page numbers of the document in the Bundle.

1.1.4. Unless I have stated otherwise, the information in this affidavit is within my own personal knowledge and belief. Where I have obtained facts from other sources, the sources are stated, and those facts are true to the best of my knowledge, information, and belief. The opinions expressed in this affidavit are mine.

1.2. Purpose of affidavit

1.2.1. This affidavit is made pursuant to Orders of the Honourable Justice Logan made on 6 June 2024 to report to the Court pursuant to rule 7.06 of *the Federal Court (Bankruptcy) Rules 2016* (Cth).

1.2.2. I understand from rule 7.06 that the report, to be in the form of an affidavit, is to include information about the bankrupt's conduct and examinable affairs and the administration of the bankrupt's estates: rule 7.06(3).

1.2.3. I am informed by Mr Peter Smith, of Johnson Winter Slattery (**JWS**), my solicitors in this matter and other proceedings to which I am a party, that:

(a) the primary purpose of a report under rule 7.06, where the report is in respect of an annulment application, is to provide the required information as to the Friggers' conduct, examinable affairs and the administration of the Bankrupt Estates with a view to assisting the Court in the exercise of the Court's discretion as to whether to grant an annulment;

(b) the relevant discretionary considerations in relation to an annulment application are summarised by Tracey J in *Bulic v Commonwealth Bank of Australia Ltd* [2007] FCA 307 at [12]; and

(c) of the discretionary considerations, the ones that I might most meaningfully be able to say something about are the Friggers' solvency and financial position and their disclosure of their financial circumstances.

1.2.4. In light of the purpose of the rule 7.06 report and the complexity and obstacles that I have faced in the administration of the Bankrupt Estates (as detailed below) it has been necessary to summarise, as best I can, the relevant conduct, examinable affairs and administration rather than exhaustively set out all of everything that has occurred.

1.3. Qualifications and experience

1.3.1. I am a registered trustee in bankruptcy with over 30 years of experience in corporate and personal insolvency. I hold a Bachelor of Business (Accounting) from the Queensland University of Technology and am a fellow of the Australian Restructuring Insolvency and Turnaround Association and a member of the Chartered Accountants Australia and New Zealand.

1.3.2. I became a registered trustee in bankruptcy in 2006, a registered liquidator in 2007, and an official liquidator in 2008.

1.3.3. I am employed by FTI Consulting (Australia) Pty Ltd (**FTI**) as a Senior Managing Director in the Corporate Finance & Restructuring segment. I have held this position since 2 October 2012. A true copy of my curriculum vitae is at page 1 of the Bundle.

1.4. Details of appointment

1.4.1. On 20 July 2018, sequestration orders were made in respect of the Bankrupt Estates pursuant to section 43(2) of the *Bankruptcy Act 1966* (Cth) (**Act**).

1.4.2. On 31 August 2018, Paul Allen and I were appointed joint and several trustees of the Bankrupt Estates by a special resolution of the creditors pursuant to section 157 of the Act. This appointment followed a notice of transfer of the administration from the Official Trustee pursuant to section 181A of the Act.

1.4.3. Upon my appointment, the extent of my usual initial actions for a bankruptcy appointment were less extensive given the prior appointment of, and work done by the Official Trustee to administer the Bankrupt Estates to that time.

1.4.4. My initial tasks included:

(a) causing a file to be opened for the administration of the Bankrupt Estates using FTI's computer and software systems;

(b) gathering records from Australian Financial Security Authority (**AFSA**) and the Official Trustee in relation to the Bankrupt Estates;

(c) completing statutory 'day one' tasks, including notifications of the appointment;

(d) issuing notification to the Friggers of the appointment;

(e) issuing written notifications to all major banking institutions requesting searches be undertaken for accounts held in the Friggers' name/s and the names of their associated business(es);

(f) issuing written notifications to State motor vehicle authorities requesting searches be undertaken for motor vehicles registered in the Friggers' name/s;

(g) conducting searches of the Personal Property Securities Register (**PPSR**) to identify any registrations of security interests against personal property of the Friggers; and

(h) conducting title searches to identify any real property held in the Friggers' name/s.

1.4.5. Prior to my appointment, I had not had any dealings with the Friggers and was not aware of them other than from discussions with the Official Trustee and Mr Mervyn Kitay of Worrells, the Liquidator of Computer Accounting & Taxation Pty Ltd (In Liquidation) (**CAT**) during the process of conducting conflict checks and consenting to the appointment.

1.4.6. From enquiries undertaken by FTI before the appointment, I confirmed that none of FTI's staff had any prior involvement with the Friggers or any related parties which would have precluded myself and Mr Allen from accepting the appointment.

1.4.7. At pages 2 to 4 of the Bundle is a copy of Mr Allen's and my Declaration of Independence and Relevant Relationships and Indemnities which was tabled at the meeting of creditors of the Bankrupt Estates held on 31 August 2018.

1.4.8. Paul Allen ceased to act as Trustee on 19 March 2020. I have been the sole trustee responsible for the administration of the Bankrupt Estates since that date.

1.4.9. The table below contains the Friggers' details:

Details	
Names	Angela Cecilia Theresa Frigger and Hartmut Josef Frigger
Bankrupt Estate	(WA) 1272/18/6
Address	29 Gairloch Street, Applecross WA 6153
Occupation	Retired
Dates of birth	Angela Frigger: 28 April 1953 Hartmut Frigger: 18 May 1955
Associated entities	CAT Frigger Superannuation Fund (**FSF**) H. & A. Frigger Pty Ltd

1.4.10. Since my appointment, in administering the Bankrupt Estates, together with FTI's staff assisting me to administer the estates, I have investigated the financial affairs of the Friggers, secured various assets owned by the Friggers, and assessed claims made by creditors against the Friggers. In doing so, we have encountered challenges and obstacles largely caused by the Friggers' conduct and have had to

defend various proceedings commenced by the Friggers against me and other parties which has contributed to the complexity, length and costs of the administration of the Bankrupt Estates.

2. Overview of the Administration

2.1. Summary

2.1.1. Set out below is a summary of the administration to date, highlighting significant events and milestones, including the proceedings commenced by the Friggers that I have had to address and defend since my appointment. I have separately identified some of significant events that occurred within WAD 141 of 2019 (which I have referred to as the "Main Proceedings") in section 2.4 below.

Date	Event	Outcomes / Status
20 July 2018	Sequestration orders made by Colvin J	
25 July 2018	The Friggers lodged their Statements of Affairs (pages 415 to 454 of the Bundle)	
31 July 2018	The Friggers sought to annul the bankruptcies in the Federal Circuit Court of Australia at Perth: PEG 409/2018 (**First Annulment Application**)	Dismissed on 25 September 2018 by order of Judge Vasta (pages 187 to 188 of the Bundle)
31 August 2018	Paul Allen and I were appointed trustees of the Bankrupt Estates of the Friggers following a notice of transfer of the administration from the Official Trustee	
12 September 2018	Paul Allen and I issued the first report to creditors (a copy of which is at pages 1200 to 1220 of the Bundle)	
21 September 2018	I caused caveats to be registered over the Real Properties	
12 October 2018	Paul Allen and I issued the second report to creditors (a copy of which is at pages 1221 to 1269 of the Bundle)	
6 November 2018	The Friggers lodged an application in the Federal Court seeking an extension of time to appeal against the sequestration orders: WAD 492 of 2018 (**Extension of Time Application**)	Dismissed by operation of an order made by Charlesworth J on 17 April 2020 (*Frigger v Kitay (No 2)* [2020] FCA 497) See also, *Frigger v Kitay* [2019] FCA 624 (as to security for costs) and *Frigger v Kitay (No 3)* [2020] FCA 650 (as to costs)
6 March 2019	The Friggers commenced proceeding WAD 141 of 2019 (**Main Proceedings**) in which they sought, among other things, various orders in relation to the funds held in the BOQ Accounts, the shares held in the Share Portfolio (referred to in paragraph 2.4.10 below) and the Bayswater Property and the Como Property (referred to in paragraph 2.2.2 below). The applicants also sought orders that I be removed as trustee of the Bankrupt Estates	Dismissed on 1 December 2021
28 August 2019	I issued a letter to CommSec requesting a freeze on all transactions in the Share Portfolio (pages 772 to 774 of the Bundle)	
19 March 2020	Paul Allen ceased to act as trustee of the Bankrupt Estates, leaving me as the sole trustee	
23 March 2021	The Friggers commenced this proceeding seeking the annulment of the bankruptcies (**Second Annulment Application**)	

Date	Event	Outcomes / Status
21 June 2021	Urgent application commenced by the Friggers to have the Main Proceedings temporarily stayed: WAD 159 of 2021	Dismissed on 21 December 2021 by order of Perry J
19 July 2021	Application commenced by the Friggers' for leave to appeal against the decision in WAD 66 of 2021 to order that the Friggers provide security for costs: WAD 169 of 2021	Dismissed on 5 April 2023 by order of Perry J (*Frigger v Trenfield (No 14)* [2023] FCA 307)
26 July 2021	The Friggers were discharged from their bankruptcies pursuant to section 149 of the Act	
12 October 2021	The Friggers commenced an application against the Bank of Queensland seeking the release of the freeze I had placed on the funds held in the BOQ accounts: WAD 225 of 2021 The BOQ accounts are detailed in paragraph 2.2.4 below	I was joined as a respondent by order of Logan J made on 8 December 2021 (*Frigger v Bank of Queensland* [2021] FCA 1667) The proceedings were adjourned pending determination of the Appeal Proceedings. No further steps have been taken since the Appeal Proceedings were dismissed on 24 March 2023
13 October 2021	The Friggers commenced an application against the Commonwealth Bank of Australia: WAD 227 of 2021	I am not involved in these proceedings. The proceedings, which I am aware are being case managed by Logan J together with WAD 225 of 2021 and WAD 228 of 2021, were adjourned pending determination of the Appeal Proceedings and to my knowledge, no further steps have been taken since the Appeal Proceedings were dismissed on 24 March 2023
15 October 2021	The Friggers commenced an application against Commonwealth Securities Limited seeking orders requiring CommSec to remove all restrictions that were placed on the Share Portfolio by me, for the return of the securities in the Share Portfolio to the Friggers, and compensation for losses alleged to have been caused by those restrictions: WAD 228 of 2021	I was joined as a respondent by order of Logan J made on 8 December 2021 (*Frigger v Bank of Queensland* [2021] FCA 1667). The proceedings were adjourned pending determination of the Appeal Proceedings and no further steps have been taken since the Appeal Proceedings were dismissed on 24 March 2023
1 December 2021	Jackson J delivered his decision in the Main Proceedings	*Frigger v Trenfield (No 10)* [2021] FCA 1500
13 December 2021	The Friggers appealed the decision in the Main Proceedings: WAD 278 of 2021 (**Appeal Proceedings**)	Dismissed by Allsop CJ, Anderson and Feutrill JJ on 24 March 2023 (*Frigger v Trenfield (No 3)* [2023] FCAFC 49)
13 April 2023	I issued an update to creditors of the Bankrupt Estates and called for proofs of debt (a copy of which is at pages 1270 to 1294 of the Bundle)	

Date	Event	Outcomes / Status
24 April 2023	The Friggers filed a special leave application to appeal the dismissal of their appeal in the Appeal Proceedings: P10 of 2023 (**Special Leave Application**)	Dismissed by the High Court on 3 August 2023 (*Frigger & Anor v Trenfield* [2023] HCASL 110)
7 September 2023	I issued an update to creditors of the Bankrupt Estates (a copy of which is at pages 1295 to 1364 of the Bundle)	
7 June 2023	The Friggers filed proceedings seeking my removal as trustee of the Bankrupt Estates for, *inter alia*, alleged conflicts of interest by reason of me being an employee of FTI: WAD 128 of 2023 (**Removal Application**)	Trial dates have been tentatively allocated for February 2025
27 March 2024	I issued an update to creditors of the Bankrupt Estates and notified creditors of my intention to adjudicate on proofs and calling for final proofs by no later than 17 April 2024 (pages 1046 to 1050 of the Bundle)	
10 April 2024	Hill J delivered judgment in proceedings numbered COR131 of 2021 (**WA Proceedings**) (*Kitay v Frigger (No 2)* [2024] WASC 113)	
17 April 2024	Commenced my adjudication of proofs of debt lodged by creditors of the Bankrupt Estates	My adjudication is ongoing (see section 8 below)

2.2. Actions by the Official Trustee before my appointment

2.2.1. On taking over as trustee of the Bankrupt Estates from the Official Trustee, one of the first things I did was review the information provided to me by the Official Trustee so as to understand the actions taken by the Official Trustee and to ensure a smooth transition of the administration.

2.2.2. During their tenure, the Official Trustee had identified the following properties registered in the name of one or both of the Friggers' (**Real Properties**):

(a) 29 Gairloch Street, Applecross WA 6153 (**Applecross Property**) – the registered owners are the Friggers;

(b) 2A Union Street, Bayswater WA 6053 (**Bayswater Property**) – the registered owner is Angela Frigger; and

(c) Unit 3, 61 Cale Street, Como WA 6053 (**Como Property**) the registered owner is Angela Frigger.

2.2.3. The Official Trustee had lodged caveats over the Real Properties. At pages 5 to 14 of the Bundle are copies of the records of certificates of titles for the Real Properties and copies of the caveats lodged by the Official Trustee. Each certificate of title records a mortgage in favour of H & A Frigger Pty Ltd.

2.2.4. The Official Trustee had also identified the following bank accounts opened in the name of the Friggers (**Bank Accounts**):

(a) a Bankwest account 4767174 in the name of Mr and Mrs Frigger (**BW1**);

(b) a Bank of Queensland (**BOQ**) account 2281 1228 in the name of Mr Frigger (**BOQ1**); and

(c) a BOQ account 228 109 32 in the name of Mrs Frigger (**BOQ2**)

2.2.5. The Official Trustee's actions and investigations concerning the Bank Accounts are detailed in an affidavit sworn by Ty Maher, an officer of the Official Trustee, filed in the First Annulment Application (**Ty Affidavit**). A copy of the Ty Affidavit is at pages 15 to 186 of the Bundle. The Ty Affidavit also included the Official Trustee's findings about the Friggers' financial transactions, other property and conduct of the Friggers.

2.2.6. From my review of the Ty Affidavit and other information given to me by the Official Trustee, I was able to:

(a) take steps to verify the status of the Bank Accounts and corroborate the Official Trustee's findings from additional financial records collated in the course of my administration of the Bankrupt Estates;

(b) begin to assess the scope and validity of H & A Frigger Pty Ltd's mortgage claims over the Real Properties;

(c) identify areas requiring further investigation to identify all the property of the Bankrupt Estates; and

(d) establish a framework for ongoing communication with the Friggers, in light of the nature of their previous communications and conduct as recorded in the information I reviewed following my appointment.

2.3. Annulment and related applications

First Annulment Application – PEG 409/2018

2.3.1. Shortly after my appointment, I became aware the Friggers had been seeking, amongst other things, orders annulling the sequestration orders in the First Annulment Application.

2.3.2. On or around 25 September 2018, I received a copy of the order made by Judge Vasta of the Federal Circuit Court dismissing the First Annulment Application. A copy of the order is at pages 187 to 188 of the Bundle. As noted by Feutrill J in *Frigger v Trenfield (No 6)* [2022] FCA 1233 at [9], the First Annulment Application was dismissed for want of jurisdiction.

Extension of Time Application - WAD 492 of 2018

2.3.3. On or about 6 November 2018, the Friggers commenced the Extension of Time Application seeking an extension of time to appeal against the sequestration orders made by Colvin J. I was not a party to the Extension of Time Application.

2.3.4. On 6 May 2019, McKerracher J ordered the Friggers to provide security for the respondents' costs of defending the Extension of Time Application by paying the

amount of $12,500 into the Court. His Honour also ordered that in the event of a failure to comply with the order for the provision of security, the proceedings be stayed until such security is paid (*Frigger v Kitay* [2019] FCA 1032).

2.3.5. The stay of the proceeding was subsequently lifted for the purpose of hearing and determining four interlocutory applications and consequential questions as to costs. On 17 April 2019, Charlesworth J dismissed two interlocutory applications commenced by the Friggers and substantially allowed two interlocutory applications pursued by the respondents. Charlesworth J also made a declaration that the proceeding be stayed by operation of McKerracher J's order of 6 May 2019 and made a further order that the Extension of Time Application be dismissed if the Friggers failed to provide the security ordered by 15 May 2020 (*Frigger v Kitay (No 2)* [2020] FCA 497).

2.3.6. The Extension of Time Application was dismissed by operation of the order made by Charlesworth J on 17 April 2019 as the Friggers did not pay the security into the Court. On 14 May 2020, Charlesworth J ordered the Friggers to pay the respondents' costs of the four interlocutory applications, fixed in the sum of $30,000 (*Frigger v Kitay (No 3)* [2020] FCA 650).

2.3.7. While the Extension of Time Application was progressing, having received legal advice from my former solicitors, I decided to focus on securing the assets of the Bankrupt Estates rather than realising them, and seeking to minimise the costs to administer the Bankrupt Estates. I adopted this approach because I apprehended there was a risk that the Court may extend the time to appeal, and if so, there was a risk of the sequestration orders being set aside.

Second Annulment Application – WAD 66 of 2021

2.3.8. On 23 March 2021, prior to judgment in the Main Proceedings, the Friggers filed these proceedings (**Second Annulment Proceedings**).

2.3.9. Until 10 April 2024, the Second Annulment Proceedings were stayed pending the determination of the WA Proceedings.

2.3.10. Given the risk that the bankruptcies may be annulled in the future, I continued my approach of securing the property of the Bankrupt Estates and seeking to minimise the costs of administering the Bankrupt Estates.

2.4. Main Proceedings, Appeal Proceedings and Special Leave Application

Main Proceedings – WAD 141 of 2019

2.4.1. In March 2019, the Friggers commenced the Main Proceedings in which they sought, among other things, various orders in relation to the funds held in the BOQ Accounts, the Bayswater Property and the Como Property. In around September 2019, the Friggers amended their claim to include the Share Portfolio. The Friggers also sought orders in the Main Proceedings that I be removed as trustee of the Bankrupt Estates.

2.4.2. One of the critical issues to be resolved in the Main Proceedings was whether the relevant assets were assets of the FSF (as the Friggers claimed) or personal assets of the Friggers. That issue was critical to an assessment as to whether the assets

vested in me as trustee of the Bankrupt Estates and were divisible among the Bankrupt Estates' creditors under section 116(2)(d)(iii)(A) of the Act.

2.4.3. Another critical issue was whether the numerous complaints raised by the Friggers about my conduct and competency were justified and warranted my removal.

2.4.4. On 1 December 2021, Jackson J delivered reasons in the Main Proceedings in *Frigger v Trenfield (No 10)* [2021] FCA 1500 (**Main Proceedings Judgment**). A copy of the Main Proceedings Judgment is at pages 189 to 414 of the Bundle. All of the Friggers' claims were dismissed. Jackson J found that the relevant assets were not held in the FSF — rather they vested in me and were divisible among the Bankrupt Estates' creditors: See for example paragraphs [11], [370], [458], [530], [531] — [533] and [634] of the Main Proceedings Judgment. Jackson J also held that my removal was not warranted and that it had not been established I had not faithfully performed my duties and or contravened the Act (Main Proceedings Judgment at [740] to [746]).

2.4.5. The Friggers appealed the Main Proceedings Judgment. The Appeal Proceedings were heard before Allsop CJ and Anderson and Feutrill JJ. The appeal was dismissed on 24 March 2023 in *Frigger v Trenfield (No 3)* [2023] FCAFC 49.

2.4.6. On 20 April 2023, the Friggers filed the Special Leave Application. The Special Leave Application was dismissed by the High Court on 3 August 2023 (*Frigger & Anor v Trenfield* [2023] HCASL 110).

2.4.7. My defence of the Main Proceedings and subsequent appeals was undertaken at a time when it was not clear whether the Bankrupt Estates would have any assets with which to pay costs, expenses and remuneration incurred in their administration. The legal costs incurred in respect of the proceedings were funded by FTI, ensuring the Bankrupt Estates' interests could be protected without any immediate financial burden being imposed on the creditors.

2.4.8. Over the course of the Main Proceedings, a number of amended applications, and interlocutory applications were filed by the Friggers, as summarised below:

Date	Type	Nature
18 June 2019	First Application for Leave to Amend Application	Seeking orders to declare funds held in BOQ2 to be an asset of the FSF, to quantify losses associated with maintaining the freeze on the Bank Accounts, and to allow payouts in relation to various consent orders
11 September 2019	Interlocutory Application	Seeking an order for me to retract a letter I sent to CommSec freezing the account be removed and I be personally liable for any loss FSF incurred during suspension
23 September 2019	Second Application for Leave to Amend Application	Seeking orders for me to retract letters issued to CommSec, and orders seeking declarations concerning CommSec Account No. 270815
6 January 2020	Interlocutory Application	Seeking an order for leave to amend original application to include a claim against me for defamation, and to order me to file an affidavit indicating whether numerous documents were under my control
25 January 2020	Third Application for Leave to Amend Application	Seeking orders regarding a letter issued on 27 September 2019 to AFSA, and alterations to statutory references on orders previously sought
10 April 2020	Interlocutory Application	Seeking orders: • for the me to produce specific documents from ATO correspondence; • declaring me guilty of three counts of contempt of court; and • for the administration of the Friggers' estates to be returned to the Official Trustee
9 June 2020	Interlocutory Application	Seeking an order granting the Friggers leave to amend their originating application
1 October 2020	Interlocutory Application	Seeking various orders including: • granting the Friggers leave to re-open the trial hearing; • for me to destroy all paper and electronic copies of documents from SMSF Audits, CommSec, Australian banks and share registries; • to obtain undertaking from lawyers involved in the Main Proceedings to delete certain records; and • for me to retract a letter to share registries advising shares have vested in the Bankrupt Estates
12 April 2021	Interim Application	Seeking a stay of the delivery of judgment pending resolution of the Second Annulment Application. This application was dismissed by Jackson J on 14 June 2021 (*Frigger v Trenfield (No 9)* [2021] FCA 652)

2.4.9. Save in some minor respects, all of the Friggers' applications within the Main Proceedings were dismissed. Details of the outcome of the applications are found within Jackson J's judgment on costs which included certain reserved costs of various interlocutory applications made during the course of the Main Proceedings: *Frigger v Trenfield (No 11)* [2022] FCA 326.

2.4.10. Over the course of my defence of the Main Proceedings, I had cause to further my initial investigations into the assets of the Bankrupt Estates, including the Bank Accounts, the Real Properties, and the identification of shareholdings appearing to be owned by the Friggers and held in a CommSec portfolio, account No. 270815 (**Share Portfolio**). I discuss the Share Portfolio in further detail in section 3.3 of this report.

2.4.11. Subsequent to the discovery of the Share Portfolio, I considered it necessary to place a freeze on the Share Portfolio to preserve these potentially significant assets while the court determined their ownership. In response to this action, the Friggers amended their claim in the Main Proceedings to include the Share Portfolio.

2.5. Removal Application – WAD 128 of 2023

2.5.1. Subsequent to filing the Special Leave Application, on 7 June 2023 the Friggers commenced the Removal Application seeking to remove me as trustee. In short, in the Removal Application, the Friggers allege that I obtained my registration as a bankruptcy trustee by fraud by misleading the relevant authorities about my employment status and insurance cover, and that because of my status as an employee of FTI, and my lack of independence and position of conflict I should be removed as trustee which should operate ab initio.

2.5.2. The Removal Application is ongoing and has been tentatively listed for a five day trial commencing on 10 February 2025.

3. My Investigations and my dealings with the Friggers

Over the course of my administration of the Bankrupt Estates, particularly during the course of the Main Proceedings, I have conducted extensive investigations to identify and secure the property available for distribution to creditors of the Bankrupt Estates, and more generally, to investigate the affairs of the Bankrupt Estates. Below is a summary of the notable investigations and findings to date and some my dealings with the Friggers.

3.1. Statement of Affairs

3.1.1. Copies of the Friggers' completed Statements of Affairs (**SOAs**) that were lodged with and accepted by AFSA on 25 July 2018 are at pages 415 to 454 of the Bundle. These documents are used by trustees to start their investigations to identify the assets of a bankrupt estate and the likely provable claims of creditors, and to gain an understanding of the likely outcome of the administration of the estate.

3.1.2. A brief summary of the information reported in the SOAs follows:

Assets / (Liabilities)	Hartmut Frigger SOA ($)	Angela Frigger SOA ($)
Assets		
Cash at bank	3,000	3,000
Tax refund	-	-
Tools of trade	-	-
Superannuation	2,762,864	3,029,400
Motor vehicle	3,000	10,000
Real property	1,700,000	1,700,000
Debtors	5,926,869	5,926,869
Shares / investments	-	-
Transfers	18,000	18,000
Other	-	-
Total assets	**10,413,733**	**10,687,269**
Liabilities		
Secured creditors	(2,450,050)	(2,450,050)
Unsecured creditors	(272,598)	(272,598)
Total liabilities	**(2,722,648)**	**(2,722,648)**
Net position	**7,691,085**	**7,964,621**

3.1.3. The SOAs recorded that there was a significant surplus of assets in the Bankrupt Estates. When I reviewed the SOAs I noted superannuation is not a divisible asset available to satisfy provable claims, the debtors balance was unsubstantiated and there was no reported realisable equity in the Real Properties. I also considered that the Friggers would have been able to retain a portion of the available cash for their living expenses, as well as their motor vehicles (see section 7.3.3 of this report) which were valued below the relevant threshold.

3.1.4. Prior to my appointment, the office of the Official Trustee had requested further information from the Friggers to substantiate the information included in the SOAs. A copy of a letter sent by the Official Trustee to the Friggers on 6 August 2018 requesting further information in regard to the superannuation, their Real Properties, and various court actions is at pages 455 to 458 of the Bundle.

3.1.5. On 12 August 2018, the Friggers responded to the request stating that the demands for information were inappropriate and extensive given a new trustee was likely to be appointed and they were seeking an annulment of their bankruptcies. No information regarding the superannuation or their Real Properties was provided by the Friggers. A copy of the letter is at pages 459 to 460 of the Bundle.

3.1.6. Upon my appointment on 31 August 2018, I sent a letter to the Friggers. Copies of those letters are at pages 461 to 482 of the Bundle. The letter outlined the Friggers' obligations as then undischarged bankrupts and requested that they:

(1) sign and return a Bankruptcy Information acknowledgement sheet;

(2) provide copies of all books and records concerning any businesses and/or personal financial affairs from the last three (3) years;

(3) produce their passports; and

(4) deliver to me all stock certificates, savings certificates, bonds and other securities.

3.1.7. I did not receive a response from the Friggers to my letters of 31 August 2018.

3.1.8. Early in my administration, based on my review of the documents provided by the Official Trustee, the matters deposed in Mr Maher's affidavit and FTI staff's interaction with Mrs Frigger, I had concerns the information provided by the Friggers may not be complete or accurate and I would have to independently investigate and verify all of the information provided by the Friggers. My concerns were based on:

(a) the SOAs disclosed the Friggers each had $3,000 in cash but no bank account details were provided despite the Official Trustee's investigations revealing several bank accounts in the Friggers' names;

(b) two (2) properties (the Bayswater Property and the Como Property) were not reported in the SOAs;

(c) the file notes included in the AFSA records noting conversations between representatives of the Official Trustee and Mrs Frigger. A bundle of copies of these file notes is at pages 483 to 487 of the Bundle; and

(d) several court decisions which I noted from reading a letter from Mr Kitay to the Official Trustee dated 25 July 2018 (a copy of which is at pages 488 to 490 of the Bundle) containing adverse findings regarding credibility against the Friggers in some of the proceedings in which they were involved, including:

(1) proceedings in the District Court commenced by Mrs Frigger against Clavey Legal Pty Ltd, set out in *Frigger v Clavey Legal Pty Ltd* [2015] WADC 21 at [169] and *Frigger v Clavey Legal Pty Ltd*

(No 3) [2015] WADC 21 at [90], [92], [94], [101], [105], [113] and [115]; and

(2) proceedings in the Court of Appeal in Western Australia against Professional Services of Australia in *Frigger v Professional Services Australia Pty Ltd* (no 3) [2014] WASCA 69 at [103] and [109].

3.1.9. On 28 September 2018, I received an email from the Friggers, which, among other things, notified me of their intentions to appeal the dismissal of the First Annulment Application. In the email, the Friggers accused me of "*intend[ing] to act partially in the bankruptcy*" and abusing my powers. A copy of this email is at pages 491 to 494 of the Bundle. I did not respond to this email.

3.1.10. I sought further information from the Friggers by letter dated 9 October 2018. A copy of that letter is at pages 495 to 496 of the Bundle. I received a response on the same day by email from the Friggers, a copy of which is at pages 497 to 501 of the Bundle. That email was not responsive to my information request. Mrs Frigger in effect told me that there was nothing further I needed to investigate and if I did not lift a freeze on the BOQ account, she would instruct her solicitor to commence proceedings against me.

3.1.11. On 15 October 2018, I received an email from the Friggers telling me that they would sue me for damages on the basis of a statement included in a report to creditors, where I had said, in effect, that given the dismissal of the First Annulment Application, I could take some comfort that the bankruptcies would not be annulled. A copy of the email is at pages 502 to 504 of the Bundle.

3.1.12. On 18 October 2018, Mr Allen issued Mr and Mrs Frigger with follow-up letters to my 31 August letter. Mr Allen requested that the Friggers deliver all books and records, passports and assets. Copies of those letters are at pages 505 to 518 of the Bundle.

3.1.13. One of FTI's staff, Lachlan Bowness, received an email from the Friggers on 24 October 2018 (a copy of which is included at pages 519 to 520 of the Bundle). The response did not assist to progress our investigations.

3.1.14. Throughout this time, the Friggers continued to claim that the Real Properties and the Bank Accounts were held on trust on behalf of the FSF and made a number of demands that I lift the freeze on the Bank Accounts. An example is found referenced at paragraph 3.1.10 above.

3.1.15. By way of further example, on 12 December 2018 I received a letter from Stefan Alteruthemeyer of Morgan Alteruthemeyer Legal Group for H & A Frigger Pty Ltd, as trustee of the FSF, claiming that all my queries of the Friggers in relation to ownership of the Bank Accounts had been addressed and seeking comfort that I would release the freeze on the Bank Accounts. A copy of that letter is at page 523 of the Bundle. My response dated 14 December 2018, and a further exchange of letters dated 14 January 2019 and 18 January 2019 are also at pages 524 to 530 of the Bundle.

3.1.16. A bundle of emails that FTI's staff received from the Friggers on 25 October 2018 and 7 November 2018 is at pages 521 to 522. These emails were unhelpful as they

did not provide any substantiative answers to my information requests but made allegations without substantiation against me and Mr Kitay.

3.1.17. I viewed this correspondence as an indication that the Friggers would not co-operate with me in the administration of their Bankrupt Estates. I formed the view that I would need to source reliable information about the affairs of the Friggers from third parties as it would not be forthcoming from the Friggers.

3.2. Bank Accounts

3.2.1. As already noted, at the commencement of the bankruptcies, each of the Bank Accounts were held by one of the Friggers as follows:

(a) BW1 was held by in Angela Frigger's name;

(b) BOQ1 was held in Hartmut Frigger's name; and

(c) BOQ2 was held in Angela Frigger's name.

3.2.2. I maintained the freeze on the funds placed by the Official Trustee on the funds held by the Friggers with BOQ over BOQ1 and BOQ2.

3.2.3. During the course of my investigations and during the Main Proceedings, I came to learn of other bank accounts held in the names of the Friggers or the FSF with **HSBC** Bank Australia Limited, **Citigroup** Pty Ltd and **St George** Bank – A division of Westpac Banking Corporation that had been used in the past by the Friggers.

3.2.4. I obtained and analysed numerous bank statements covering periods before and after the commencement of the bankruptcies.

3.2.5. I also conducted a thorough tracing exercise to track the flow of funds between the various accounts, particularly focusing on the source of funds in BOQ1 and BOQ2, where the largest concentration of funds were held.

3.2.6. The tracing exercise revealed that the majority of funds in BOQ2 (approximately $2.5 million at the time) could be traced back to BW1, with some funds coming from other sources such as interest and rental income. With the assistance of employees of FTI, I created a diagram in which I attempted to trace the funds in BOQ1, based on these investigations. A copy of that diagram is at page 531 of the Bundle.

3.2.7. From my analysis of the transactions in BW1, I believed that BW1 was used for a variety of purposes, including day-to-day transactions, receiving rental income from properties claimed by the Friggers to be FSF assets, and paying personal expenses of the Friggers.

3.2.8. During my review I also found discrepancies in bank statements provided by the Friggers during the course of the Main Proceedings including:

(a) a bank statement of St George which appeared manually altered to include the words "Frigger Super Fund"; and

(b) a bank statement for BW1 appeared to have been altered to include a reference to the "Frigger Super Fund".

3.2.9. Copies of the bank statements provided by the Friggers are at pages 532 to 540 of the Bundle.

3.2.10. I formed the opinion that BOQ1 and BOQ2 were personal assets of Mr and Mrs Frigger respectively, not FSF assets. I concluded, the mixing of alleged FSF funds with personal funds in BW1 indicated a lack of proper separation between personal and superannuation assets, contrary to relevant superannuation regulations.

3.2.11. The Court's findings in the Main Proceedings Judgment (pages 189 to 414 of the Bundle) supported my conclusions. Relevantly, Jackson J held:

> *"[65] I do not accept Mrs Frigger's evidence that the St George bank statement she downloaded had no account name on it, and she mistakenly put her name on it, along with the reference to the FSF. It is an explanation proffered in an attempt to dispel the obvious inference arising from the different versions of the statements in evidence, that Mrs Frigger altered the document so that it no longer showed Jessica Frigger as the account holder, and then put it into evidence in an attempt to persuade the court that it was an asset of the FSF. The case of the applicants, apparent from ACTF 1, was that the flow of funds from STG1 and other accounts to BOQ1 indicated that the funds in BOQ1 were FSF funds (paras 17-19). Establishing that STG1 was an FSF asset was part of that case. That gave Mrs Frigger motive to present the bank statement of STG1 as if the account were an asset of the FSF.*
>
> *...*
>
> *[302] I conclude that BW1 was used as an account for the receipt of income of the FSF and tax refunds of the FSF and payment of expenses and other outgoings attributable to the FSF. But it was also used as the account for numerous other receipts and payments which were not connected to the FSF, or are simply unexplained.*
>
> *...*
>
> *[626] The applicants have not established that BOQ1 and BOQ2 were FSF assets. Those accounts are in the names of Mr Frigger (BOQ1) and Mrs Frigger (BOQ2) respectively. Since the applicants have not discharged their practical and legal onus of establishing that the accounts are held in any trust capacity, the first respondent is entitled to treat those accounts as assets divisible among the creditors of the bankrupt estates."*

3.3. Share Portfolio

3.3.1. On 6 March 2019, I reviewed Mrs Frigger's affidavit filed in the Main Proceedings which claimed the Share Portfolio had been transferred to the FSF in 1997. A copy of that affidavit excluding annexures is at pages 541 to 745 of the Bundle. This affidavit included as an annexure a CommSec financial year summary for the year ending 30 June 2018, which prominently displayed a "FRIGGER SUPER FUND" notation under the account name.

3.3.2. On 28 August 2019, I received documents from the FSF's auditor, Just SMSF Audits, including CommSec financial year summaries for multiple years, including the year ending 30 June 2018. A copy of this document is at pages 746 to 771 of the Bundle. I compared this document with the version provided in Mrs Frigger's affidavit and found the "FRIGGER SUPER FUND" notation did not appear in the

version provided by the auditor. I believed that the version of the document received from the auditor was the original unaltered version and that it indicated that the share portfolio was an asset of the Friggers, not the FSF.

3.3.3. Accordingly, on 28 August 2019, I issued a letter to CommSec requesting a freeze on all transactions in the Share Portfolio. A copy of my letter to CommSec dated 28 August 2019 is at pages 772 to 774 of the Bundle.

3.3.4. Following my freeze request, on or around September 2019, I received copies of the original account opening form and CHESS sponsorship form for the Share Portfolio from CommSec. The account opening documents from 1998 showed the Share Portfolio was opened in the names of Mr and Mrs Frigger, with no reference to the FSF or to them acting in any trustee capacity. A bundle of documents including that application form and the CHESS sponsorship form is at pages 775 to 777 of the Bundle.

3.3.5. Subsequently, I obtained and analysed CommSec statements for the Share Portfolio, covering periods before and after the commencement of the bankruptcies. These statements consistently showed the account in the names of Mr and Mrs Frigger, with no reference to the FSF.

3.3.6. Between September 2019 and April 2020, FTI's staff and I conducted extensive inquiries with multiple share registries to determine when and if the FSF's tax file number (**TFN**) had been associated with the shareholdings in the Share Portfolio. I discovered that in most cases the FSF's TFN was only notified to the share registries after 20 July 2018, being the date of the sequestration orders. Many TFN notifications occurred in September 2019, coinciding with when my investigations into the Share Portfolio commenced.

3.3.7. I also traced dividend payments from the Share Portfolio, examining the accounts into which these payments were deposited. Dividends were consistently deposited into personal accounts of the Friggers, rather than into any account clearly designated as belonging to the FSF.

3.3.8. While a PPSR registration existed showing the FSF as a secured party over the Share Portfolio, its nature and effect was unclear and did not align with typical superannuation fund arrangements. I would have expected the shares to be held by the trustee of the FSF.

3.3.9. The discrepancies in documentation, particularly the altered financial year summary annexed to Mrs Frigger's affidavit, raised serious concerns about the reliability of the Friggers' claims regarding the ownership of the Share Portfolio. There was no clear evidence of an intention to hold the shares on trust for the FSF prior to the bankruptcies. The late notification of the FSF's TFN to most share registries appeared to be an attempt to retrospectively characterise the shares as FSF assets.

3.3.10. In light of the above, I formed the opinion the Share Portfolio was legally and beneficially owned by Mr and Mrs Frigger in their personal capacities, not as trustees of the FSF.

3.3.11. Jackson J's findings in the Main Proceedings Judgment (pages 189 to 414 of the Bundle) were consistent with my findings, his Honour stating:

"[458] I conclude that the applicants have failed to establish that any of the securities in the [Share Portfolio] *were held by them on trust on the terms of the FSF, or in any event contributed to and part of the fund known as the FSF, as at the commencement of the bankruptcy or at any other time.*

...

[635] The Main Portfolio was in the names of the individuals without any reference to the FSF in the account name. It may have appeared to Mrs Trenfield that the FRIGGER SUPER FUND notation on the Financial Year Summary attached to affidavit ACTF 1 was a forgery. A prudent bankruptcy trustee with that suspicion would take immediate steps to ensure that the bankrupts were unable to deal with those securities. That is what Mrs Trenfield did."

3.4. Real Properties

3.4.1. As already noted, prior to my appointment, the Official Receiver lodged caveats over the Real Properties. From my preliminary investigations into the Real Properties (including the related entity caveats and mortgages in favour of H & A Frigger Pty Ltd), I understood that the caveats lodged by the Official Receiver would need to be replaced by my own. I formed the view that caveats should be maintained over the Real Properties to secure the Real Properties as my investigations into the ownership of the Real Properties and the mortgages continued. I therefore caused a caveat to be registered over the Real Properties on 21 September 2018. A copy of that caveat is at pages 778 to 780 of the Bundle.

3.4.2. The certificate of title for the Bayswater property recorded that Mrs Frigger became the registered proprietor on 8 July 1998. The certificate of title for the Como property recorded that Mrs Frigger became the registered proprietor on 16 June 1980.

3.4.3. During the course of the Main Proceedings, in relation to the Bayswater and Como properties the Friggers produced two "Declarations of Trust" purportedly signed in 2014 (**Declarations of Trust**) bearing the same stamp duty notation. Copies of the two Declarations of Trust that were annexed to an affidavit sworn by Mrs Frigger and filed in the Main Proceedings are at pages 781 to 782 of the Bundle.

3.4.4. The Friggers claimed that the Declarations of Trust had the effect of transferring these properties to the FSF. These declarations were dated 1 July 2014 and stated Mrs Frigger held the properties "in trust on behalf of the beneficiaries", who were identified as Mr and Mrs Frigger.

3.4.5. I formed the view the Declarations of Trust may not have effectively transferred the Como Property and Bayswater Property. The purported change in ownership of the properties was not reflected on the certificates of title of the properties. Further, I understood there were legal impediments for in-specie contributions to be made by a related party to a self-managed superannuation fund by reason of section 66 of the *Superannuation Industry (Supervision) Act 1993* (Cth) (**SIS Act**).

3.4.6. In the Main Proceedings Judgment, Jackson J found that the Declarations of Trust did not support the Friggers' allegation that the Real Properties were assets of the FSF. His Honour stated (at [530] to [531]):

"On their objective construction, the 2014 Declarations did not result in a contribution of the Residential Properties to the FSF. They did not express an intention to that effect and even if they had, it would have been illegal and the trustees of the FSF would have been required not to accept them. Instead, the 2014 Declarations constituted trusts over the Residential Properties on terms different to the terms of the FSF Deed.

It follows that the applicants' interests in the Residential Properties did vest in the first respondent on the date sequestration orders, and she does have the interests she claims in the caveats she lodged over the Residential Properties."

3.5. H & A Frigger Pty Ltd mortgage

3.5.1. At pages 783 to 802 of the Bundle is a historical and current company search of H & A Frigger Pty Ltd, together with a copy of ASIC document number 7E962585 that is referred to therein. The search records that H & A Frigger Pty Ltd was registered on 2 April 2012 and the Friggers were the directors and shareholders of the company at the time. The search, when read together with document number 7E962585 also records that on 4 April 2014, the shares in the company were transferred to Wolfgang and Helga Popitz but the Friggers remained the directors of H & A Frigger Pty Ltd. However, I am aware that the Court of Appeal of the Supreme Court of Western Australia in *Frigger v Kitay* [2016] WASCA 173 accepted that the shares in H & A Frigger Pty Ltd were transferred to Mr and Mrs Popitz on 1 July 2012.

3.5.2. I have sought to investigate the validity and enforceability of the mortgage granted by the Friggers over the Real Properties (including the Applecross Property) in favour of H & A Frigger Pty Ltd on 1 July 2012, but not registered until 7 April 2014. In their SOAs, the Friggers claim the mortgage secures the amount of $2.45 million owing by them to H & A Frigger Pty Ltd.

3.5.3. As already noted, early in the administration, I became aware of a number of court decisions indicating that the H & A Frigger Pty Ltd mortgage had been granted to H & A Frigger Pty Ltd by the Friggers to defeat creditor interests. Relevant extracts are set out below:

(a) *Frigger v Professional Services of Australia* [2015] WASCA 3, where Buss and Murphy JJA noted:

> *"the appellants* [the Friggers] *have taken steps which have the effect, and it is open to infer were done with the intent, of putting assets out of the reach of unsecured creditors"* [para 54]

(b) *Frigger v Kitay* [2016] WASCA 173, where the Court of Appeal of Western Australia expressed concerns:

> *"the mortgages registered had the effect, and it is open to infer were done, with the intention of putting assets out of the reach of Mr. and Mrs. Friggers' creditors"* [para 63].

(c) *Frigger, in the matter of Computer Accounting & Tax Pty Ltd (in Liq) (No 2)* [2018] FCA 612, where Colvin J stated:

> *"certain mortgages were registered with the effect (and in circumstances where it was open to infer with the intention) of putting assets out of the reach of Mr and Mrs Frigger's creditors. Those mortgages were the mortgages granted to H & A Frigger Pty Ltd. The submissions by Mr and Mrs Frigger claim that such matters were 'disproved' in the course of a means inquiry conducted by Justice Martino of the Supreme Court of Western Australia."* [para 16]

3.5.4. After reading these judicial findings and observations, I formed the view that the H & A Frigger Pty Ltd mortgage required careful scrutiny.

3.5.5. After the dismissal of the Appeal Proceedings on 14 April 2023, it was clear the Real Properties vested in the Bankrupt Estates. Consequently, I considered it appropriate to progress my investigation into the H & A Frigger Pty Ltd mortgage in order to assess the potential equity in the Real Properties. To that end, on 14 April 2023 I sent a letter to H & A Frigger Pty Ltd requesting a proof of debt and any relevant supporting documents to verify their claims. A copy of that letter is at pages 803 to 816 of the Bundle.

3.5.6. On 10 August 2023, after the Special Leave Application was dismissed and as H & A Frigger Pty Ltd had not responded to my letter, I sent another letter to H & A Frigger Pty Ltd reiterating my previous request of 14 April 2023. A copy of that letter is at pages 817 to 818 of the Bundle.

3.5.7. In response to these letters, on 11 August 2023 I received a letter from the Friggers in their capacity as directors of H & A Frigger Pty Ltd demanding that I cease all communication to the company as they consider it to be "harassment". Copies of that letter and my reply email are at pages 819 to 820 and pages 821 to 824 of the Bundle, respectively.

3.6. Attempted sale of the Bayswater Property

3.6.1. On 23 May 2024, I received an email from Mrs Frigger advising she had received an offer to purchase the Bayswater Property which she intended to accept. Mrs Frigger demanded I remove the caveat registered over the title prior to, or at, settlement which they indicated would be in *"4-6 weeks"*.

3.6.2. I responded to Mrs Frigger's email on the same date. In that email I reiterated my previous request to provide details of any claim to the sale proceeds of the Real Properties by H & A Frigger Pty Ltd (and/or others), including the amount of the claim and documentation to support such claims. I also requested they provide details of the purchaser, sale price and terms of sale.

3.6.3. On 23 May 2024, Mrs Frigger responded by stating *"the Offer and Acceptance will be delivered to me in hard copy today. I will sign, scan and send you a copy."* I subsequently advised Mrs Frigger via email of the ongoing Bankrupt Estates and the vesting of this property and as such, Mrs Frigger did not have the requisite authority to sign the contract without my consent. I then reiterated I would be happy to work with her regarding the sale on the basis she provide the documents I requested. A copy of the email chain described above is at pages 825 to 829 of the Bundle.

3.6.4. On 10 June 2024, I received a letter from the directors of H & A Frigger Pty Ltd dated 7 June 2024 notifying me they had purportedly exercised a power of sale and sold the Bayswater Property by private treaty, with settlement due to take place on 2 July 2024. The letter also demanded I provide a fully executed Withdrawal of Caveat form, alongside a bank cheque to cover the lodgement fee. No communication had been received from Mrs Frigger or H & A Frigger Pty Ltd since 23 May 2024, nor had any information concerning the purchaser or H & A Frigger Pty Ltd's mortgage been provided. A copy of that letter is at pages 830 to 831 of the Bundle.

3.6.5. Between 10 June 2024 and 11 June 2024 I exchanged further emails with the directors of H & A Frigger Pty Ltd through the same email address the Friggers use in their personal capacity, being frigger@tpg.com.au. During this exchange, they reiterated their position refusing to provide any further documentation and threatened to *"obtain an urgent order from the Federal Court to enable settlement completion on 2 July 2024"* whereas I affirmed my position, that without adequate documentation supporting H & A Frigger Pty Ltd's mortgage over the properties, I could not and would not release the caveat over the Bayswater property. A copy of this email chain is at pages 832 to 844 of the Bundle.

3.6.6. On 17 July 2024, I received a call from Blair Campbell of CS Legal acting for the potential buyers of the Bayswater Property. Mr Campbell provided a copy of the executed contract by email later that date. A copy of that email chain and its attachment (being a copy of the executed contract) is at pages 845 to 872 of the Bundle.

3.6.7. On 18 July 2024, I was copied to an email sent by Mr Campbell to Mrs Frigger enclosing a notice of termination of contract, and a letter to Mrs Frigger regarding her inability to enter into a sale contract. A copy of that letter and its enclosure (being the notice of termination) is at pages 873 to 875 of the Bundle.

3.6.8. To date, no documentation concerning the sale, or the mortgage has been provided by Mrs Frigger or H & A Frigger Pty Ltd.

3.6.9. I have investigated the original source of the purported "loaned funds" the mortgages were said to secure. I was concerned to verify that H & A Frigger Pty Ltd advanced the funds said to be secured by the mortgage.

3.6.10. At pages 876 to 885 of the Bundle is a statutory declaration made by Mrs Frigger and produced by the Friggers to the Official Trustee concerning the H & A Frigger Pty Ltd mortgage. Page 6 of that document (page 881 of the Bundle) contains a copy of a BW1 bank statement which records a deposit of $4,883,504.21 received into the account on 4 March 2014, with the narration *"OST EUR3200000 W & H POPITZ"*.

3.6.11. At pages 886 to 890 of the Bundle is an extract of a BW1 bank statement I attained independently from Bankwest recording the same deposit of $4,883,504.21 received on 4 March 2014, except with the narration *"A FRIGGER 50647907S8"*. The bank statement provides no evidence to allow me to confirm that the funds were advanced by H & A Frigger Pty Ltd, nor does the statutory declaration (pages 876 to 885 of the Bundle). In my opinion the bank statement annexed to the statutory declaration is likely to be a manipulated document.

3.6.12. If the bankruptcies are not annulled and there is a shortfall in estate assets presently under my control (the funds held in the Bank Account and the Share Portfolio) to cover the costs of the administration, my remuneration and to pay creditors' admitted claims in full, then it is my intention to challenge the H & A Frigger Pty Ltd claim and the validity of its mortgage and seek to remove the mortgage from the titles of the Real Properties for the benefit of the creditors of the Bankrupt Estates.

3.7. Audit Report, Financial Statements, and Trustee Declarations

3.7.1. On 28 August 2019, at my request I received a comprehensive set of documents from Just SMSF Audits, the auditors for the FSF. These documents included audit reports, the FSF Trust Deed, minutes of meetings, financial statements, tax returns, CommSec financial year summaries for multiple years, trustee declarations and various other documents concerning the FSF and its purported assets.

3.7.2. I analysed the documents provided for the financial years ending 30 June 2016, 2017, and 2018 and observed that all the trustee declarations appeared to have been prepared after the date of the sequestration orders (20 July 2018). This timing raised my concerns about the reliability and authenticity of these documents.

3.7.3. Given the Friggers had sought on other occasions to depend on unreliable documentation, I formed the opinion that documents dated after the sequestration date were of very limited evidentiary value for determining the legal and beneficial ownership of the various assets in question at the commencement of the bankruptcies. My opinion was consistent with Jackson J's findings in the Main Proceeding Judgment at [477] where his Honour said: "*Given that they post-date the sequestration order, they cannot be taken as reliable evidence of the existence of a trust over those properties*".

3.7.4. The qualified audit reports for the FSF were also a concern for me, especially for the year ending 30 June 2017. The audit report dated 16 March 2019 (a copy of which

is at pages 891 to 900 of the Bundle), recorded that the auditors were unable to obtain independent confirmation of significant fund assets, representing approximately 63% of the FSF's total assets. Specifically, the report stated:

"We were unable to obtain independent confirmation of the fund's holding of Properties at Perth, Hobart & Bayswater; Investments in Platinum Trust; Term Deposits representing approximately 63% of the FSF's assets."

3.7.5. The qualified audit report also raised questions about the management and record-keeping practices of the FSF, as well as the true owner of assets claimed to be part of the fund. In my experience, the inability of the auditors to be able to verify a substantial portion of the fund's assets is unusual and problematic for a self-managed superannuation fund.

3.7.6. During my review, I also discovered numerous discrepancies between the documents provided by the auditors compared to those sourced from the Friggers, including the CommSec financial year summaries discussed in section 3.3 above.

3.7.7. I have also seen different versions of financial statements, including competing versions of balance sheets as at 30 June 2016 and 30 June 2017 and multiple versions of FSF's 2018 annual return. Each version carries some form of alteration and with material changes in the composition of assets, and values.

3.7.8. These discrepancies gave me further cause for concern about the reliability of the documents submitted by the Friggers.

3.7.9. By reason of my investigations referred to above, I formed the opinion that the audit reports, financial statements and post-dated declarations of market value were not reliable evidence as to the true ownership and status of the assets in question. The timing of their preparation raised serious questions about their reliability and purpose.

3.7.10. The question of the reliability of documents prepared by the Friggers including financial statements and the audits prepared based on those documents was dealt with at length by Jackson J in the Main Proceedings Judgment (pages 189 to 414 of the Bundle). By way of a small number of examples only, see Jackson J's findings in relation to:

(a) the audits at [239] and [240]:

"[239] Also it can be inferred from the date of the audit, 16 March 2019, that the auditor was working from materials which Mrs Frigger supplied after the sequestration order and close to the institution of these proceedings. Given the heavy qualification of the audit and the lack of any clear link between the audit and a particular balance sheet in the evidence, and the concerns I have expressed about the scope of the audits, I place no weight on this audit report. It follows from that and from the competing versions of the 2017 balance sheet that I also place no weight on either of them.

[240] Finally, there are two versions of a balance sheet as of June 2016 which the auditor provided to Mrs Trenfield (KAT 4 para 117; pp 411-412). These appear to have been the subject of an unqualified audit opinion dated 11 January 2019 (KAT 4 p 476). That suggests that they were

prepared and submitted to the auditor after the sequestration order was made. In cross-examination Mrs Frigger said that one of the versions was printed, at least, in early January 2019. In any event these balance sheets make no reference to BW1 as a trust asset. That is so, even though the bank statements for the account show a balance as at 30 June 2016 of $1,779,488.20 (KAT 4 p 505). So these balance sheets tend to contradict the applicants' case as to BW1."

(b) the market value declarations for various properties at [479]:

"There is no independent evidence confirming that these were in fact the dates on which they were signed and, given that the audit reports for the year ending 30 June 2016 and 30 June 2017 were each prepared in 2019, they are likely to have been provided to the auditor after the sequestration order".

(c) doctoring documents at [51] and [85]:

[51] It is necessary to say at the outset that I have concluded that [Mrs Frigger] knowingly altered documents which she put into evidence, in order to create a false impression that the documents support the applicants' case.

[85] Even if I did not draw the inference that Mrs Frigger did doctor the document with the purpose of misleading the court in her mind, that would not exculpate her. The fact would remain that she put a document into evidence which she had altered so as to say something which the original version of it, issued by an independent third party, did not say.

3.7.11. I note that a more comprehensive review of potential claims against the FSF may need to be carried out if the assets presently under my control (funds held in the Bank Account, and the Share Portfolio) are not sufficient to cover the costs of the administration, my remuneration and pay creditors' provable claims in full. Given the Friggers' litigious conduct to date, I am conscious further investigations directed to the affairs of the FSF will be costly, and any claims I seek to prosecute will be undoubtedly contested by the Friggers. Accordingly, I will not proceed with this avenue of inquiry, unless and until I am reasonably certain that it will be necessary to take that action for the benefit of the creditors of the Bankrupt Estates and then only if it would be commercially viable to do so.

3.8. Lodgement of outstanding tax returns for the Bankrupt Estates.

3.8.1. I have investigated the need to prepare and lodge outstanding tax returns for the Bankrupt Estates. This obligation stems from section 254(1)(a) of the *Income Tax Assessment Act 1936* (Cth), which requires a trustees to lodge returns and be assessed on behalf of a bankrupt.

3.8.2. A significant concern arose during my investigations regarding the accuracy of the Friggers' previous tax returns. Based on the discrepancies found in their financial records and the treatment by the Friggers of personal assets as FSF assets (those assets that Jackson J found were in fact personal assets), I believe that various tax returns lodged for several years prior to their bankruptcies may be inaccurate.

3.8.3. This situation creates a complex interplay between my duty to lodge outstanding returns and the need to verify the accuracy of past financial information. The potential misclassification of personal assets as FSF assets in previous years' tax returns raises complex questions about the true tax position of the Bankrupt Estates. This complexity arises from several factors, including:

(a) the need to untangle personal assets from those genuinely held in the FSF;

(b) the potential impact on past tax liabilities if assets were incorrectly classified;

(c) the risk of perpetuating inaccuracies if new returns are based on flawed historical data; and

(d) the potential for additional tax liabilities to arise from corrected returns, which could impact future distributions from the Bankrupt Estates.

3.8.4. Furthermore, the priority status of tax debts under section 109(1)(e) of the Act adds another layer of complexity for the administration. Any tax liabilities arising from returns I lodge would be considered provable debts in the bankruptcies, potentially impacting the distribution of assets to other creditors.

3.8.5. Based on my discussions with the ATO to date, I understand that the ATO is conducting its own investigations into tax affairs of the FSF. As these investigations are ongoing, I will continue to monitor the ATO's position and when necessary, determine the most appropriate course of action regarding the lodgement of tax returns for the Bankrupt Estates. This process may involve consultation with tax professionals and potentially the ATO to ensure compliance with all relevant laws and regulations.

3.9. Voidable Transactions

3.9.1. Until recently, my primary focus throughout the administration has been on securing the most valuable and readily realisable assets – those the subject of the Main Proceedings, namely (the Real Properties, Share Portfolio and the Bank Accounts (**Key Assets**).

3.9.2. My initial early assessment was that the realisation of the Key Assets would have been sufficient to cover the costs of the Bankrupt Estates, my remuneration and pay creditors' provable claims in full so that there would be no need for me to embark on a costly investigation of voidable transactions.

3.9.3. However, by reason of the substantial costs of the litigation discussed above, and additional creditor claims lodged to date (dealt with in section 5 below), it may be necessary to investigate and prosecute voidable transaction recovery proceeds. In other words, there is a real possibility that the Key Assets may not be sufficient to fund the administration costs, my remuneration and pay the creditors' provable claims for the reasons outlined in section 7 of this affidavit.

3.9.4. While my investigations of voidable transactions to date has been limited, I have completed an analysis to ensure that potential claims are not at risk of becoming time barred in the near future. From my investigations, I have concluded that the only potential recovery actions fall under section 121 of the Act. I understand there is no applicable limitation period for those claims by reason of section 127(4) of the Act.

4. The Friggers' conduct

4.1. Generally

4.1.1. Throughout the administration of the Bankrupt Estates, the Friggers have been uncooperative, unhelpful, obstructive, aggressive, rude and litigious. Much of that conduct is contained in section 3 above. Further instances are deposed to below.

4.2. False or manipulated evidence

4.2.1. In addition to the instances identified in section 3 above, in the Main Proceedings Judgment (pages 189 to 414 of the Bundle), Jackson J identified several instances where Mrs Frigger presented false or manipulated evidence to the Court. For example, Jackson J found that Mrs Frigger:

(a) had knowingly altered a St George Bank statement for an account ending in 718 (**STG1**). Mrs Frigger had presented a version of this statement in her affidavit which included the notation "Frigger Super Fund" in the account name. However, evidence revealed this notation was not present on the original bank statement. His Honour held at [65]:

> *"I do not accept Mrs Frigger's evidence that the St George bank statement she downloaded had no account name on it, and she mistakenly put her name on it, along with the reference to the FSF. It is an explanation proffered in an attempt to dispel the obvious inference arising from the different versions of the statement in evidence, that Mrs Frigger altered the document so that it no longer showed Jessica Frigger as the account holder, and then put it into evidence in an attempt to persuade the court that it was an asset of the FSF."*

(b) had deliberately altered a CommSec Financial Year Summary for the year ending 30 June 2018. The altered version included the words "FRIGGER SUPER FUND" under the account name, which did not appear in the original document. At [84], his Honour held:

> *"I draw the inference the first respondent puts, namely that Mrs Frigger altered the CommSec statement shortly before annexing it to affidavit ACTF 1 with the intention of convincing the court that it was an asset of the Frigger Super Fund."*

(c) displayed a readiness to change her evidence to suit her interests. Mrs Frigger's evidence about the FSF's ownership of $80,000 held in a St George Bank account was different to what she had said in previous proceedings before Colvin J (WAD 616 of 2017) where she had claimed this was a personal asset to avoid bankruptcy. At [87], Jackson J observed:

> *"She admitted that she had told Colvin J that it was a personal asset 'from the bar table and I was doing it in my desperation not to be put into bankruptcy' (ts 381 ln 25). She then tried to resile from that evidence, or at least qualify it, in re-examination in this proceeding (ts 469). She then attempted to give a further explanation in closing submissions which was, with respect,*

incomprehensible (ts 960-961). All this displays a readiness on Mrs Frigger's part to change what she tells the court in order to suit what she perceives to be her interests on the particular occasion."

(d) had created false meeting minutes purportedly from a meeting held on 1 July 2014. However, his Honour found significant issues with the authenticity of these minutes. At [472], his Honour held:

> *"I am, once again, conscious that any finding that Mrs Frigger did deliberately create the 2014 Minutes for the purposes of putting them into evidence is a serious one and that it is a matter of which I should be firmly persuaded if I am to make a finding to that effect. The accumulation of circumstances summarised in the previous two paragraphs, along with Mrs Frigger's history of producing altered documents to the court in this proceeding, does so persuade me."*
>
> His Honour went on explain the minutes appeared to have been created after 22 May 2020, specifically for the purpose of the court proceedings, rather than being genuine contemporaneous records from 2014. This finding was based on various inconsistencies and the timing of when these minutes were first produced in evidence.

4.3. Attempts to retake control of assets

4.3.1. The Friggers have also attempted to, in effect, take back control of the Share Portfolio and the cash held in the Bank Accounts.

4.3.2. I was informed by Henry Newton (a former FTI staff member) and believe that on 28 September 2020 (shortly after the trial of the Main Proceedings but before judgment was delivered) Mr Newton received a call from Ben Mullavey from Computershare and was advised the Friggers were attempting to unfreeze the Share Portfolio. The call was file noted, a copy of which is at page 901 of the Bundle.

4.3.3. Consequently, on 29 September 2020, I issued letters to the following share registries advising them to keep the freezes in place until advised otherwise:

(a) Advanced Share Registry Ltd;

(b) Automic Pty Ltd;

(c) Boardroom Pty Limited;

(d) Computershare Investor Services Pty Limited; and

(e) Link Market Services Limited,

copies of which are at pages 902 to 911 of the Bundle.

4.3.4. On 10 August 2021 (prior to delivery of judgment in the Main Proceedings), my office received an email from Peter Collins, a Senior Operations Officer at BOQ who indicated Mr Frigger had attended the BOQ Applecross branch to close BOQ2 and transfer the funds held in the account to Mrs Frigger. A copy of that email together with its attachment is at pages 912 to 916 of the Bundle.

4.3.5. I am informed by Paris Parasadi (an employee of FTI assisting me with the administration of the Bankrupt Estates) that on 16 August 2021 he received a call from an officer of the BOQ Applecross branch who reported that Mr Frigger has been threatening the staff at the Branch demanding the BOQ1 and BOQ2 be unfrozen, and claiming "proceedings have been resolved".

4.3.6. On 16 August 2021, Lachlan Bowness of FTI's staff received an email from CommSec advising that CommSec had received a number of documents from the Friggers and enquiring whether the contents of those documents were genuine, and whether it meant they should be unfreezing the account. A copy of that email (without the attachments) is at pages 917 to 920 of the Bundle.

4.3.7. On 18 August 2021 I sent a letter to CommSec confirming that the freeze of the Share Portfolio should not be lifted. A copy of that letter is at pages 921 to 922 of the Bundle.

4.3.8. Also on 18 August 2021 I sent a letter to BOQ, to confirm my instructions that the BOQ accounts were to remain frozen. A copy of that letter is at pages 923 to 924 of the Bundle.

4.3.9. The Friggers' attempts to unfreeze the Share Portfolio and access the BOQ accounts was, obviously, not authorised by me. I found the behaviour quite extraordinary, especially given the Friggers had previously tried, unsuccessfully to seek summary judgment and compel me to unfreeze those assets and given that the judgment in the Main Proceedings had not yet been delivered.

4.4. Failure to account for deceased estate distribution

4.4.1. On or around, October 2021, I received notice of a then recently commenced proceeding in the Supreme Court of Western Australia no CIV 1887 of 2021 to which Mrs Frigger was a party. My subsequent investigations revealed that Mrs Frigger was a beneficiary of the deceased estate of Evelyn Reid and had received a distribution from the estate of $111,315.05 on or around May 2021.

4.4.2. I was not informed by Mrs Frigger of the distribution from the Ms Reid's estate.

4.4.3. On 25 October 2021, I sent a letter to Mrs Frigger requiring her to pay the sum of $111,315.05 to Angela's Estate pursuant to section 58(b) of the Act. A copy of that letter is at pages 925 to 926 of the Bundle.

4.4.4. Having received no response, on 8 November 2021 I sent a further letter to Mrs Frigger. A copy of that letter is at pages 927 to 928 of the Bundle. Mrs Frigger responded by letter on the same day, disregarding my request and instead demanding I reveal the source of my investigations which revealed her inheritance. A copy of that letter is at page 929 of the Bundle.

4.4.5. I responded to Mrs Frigger's letter on 10 November 2021, and restated my request for Mrs Frigger to pay the sum of her inheritance to Angela's Estate. A copy of that letter is at pages 930 to 941 of the Bundle.

4.4.6. On 10 November 2021 I received an email from Mrs Frigger in response to my letter of the same date. A copy of that email is at pages 942 to 944 of the Bundle. In the email, Mrs Frigger refused to admit she received the funds and stated, among other things:

"Your letter beggars belief!!.... You are such a fucking liar. In case you haven't noticed, I did not come down in the last shower. ... You currently owe my husband and me approximately $8,000,000 in damages."

4.4.7. To date, the amount I demanded from Mrs Frigger has not been paid to Angela's Estate.

4.5. Failure to provide information and documents for income assessment

4.5.1. Pursuant to section 139U of the Act, I have sought to assess the Friggers' income on several occasions:

(a) on appointment, for the contribution assessment period (**CAP**) 1 of 20 July 2018 to 19 July 2019 (estimate);

(b) in August 2019, for CAP 1 of 20 July 2018 to 19 July 2019 (actual) and CAP 2 of 20 July 2019 to 19 July 2020 (estimated); and

(c) in August 2021, for the CAP of 20 July 2020 to 19 July 2021 (actual) and 20 July 2021 to 25 July 2021 (actual).

4.5.2. On appointment, I relied on the materials provided by AFSA to assess the Friggers' potential estimated income contribution liability. However, while the First Annulment Application and the First Extension Application were pending, I did not actively pursue the assessments. I decided to defer further action on income contributions until the outcome of those proceedings was known.

4.5.3. In August 2019, I requested the Friggers provide me with details of their income.

4.5.4. In their response by email on 29 August 2019, the Friggers indicated their income for the contribution periods ended 19 July 2019 and 2020 was $57,866.90 each. A copy of that email chain is at pages 945 to 947 of the Bundle.

4.5.5. I made similar requests of the Friggers in July 2020 and August 2021. Copies of those requests are at pages 948 to 967 and pages 968 to 989 of the Bundle, respectively.

4.5.6. A copy of the email correspondence between FTI staff members and Mrs Frigger following my request of July 2020 is at pages 990 to 991 of the Bundle. No further response was received.

4.5.7. In response to my August 2021 request, the Friggers advised by email on 24 August 2021 that their income for the period of 20 July 2020 to 19 July 2021 was $40,000. A copy of that email is included in the email chain that is at pages 968 to 989 of the Bundle.

4.5.8. I considered the Friggers' disclosed income to be substantially understated because the reported income did not appear to include any dividends they would have received from the Share Portfolio, nor rental income from the Como Property and the Bayswater Property or amounts required to be drawn from their substantial superannuation accounts.

4.5.9. Over the course of the administration, I have requested that the Friggers substantiate their disclosed income by providing me with details of the bank account they then used for day-to-day transactions, and bank statements. I have also

requested they provide me with documentary evidence supporting their advice regarding the amount of pension income they received. Copies of the letters I sent to the Friggers on 29 November 2019 are at pages 992 to 993 of the Bundle.

4.5.10. I have never received an appropriate response from either of the Friggers in relation to my requests. To date, the Friggers have maintained:

(a) their only income is limited to the allocated pension from the FSF;

(b) there are no bank accounts to which allocated pensions are paid;

(c) there are no bank accounts used for day-to-day (personal) transactions; and

(d) all living expenses are paid using cash.

4.5.11. At pages 994 to 1001 of the Bundle is a copy of an email chain between Lachlan Bowness of FTI's staff and Mrs Frigger on 8, 16, 17, 20, 28 and 29 January 2020, to which I was copied, in which the Friggers maintain these positions.

4.6. Failure to provide information necessary to adjudicate creditors' proofs of debt

4.6.1. During the administration and in various proceedings, the Friggers have on numerous occasions claimed that they have counterclaims against most of the creditors who have lodged proofs of debt in the Bankrupt Estates and that some of those creditors are actually debtors of the Bankrupt Estates.

4.6.2. To assist me to adjudicate the proofs of debt that have been submitted I have requested the Friggers provide me details and supporting documentation for any counterclaims they consider they may have against creditors. A true copy of my letter of request to the Friggers dated 27 March 2024 is at pages 1002 to 1008 of the Bundle.

4.6.3. I did not receive an adequate response to my letter (an affidavit was filed in the Removal Application which provided no useful information). Accordingly, I prepared a schedule of the information required from the Friggers to assist me to adjudicate the proofs of debt. I sent this schedule to Mrs Frigger under cover of my letter dated 7 May 2024. A copy of that letter is at pages 1009 to 1011 of the Bundle.

4.6.4. On 15 May 2024, Mrs Frigger requested an extension of time to 6 June 2024 to provide a response so she could attend her criminal trial. I did not receive a response by 6 June 2024 and so on 10 June 2024, I sent a follow up email asking Mrs Frigger to provide this information by 14 June 2024. A copy of an email chain containing the relevant emails with Mrs Frigger is at pages 1012 to 1017 of the Bundle.

4.6.5. On 15 June 2024, I received an email from Mrs Frigger providing me with some additional information. Mrs Frigger stated that she was providing the information 'under protest'. A copy of this email and its attachments is at pages 1018 to 1045 of the Bundle. The additional documents provided are unhelpful and are not responsive to my request. The documents do not enable me to determine whether there is any merit to the alleged counterclaims.

5. Creditors of the Bankrupt Estates

5.1. Proofs of Debt the subject of adjudication

5.1.1. In April 2023, following the dismissal of the Appeal Proceedings, I invited the creditors of the Bankrupt Estates to submit their proofs of debt for adjudication. In my update report to creditors issued on 27 March 2024, a copy of which is at pages 1046 to 1050 of the Bundle, I advised creditors it was my intention to finalise my adjudication of all claims in the Bankrupt Estates and gave creditors a further opportunity to submit a proof of debt by no later than 17 April 2024.

5.1.2. I have received 22 proofs of debt from 13 separate creditors. While there are only 22 proofs of debt, most of the proofs of debt contain multiple separate claims. There are 75 separate claims within the 22 proofs of debt.

5.1.3. I have not annexed to this affidavit each of the proofs of debts and supporting information because the documentation is voluminous, and I consider it unnecessary to refer to that documentation for the purpose of updating the Court on the status of the administration of the estates.

5.1.4. The following table provides a breakdown of each claim types for each of the Bankrupt Estates:

Claim Type	Joint Estate ($)	Angela's Estate ($)	Hartmut's Estate ($)
Legal fees	270,700.97	-	-
Interest	405,010.50	62.35	-
Adverse costs	2,213,643.36	5,222.85	-
Judgment debts	77,948.96	-	-
Other claims (CAT/Kitay claims)	7,592,082.54	-	-
Petitioning and supporting creditor costs	77,347.26	-	-
Total	**10,636,733.59**	**5,285.20**	**-**

5.1.5. The majority of the claims (in number) made by unsecured creditors arise from adverse costs orders made against the Friggers, judgment debts payable by the Friggers and claims for unpaid legal fees incurred by them, prior to the commencement of the bankruptcies. As most of the claims have not been taxed, to assist me to adjudicate these proofs of debt, I have engaged Ms Kellie Woods, an independent WA-based barrister experienced in costs assessments, to review the proofs of debt and supporting documents and to provide her opinion on the amount that, in her experience, would likely be awarded on a taxation of those costs. I have adopted this approach because, in my experience, it would be far more time consuming and costly to require each creditor to have its costs claim taxed.

5.1.6. Ms Woods has completed her review of a number of proofs and is awaiting further information from a number of creditors to complete her reviews.

5.1.7. The remaining claims relate to Mr Kitay's petitioning creditor costs and claims by Mr Kitay (in his capacity as liquidator of CAT) and CAT.

5.1.8. On 24 July 2024, Mr Kitay's bill of costs for his petitioning creditors' costs was filed for taxation in WAD 616 of 2017. Ms Woods has been instructed to review the bill of costs so I may decide whether to respond to the bill of costs.

5.1.9. CAT has lodged a proof of debt for $5,536,727 against the joint estates. Mr Kitay has lodged a proof of debt for $2,716,308 against the joint estates, and a proof of debt for $1,000 against Mrs Friggers' estate. The claims the subject of the proofs of debt fall into two categories:

(a) claims in relation to 24 separate costs orders made against Mr and Mrs Frigger, not including the petitioning creditor's costs of Mr Kitay; and

(b) claims the subject of a counter-claim made against the Friggers by CAT and Mr Kitay in Supreme Court of Western Australia proceedings CIV 2765 of 2010 (**CAT Proceedings**) which is being prosecuted with leave granted by Jackson J on 6 May 2021 (*Kitay v Trenfield* [2021] FCA 508 (a copy of which is at pages 1051 to 1062 of the Bundle). I am not a party to the CAT Proceedings.

5.1.10. At pages 1063 to 1151 of the Bundle is a copy of the minute of proposed re-amended substituted defence and counterclaim filed in the CAT Proceedings (**CAT defence and counterclaim**). The claims the subject of the CAT counterclaim are summarised in paragraphs 6 to 9 of Jackson J's reasons. I understand from reading the CAT defence and counterclaim and the decision of Jackson J that the primary provable claim of CAT in the Joint Estate is a debt claim against the Friggers in respect of a running account between CAT and the Friggers, but that the debt claim (the balance of the running account) is dependent on the resolution of a number of other (complex) issues of fact and law including those identified in paragraphs 7 to 9 of his Honour's reasons.

5.1.11. It is apparent from the CAT defence and counterclaim that the claims in the CAT Proceedings are complex and complicated. For those reasons, I note that Jackson J concluded that they are not suitable for determination in the bankruptcy administration. In granting leave to CAT and Mr Kitay to continue to prosecute the counterclaim in the CAT Proceedings, Jackson J held at [27]:

> "... I was satisfied that the undoubtedly provable claim in debt which [CAT/Kitay] wish to pursue against the Friggers is a substantial part of a complicated web of claims, so that it would be impracticable to try to separate it out. If, for example, leave to proceed was not given, then [CAT/Kitay] would need to prove for that claim in the bankruptcy, but quantification of that proof may require determination of numerous other non-provable aspects of the counterclaim. The complexity and contestability of many of those aspects make them unsuited to determination as part of the bankruptcy administration and it is likely that they would end up back in court, especially since the bankrupts have a right to apply to the court for review of any decision of the trustee in bankruptcy to admit a proof of debt: s 104(1). That situation would be contrary to the orderly administration of the bankrupt estate..."

5.1.12. Noting Jackson J's findings set out immediately above, it is my current intention:

(a) to defer adjudication of the CAT and Kitay proofs of debt relating to the claims the subject of the CAT counterclaim until the CAT Proceedings are determined; and

(b) to monitor the progress of the CAT Proceedings to ensure that the deferral of the adjudication of the proofs of debt will not unduly delay the finalisation of the administration of the Bankrupt Estates.

5.1.13. I am aware that orders were made on 18 July 2024 that the case management hearing for the CAT proceedings be adjourned until these proceedings are determined. A copy of the orders of Archer J made that day is at page 1152 of the Bundle. Given that order, my decision to defer the adjudication of the CAT and Kitay proofs of debt may need to be revisited in the unlikely event it becomes apparent that a trial of these proceedings may be delayed for a significant period of time.

5.2. Current assessment of the proofs of debt

5.2.1. A summary of my current assessment of creditors' proofs of debt against the Bankrupt Estates is at pages 1365 to 1367 of the Bundle:

(a) amounts claimed by each creditor;

(b) a short description of the basis of each creditor's claim;

(c) the status of the adjudication of each proof; and

(d) the amounts estimated to be admitted to proof.

5.2.2. The total claims made by creditors is $10,642,018.79. While my adjudication of proofs is continuing, my present estimate (to the extent that I am able to give an estimate) is that (not including the Kitay/CAT proof in relation to the CAT Proceedings):

(a) claims of $1,590,097.27 are likely admissible to proof;

(b) claims of $21,866.50 have been withdrawn; and

(c) claims of $405,455.72 are likely to be rejected.

5.2.3. The remaining proofs of debt relate to:

(a) costs orders or claims for legal fees claimed in the amount of $963,136.10 where further information is required from creditors to adjudicate the proofs of debt or which require review by Ms Woods; and

(b) the claims the subject of the CAT counterclaim which are to be deferred and it is too early to estimate the likely admissible amounts of the CAT and Kitay proofs in respect of those claims.

6. Costs of the Administration

6.1. Remuneration Approvals

6.1.1. To date, I have obtained creditor approval for:

(a) my remuneration for administering the Bankrupt Estates in the amount of $1,378,650.50 (excluding GST); and

(b) my internal disbursements (for services provided to me by FTI) incurred for administering the Bankrupt Estates in the amount of $10,164.18 (excluding GST).

6.1.2. The breakdown of each creditor approval is provided below.

6.1.3. On 8 November 2018, I obtained creditor approval for:

(a) my remuneration for the period 31 August 2018 to 7 October 2018 in the amount of $24,890.50 (excluding GST). At pages 1153 to 1162 of the Bundle is a copy of my certification dated 8 November 2018 of the resolutions I obtained from the creditors of the estates without holding a meeting of creditors pursuant to section 75-40 of the Insolvency Practice Schedule (Bankruptcy) (IPS) approving this remuneration;

(b) my then estimated future remuneration for the period 8 October 2018 to the conclusion of the administration in the sum of $109,090.91 (excluding GST). At pages 1163 to 1172 of the Bundle is a copy of my certification dated 8 November 2018 of the resolution I obtained from the creditors of the estates without holding a meeting of creditors pursuant to section 75-40 of the Insolvency Practice Schedule (Bankruptcy) (IPS) approving this remuneration;

(c) my internal disbursements for the period 31 August 2018 to 7 October 2018 in the amount of $164.18 (excluding GST). At pages 1173 to 1182 of the Bundle is a copy of my certification dated 8 November 2018 of the resolution I obtained from the creditors of the estates without holding a meeting of creditors pursuant to section 75-40 of the IPS approving these internal disbursements; and

(d) my then future estimated internal disbursements for the period 8 October 2018 to the conclusion of the administration in the amount of $10,000 (excluding GST). At pages 1183 to 1193 of the Bundle is a copy of my certification dated 8 November 2018 of the resolution I obtained from the creditors of the estates without holding a meeting of creditors pursuant to section 75-40 of the IPS approving these internal disbursements.

6.1.4. On 3 October 2023, I obtained further creditor approval for:

(a) my remuneration for the period 27 August 2019 to 13 August 2023 in the amount of $869,669.09 (excluding GST). At page 1194 of the Bundle is a copy of my certification dated 3 October 2023 of the resolution I obtained from the creditors of the estates without holding a meeting of creditors pursuant to section 75-40 of the Insolvency Practice Schedule (Bankruptcy) (IPS) approving this remuneration; and

(b) my then estimated future remuneration for the period 13 August 2023 to the conclusion of the administration in the amount of $375,000 (excluding GST). At page 1195 of the Bundle is a copy of my certification dated 3 October 2023 of the resolution I obtained from the creditors of the estates without holding a meeting of creditors pursuant to section 75-40 of the Insolvency Practice Schedule (Bankruptcy) (IPS) approving this remuneration.

6.1.5. I hold no other approval for my remuneration and internal disbursements in relation to the administration of the estates.

6.1.6. To date, and despite the approvals referred to above, I have not drawn down any funds of the Bankrupt Estates that I hold to pay any approved remuneration or internal disbursements.

6.1.7. At pages 1196 to 1199 of the Bundle, is a copy of a letter from my instructing solicitors, JWS, to the Associate to Colvin J dated 9 May 2024 (**Confirmation Letter**) confirming to the Court in the course of the Removal Proceedings that I will not draw down any of the Bankrupt Estates' funds to pay any remuneration or internal disbursements, approved or to be approved in the future, without the Court's approval.

6.2. Time cost for work done administering the Bankrupt Estates

6.2.1. From the date of my appointment to 31 July 2024, the time cost for all the work performed by FTI staff and me to administer the Bankrupt Estate, calculated using FTI's charge-out rates of its staff from time to time, totals $1,277,327 (excluding GST). As noted in the table below, of this amount, $645,829 has been incurred to defend the various proceedings commenced by the Friggers.

Task Category	Hours	Charge ($)	%
Administration - Banking	138.0	52,089	3.9%
Administration - File Review	65.8	33,466	2.5%
Administration - General	110.60	46,171	3.4%
Administration - Remuneration	53.5	26,218	1.9%
Assets - Income Assessment	37.5	15,349	1.1%
Assets - Strategy	21.1	10,264	0.8%
Creditor - Correspondence	104.50	51,197	3.8%
Creditor - Other	8.6	3,278	0.2%
Creditor - POD	121.10	55,284	4.1%
Creditor - Report	101.50	45,296	3.4%
Investigations - Bank Accounts	164.8	67,290	5.0%
Investigations - Gathering records	82.7	35,498	2.6%
Investigations - Property	47.6	19,303	1.4%
Investigations - Shareholdings	226.5	95,560	7.1%
Investigations - SMSF	68.6	29,419	2.2%
Investigations - Statutory	105.7	46,924	3.5%
Legal costs	1,320.9	716,398	53.1%
Total	**2,780.0**	**1,349,000**	**100.0%**

6.3. External Disbursements – legal costs

6.3.1. As at 2 May 2023, the external disbursements which I incurred in the administration of the Bankrupt Estates totalled $756,442.94 (excluding GST). The majority of those disbursements were legal fees, including counsel fees, incurred by me in defending the Main Proceedings, the Appeal Proceedings and other proceedings commenced by the Friggers.

6.3.2. Between 3 May 2023 and 25 August 2023, I have incurred a further $68,805.25 (excluding GST) in external disbursements in the administration of the Bankrupt Estates, not including external disbursement I have incurred to defend the Removal Proceedings. The majority of the disbursements were legal fees, including counsel fees, incurred by me in defending proceedings commenced by the Friggers.

6.3.3. The external disbursements discussed above were funded and paid on my behalf by FTI. On 20 September 2023, I reimbursed FTI using funds of the Bankrupt Estates for the external disbursements of $756,442.94 (excluding GST) and $68,805.25 (excluding GST) that FTI had funded.

6.3.4. Between 26 August 2023 and 31 July 2024, I have incurred a further $232,490.25 (excluding GST) in external disbursements in the administration of the Bankrupt Estates, including defending the Removal Proceedings and assisting the Court in this proceeding. Separately to those costs, I have drawn down funds of $77,376.91 to pay external disbursements not related to defending the Removal Proceedings or assisting the Court in this proceeding. FTI has funded payment of the external disbursements relating to my defence of the Removal Proceedings, and for assisting the Court in these proceeding.

6.3.5. FTI continues to fund part of my external disbursements because, as I confirmed to the Court in the Confirmation Letter:

(a) without the Court's approval, I will not draw down any funds to pay external disbursements I had incurred to 9 May 2024 and which remained unpaid at that time, or will incur in the future, in respect of my defence of the Removal Proceedings; and

(b) without the Court's approval, I will not draw down any funds to pay any external expenses I will incur after 9 May 2024 in respect of my involvement in these proceedings.

6.4. Payment of remuneration, and disbursements

6.4.1. To date, the Friggers have not offered or submitted any proposal to me for payment of my remuneration, and internal and external disbursements incurred by me in administering the Bankrupt Estates or any amount in respect of estate creditors in the event that the bankruptcies are annulled or the sequestrations orders are set aside by the Court in these proceedings.

7. Estimated Statement of Position

7.1. Introduction

7.1.1. I note that pursuant to section 110 of the Act:

(a) the assets of the Joint Estate must be applied to their joint debts;

(b) the separate assets of each Angela's Estate and Hartmut's Estate must be applied to their separate debts;

(c) if there is a surplus in either Angela's Estate or Hartmut's Estate, it shall be dealt with as part of the Joint Estate; and

(d) if there is a surplus in the Joint Estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each joint debtor in the Joint Estate.

7.1.2. It is very difficult for me to give a realistic estimate as to the likely net position of the Joint Estate or either of the Bankrupt Estates for two reasons.

7.1.3. First, I am yet to complete my adjudication of creditors' proofs of debt, including the significant proofs lodged by CAT and Mr Kitay in relation to the claims the subject of the CAT Proceedings.

7.1.4. Second, the future fees and costs that will be incurred in the future administration of the Bankrupt Estates are unknown - the majority of those costs are likely to be incurred in continuing to respond to litigation commenced by the Friggers.

7.1.5. However, for the purpose of reporting to the Court, I have prepared with assistance from FTI's staff, an estimated statement of position for the Bankrupt Estates as at 31 July 2024 (**ESOP**) based on alternative 'high' (optimistic) and 'low' (pessimistic) scenarios. The ESOP is set out in section 7.2, with notes in section 7.3.

7.1.6. The ESOP is a preliminary estimate only based on the information presently available to me as Trustee, and subject to various assumptions and limitations that are noted in the 'comments' column of the ESOP.

7.1.7. I note that the 'high' optimistic scenario only includes those creditor claims that have provided supporting documentation and that I have assessed, on a preliminary basis, are likely to be admitted. Mr Kitay's claim is not included in that scenario.

7.1.8. Conversely, the 'low' pessimistic scenario assumes that the balance of the creditors' claims (other than those which should likely be rejected), are admitted, including Mr Kitay's claim.

7.1.9. Nothing that I depose to in this affidavit about the net position should be taken as me having already reached a decision or that I am pre-disposed to reaching such a decision.

7.1.10. As to the estimated net position:

(a) even on an optimistic scenario (a scenario that would be, in effect, more beneficial to the Friggers in the sense of there being a return of assets to them) there is insufficient cash assets to meet all creditor claims including the trustees remuneration and disbursements and I will need to have

recourse to at least some of the Share Portfolio (which shares in the portfolio would be a matter for consideration in due course); and

(b) on a pessimistic scenario it is possible that even if all of the assets currently vested in me were realised, creditor claims, including my remuneration and disbursements, would not be satisfied in full.

7.1.11. There are a number of variables that will affect the estimated net position. One of those variables is how much time and cost will be incurred in dealing with the present and possible future litigation.

7.1.12. As noted, the Friggers have proved to be highly litigious. Thus far multiple proceedings have been commenced to which I am a party and the legal fees and my time and FTI staff's time in dealing with that litigation has been significant.

7.1.13. If the litigation continues and proliferates it is quite possible that my remuneration, and disbursements (including the legal fees incurred and to be incurred) will significantly erode the assets that would otherwise be available to ordinary unsecured creditors of the Bankrupt Estates.

7.1.14. In other words, by the Friggers continuing to involve me in litigation and continuing to make allegations (old and new) they are effectively continuing to reduce the assets that might otherwise have been returned to them.

7.1.15. Thus far, the substantive decisions that have been delivered in the proceedings in which I have been named (as Trustee of the estates) have justified the position I have taken in those proceedings and there is, at this point, no reason for me to consider that my remuneration and my disbursements (including legal fees incurred and to be incurred) will not be found to have been justified and will be approved by creditors or the court (as the case may be).

7.1.16. I make that observation only for the purposes of justifying both the high and low scenarios in ESOP and also to highlight the potential precariousness of the estimated further remuneration, and disbursements in that estimate. Given the current circumstances, I have provided the best estimates as to the likely net position of the Joint Estates. I have not prepared a separate ESOP for Angela's Estate or Hartmut's Estate as they have limited creditors.

7.1.17. I note also that the optimistic scenario:

(a) assumes no further creditor claims are received or admitted;

(b) includes only those creditors with claims that have been assessed, finally or on a preliminary basis, as likely to be admitted. Mr Kitay's claim is not included in full for this scenario;

(c) assumes that the Share Portfolio is realised at current market value;

(d) adopts a 'high end' realisation value for the Real Properties based on searches conducted with Corelogic (noting the higher value has an adverse impact on my liability for Capital Gains Tax (**CGT**) and related selling costs); and

(e) assumes limited legal fees are incurred, the extent of which is dependent upon ongoing and additional legal proceedings to which the I am a party as noted above.

7.1.18. Conversely, the pessimistic scenario assumes:

(a) the balance of the creditors' claims not yet rejected are admitted, including Mr Kitay's larger claim;

(b) the Share Portfolio is realised at 10% less than the current market value; and

(c) the Real Properties are realised at low estimates based on searches conducted with Corelogic (noting the lower sale price will reduce my liability for CGT and related selling costs).

7.2. ESOP

Assets / (Liabilities)	Note	Hartmut Frigger SOA ($)	Angela Frigger SOA ($)	Joint Estates Optimistic ($)	Joint Estates Pessimistic ($)
Assets					
Cash at bank	7.3.1	3,000	3,000	1,943,348	1,943,348
Superannuation	7.3.2	2,762,864	3,029,400	-	-
Motor vehicle	7.3.3	3,000	10,000	-	-
Real property	7.3.4	1,700,000	1,700,000	1,038,725	767,798
Debtors	7.3.5	5,926,869	5,926,869	-	-
Shares / investments	7.3.6	-	-	3,409,721	3,091,660
Transfers	7.3.7	18,000	18,000	-	-
Income contributions	7.3.8	n/a	n/a	-	-
Voidable transactions	3.9	n/a	n/a	-	-
Other assets	7.3.9				
Total assets		**10,413,733**	**10,687,269**	**6,391,793**	**5,802,806**
Liabilities					
Secured creditors	3.1.2, 5.2.1	(2,450,050)	(2,450,050)	-	-
Unsecured creditors	3.1.2, 5.2.1	(272,598)	(272,598)	(1,590,097)	(7,979,655)
Realisation and interest charges	7.3.10	n/a	n/a	(6,820)	(6,820)
Petitioning creditor's costs	7.3.11	n/a	n/a	(55,481)	(55,481)
Current Trustee remuneration	7.3.12	n/a	n/a	(1,349,000)	(1,349,000)
Current Trustee external disbursements	7.3.12	n/a	n/a	(232,490)	(232,490)
Current Trustee internal disbursements	7.3.12	n/a	n/a	(323)	(323)
Current legal fees	7.3.13	n/a	n/a	-	-
Other costs	7.3.14	n/a	n/a	(25,500)	(38,250)
Total liabilities		**(2,722,648)**	**(2,722,648)**	**(3,259,711)**	**(9,662,019)**

7.3. Notes to ESOP

7.3.1. Cash at bank

(a) The SOAs recorded each of the Friggers separately held cash at bank in the amount of $3,000.

(b) The current net position represents the cash at bank I currently hold in the amount of $1,943,348. This amount is derived from:

(1) funds from a pre-appointment account legally and beneficially held by Hartmut Frigger;

(2) dividend payments received from various shareholdings held by the Friggers; and

(3) interest earned on funds held by the me in an interest savings account.

7.3.2. Superannuation

(a) The SOAs provided superannuation balances of $2,762,864 for Hartmut Frigger and $3,029,405 for Angela Frigger.

(b) Despite my requests, the Friggers have not provided any substantive evidence to substantiate this balance of their superannuation funds. As already explained, the Friggers did provide documentation asserting they were trustees of FSF which held significant assets including shareholdings and cash at bank.

(c) Given the findings in the Main Proceedings, the Share Portfolio and cash at bank have been addressed in this ESOP as shareholdings and cash at bank rather than superannuation.

(d) Pursuant to section 116(2)(d)(iii)(A) of the Act, the interest of a bankrupt in a regulated superannuation fund (within the meaning of the SIS Act) is not considered property divisible amongst a bankrupt's creditors and as such does not attribute any recoverable value.

(e) Despite irregularities the FSF remains a regulated fund. Should further investigations identify assets of the Friggers that are purported to be assets of FSF, the value would of these assets to the Bankrupt Estates would be in recovery actions rather as a claim to a Friggers' superannuation entitlement accounts.

(f) Accordingly, I do not anticipate a superannuation recovery in either the optimistic or pessimistic scenario.

7.3.3. Motor vehicles

(a) Pursuant to section 116(2)(ca) of the Act, a bankrupt is entitled to own a primary means of transport to the certain value which is indexed biannually. It must be noted this can be applied to one (1) vehicle only.

(b) The Friggers listed the following motor vehicles in their SOAs:

Owner	Make	Model	Year
Hartmut Frigger	Toyota	Camry	2001
Angela Frigger	Toyota	Hybrid	2010

(c) The Friggers have indicated both vehicles are subject to finance but have not provided further information in this regard. Investigations identified the equity in value of these vehicles is below the threshold and as such neither vehicle has any recoverable value in either an optimistic or pessimistic scenario.

7.3.4. Real property

(a) The SOAs noted the Friggers have an interest in one (1) real property, the Applecross Property, with an estimated resale value $1.7M. As already noted my investigations identified the Friggers have interests in the Real Property.

(b) The SOAs indicate the balance of the H & A Frigger Pty Ltd mortgage was $2,450,050 as at 25 July 2018. Despite numerous requests, and as already explained above, the Friggers have not provided an updated balance or further details regarding this mortgage.

(c) My investigations provide the below optimistic and pessimistic net position of the Real Properties after costs:

Property	Optimistic ($)	Pessimistic ($)	Comments
Bayswater Property	858,000	746,000	Based on searches conducted with Corelogic on 11 June 2024
Como Property	680,000	490,000	Estimates based on publicly available property data
Applecross Property	3,500,000	2,580,000	Based on searches conducted with Corelogic on 11 June 2024
Less:			
Realisation charges	(352,660)	(267,120)	Future expected realisation charge at 7%
Capital Gains Tax (**CGT**)	(897,909)	(92,540)	CGT calculated at FY25 marginal tax rate
Mortgage - H & A Frigger Pty Ltd	(2,450,050)	(2,450,050)	Assumes mortgage balance per SOAs
Advertising costs	(50,380)	(7,460)	Assumes costs of 1% of sale price
Conveyancing fees	(50,000)	(50,000)	Assume conveyancing fee of $50,000 for the Real Properties
Valuation fees	(2,250)	(3,000)	Assume $750 high and $1,000 low valuation fees per property
Agent fees	(136,026)	(103,032)	Assumes costs of 2.7% of sale price
Trustee remuneration for sale of the Real Properties	(60,000)	(75,000)	
Net position of the Real Properties after costs	1,038,725	767,798	

(d) For the purposes of preparing the ESOP, I have assumed the Applecross Property is the Friggers principal place of residence and therefore incurs no CGT in the event of a sale.

(e) As the purchase prices for the Bayswater Property and the Como Property are not known, I have used the average property prices in the area at the years of acquisition (1977 for the Como Property; 1997 for the Bayswater Property) for the purposes of estimating the applicable CGT. The Como Property will incur not CGT given the acquisition pre-dates the CGT regime.

7.3.5. Debtors

(a) The SOAs reported $5,926,869 in outstanding debtors, which comprise of individuals against whom the Friggers have made various claims. I note the debtors listed appear to, in fact, be creditors of the Bankrupt Estates. I have previously requested the Friggers provide me with documents to justify their claims against these individuals, but to date they have failed to provide me with adequate information supporting their claims.

(b) These amounts do not represent crystallised debts which are due and payable but rather claims requiring litigation to realise. As such, I consider these amounts to be overstated and not commercially recoverable.

(c) Accordingly, there is no anticipated recovery in either the optimistic or pessimistic scenarios.

7.3.6. Shares / investments

(a) Whilst the SOAs did not list any shares or investments owned by the Friggers, Jackson J in the Main Proceedings held that the Share Portfolio is an asset of the Joint Estate.

(b) I have engaged JBWere to manage the Share Portfolio. As at 11 June 2024, the value of shares in the Share Portfolio was $4,081,554.94.

(c) The current optimistic and pessimistic estimates of the net position of the Share Portfolio after costs is as follows:

Item	Optimistic ($)	Pessimistic ($)	Comments
94 shareholdings in the Share Portfolio	4,081,555	3,673,399	Amount from JBWere portal on 11 June 2024. The pessimistic scenario assumes a 10% reduction in value
Less:			
Realisation charge	(285,709)	(257,138)	Future expected realisation charge at 7%
Capital gains tax	(306,682)	(215,628)	CGT calculated at FY25 marginal tax rates
Accountant fees	(11,000)	(22,000)	Estimated accountant fees to advise on the CGT payable upon realisation of the share portfolio
Stockbroker fees	(46,443)	(42,974)	Assumed brokerage rate of 0.85% plus a minimum of $125 each of the 94 transactions
Trustee remuneration for sale of Share Portfolio	(22,000)	(44,000)	
Net position of Share Portfolio after costs	**3,409,721**	**3,091,660**	

7.3.7. Transfers

(a) The SOAs report a transfer of $18,000 was paid to a creditor prior to the date of appointment. This transfer may constitute a potential preferential payment to creditors. I have not been provided with any other details of the transfer.

(b) Given the need to prove insolvency to establish a preference payment, I consider this amount uncommercial to pursue and as such there is no recovery in either the optimistic or pessimistic scenario.

7.3.8. Income contributions

(a) Pursuant to section 139W of the Act, I am required to assess the income derived by the Friggers for each 12-month contribution period during the bankruptcy period. This is to determine any contribution liability which is

calculated for amounts earned over a threshold determined by legislation (this threshold is revised twice per year).

(b) I have already explained above (section 4.5 above) how I have attempted to assess the Friggers' income. While I have completed income assessments to the best of my ability based on the limited information available to me, I have not had sufficient information to deem and therefore seek to recover any contributions. The lack of substantive evidence, combined with the disputes regarding legal and beneficial ownership of bank accounts and assets, has made it challenging to accurately assess their income or pursue recovery of contributions.

(c) Given these circumstances and the potential for further delays and complications in the current proceedings, I determined it was not appropriate to incur additional costs in pursuing income contributions at this time. However, this matter remains under review as the bankruptcy administration progresses.

7.3.9. **Other Assets**

(a) I have conducted searches and other enquiries and have not identified any other assets held by the Friggers which are available to the Bankrupt Estates. This includes any outstanding tax refunds and tools of trade.

7.3.10. **Realisation and interest charges**

(a) In accordance with the Act, the following amounts from a bankrupt estate must be paid annually to AFSA:

(1) 7% of all realisations in a financial year; and

(2) all interest earned on money held on trust in a financial year less bank fees.

(b) This figure represents the accumulated liability to AFSA for realisation and interest charges due for FY25 period per the following breakdown:

Charge	Amount ($)
Realisation charge	2,088.78
Interest charge	4,730.73
Total	**6,819.51**

(c) The liability outstanding to 30 June 2024 has been paid to AFSA.

(d) I note my office has previously confirmed with AFSA that any realisations and interest charges paid can be refunded in the event the bankruptcy is annulled.

7.3.11. **Petitioning creditor's and supporting creditors' costs**

(a) Pursuant to section 109(1) of the Act, a petitioning creditor receives a priority for payment of their taxed costs.

(b) The sequestration orders made by Colvin J on 20 July 2018 provide that supporting creditors listed may also apply for orders for costs. However, the supporting creditors have withdrawn their claims.

(c) I have the bill of costs for the petitioning creditors costs. Whilst the costs have not yet been taxed, they currently account to $55,480.76. This amount represents the optimistic net position.

7.3.12. **Trustee remuneration and disbursements**

(a) Pursuant to Section 109(1) of the Act, a trustee's remuneration and internal disbursements are paid in priority to employees and unsecured creditor claims.

7.3.13. **Current legal costs**

(a) As at 31 July 2024, all legal costs I have incurred in the administration of the Bankrupt Estates have been paid either from funding by FTI or from funds of the Bankrupt Estates.

(b) The amount of future legal fees are likely to depend upon the extent of ongoing and additional legal proceedings to which I am a party and as such have not been included.

7.3.14. **Other costs**

(a) This figure represents the estimated costs to advertise a dividend distribution, and estimated costs for a tax accountant to lodge any tax returns (including implications arising from CGT).

8. Next Steps

8.1. Required tasks

8.1.1. As ought be evident from the matters deposed above, there is still much to be done in the administration of the Bankrupt Estates including:

(a) resolving the current litigation to which I am a party, including these proceedings, the Removal Proceedings, and WAD 225 of 2001 and WAD 228 of 2001;

(b) adjudicating on proofs of debt;

(c) seeking approval for remuneration;

(d) realising assets; and

(e) distributing assets to pay fees, costs and expenses and creditor claims.

8.2. Timing

8.2.1. Whilst the tasks above can be simply stated, the complexity of those tasks and therefore the time it will likely take to complete them and finalise my administration of the Bankrupt Estates will depend on:

(a) whether I need to have recourse to Bankrupt Estate assets other than the Share Portfolio and cash in the Bank Accounts which might in turn require me to challenge the H & A Frigger Pty Ltd mortgage;

(b) the extent to which there is opposition to my adjudication of proofs of debt;

(c) the extent to which there is opposition to approval for my remuneration; and

(d) the extent to which there is any further litigation that I need to deal with.

Sworn by the deponent)
at Brisbane)
in Queensland)
on 5 August 2023) Signature of deponent
Before me: Trent Brian Candy)
)
)

Signature of witness

Trent Brian Candy
A legal practitioner who has held a practice certificate for at least 2 years and who holds a current practice certificate.

Portfolio Valuation

Issued by
JBWere Limited
ACN 137 978 360

Mrs Kelly-Anne Trenfield

Attached is your Portfolio Valuation report as at 19 Sep 2025.

This report was compiled using the current information we have about your portfolio. If you have shareholdings that are not CHESS sponsored by Wealthhub Securities our records may be inaccurate or out-of-date. Before acting on information in this document, we recommend you confirm your holdings with the relevant issuer share registry.

Portfolio Valuation

Issued by
JBWere Limited
ACN 137 978 360

Portfolio Summary — Account Number: 1297258

Asset Class	Market Value *	Estimated Income **	Estimated Yield	% Of Portfolio	Cost ***	Appreciation/ Depreciation
Cash	$ 368,264.68	$ 12,336.87	3.35 %	7.50 %	$ 368,264.68	$ 0.00
Real Assets	$ 115,005.00	$ 4,592.50	3.99 %	2.34 %	$ 0.00	$ 115,005.00
Equity - Domestic	$ 3,323,745.08	$ 107,193.29	3.23 %	67.66 %	-$ 1,383.75	$ 3,325,128.83
Equity - International	$ 1,105,239.20	$ 17,779.10	1.61 %	22.50 %	$ 27,407.60	$ 1,077,831.60
Total Portfolio Value	**$ 4,912,253.96**	**$ 141,901.76**	**2.89 %**	**100.00 %**	**$ 394,288.53**	**$ 4,517,965.43**
Unsettled Transactions	**$ 0.00**					
Net Portfolio Value	**$ 4,912,253.96**					

Regional Summary

Region	Market Value *	Estimated Income **	Estimated Yield	% Of Portfolio	Cost ***	Appreciation/ Depreciation
Domestic	$ 3,807,014.76	$ 124,122.66	3.26 %	77.50 %	$ 366,880.93	$ 3,440,133.83
International	$ 1,105,239.20	$ 17,779.10	1.61 %	22.50 %	$ 27,407.60	$ 1,077,831.60
Total Regional Summary	**$ 4,912,253.96**	**$ 141,901.76**	**2.89 %**	**100.00 %**	**$ 394,288.53**	**$ 4,517,965.43**

Defensive/Growth Summary

Defensive/Growth	Market Value *	Estimated Income **	Estimated Yield	% Of Portfolio	Cost ***	Appreciation/ Depreciation
Defensive	$ 368,264.68	$ 12,336.87	3.35 %	7.50 %	$ 368,264.68	$ 0.00
Growth	$ 4,543,989.28	$ 129,564.89	2.85 %	92.50 %	$ 26,023.85	$ 4,517,965.43
Total Defensive/Growth Summary	**$ 4,912,253.96**	**$ 141,901.76**	**2.89 %**	**100.00 %**	**$ 394,288.53**	**$ 4,517,965.43**

Portfolio Valuation

Issued by
JBWere Limited
ACN 137 978 360

Holding Description		% Of Portfolio	Quantity	Market Price	Market Value *	Estimated Income **	Estimated Yield	Est. Div / Rate	Est.Franking & Maturity Date	Cost Per Unit ***	Cost ***
Cash											
JBWCash	JBWere Cash	7.50%			$ 368,264.68	$ 12,336.87	3.35 %	3.35%			$ 368,264.68
Total Cash		**7.50%**			**$ 368,264.68**	**$ 12,336.87**	**3.35 %**				**$ 368,264.68**
Real Assets											
GICS Sector Code Not Applicable		**2.34%**									
VAP	VANGUARD AUSTRALIAN PROPERTY SECURITIES INDEX ETF, EXCHANGE TRADED FUND UNITS	2.34%	1,100	$ 104.550	$ 115,005.00	$ 4,592.50	3.99 %	417.50 ¢	21.54 %	$ 0.000	$ 0.00
Total Real Assets		**2.34%**			**$ 115,005.00**	**$ 4,592.50**	**3.99 %**				**$ 0.00**
Equity - Domestic											
GICS Sector Code Not Applicable		**15.81%**									
BBOZ	BETASHARES AUS EQUITIES STRONG BEAR COMPLEX ETF, TRADING MANAGED FUND	0.13%	290	$ 21.760	$ 6,310.40	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
LSF	L1 LONG SHORT FUND LIMITED, ORDINARY	3.47%	51,000	$ 3.340	$ 170,340.00	$ 4,590.00	2.69 %	9.00 ¢	100.00 %	$ 0.000	$ 0.00
MVW	VANECK AUSTRALIAN EQUAL WEIGHT ETF, EXCHANGE TRADED FUND UNITS	5.57%	6,900	$ 39.670	$ 273,723.00	$ 13,241.10	4.84 %	191.90 ¢	77.94 %	$ 0.000	$ 0.00
UWC	UNDERWOOD CAPITAL LIMITED, ORDINARY	0.11%	75,000	$ 0.070	$ 5,250.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
VAS	VANGUARD AUSTRALIAN SHARES INDEX ETF, EXCHANGE TRADED FUND UNITS	1.61%	720	$ 109.850	$ 79,092.00	$ 3,227.76	4.08 %	448.30 ¢	86.05 %	$ 0.000	$ 0.00
VHY	VANGUARD AUSTRALIAN SHARES HIGH YIELD ETF, EXCHANGE TRADED FUND UNITS	4.49%	2,840	$ 77.620	$ 220,440.80	$ 21,947.52	9.96 %	772.80 ¢	100.81 %	$ 0.000	$ 0.00
WLE	WAM LEADERS LIMITED, ORDINARY	0.44%	16,000	$ 1.345	$ 21,520.00	$ 1,504.00	6.99 %	9.40 ¢	100.00 %	$ 0.000	$ 0.00

Portfolio Valuation

Issued by
JBWere Limited
ACN 137 978 360

Holding Description		% Of Portfolio	Quantity	Market Price	Market Value *	Estimated Income **	Estimated Yield	Est. Div / Rate	Est.Franking & Maturity Date	Cost Per Unit ***	Cost ***
Banks		**0.03%**									
ANZ	ANZ GROUP HOLDINGS LIMITED, ORDINARY	0.03%	50	$ 33.050	$ 1,652.50	$ 78.95	4.78 %	157.90 ¢	70.00 %	$ 0.000	$ 0.00
Insurance		**3.52%**									
IAG	INSURANCE AUSTRALIA GROUP LIMITED, ORDINARY	0.17%	976	$ 8.310	$ 8,110.56	$ 313.30	3.86 %	32.10 ¢	40.00 %	$ 0.000	$ 0.00
QBE	QBE INSURANCE GROUP LIMITED, ORDINARY	1.78%	4,300	$ 20.300	$ 87,290.00	$ 4,768.70	5.46 %	110.90 ¢	25.00 %	$ 0.000	$ 0.00
SUN	SUNCORP GROUP LIMITED, ORDINARY	1.58%	3,802	$ 20.400	$ 77,560.80	$ 3,326.75	4.29 %	87.50 ¢	100.00 %	$ 0.000	$ 0.00
Energy		**1.19%**									
STO	SANTOS LIMITED, ORDINARY	0.47%	3,400	$ 6.770	$ 23,018.00	$ 1,278.40	5.55 %	37.60 ¢	10.00 %	$ 0.000	$ 0.00
WDS	WOODSIDE ENERGY GROUP LTD, ORDINARY	0.72%	1,530	$ 23.030	$ 35,235.90	$ 1,692.18	4.80 %	110.60 ¢	100.00 %	$ 0.000	$ 0.00
Materials		**22.35%**									
1MC	MORELLA CORPORATION LIMITED, ORDINARY	0.00%	7,200	$ 0.015	$ 108.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
ALK	ALKANE RESOURCES LIMITED, ORDINARY	1.68%	78,000	$ 1.060	$ 82,680.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
ASM	AUSTRALIAN STRATEGIC MATERIALS LIMITED, ORDINARY	0.17%	15,600	$ 0.550	$ 8,580.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
ATC	ALTECH BATTERIES LTD, ORDINARY	0.11%	170,000	$ 0.033	$ 5,610.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
AUZ	AUSTRALIAN MINES LIMITED, ORDINARY	0.01%	34,000	$ 0.015	$ 510.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
BHP	BHP GROUP LIMITED, ORDINARY	0.14%	170	$ 39.640	$ 6,738.80	$ 271.49	4.03 %	159.70 ¢	100.00 %	$ 0.000	$ 0.00
CST	CASTILE RESOURCES LTD, ORDINARY	0.00%	3,076	$ 0.064	$ 196.86	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
DNL	DYNO NOBEL LIMITED., ORDINARY	0.64%	10,500	$ 2.980	$ 31,290.00	$ 913.50	2.92 %	8.70 ¢	0.00 %	$ 0.156	-$ 1,634.85
DRR	DETERRA ROYALTIES LIMITED, ORDINARY	0.27%	3,200	$ 4.130	$ 13,216.00	$ 656.00	4.96 %	20.50 ¢	100.00 %	$ 0.000	$ 0.00
EGR	ECOGRAF LIMITED, ORDINARY	0.30%	40,000	$ 0.365	$ 14,600.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
EMR	EMERALD RESOURCES NL, ORDINARY	1.77%	20,000	$ 4.340	$ 86,800.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00

Portfolio Valuation

Issued by
JBWere Limited
ACN 137 978 360

Holding Description		% Of Portfolio	Quantity	Market Price	Market Value *	Estimated Income **	Estimated Yield	Est. Div / Rate	Est.Franking & Maturity Date	Cost Per Unit ***	Cost ***
FGR	FIRST GRAPHENE LIMITED, ORDINARY	0.04%	30,000	$ 0.067	$ 2,010.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
GRR	GRANGE RESOURCES LIMITED., ORDINARY	0.26%	60,000	$ 0.210	$ 12,600.00	$ 0.00	0.00 %	0.00 ¢	100.00 %	$ 0.000	$ 0.00
IGO	IGO LIMITED, ORDINARY	0.69%	7,000	$ 4.870	$ 34,090.00	$ 238.00	0.70 %	3.40 ¢	100.00 %	$ 0.000	$ 0.00
ILU	ILUKA RESOURCES LIMITED, ORDINARY	0.39%	3,200	$ 6.050	$ 19,360.00	$ 176.00	0.91 %	5.50 ¢	100.00 %	$ 0.000	$ 0.00
IMA	IMAGE RESOURCES NL, ORDINARY	0.16%	110,000	$ 0.070	$ 7,700.00	$ 0.00	0.00 %	0.00 ¢	100.00 %	$ 0.000	$ 0.00
KCN	KINGSGATE CONSOLIDATED LIMITED., ORDINARY	1.12%	18,000	$ 3.060	$ 55,080.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
LYC	LYNAS RARE EARTHS LIMITED, ORDINARY	3.35%	11,250	$ 14.630	$ 164,587.50	$ 78.75	0.05 %	0.70 ¢	0.00 %	$ 0.000	$ 0.00
MIN	MINERAL RESOURCES LIMITED, ORDINARY	4.19%	5,300	$ 38.860	$ 205,958.00	$ 15.90	0.01 %	0.30 ¢	100.00 %	$ 0.000	$ 0.00
MLX	METALS X LIMITED, ORDINARY	1.16%	86,614	$ 0.660	$ 57,165.24	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
NC1	NICO RESOURCES LIMITED, ORDINARY	0.00%	2,386	$ 0.095	$ 226.67	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
NRZ	NEURIZER LTD, ORDINARY	0.00%	55,000	$ 0.001	$ 55.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
NUF	NUFARM LIMITED, ORDINARY	0.44%	9,189	$ 2.340	$ 21,502.26	$ 441.07	2.05 %	4.80 ¢	0.00 %	$ 0.000	$ 0.00
PLS	PILBARA MINERALS LIMITED, ORDINARY	1.46%	31,000	$ 2.310	$ 71,610.00	$ 186.00	0.26 %	0.60 ¢	100.00 %	$ 0.000	$ 0.00
PWN	PARKWAY CORPORATE LIMITED, ORDINARY	0.03%	126,667	$ 0.011	$ 1,393.34	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
RIO	RIO TINTO LIMITED, ORDINARY	0.03%	14	$ 114.000	$ 1,596.00	$ 75.28	4.72 %	537.70 ¢	100.00 %	$ 0.000	$ 0.00
RSG	RESOLUTE MINING LIMITED, ORDINARY	0.41%	24,000	$ 0.840	$ 20,160.00	$ 96.00	0.48 %	0.40 ¢	0.00 %	$ 0.000	$ 0.00
RYZ	RYZON MATERIALS LIMITED, ORDINARY	0.05%	56,000	$ 0.042	$ 2,352.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
S32	SOUTH32 LIMITED, ORDINARY	0.01%	170	$ 2.600	$ 442.00	$ 14.96	3.38 %	8.80 ¢	100.00 %	$ 0.000	$ 0.00
SRL	SUNRISE ENERGY METALS LIMITED, ORDINARY	0.28%	3,500	$ 3.900	$ 13,650.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
SVL	SILVER MINES LIMITED, ORDINARY	0.34%	120,000	$ 0.140	$ 16,800.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00

Portfolio Valuation

Issued by
JBWere Limited
ACN 137 978 360

Holding Description		% Of Portfolio	Quantity	Market Price	Market Value *	Estimated Income **	Estimated Yield	Est. Div / Rate	Est.Franking & Maturity Date	Cost Per Unit ***	Cost ***
SYR	SYRAH RESOURCES LIMITED, ORDINARY	0.07%	12,900	$ 0.270	$ 3,483.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
TLG	TALGA GROUP LTD, ORDINARY	0.09%	10,000	$ 0.430	$ 4,300.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
TTT	TITOMIC LIMITED, ORDINARY	0.08%	14,000	$ 0.265	$ 3,710.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
TVN	TIVAN LIMITED, ORDINARY	0.44%	190,000	$ 0.115	$ 21,850.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
VAU	VAULT MINERALS LIMITED, ORDINARY	1.06%	78,982	$ 0.660	$ 52,128.12	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
WGX	WESTGOLD RESOURCES LIMITED., ORDINARY	0.99%	12,307	$ 3.970	$ 48,858.79	$ 578.43	1.18 %	4.70 ¢	0.00 %	$ 0.000	$ 0.00
WTM	WARATAH MINERALS LIMITED, ORDINARY	0.10%	8,000	$ 0.635	$ 5,080.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
Capital Goods		**1.36%**									
A3D	AURORA LABS LIMITED, ORDINARY	0.02%	20,000	$ 0.044	$ 880.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
RFT	RECTIFIER TECHNOLOGIES LTD, ORDINARY	0.01%	100,000	$ 0.004	$ 400.00	$ 0.00	0.00 %	0.00 ¢	100.00 %	$ 0.000	$ 0.00
SGH	SGH LIMITED, ORDINARY	0.86%	837	$ 50.430	$ 42,209.91	$ 518.94	1.23 %	62.00 ¢	100.00 %	$ 0.300	$ 251.10
SLX	SILEX SYSTEMS LIMITED, ORDINARY	0.47%	4,000	$ 5.770	$ 23,080.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
Commercial & Professional Services		**0.01%**									
CNQ	CLEAN TEQ WATER LIMITED, ORDINARY	0.01%	1,750	$ 0.335	$ 586.25	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
Consumer Discretionary Distribution & Retail		**0.76%**									
WES	WESFARMERS LIMITED, ORDINARY	0.76%	400	$ 93.080	$ 37,232.00	$ 952.80	2.56 %	238.20 ¢	100.00 %	$ 0.000	$ 0.00
Consumer Staples Distribution & Retail		**0.38%**									
COL	COLES GROUP LIMITED., ORDINARY	0.38%	800	$ 23.620	$ 18,896.00	$ 645.60	3.42 %	80.70 ¢	100.00 %	$ 0.000	$ 0.00

Portfolio Valuation

Issued by
JBWere Limited
ACN 137 978 360

Holding Description		% Of Portfolio	Quantity	Market Price	Market Value *	Estimated Income **	Estimated Yield	Est. Div / Rate	Est.Franking & Maturity Date	Cost Per Unit ***	Cost ***
Food, Beverage & Tobacco		**0.56%**									
AAC	AUSTRALIAN AGRICULTURAL COMPANY LIMITED., ORDINARY	0.56%	18,500	$ 1.495	$ 27,657.50	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
Health Care Equipment & Services		**0.34%**									
HLS	HEALIUS LIMITED, ORDINARY	0.06%	3,895	$ 0.780	$ 3,038.10	$ 27.27	0.90 %	0.70 ¢	100.00 %	$ 0.000	$ 0.00
PGC	PARAGON CARE LIMITED, ORDINARY	0.28%	43,000	$ 0.315	$ 13,545.00	$ 43.00	0.32 %	0.10 ¢	100.00 %	$ 0.000	$ 0.00
Pharmaceuticals, Biotechnology & Life Sciences		**0.29%**									
MSB	MESOBLAST LIMITED, ORDINARY	0.29%	6,000	$ 2.410	$ 14,460.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
Financial Services		**2.89%**									
AFG	AUSTRALIAN FINANCE GROUP LTD, ORDINARY	0.85%	15,000	$ 2.780	$ 41,700.00	$ 1,815.00	4.35 %	12.10 ¢	100.00 %	$ 0.000	$ 0.00
AMP	AMP LIMITED, ORDINARY	0.09%	2,700	$ 1.705	$ 4,603.50	$ 132.30	2.87 %	4.90 ¢	20.00 %	$ 0.000	$ 0.00
ASX	ASX LIMITED, ORDINARY	0.07%	56	$ 61.500	$ 3,444.00	$ 122.92	3.57 %	219.50 ¢	100.00 %	$ 0.000	$ 0.00
IFL	INSIGNIA FINANCIAL LTD, ORDINARY	0.23%	2,500	$ 4.490	$ 11,225.00	$ 117.50	1.05 %	4.70 ¢	0.00 %	$ 0.000	$ 0.00
MQG	MACQUARIE GROUP LIMITED, ORDINARY	1.64%	363	$ 222.560	$ 80,789.28	$ 2,688.02	3.33 %	740.50 ¢	35.00 %	$ 0.000	$ 0.00
Software & Services		**0.18%**									
3DP	POINTERRA LIMITED, ORDINARY	0.18%	180,000	$ 0.050	$ 9,000.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
Telecommunication Services		**3.90%**									
TLS	TELSTRA GROUP LIMITED, ORDINARY FULLY PAID	3.90%	39,700	$ 4.830	$ 191,751.00	$ 8,019.40	4.18 %	20.20 ¢	100.00 %	$ 0.000	$ 0.00
Media & Entertainment		**0.43%**									
FDV	FRONTIER DIGITAL VENTURES LIMITED, ORDINARY	0.43%	54,000	$ 0.395	$ 21,330.00	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00

Portfolio Valuation

Issued by
JBWere Limited
ACN 137 978 360

Holding Description		% Of Portfolio	Quantity	Market Price	Market Value *	Estimated Income **	Estimated Yield	Est. Div / Rate	Est.Franking & Maturity Date	Cost Per Unit ***	Cost ***
Equity Real Estate Investment Trusts (REITs)		**13.48%**									
BWP	BWP GROUP, TRUST UNITS	0.15%	2,000	$ 3.720	$ 7,440.00	$ 388.00	5.22 %	19.40 ¢	0.00 %	$ 0.000	$ 0.00
CIP	CENTURIA INDUSTRIAL REIT, TRUST UNITS	2.01%	28,000	$ 3.530	$ 98,840.00	$ 4,760.00	4.82 %	17.00 ¢	0.00 %	$ 0.000	$ 0.00
SCG	SCENTRE GROUP, TRUST UNITS	3.88%	46,700	$ 4.080	$ 190,536.00	$ 8,592.80	4.51 %	18.40 ¢	0.00 %	$ 0.000	$ 0.00
VCX	VICINITY CENTRES, TRUST UNITS	7.44%	146,200	$ 2.500	$ 365,500.00	$ 18,421.20	5.04 %	12.60 ¢	0.00 %	$ 0.000	$ 0.00
Real Estate Management & Development		**0.16%**									
LLC	LENDLEASE GROUP, TRUST UNITS	0.16%	1,500	$ 5.320	$ 7,980.00	$ 238.50	2.99 %	15.90 ¢	61.23 %	$ 0.000	$ 0.00
Total Equity - Domestic		**67.66%**			**$ 3,323,745.08**	**$ 107,193.29**	**3.23 %**				**-$ 1,383.75**
Equity - International											
GICS Sector Code Not Applicable		**22.50%**									
AGX1	ANTIPODES GLOBAL VALUE ACTIVE ETF, TRADING MANAGED FUND	3.45%	26,138	$ 6.480	$ 169,374.24	$ 2,363.01	1.40 %	9.04 ¢	85.99 %	$ 1.049	$ 27,407.60
ASIA	BETASHARES ASIA TECHNOLOGY TIGERS ETF, EXCHANGE TRADED FUND UNITS	2.70%	9,500	$ 13.940	$ 132,430.00	$ 836.00	0.63 %	8.80 ¢	0.00 %	$ 0.000	$ 0.00
NDQ	BETASHARES NASDAQ 100 ETF, EXCHANGE TRADED FUND UNITS	4.23%	3,800	$ 54.660	$ 207,708.00	$ 1,972.20	0.95 %	51.90 ¢	0.00 %	$ 0.000	$ 0.00
PAXX	PLATINUM ASIA FUND COMPLEX ETF, TRADING MANAGED FUND	2.02%	17,396	$ 5.710	$ 99,331.16	$ 0.00	0.00 %	0.00 ¢	0.00 %	$ 0.000	$ 0.00
PGF	PM CAPITAL GLOBAL OPPORTUNITIES FUND LIMITED, ORDINARY	3.96%	74,000	$ 2.630	$ 194,620.00	$ 8,510.00	4.37 %	11.50 ¢	100.00 %	$ 0.000	$ 0.00
ROBO	GLOBAL X ROBO GLOBAL ROBOTICS & AUTOMATION ETF, EXCHANGE TRADED FUND UNITS	1.06%	590	$ 87.920	$ 51,872.80	$ 107.38	0.21 %	18.20 ¢	0.00 %	$ 0.000	$ 0.00

Portfolio Valuation

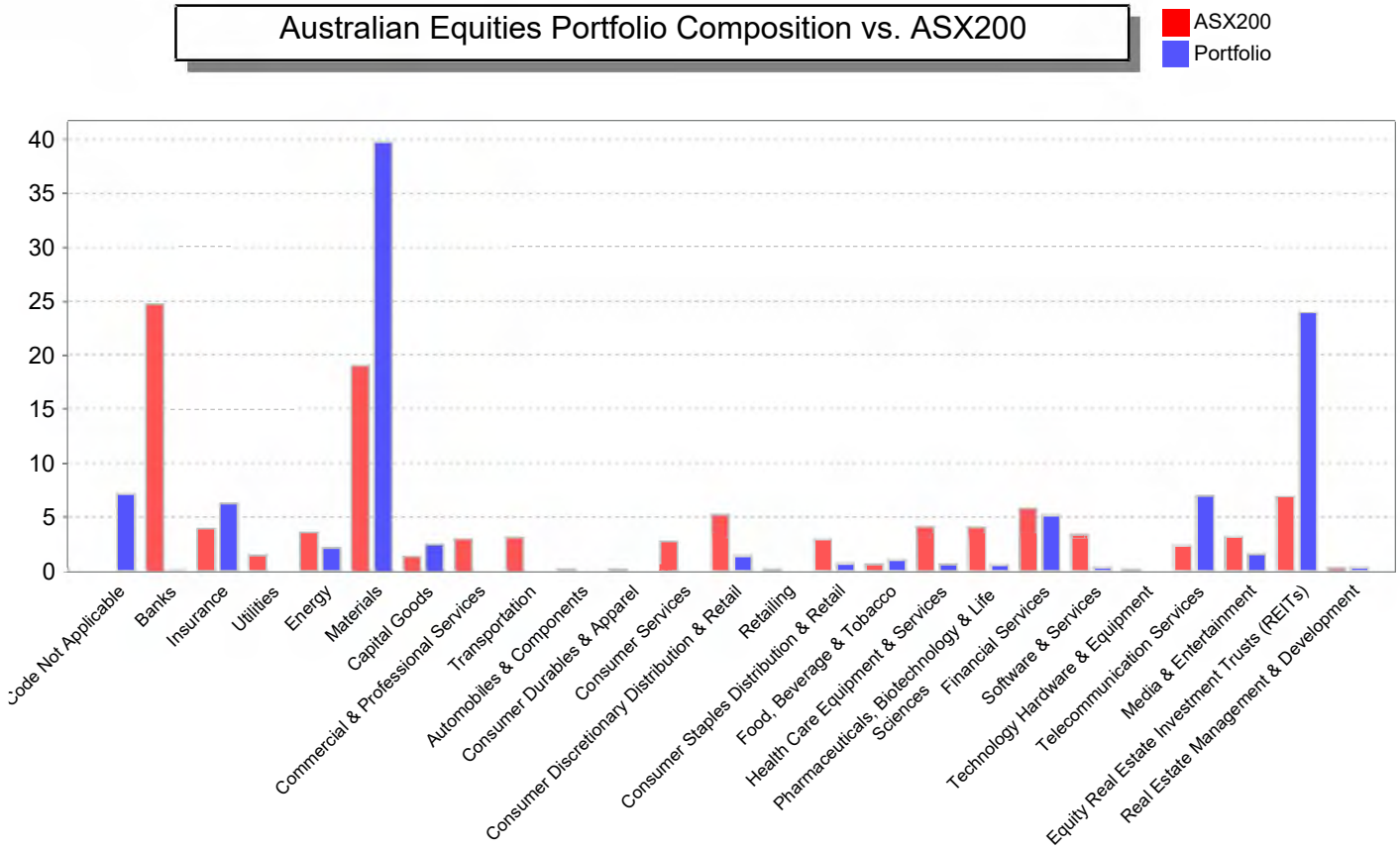
Issued by
JBWere Limited
ACN 137 978 360

Holding Description		% Of Portfolio	Quantity	Market Price	Market Value *	Estimated Income **	Estimated Yield	Est. Div / Rate	Est.Franking & Maturity Date	Cost Per Unit ***	Cost ***
VEQ	VANGUARD FTSE EUROPE SHARES ETF, EXCHANGE TRADED FUND UNITS	2.09%	1,200	$ 85.360	$ 102,432.00	$ 2,430.00	2.37 %	202.50 ¢	0.00 %	$ 0.000	$ 0.00
VEU	VANGUARD ALL-WORLD EX-US SHARES INDEX ETF, EXCHANGE TRADED FUND UNITS	0.88%	400	$ 107.910	$ 43,164.00	$ 781.20	1.81 %	195.30 ¢	0.00 %	$ 0.000	$ 0.00
VTS	VANGUARD US TOTAL MARKET SHARES INDEX ETF, EXCHANGE TRADED FUND UNITS	2.12%	210	$ 496.700	$ 104,307.00	$ 779.31	0.75 %	371.10 ¢	0.00 %	$ 0.000	$ 0.00
Total Equity - International		**22.50%**			**$ 1,105,239.20**	**$ 17,779.10**	**1.61 %**				**$ 27,407.60**

Portfolio Valuation

Issued by
JBWere Limited
ACN 137 978 360

Australian Equities



This chart illustrates the spread of your listed Australian Equities holdings against the various sectors that make up the S&P/ASX 200.

The chart may show you are overweight, underweight or have no exposure to various sectors of the market. This is not unusual for private investors.

However, where your exposure to the market varies significantly from the S&P/ASX 200 it may indicate that the portfolio carries undue risk. This will depend on your investment aims and objectives.
We recommend you discuss your portfolio weightings with your adviser.

The S&P/ASX 200 ("Index") is a product of S&P Dow Jones Indices LLC and/or its affiliates. Copyright © 2014 S&P Dow Jones Indices LLC, a subsidiary of McGraw Hill Financial Inc., and/or its affiliates. All rights reserved. Neither S&P Dow Jones Indices LLC, Dow Jones Trademark Holdings LLC, their affiliates nor their third party licensors shall have any liability for any errors, omissions, or interruptions of any index or the data included therein. Please refer to https://www.jbwere.com.au/nav_footer/disclosures/ for further terms and conditions associated with your use of the Index information.

Portfolio Valuation

Issued by
JBWere Limited
ACN 137 978 360

Estimated Cash Flow Analysis

Income

Month	Total Income	Cash	Government Bonds	Credit	Real Assets	Equity - Domestic	Equity - International	Uncorrelated Strategies
October 2025	$ 20,357.05	$ 1,028.07	$ 0.00	$ 0.00	$ 1,148.13	$ 12,928.22	$ 5,252.63	$ 0.00
November 2025	$ 1,780.07	$ 1,028.07	$ 0.00	$ 0.00	$ 0.00	$ 752.00	$ 0.00	$ 0.00
December 2025	$ 3,088.84	$ 1,028.07	$ 0.00	$ 0.00	$ 0.00	$ 2,060.77	$ 0.00	$ 0.00
January 2026	$ 18,721.68	$ 1,028.07	$ 0.00	$ 0.00	$ 1,148.13	$ 14,143.75	$ 2,401.73	$ 0.00
February 2026	$ 5,518.47	$ 1,028.07	$ 0.00	$ 0.00	$ 0.00	$ 4,490.40	$ 0.00	$ 0.00
March 2026	$ 16,319.43	$ 1,028.07	$ 0.00	$ 0.00	$ 0.00	$ 15,291.36	$ 0.00	$ 0.00
April 2026	$ 24,666.86	$ 1,028.07	$ 0.00	$ 0.00	$ 1,148.13	$ 17,238.03	$ 5,252.63	$ 0.00
May 2026	$ 1,041.71	$ 1,028.07	$ 0.00	$ 0.00	$ 0.00	$ 13.64	$ 0.00	$ 0.00
June 2026	$ 1,248.61	$ 1,028.07	$ 0.00	$ 0.00	$ 0.00	$ 220.54	$ 0.00	$ 0.00
July 2026	$ 21,842.30	$ 1,028.07	$ 0.00	$ 0.00	$ 1,148.13	$ 14,793.98	$ 4,872.12	$ 0.00
August 2026	$ 6,708.47	$ 1,028.07	$ 0.00	$ 0.00	$ 0.00	$ 5,680.40	$ 0.00	$ 0.00
September 2026	$ 20,608.30	$ 1,028.07	$ 0.00	$ 0.00	$ 0.00	$ 19,580.23	$ 0.00	$ 0.00
Total Income	**$ 141,901.76**	**$ 12,336.87**	**$ 0.00**	**$ 0.00**	**$ 4,592.50**	**$ 107,193.29**	**$ 17,779.10**	**$ 0.00**

Portfolio Valuation

Issued by
JBWere Limited
ACN 137 978 360

Important Notices

JBWere uses its best endeavours to ensure information contained in this document accurately reflects the status of the account(s) as at time of compilation and that any estimates, opinions, conclusions, or recommendations contained in this document are reasonably held or made as at the time of compilation. However, no warranty is made as to the accuracy or reliability of any information contained in this document and, to the maximum extent permitted by law, JBWere disclaims all liability and responsibility for any direct or indirect loss or damage suffered by any recipient through relying on anything contained in or omitted from this document. This document is for the intended recipient only and is provided on the condition that you keep it confidential and do not copy or circulate it in whole or in part to any other person without the permission of JBWere.

At JBWere, we work hard to provide exceptional service. On an occasion where our service does not meet your expectations, we are here to listen, learn and work with you to make sure you receive the necessary support.

If you have a complaint, including any complaint about:
- the operation of the JBWere Multi-Asset Platform.
- accessible financial products held through the JBWere Multi-Asset Platform; or
- financial product advice provided to you in relation to the JBWere Multi-Asset Platform,

we encourage you to discuss the matter with your JBWere Adviser.

If you wish to register a complaint, please contact the JBWere Regulatory Compliance Manager at the address below:

Manager, Regulatory Compliance
JBWere Limited
GPO Box 4370
Melbourne VIC 3001

When dealing with a complaint you have submitted to us in writing:
- we will provide acknowledgement of our receipt of your complaint in the first instance; and
- we will investigate your matter if it is not resolved to your satisfaction within 5 business days and provide you with a written response within 30 days.

If you are not satisfied with our handling of your complaint, you may have the right to take your complaint to the Australian Financial Complaints Authority (AFCA), an independent complaints resolution body.

Portfolio Valuation

Issued by
JBWere Limited
ACN 137 978 360

You can contact them at:
- 1800 931 678 (free call)
- www.afca.org.au
- info@afca.org.au
- Australian Financial Complaints Authority, GPO Box 3, MELBOURNE VIC 3001

JBWere Limited is part of the National Australia Bank group of companies and the issuer of the JBWere Multi-Asset Platform. Your investment in the JBWere Multi-Asset Platform does not represent a deposit with or a liability of JBWere, NAB or any other member of the NAB group of companies.

Your investments can be subject to investment risk, including possible delays in repayment and loss of income and principal invested. None of the NAB group companies nor any other party guarantees the capital value, payment of income, the performance of the JBWere Multi-Asset Platform or investments acquired through it.

***Market value/Ending market value:** The Market value/Ending Market value of listed securities reflects the closing price of those securities on the relevant exchange as at the closing date of the relevant statement. Brokerage charges have not been deducted from the prices of listed securities shown. If you exceed your number of domestic free trades in the financial year, as per your MAP agreement brokerage will be charged at the rate applicable to you. Valuation of managed funds is based on unit prices available as at the closing date of the relevant statement (or otherwise those most recently available to us on the fourth business day following the end of the relevant statement). The information provided in relation to other assets including unlisted investments can vary depending on the type of investment. It may be based on the cost of the investment, latest estimate, or other method we determine and will not always be a valuation as at the reporting date. Some of these unlisted investments are not liquid and the value provided is not necessarily an exit value. Valuations of unlisted investments may be based on information provided by third parties. You should contact your JBWere Adviser before acting on the basis of the valuation of any investment described.

Valuation of alternative investments governed by JBWere' s Additional Services Agreement ("Alts ASA"): Valuation of Alternative Investments governed by JBWere' s Alts ASA are prepared based on the unit price, a Net Asset Valuation (NAV) provided by the Fund Manager, or an 'estimated' NAV calculated by JBWere. An 'estimated' value equals the latest issued Net Asset Valuation from the Fund, adjusted for subsequent cashflows. A cash flow may be, but is not limited to, a capital call or distribution by the Fund Manager. An estimation may be used by JBWere for valuation purposes at the time of quarterly and/or annual report delivery, and before fund managers have released their updated NAV. This is because some Fund Managers may only release valuations on a quarterly basis, usually provided within 4-12 weeks of the quarter end. Further, year-end valuations may take up to 90-days after year-end. Within JBWere systems, commitments to Alternative Investments governed by the Alts ASA are unitised and separated into 'paid' and 'unpaid' securities. The outstanding capital commitment is represented by the 'unpaid' security. The capital contributed is represented by the 'paid' security. Each unit represents a dollar committed to the fund, in the relevant currency denomination of that fund. The total commitment to each Fund will equal the sum of 'paid' and 'unpaid' units. JBWere gives no assurance of liquidity or redemptions for any alternative assets.

Portfolio Valuation

Issued by
JBWere Limited
ACN 137 978 360

****Estimated Income:** JBWere uses its best endeavours to provide estimated projected income. JBWere utilises data available from a combination of third-party specialist data vendors, internal asset class projections for Managed Funds and Alternative Investments, and historic actual income for ETFs. It is noted that historical performance is not an indicator of future performance, and no warranty or guarantee is provided as to the accuracy of Estimated Income figures.

Managed funds: If you have made an application to either purchase or redeem a managed fund investment in the week prior to the end of the reporting period, these may not necessarily be reflected in your statements, (if, for instance, we have not received a confirmation of the redemption or purchase from the relevant product issuers). This information will be contained in future reports.

****Cost per unit**

***Cost reflects the information currently available on the average underlying purchase value of the holding

Actual cost base details supplied: Where you have provided to JBWere the actual cost base details for an asset, we have not verified the accuracy of this information. Actual cost base details provided to JBWere may need to be reviewed and adjusted taking into account distribution information received from your previous service provider following financial year end. Please notify your JBWere Adviser if you believe the actual cost base details you have provided may be inaccurate or require adjustments due to updated end of financial year information. Your report will need to be reassessed taking into account such information.

Actual cost details not supplied: Please note that where the Actual Cost details for a capital gains tax asset have not been supplied, the report may not correctly reflect the portfolio's financial position. Reports such as the Realised report, the Unrealised report and the Portfolio valuation will need to be reassessed to account for the missing cost information.

†† Valuations for fixed interest securities: These will vary depending on the type of investment and can be based on the cost of the investment, last reported market price or latest available estimates. Valuations of Fixed Interest Securities may be based on information provided by third parties. For Exchange Traded Fixed Interest Securities, the estimated yield shown is either the yield to maturity or yield to next re-set date. For Over-The-Counter Fixed Interest Securities, the estimated yield shown is either the yield to reset or yield to call. All yield information on Fixed Interest Securities may be provided by third parties.

BOQ

Account Details

Select Account

Frigger Bonus Interest Savings 23267367 Available:$896,502.58

Balance:
$896,502.58

Available:
$896,502.58

Account Information

Search Transactions

Transaction Type

All transactions

Start Date

01/09/2025

Format: DD/MM/YYYY

End Date

19/09/2025

Format: DD/MM/YYYY

Amount From

($$$.cc)

Amount To

($$$.cc)

Search For Text

Completed Transactions

Date	Description	Debit	Credit	Balance
18/09/2025	TFR TO ACCOUNT 023039942 IB2-29350438	-$220,000.00		$ 896,502.58

BOQ

Account Details

Select Account

Frigger Day2Day Plus 23039942 Available:$54,551.31

Balance:
$54,551.31

Available:
$54,551.31

Account Information

Search Transactions

Transaction Type

All transactions

Start Date

01/09/2025

Format: DD/MM/YYYY

End Date

19/09/2025

Format: DD/MM/YYYY

Amount From

($$$.cc)

Amount To

($$$.cc)

Search For Text

Completed Transactions

Date	Description	Debit	Credit	Balance
18/09/2025	PAY ANYONE TO Johnson Winter & Slattery 015010 835...Show more	-$15,713.50		$54,551.31
18/09/2025	PAY ANYONE TO Johnson Winter & Slattery 015010 835...Show more	-$82,602.19		$70,264.81
18/09/2025	PAY ANYONE TO Johnson Winter & Slattery 015010 835...Show more	-$3,575.00		$152,867.00
18/09/2025	PAY ANYONE TO Johnson Winter & Slattery 015010 835...Show more	-$8,963.35		$156,442.00
18/09/2025	PAY ANYONE TO Johnson Winter & Slattery 015010 835...Show more	-$73,260.59		$165,405.35
18/09/2025	TFR FROM 023267367 IB2-29350438		$220,000.00	$238,665.94

IntelliVal Automated Valuation Estimate

Prepared on 21 September 2025

2A Union Street Bayswater WA 6053

Estimated Value:

$995,000

Estimated Value Confidence:

Low High

Estimated Price Range:

$904,000 - $1,083,000

Property Attributes:

4 2 4 150m^2



Year Built	Land Area	Property Type	Land Use	Development Zoning
1997	335m^2	House	Group House	-

Estimated Value as at 15 September 2025. An automated valuation model estimate (Estimated Value) is a statistically derived estimate of the value of the subject property. An Estimated Value must not be relied upon as a professional valuation or an accurate representation of the market value of the subject property as determined by the valuer.

For further information about confidence levels, please refer to the end of this document.

© Copyright 2025 | RP Data Pty Ltd trading as Cotality and its licensors are the sole and exclusive owners of all rights, title and interest (including intellectual property rights) subsisting in this publication including any data, analytics, statistics and other information. All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

2A Union Street Bayswater WA 6053

Prepared on 21 September 2025

Location Highlights









Cotality IntelliVal Automated Valuation Estimate

© Copyright 2025 | RP Data Pty Ltd trading as Cotality and its licensors are the sole and exclusive owners of all rights, title and interest (including intellectual property rights) subsisting in this publication including any data, analytics, statistics and other information. All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

2A Union Street Bayswater WA 6053

Prepared on 21 September 2025

Recently Sold Properties



4 | 2 | 2 | 129m² | 285m²

23A Henrietta Street Bayswater WA 6053

Sold Price: $880,000

Sold Date: 20 June 2025

Distance from 0.4km

Features Air Conditioning, 1 Dining Rooms, 1 Ensuites, 1 Family / Rumpus Rooms, 2 Lockup Garages, 1 Lounge Rooms, BRICK, IRON, 1 No of



4 | 2 | 2 | 136m² | 346m²

2/28 Beechboro Road South Bayswater WA 6053

Sold Price: $910,000

Sold Date: 07 April 2025

Distance from 0.9km

Features Air Conditioning, Residential, 1 Ensuites, 1 Family / Rumpus Rooms, 2 Lockup Garages, 1 Lounge Rooms, Brick, Brick, Tile, 1 No



4 | 2 | 2 | 124m² | 321m²

86 Drake Street Bayswater WA 6053

Sold Price: $975,000

Sold Date: 23 January 2025

Distance from 0.1km

Features Reverse Cycle Aircon, 1 Dining Rooms, 1 Ensuites, 2 Lockup Garages, 1 Lounge Rooms, Rendered brick, BRICK, Concrete tile, 1 No of

Cotality IntelliVal Automated Valuation Estimate

© Copyright 2025 | RP Data Pty Ltd trading as Cotality and its licensors are the sole and exclusive owners of all rights, title and interest (including intellectual property rights) subsisting in this publication including any data, analytics, statistics and other information. All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

2A Union Street Bayswater WA 6053

Prepared on 21 September 2025



3	2	2	152m²	375m²

16 Mallion Street Embleton WA 6062

Sold Price: $1,022,000

Sold Date: 23 April 2025

Distance from 0.3km

Features 1 Dining Rooms, 1 Ensuites, 2 Lockup Garages, 1 Lounge Rooms, Rendered brick; Imitation weatherboard, BRICK, Colorbond, 1 No



4	2	2	141m²	416m²

2A Burnett Street Embleton WA 6062

Sold Price: $982,000

Sold Date: 02 June 2025

Distance from 0.4km

Features Air Conditioning, Medium and High Density Residential, 1 Ensuites, 1 Family / Rumpus Rooms, 2 Lockup Garages, 1 Lounge



4	2	2	153m²	337m²

21 Bromley Street Embleton WA 6062

Sold Price: $900,000

Sold Date: 15 February 2025

Distance from 0.4km

Features Medium and High Density Residential, 1 Dining Rooms, 1 Ensuites, 1 Family / Rumpus Rooms, 2 Lockup Garages, 1 Lounge Rooms,

Cotality IntelliVal Automated Valuation Estimate

© Copyright 2025 | RP Data Pty Ltd trading as Cotality and its licensors are the sole and exclusive owners of all rights, title and interest (including intellectual property rights) subsisting in this publication including any data, analytics, statistics and other information. All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

2A Union Street Bayswater WA 6053

Prepared on 21 September 2025

Bayswater Insights: A Snapshot



Houses

Median Price

$1,020,521

	Past Sales	Capital Growth
2025	267	↑ 11.63%
2024	267	↑ 25.43%
2023	238	↑ 2.71%
2022	233	↑ 5.98%
2021	264	↑ 19.34%

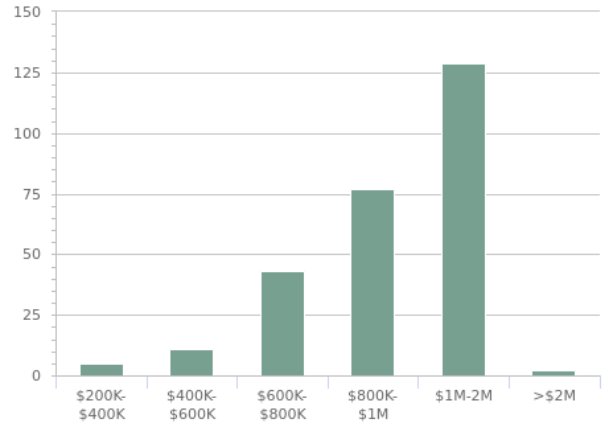
Units

Median Price

$536,192

	Past Sales	Capital Growth
2025	72	↑ 16.54%
2024	92	↑ 35.08%
2023	66	↑ 17.67%
2022	54	↓ 2.38%
2021	41	↑ 17.61%

House Sales by Price (Past 12 Months)



Unit Sales by Price (Past 12 Months)



Cotality IntelliVal Automated Valuation Estimate

© Copyright 2025 | RP Data Pty Ltd trading as Cotality and its licensors are the sole and exclusive owners of all rights, title and interest (including intellectual property rights) subsisting in this publication including any data, analytics, statistics and other information. All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

Prepared on 21 September 2025

Disclaimers

This publication reproduces materials and content owned or licenced by RP Data Pty Ltd trading as Cotality and may include data, statistics, estimates, indices, photographs, maps, tools, calculators (including their outputs), commentary, reports and other information (Cotality Data).

The Cotality Data provided in this publication is of a general nature and should not be construed as specific advice or relied upon in lieu of appropriate professional advice.

While Cotality uses commercially reasonable efforts to ensure the Cotality Data is current, Cotality does not warrant the accuracy, currency or completeness of the Cotality Data and to the full extent permitted by law excludes all loss or damage howsoever arising (including through negligence) in connection with the Cotality Data.

Based on information provided by and with the permission of the Western Australian Land Information Authority (2022) trading as Landgate.

An Estimated Value is generated (i) by a computer driven mathematical model in reliance on available data; (ii) without the physical inspection of the subject property; (iii) without taking into account any market conditions (including building, planning, or economic), and/or (iv) without identifying observable features or risks (including adverse environmental issues, state of repair, improvements, renovations, aesthetics, views or aspect) which may, together or separately, affect the value.

An Estimated Value is current only at the date of publication or supply. Cotality expressly excludes any warranties and representations that an Estimated Value is an accurate representation as to the market value of the subject property.

To the full extent permitted by law, Cotality excludes all liability for any loss or damage howsoever arising or suffered by the recipient, whether as a result of the recipient's reliance on the accuracy of an Estimated Value or otherwise arising in connection with an Estimated Value.

How to read Estimated Value

The Confidence is based on a statistical calculation as to the probability of the Estimated Value being accurate compared to market value. The available confidence values returned are High, Medium-High, Medium, Medium-Low, and Low. An Estimated Value with a ‘High’ confidence is considered more reliable than an Estimated Value with a ‘Medium-High’, 'Medium', ‘Medium-Low’ or 'Low' confidence. The Confidence is a reflection of the amount of data we have on the property and similar properties in the surrounding areas. Generally, the more data we have for the local real estate market and subject property, the higher the Confidence level will be. Confidence should be considered alongside the Estimated Value.

Confidence is displayed as a coloured coded range with red representing low confidence, through to amber which represents medium confidence to green for higher confidence.



Low Medium High

For more information on estimated values: https://www.corelogic.com.au/estimated-value-faqs

If you have any questions or concerns about the information in this report, please contact our customer care team.

Within Australia: **1300 734 318**
Email Us: **customercare@corelogic.com.au**

© Copyright 2025 | RP Data Pty Ltd trading as Cotality and its licensors are the sole and exclusive owners of all rights, title and interest (including intellectual property rights) subsisting in this publication including any data, analytics, statistics and other information. All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.



3/61 CALE STREET COMO WA 6152

Prepared on **21st September 2025**

Tanya Kratz
FTI CONSULTING

Level 6, 30 The Esplanade
PERTH WA 6000

m: 0732254959

tanya.kratz@fticonsulting.com

Your Property

3/61 CALE STREET COMO WA 6152

2 1 4 80m² 81m²





Your Property History

28 Dec, 2020 - Listed for rent at $385

30 Nov, 2018 - Listed for rent as Not Disclosed

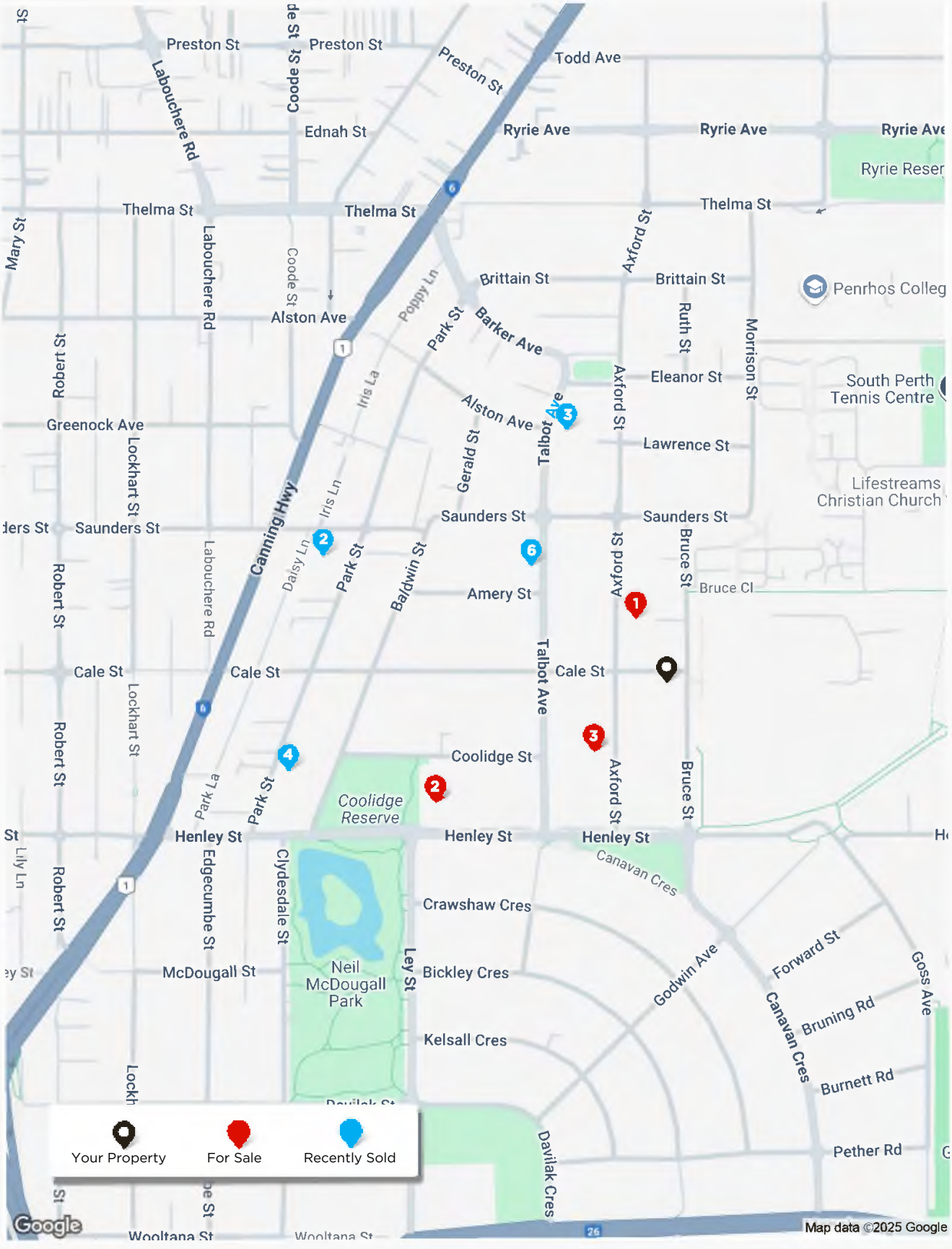
18 Apr, 2018 - Listed for rent as Not Disclosed

7 Nov, 2017 - Listed for rent as Not Disclosed

Introducing Tanya Kratz

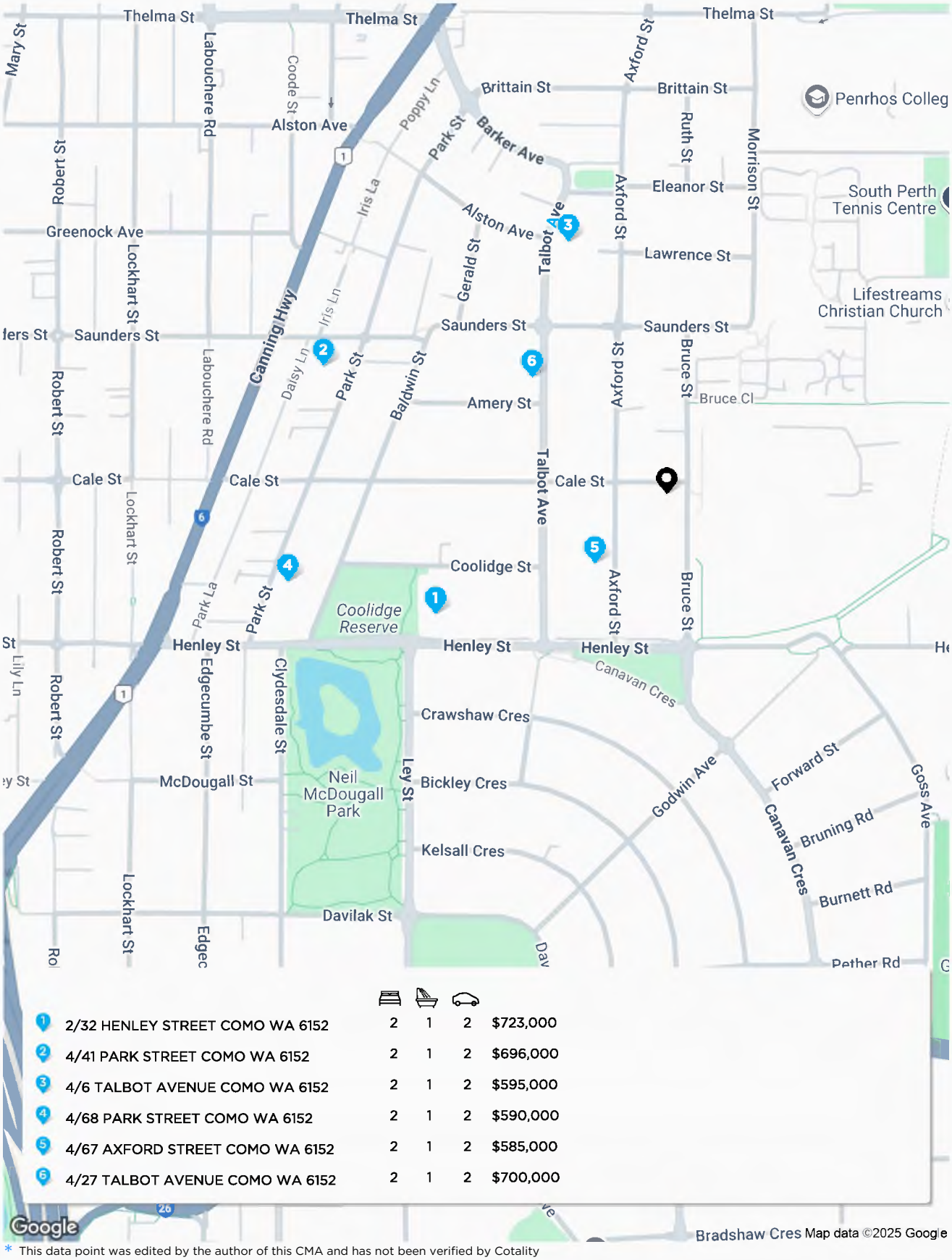
© Copyright 2025. RP Data Pty Ltd trading as Cotality (Cotality). All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

Comparables Map: Sales & Listings



© Copyright 2025. RP Data Pty Ltd trading as Cotality (Cotality). All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

Comparables Map: Sales



1 2/32 HENLEY STREET COMO WA 6152	2	1	2	$723,000
2 4/41 PARK STREET COMO WA 6152	2	1	2	$696,000
3 4/6 TALBOT AVENUE COMO WA 6152	2	1	2	$595,000
4 4/68 PARK STREET COMO WA 6152	2	1	2	$590,000
5 4/67 AXFORD STREET COMO WA 6152	2	1	2	$585,000
6 4/27 TALBOT AVENUE COMO WA 6152	2	1	2	$700,000

* This data point was edited by the author of this CMA and has not been verified by Cotality

© Copyright 2025. RP Data Pty Ltd trading as Cotality (Cotality). All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

Comparable Sales

2/32 HENLEY STREET COMO WA 6152

Sold $723,000



2 | 1 | 2 | 85m² | 85m²

Year Built	1976	DOM	6
Sold Date	12-Nov-24	Distance	0.44km
First Listing	BEST OFFER BY 19 NOVEMBER | FROM $650K		
Last Listing	UNDER CONTRACT!		

4/41 PARK STREET COMO WA 6152

Sold $696,000



2 | 1 | 2 | 92m² | 80m²

Year Built	1976	DOM	61
Sold Date	12-Dec-24	Distance	0.61km
First Listing	Expressions Of Interest!!		
Last Listing	IT IS SOLD!!!		

4/6 TALBOT AVENUE COMO WA 6152

Sold $595,000



2 | 1 | 2 | 75m² | 75m²

Year Built	1974	DOM	83
Sold Date	04-Jan-25	Distance	0.45km
First Listing	Suit buyers over $590,000		
Last Listing	UNDER OFFER		

4/68 PARK STREET COMO WA 6152

Sold $590,000



2 | 1 | 2 | 80m² | 80m²

Year Built	1982	DOM	60
Sold Date	03-Oct-24	Distance	0.65km
First Listing	Offers Over $620,000		
Last Listing	CONTACT AGENT		

4/67 AXFORD STREET COMO WA 6152

Sold $585,000



2 | 1 | 2 | 72m² | 75m²

Year Built	1979	DOM	32
Sold Date	29-Mar-25	Distance	0.17km
First Listing	Offers Above $549,000		
Last Listing	Above $549,000		

DOM = Days on market **RS** = Recent sale **UN** = Undisclosed Sale * This data point was edited by the author of this CMA and has not been verified by Cotality

© Copyright 2025. RP Data Pty Ltd trading as Cotality (Cotality). All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

Comparable Sales

6 4/27 TALBOT AVENUE COMO WA 6152

Sold **$700,000**



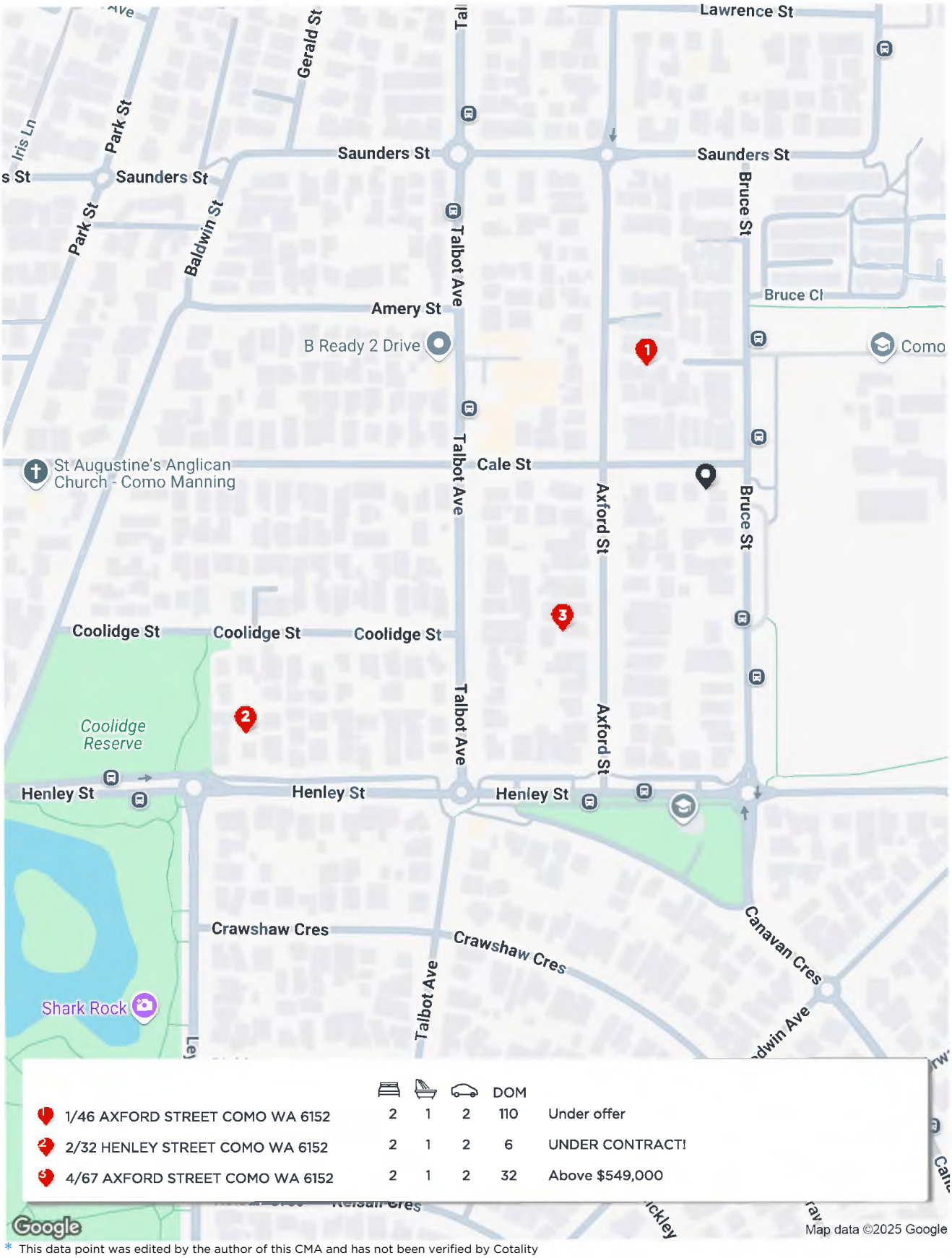
2 1 2 74m² 74m²

Year Built	1974	DOM	100
Sold Date	16-Apr-25	Distance	0.3km
First Listing	Set Date Sale | 24th April		
Last Listing	UNDER OFFER		

DOM = Days on market **RS** = Recent sale **UN** = Undisclosed Sale * This data point was edited by the author of this CMA and has not been verified by Cotality

© Copyright 2025. RP Data Pty Ltd trading as Cotality (Cotality). All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

Comparables Map: Listings



				DOM	
1/46 AXFORD STREET COMO WA 6152	2	1	2	110	Under offer
2/32 HENLEY STREET COMO WA 6152	2	1	2	6	UNDER CONTRACT!
4/67 AXFORD STREET COMO WA 6152	2	1	2	32	Above $549,000

* This data point was edited by the author of this CMA and has not been verified by Cotality

© Copyright 2025. RP Data Pty Ltd trading as Cotality (Cotality). All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

Comparable Listings

1 1/46 AXFORD STREET COMO WA 6152



2 | 1 | 2 | 72m² | 85m²

Year Built	1980	DOM	110 days
Listing Date	12-Dec-24	Distance	0.11km
Listing Price	Under offer		

2 2/32 HENLEY STREET COMO WA 6152



2 | 1 | 2 | 85m² | 85m²

Year Built	1976	DOM	6 days
Listing Date	07-Nov-24	Distance	0.44km
Listing Price	UNDER CONTRACT!		

3 4/67 AXFORD STREET COMO WA 6152



2 | 1 | 2 | 72m² | 75m²

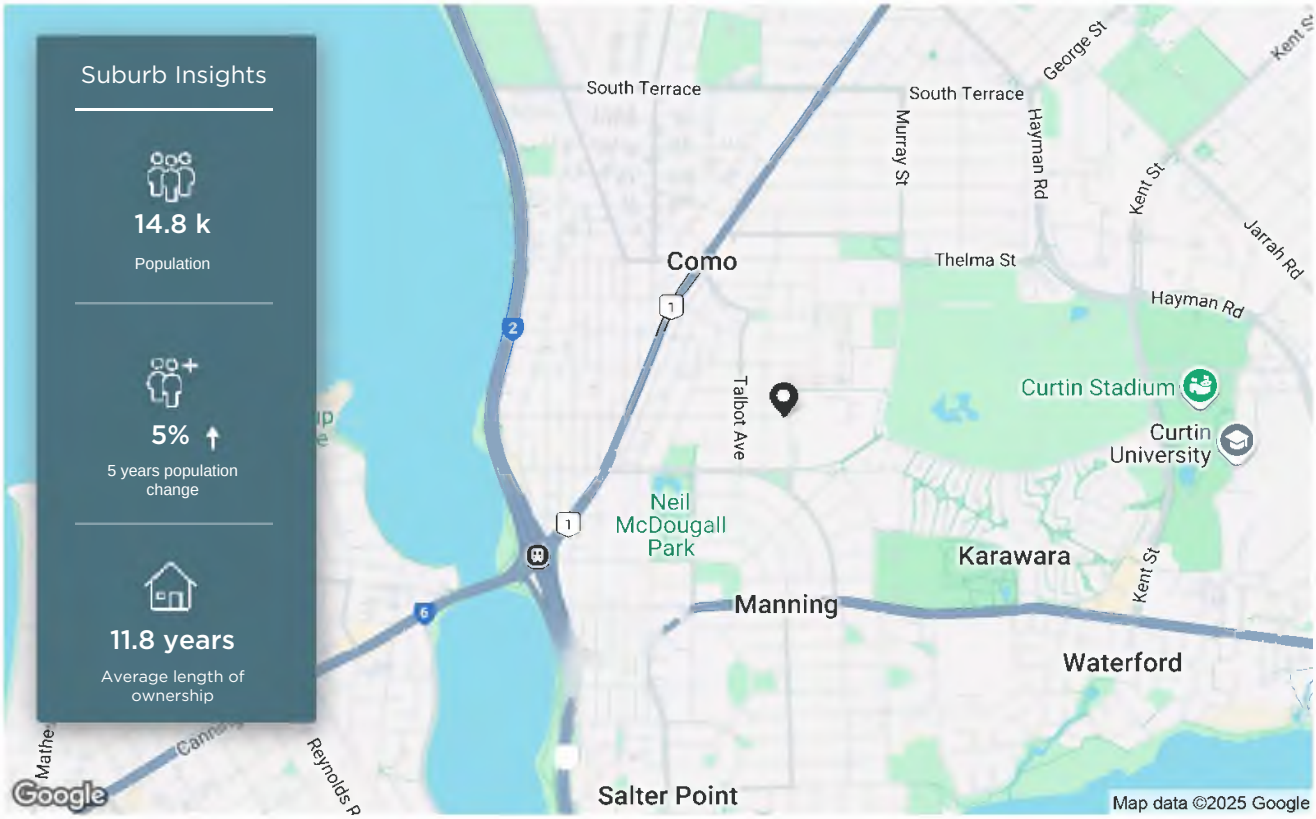
Year Built	1979	DOM	32 days
Listing Date	10-Mar-25	Distance	0.17km
Listing Price	Above $549,000		

DOM = Days on market * This data point was edited by the author of this CMA and has not been verified by Cotality

© Copyright 2025. RP Data Pty Ltd trading as Cotality (Cotality). All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

Como

Demographic

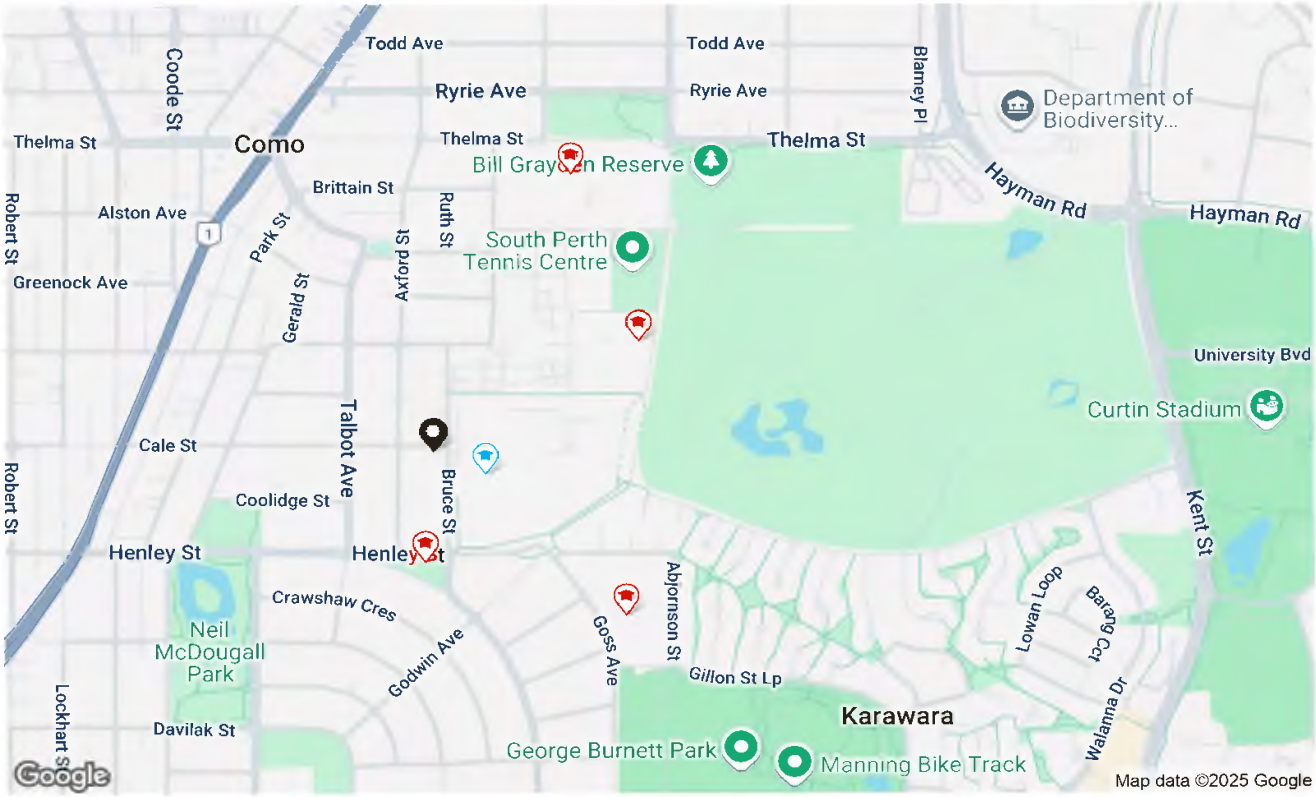


The size of Como is approximately 6.5 square kilometres. It has 16 parks covering nearly 20.7% of total area. The population of Como in 2016 was 14138 people. By 2021 the population was 14786 showing a population growth of 4.6% in the area during that time. The predominant age group in Como is 20-29 years. Households in Como are primarily childless couples and are likely to be repaying $1800 - $2399 per month on mortgage repayments. In general, people in Como work in a professional occupation.In 2021, 55.40% of the homes in Como were owner-occupied compared with 54.70% in 2016.

HOUSEHOLD STRUCTURE		HOUSEHOLD OCCUPANCY		HOUSEHOLD INCOME		AGE	
TYPE	%	TYPE	%	TYPE	%	TYPE	%
Single Parents	12.3	Not Stated	0.9	52-78K	13.0	40-49	11.6
Childless Couples	48.5	Purchaser	27.8	15.6-33.8K	13.3	30-39	17.0
Couples with Children	34.8	Other	3.4	78-130K	21.8	50-59	10.4
Other	4.3	Owns Outright	27.6	130-182K	12.2	10-19	8.3
		Renting	40.3	182K+	19.0	70-79	8.0
				0-15.6K	4.0	20-29	17.8
				33.8-52K	10.2	60-69	10.8
						90-99	2.0
						80-89	4.9
						100+	0.1

© Copyright 2025. RP Data Pty Ltd trading as Cotality (Cotality). All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

Local Schools



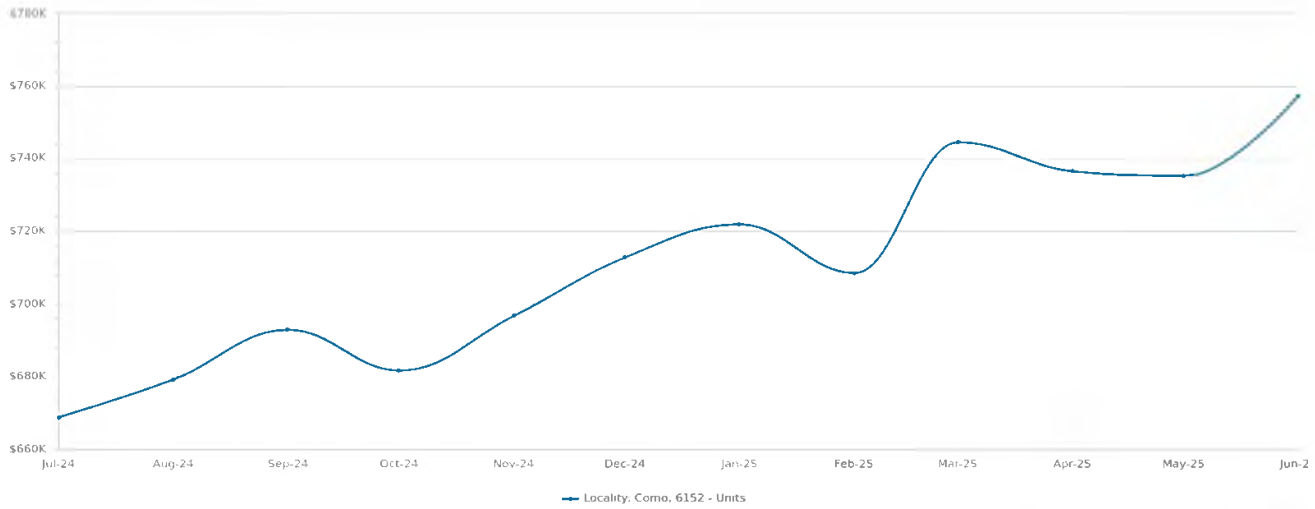
	SCHOOL ADDRESS	DISTANCE	SCHOOL TYPE	GENDER	SECTOR	YEARS
	Como Secondary College 20 Bruce Street Como WA 6152	0.14km	Secondary	Mixed	Government	7-12
	Mcdougall Park Community Kindergarten Inc Cnr Bruce/Henley Streets Como WA 6152	0.28km	Preschool	-	Government	-
	Alta-1 College - Como Campus 2 McNabb Loop Como WA 6152	0.57km	Special	Mixed	Non-Government	-
	Curtin Primary School 20 Goss Avenue Manning WA 6152	0.63km	Primary	Mixed	Government	0-6
	Penrhos College 101 Thelma Street Como WA 6152	0.78km	Combined	-	Non-Government	0-12

Property is within school catchment area Property is outside school catchment area

© Copyright 2025. RP Data Pty Ltd trading as Cotality (Cotality). All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

Recent Market Trends

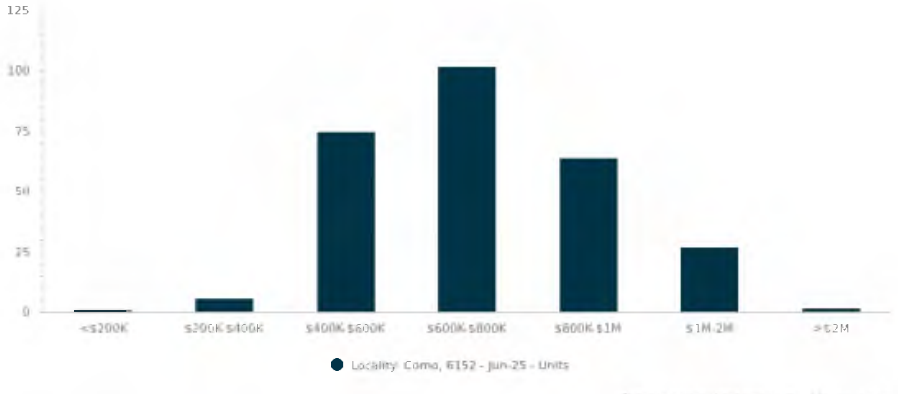
Median Value - 12 Months (Unit)



PERIOD	PROPERTIES SOLD	MEDIAN VALUE	GROWTH	DAYS ON MARKET	LISTINGS	ASKING RENT
Jun 2025	24	$757,152	3.0% ▲	10	51	$650
May 2025	19	$734,988	-0.2% ▼	11	50	$650
Apr 2025	20	$736,172	-1.1% ▼	11	57	$647
Mar 2025	25	$744,149	5.1% ▲	9	62	$625
Feb 2025	22	$708,246	-1.8% ▼	9	68	$620
Jan 2025	23	$721,583	1.3% ▲	9	67	$620
Dec 2024	23	$712,518	2.3% ▲	8	74	$610
Nov 2024	27	$696,494	2.2% ▲	8	84	$600
Oct 2024	26	$681,481	-1.6% ▼	8	69	$600
Sep 2024	18	$692,638	2.0% ▲	9	60	$600
Aug 2024	27	$679,022	1.6% ▲	9	68	$600
Jul 2024	23	$668,655	4.1% ▲	9	61	$600

Sales by Price - 12 months (Unit)

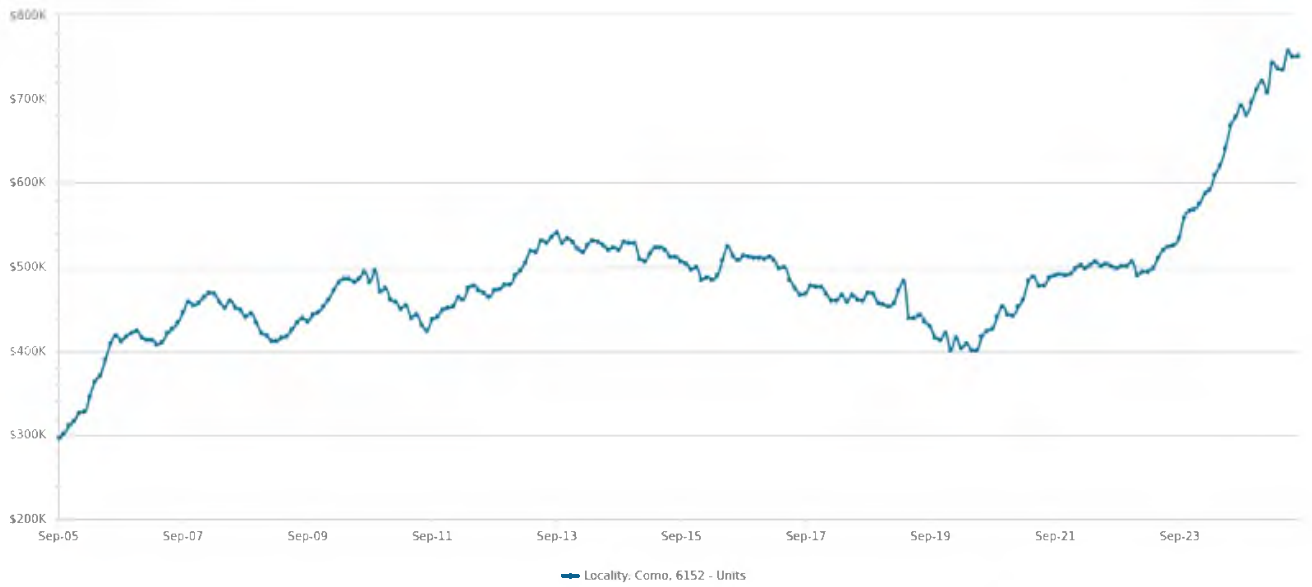
PRICE	NUMBER
<$200K	1
$200K-$400K	6
$400K-$600K	75
$600K-$800K	102
$800K-$1M	64
$1M-$2M	27
>$2M	2



© Copyright 2025. RP Data Pty Ltd trading as Cotality (Cotality). All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

Long Term Market Trends

Median Value - 20 Years (Unit)



PERIOD	PROPERTIES SOLD	MEDIAN VALUE	GROWTH	DAYS ON MARKET	LISTINGS	ASKING RENT
2025	277	$751,497	10.7% ▲	10	322	$650
2024	277	$679,022	29.0% ▲	10	319	$600
2023	262	$526,498	5.1% ▲	19	333	$500
2022	348	$500,890	2.8% ▲	22	419	$445
2021	266	$487,346	14.9% ▲	38	322	$395
2020	157	$424,162	-2.4% ▼	40	265	$350
2019	168	$434,657	-5.5% ▼	52	326	$340
2018	192	$460,068	-1.5% ▼	41	349	$330
2017	179	$467,108	-8.0% ▼	38	308	$345
2016	164	$507,574	-0.9% ▼	31	295	$375
2015	237	$512,323	-2.2% ▼	29	337	$410
2014	266	$523,659	-2.3% ▼	18	343	$440
2013	285	$535,916	15.5% ▲	19	302	$440
2012	225	$463,801	9.3% ▲	35	265	$400
2011	241	$424,496	-14.1% ▼	38	315	$370
2010	269	$494,258	12.6% ▲	22	279	$350
2009	275	$438,843	-2.2% ▼	41	315	$350
2008	227	$448,699	3.4% ▲	38	275	$315
2007	349	$433,845	3.5% ▲	31	311	$280
2006	405	$418,974	43.2% ▲	11	263	$227

© Copyright 2025. RP Data Pty Ltd trading as Cotality (Cotality). All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

Summary

3/61 CALE STREET COMO WA 6152









Appraisal price range
595,000 to 850,000

Notes from your agent

© Copyright 2025. RP Data Pty Ltd trading as Cotality (Cotality). All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

Disclaimer

Information contained within this product includes or is derived from the location information data licensed from Western Australian Land Information Authority (WALIA) (2025) trading as Landgate. Copyright in the location information data remains with WALIA. WALIA does not warrant the accuracy or completeness of the location information data or its suitability for any particular purpose. Western Australian Land Information Authority owns all copyright in the location information which is protected by the Copyright Act 1968 (Cth) and apart from any use as permitted under the fair dealing provisions of the Copyright Act 1968 (Cth), all other rights are reserved and no location information, or part of the location information, may be reproduced, distributed, commercialised or re-used for any other purpose without the prior written permission of Western Australian Land Information Authority (Landgate).

The Appraisal Amount contained in the report may have been manually provided by the Agent; or may be based on an automated valuation model estimate provided by Cotality ('AVM Estimated Value'). AVM Estimated Values are current at the date of the publication only. It is computer generated and is not a professional appraisal of the subject property and should not be relied upon in lieu of appropriate professional advice. The accuracy of the methodology used to develop the AVM Estimated Value, the existence of the subject property, and the accuracy of the AVM Estimated Value and all rule sets provided are estimates based on available data and are not guaranteed or warranted. Cotality excludes all liability for any loss or damage arising in connection with the Appraisal Amount and/or AVM Estimated Value.

Product Data licensed by Cotality under a Creative Commons Attribution licence. For details regarding licence, data source, copyright and disclaimers, see
www.corelogic.com.au/aboutus/thirdpartyrestrictions.html
All information relating to Schools provided by Cotality is as a courtesy only. Cotality does not make any representations regarding the accuracy or completeness of the data. You should contact the School directly to verify this information.

The Cotality Data provided in this publication is of a general nature and should not be construed as specific advice or relied upon in lieu of appropriate professional advice. While Cotality uses commercially reasonable efforts to ensure the Cotality Data is current, Cotality does not warrant the accuracy, currency or completeness of the Cotality Data and to the full extent permitted by law excludes all loss or damage howsoever arising (including through negligence) in connection with the Cotality Data.

© Copyright 2025. RP Data Pty Ltd trading as Cotality (Cotality). All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

IntelliVal Automated Valuation Estimate

Prepared on 21 September 2025

29 Gairloch Street Applecross WA 6153

Estimated Value:

$3,350,000

Estimated Value Confidence:

Low High

Estimated Price Range:

$2,949,000 - $3,754,000

Property Attributes:

4	3	2	280m^2



Year Built	Land Area	Property Type	Land Use	Development Zoning
1960	1,073m^2	House	House	R17.5 - low density res

Sales History

Sale Date	Sale Price	Sale Type
27 Aug 1990	$220,000	Unknown
30 Oct 1988	$225,000	Unknown

Estimated Value as at 15 September 2025. An automated valuation model estimate (Estimated Value) is a statistically derived estimate of the value of the subject property. An Estimated Value must not be relied upon as a professional valuation or an accurate representation of the market value of the subject property as determined by the valuer.

For further information about confidence levels, please refer to the end of this document.

© Copyright 2025 | RP Data Pty Ltd trading as Cotality and its licensors are the sole and exclusive owners of all rights, title and interest (including intellectual property rights) subsisting in this publication including any data, analytics, statistics and other information. All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

29 Gairloch Street Applecross WA 6153

Prepared on 21 September 2025

Location Highlights



Cotality IntelliVal Automated Valuation Estimate

© Copyright 2025 | RP Data Pty Ltd trading as Cotality and its licensors are the sole and exclusive owners of all rights, title and interest (including intellectual property rights) subsisting in this publication including any data, analytics, statistics and other information. All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

29 Gairloch Street Applecross WA 6153

Prepared on 21 September 2025

Recently Sold Properties



4	3	2	295m²	901m²

8 Roskhill Place Applecross WA 6153

Sold Price: **$3,460,000**

Sold Date: 08 July 2025

Distance from 0.9km

Features Living Areas, 1 Dining Rooms, 1 Ensuites, 1 Family / Rumpus Rooms, 2 Lockup Garages, 1 Lounge Rooms, Brick, Brick, Tile, 1 No



4	3	2	311m²	1,036m²

25 Fraser Road Applecross WA 6153

Sold Price: $3,800,000

Sold Date: 09 March 2025

Distance from 0.7km

Features Living Areas, 1 Dining Rooms, 1 Ensuites, 1 Family / Rumpus Rooms, 2 Lockup Garages, 1 Lounge Rooms, Brick, Oak Timber



4	3	2	-	1,138m²

15 Riverway Applecross WA 6153

Sold Price: $3,300,000

Sold Date: 01 February 2025

Distance from 0.9km

Features Living Areas, 1 Dining Rooms, 2 Ensuites, 1 Family / Rumpus Rooms, 2 Lockup Garages, 1 Lounge Rooms, Brick, Tile, 1 No of

*Agent Advised

Cotality IntelliVal Automated Valuation Estimate

© Copyright 2025 | RP Data Pty Ltd trading as Cotality and its licensors are the sole and exclusive owners of all rights, title and interest (including intellectual property rights) subsisting in this publication including any data, analytics, statistics and other information. All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

29 Gairloch Street Applecross WA 6153

Prepared on 21 September 2025



5 | 3 | 2 | 510m² | 1,012m²

14 Hope Road Ardross WA 6153

Sold Price: $3,200,000

Sold Date: 15 July 2025

Distance from 1.3km

Features Ducted Cooling, Living Areas, 1 Dining Rooms, 1 Ensuites, 1 Family / Rumpus Rooms, 2 Lockup Garages, 1 Lounge Rooms, Brick, Tile, 1



5 | 3 | 4 | 265m² | 750m²

29 Bateman Road Mount Pleasant WA 6153

Sold Price: $3,250,000

Sold Date: 14 April 2025

Distance from 2km

Features Ducted Reverse Cycle, Living Areas, 1 Dining Rooms, 2 Ensuites, 1 Family / Rumpus Rooms, Granite Bench Tops, Stainless Steel



4 | 2 | 2 | 250m² | 1,073m²

35 Gairloch Street Applecross WA 6153

Sold Price: $3,250,000

Sold Date: 26 March 2025

Distance from 0.1km

Features Living Areas, 1 Dining Rooms, 1 Ensuites, 1 Family / Rumpus Rooms, 2 Lockup Garages, 1 Lounge Rooms, Brick, Brick, Tile, 1 No

Cotality IntelliVal Automated Valuation Estimate

© Copyright 2025 | RP Data Pty Ltd trading as Cotality and its licensors are the sole and exclusive owners of all rights, title and interest (including intellectual property rights) subsisting in this publication including any data, analytics, statistics and other information. All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

29 Gairloch Street Applecross WA 6153

Prepared on 21 September 2025

Applecross Insights: A Snapshot



Houses

Median Price

$2,332,647

	Past Sales	Capital Growth
2025	146	↑ 7.90%
2024	141	↑ 17.94%
2023	99	↑ 4.19%
2022	111	↑ 7.59%
2021	137	↑ 19.19%

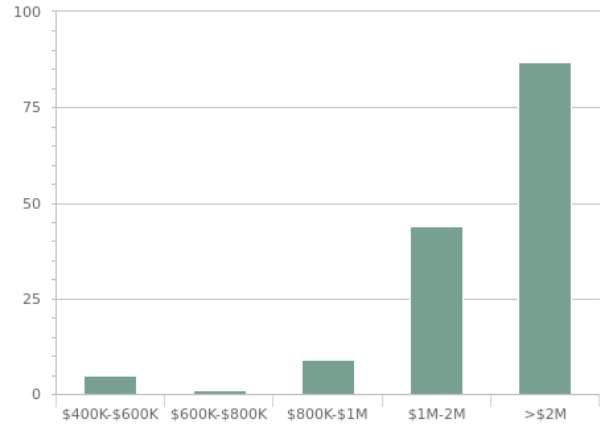
Units

Median Price

$978,913

	Past Sales	Capital Growth
2025	132	↑ 18.22%
2024	111	↑ 12.22%
2023	78	↑ 1.92%
2022	104	↑ 3.77%
2021	133	↑ 13.40%

House Sales by Price (Past 12 Months)



Unit Sales by Price (Past 12 Months)



Cotality IntelliVal Automated Valuation Estimate

© Copyright 2025 | RP Data Pty Ltd trading as Cotality and its licensors are the sole and exclusive owners of all rights, title and interest (including intellectual property rights) subsisting in this publication including any data, analytics, statistics and other information. All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

29 Gairloch Street Applecross WA 6153

Prepared on 21 September 2025

Disclaimers

This publication reproduces materials and content owned or licenced by RP Data Pty Ltd trading as Cotality and may include data, statistics, estimates, indices, photographs, maps, tools, calculators (including their outputs), commentary, reports and other information (Cotality Data).

The Cotality Data provided in this publication is of a general nature and should not be construed as specific advice or relied upon in lieu of appropriate professional advice.

While Cotality uses commercially reasonable efforts to ensure the Cotality Data is current, Cotality does not warrant the accuracy, currency or completeness of the Cotality Data and to the full extent permitted by law excludes all loss or damage howsoever arising (including through negligence) in connection with the Cotality Data.

Based on information provided by and with the permission of the Western Australian Land Information Authority (2022) trading as Landgate.

An Estimated Value is generated (i) by a computer driven mathematical model in reliance on available data; (ii) without the physical inspection of the subject property; (iii) without taking into account any market conditions (including building, planning, or economic), and/or (iv) without identifying observable features or risks (including adverse environmental issues, state of repair, improvements, renovations, aesthetics, views or aspect) which may, together or separately, affect the value.

An Estimated Value is current only at the date of publication or supply. Cotality expressly excludes any warranties and representations that an Estimated Value is an accurate representation as to the market value of the subject property.

To the full extent permitted by law, Cotality excludes all liability for any loss or damage howsoever arising or suffered by the recipient, whether as a result of the recipient's reliance on the accuracy of an Estimated Value or otherwise arising in connection with an Estimated Value.

How to read Estimated Value

The Confidence is based on a statistical calculation as to the probability of the Estimated Value being accurate compared to market value. The available confidence values returned are High, Medium-High, Medium, Medium-Low, and Low. An Estimated Value with a ‘High’ confidence is considered more reliable than an Estimated Value with a ‘Medium-High’, 'Medium', ‘Medium-Low’ or 'Low' confidence. The Confidence is a reflection of the amount of data we have on the property and similar properties in the surrounding areas. Generally, the more data we have for the local real estate market and subject property, the higher the Confidence level will be. Confidence should be considered alongside the Estimated Value.

Confidence is displayed as a coloured coded range with red representing low confidence, through to amber which represents medium confidence to green for higher confidence.



Low Medium High

For more information on estimated values: https://www.corelogic.com.au/estimated-value-faqs

If you have any questions or concerns about the information in this report, please contact our customer care team.

Within Australia: **1300 734 318**
Email Us: **customercare@corelogic.com.au**

© Copyright 2025 | RP Data Pty Ltd trading as Cotality and its licensors are the sole and exclusive owners of all rights, title and interest (including intellectual property rights) subsisting in this publication including any data, analytics, statistics and other information. All rights reserved. No reproduction, distribution, or transmission of the copyrighted materials is permitted. The information is deemed reliable but not guaranteed.

Our Ref.: 464538.0001-12-06-01-l1

11 September 2025

Mr David Vilensky
Managing Director
BBV Legal Pty Ltd
Level 14, 251 Adelaide Terrace
PERTH WA 6000

Attention: Mr David Vilensky

By Email: dvilensky@bbvlegal.com.au

Dear Sir

Re: Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6
Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6 ("the Bankrupt Estates")

Notice of rejection of proof of debt – section 102(2) of the *Bankruptcy Act 1966* (Cth)

I refer to previous correspondence regarding the proof of debt lodged by BBV Legal Pty Ltd in the Bankrupt Estates for $403,979 dated 13 July 2020 (**"Proof of Debt"**).

Based on the information provided, there is insufficient evidence to prove the debt claimed in the Proof of Debt against the Bankrupt Estates. Accordingly, your claim against the Bankrupt Estates has been rejected in full.

Please find **enclosed** formal notice of the rejection, which includes the reasons for my decision.

Should you have any queries, please contact Nick Hawthorne of this office on (07) 3225 4971 or by email at nick.hawthorne@fticonsulting.com.

Yours faithfully

Kelly-Anne Trenfield

Trustee

NOTICE OF REJECTION OF PROOF OF DEBT

section 102(2) of the *Bankruptcy Act 1966* (Cth)

Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6

Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6

("THE BANKRUPT ESTATES")

To: Mr David Vilensky, BBV Legal Pty Ltd
of Level 14, 251 Adelaide Terrace
PERTH WA 6000

1. Adjudication

Your claim against the Bankrupt Estates set out in proof of debt lodged by BBV Legal Pty Ltd (**"BBV Legal"**) in the Bankrupt Estates for $403,979 dated 13 July 2020 (**"Proof of Debt"**) has been rejected in full.

2. Background

a. Bowen Buchbinder Vilensky (**"BBV"**) acted for Computer Accounting & Tax Pty Ltd (**"CAT"**) in Supreme Court proceeding CIV 1741/2010. CAT was the plaintiff in the proceeding. Mr and Mrs Frigger were directors and shareholders of CAT.

b. The terms of engagement between BBV and CAT are set out in a Retainer Agreement between BBV and CAT dated 6 March 2007 (**"Retainer Agreement"**). The Retainer Agreement includes a 'Directors Guarantee' clause.

c. In or around early 2010, there was a dispute between BBV and CAT regarding fees owing by CAT to BBV. BBV undertook to have the fees taxed pursuant to section 237 of the *Legal Practice Act 2003* (WA). The bill of costs was taxed and allowed by the Taxing Officer in the sum of $252,489.47. The taxation took place on 3 August 2010.

d. The work done and referred to in the bill of costs spans the period 1 November 2007 to 29 February 2008.

e. BBV (as first plaintiff) and BBV Legal (as second plaintiff) commenced proceedings against Mrs Frigger personally in the District Court of Western Australia in CIV 2603 of 2010 for recovery of the fees pursuant to the 'Directors Guarantee' clause in the Retainer Agreement. The proceeding was defended by Mrs Frigger.

f. BBV and BBV Legal applied for summary judgment which was opposed by Mrs Frigger. The summary judgment application was dismissed by Registrar Kingsley on 2 February 2011 (*Bowen Buchbinder Vilensky (A Firm) v Frigger* [2011] WADC 12).

g. BBV and BBV Legal appealed against the decision of Registrar Kingsley. Scott DCJ dismissed the plaintiffs' appeal on 4 May 2011 (*Bowen Buchbinder Vilensky (A Firm) [No 2]* [2011] WADC 67).

h. On 23 September 2011 Mrs Frigger issued a Chamber Summons for orders that, amongst other things, the plaintiffs' action be dismissed for want of prosecution. The Chamber Summons was opposed by BBV Legal.

i. On 15 December 2011, Deputy Registrar Hewit made an order dismissing the plaintiffs' action in CIV 2603 of 2010.

j. Since the dismissal in December 2011, BBV and BBV Legal have not commenced fresh proceedings against Mrs Frigger.

k. On 20 July 2018, sequestration orders were made in respect of the Bankrupt Estates pursuant to s 43(2) of the *Bankruptcy Act 1966* (Cth).

3. Grounds for Rejection

a. Having regard to section 13 of the *Limitation Act 2005* (WA), and the Retainer Agreement, the limitation period applicable to BBV Legal's claim the subject of the Proof of Debt is six (6) years.

b. A debt is not provable if it has become unenforceable by reason of the statute of limitations (*Motor Terms Co Pty Ltd v Liberty Insurance* Ltd (1967) 116 CLR 177). If a debt is statute-barred against the bankrupt before the onset of bankruptcy then it is equally statute-barred against the bankrupt estate (*Coshott v Official Trustee in Bankruptcy, Bankrupt Estate of Michael Petrovic Lenin (Decd)* [2019] FCA 913 per Stewart J at [37]).

c. BBV Legal's claim was statute barred prior to 20 July 2018 (being the date of bankruptcy). Accordingly, the claim is statute barred against the Bankrupt Estates and is not a debt provable in the Bankrupt Estates.

If you are dissatisfied with my determination as set out above, you may appeal against it, no later than 21 days after the service of this notice or, if the Court allows, within any further period.

Dated this 11th day of September 2025

Kelly-Anne Trenfield

Trustee

Our Ref.: 464538.0001-12-06-02-l1

11 September 2025

Clavey Legal Pty Ltd
c/- MDS Legal
Level 2, 16 Irwin Street
PERTH WA 6000

Attention: Mr Ashley Macknay

By Email: amacknay@mdslegal.com.au

Dear Sir

Re: Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6
Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6 ("the Bankrupt Estates")

Notice pursuant to section 102(1) and section 82(4) of the *Bankruptcy Act 1966* (Cth)

I refer to previous correspondence regarding the Bankrupt Estates and the proof of debt lodged by Clavey Legal Pty Ltd in the Bankrupt Estate for $580,491.44 dated 9 May 2023 (**"Proof of Debt"**).

The Proof of Debt has been allowed in the sum of $661,811.31. A notice of admissions and/or estimate outlining my decision is **enclosed** for your reference.

Should you have any queries, please contact Nick Hawthorne of this office on (07) 3225 4971 or by email at nick.hawthorne@fticonsulting.com.

Yours faithfully

Kelly-Anne Trenfield

Trustee

NOTICE OF ADMISSION AND/OR ESTIMATE OF THE VALUE OF THE DEBT OR LIABILITY

section 102(1) of the *Bankruptcy Act 1966* (Cth)
section 82(4) of the *Bankruptcy Act 1966* (Cth)

Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6

Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6

("THE BANKRUPT ESTATES")

To: Clavey Legal Pty Ltd (**"Clavey Legal"**)

of c/- Mr Ashley Macknay
MDS Legal
Level 2, 16 Irwin Street
PERTH WA 6000

Adjudication

1. Your claim against the Bankrupt Estates set out in proof of debt lodged by Clavey Legal in the Bankrupt Estates for $580,491.44 dated 9 May 2023 (**"Proof of Debt"**) has been allowed in the amount of $661,811.31 on the basis calculated below:

Claim	Date debt/s incurred	Details of debt	Amount claimed	Amount allowed
1.	19.10.2015	Costs payable pursuant to order of Judge Herron dated 19 October 2015 in District Court proceeding CIV 1221 of 2011 and Certificate of Taxation of Deputy Registrar Hewitt dated 21 July 2016	$122,533.96	$142,777.25 (comprising $122,533.96 of taxed costs plus interest at 6% p.a. from 19 October 2015 to the date of bankruptcy)
2.	19.10.2015	Indemnity Costs payable pursuant to paragraph 2 of the order made by Judge Herron dated 19 October 2015 in District Court proceeding CIV 1221 of 2011	$447,539.91	$507,691.75 (comprising $435,710.07 of costs plus interest at 6% p.a. from 19 October 2015 to the date of bankruptcy)
3.	27.01.2017	Costs payable pursuant to order made by Judge Stevenson dated 27 January 2017 in District Court proceeding CIV 1221 of 2011	$10,417.57	$11,342.31 (comprising $10,417.57 of costs plus interest at 6% p.a. from 27 January 2017 to the date of bankruptcy)
TOTAL			**$580,491.44**	**$661,811.31**

Summary of claims

2. The debt the subject of claim item 1 referred to in the table above relate to a costs order that has been assessed at taxation and are admitted in full pursuant to section 102(1)(a) of the Act.

3. The debts the subject of claim items 2 and 3 referred to in the table above relate to costs orders that have not been assessed at taxation and for which I make an estimate of the value of the debt pursuant to section 82(4) of the Act below.

4. Claim 2 arises from paragraph 2 of the order made by Judge Herron dated 19 October 2015 in District Court proceeding CIV 1221 of 2011 (**"2015 Order"**):

   1. The plaintiffs pay the defendant's costs of the action, including reserved costs before 14 June 2013 on a party and part basis to be taxed.

   2. The plaintiffs pay all the defendant's costs of the action from 14 June 2013 except insofar as they are of an unreasonable amount or have been unreasonably incurred so that subject to the above exclusions the defendant is completely indemnified by the plaintiffs for its costs from 14 June 2013, including the costs of this application for costs.

   3. The defendant's costs under items 17, 20(b) and 20(d) be taxed without reference to the limits fixed under Supreme Court scale of costs.

   4. The plaintiffs pay the defendant's costs of obtaining the transcript incurred by the defendant.

5. The reference to 'plaintiff' in the 2017 Order is to Mr and Mrs Frigger and the reference to 'defendant' in the 2017 order is Clavey Legal Pty Ltd.

6. Claim 3 arises from an order made by Judge Stevenson dated 27 January 2017 in District Court proceeding CIV 1221 of 2011 (**"2017 Order"**):

   1. The applicants pay the respondent's costs of the application (including any reserved costs) to be taxed, unless otherwise agreed.

7. The reference to 'applicant' in the 2017 Order is to Mr and Mrs Frigger and the reference to 'respondent' in the 2017 order is Clavey Legal Pty Ltd.

8. I have been provided with the following documents to assist with my assessment of Claims 2 and 3:

   a. Draft Bill of Costs relating to the 2015 Order (**"Draft Bill"**);

   b. Letter from MDS Legal to FTI Consulting dated 23 May 2024;

   c. Each of the orders referred to in paragraphs 4 and 5 above;

   d. MDS Legal Tax Invoice 66813 dated 25 August 2016 (redacted);

   e. MDS Legal Tax Invoice 67163 dated 30 September 2016 (redacted);

   f. MDS Legal Tax Invoice 67485 dated 31 October 2016 (redacted);

   g. MDS Legal Tax Invoice 67673 dated 30 November 2016 (redacted);

   h. MDS Legal Tax Invoice 68519 dated 28 February 2017 (redacted); and

   i. MDS Legal Tax Invoice 70723 dated 29 September 2017 (redacted); and

j. a copy of various court documents filed in proceeding CIV 1221 of 2011.

Claim 2 Assessment

9. The Draft Bill dated 18 March 2016 claims $447,186.91 for items 44 to 110 of the Draft Bill under the 2015 Order.

10. Dealing with each of the items claimed in the Draft Bill to the extent that the costs claimed do not appear to be reasonably, necessarily or properly incurred, fair and reasonable in amount or which otherwise require some comment based on a review of the documents provided:

    a. Item 54 – Allowed amount: $849.77

       The Defendant has not provided a copy of its request for further and better particulars in the Court documents provided. However, having regard to the content and length of the Plaintiffs' response to the request for further and better particulars dated 18 February 2014, the time claimed of $849.77 appears reasonable.

    b. Item 55 – Allowed amount: $1,766.93

       The supplementary affidavit of discovery discovered 20 additional documents and three (3) generic bundles/categories of documents, which does not appear to warrant 448 minutes (7.46 hours) of time for Senior Practitioner 2 listed in the Draft Bill (**"SP2"**).

       I consider that five (5) hours be allowed for SP2 at the rate of $340.56 including GST in addition to time claimed by Senior Practitioner 1 listed in the Draft Bill (**"SP1"**) of $64.13.

       Accordingly, I consider this item should be reduced by $840.05.

    c. Item 58 – Allowed amount: $1,305.03

       There is insufficient information included in the Draft Bill to determine whether the amount claimed is reasonable and justified. A copy of the subpoena to R Martin does not appear to have been included in the Court documents provided. Further, item 58 does not detail the number of and length of documents reviewed resulting from the subpoenas to M Kitay and R Martin.

       I consider the amount should be reduced by 10%, being $145.

    d. Item 59 – Allowed amount: $3,285.90

       After reviewing the following Court documents:

       i. Orders of Acting Principal Registrar Kingsley made on 20 March 2014;

       ii. Notice of Appeal dated 24 March 2014; and

       iii. Orders made by His Honour Justice Derrick on 28 March 2014,

       and because of the apparent urgency of the work completed, this item appears reasonable.

       Based on the Court documents provided it is not apparent that there was a separate costs order made in the appeal of the Registrar's decision heard on 2 April 2014. Therefore, costs have been treated as following the event.

e. Item 60 – Allowed amount: $6,593.52

After reviewing the following Court documents:

i. Orders of Acting Principal Registrar Kingsley made on 20 March 2014;

ii. Notice of Appeal dated 24 March 2014;

iii. Orders made by His Honour Justice Derrick on 28 March 2014;

iv. the Plaintiff's Outline of Submissions filed on 1 April 2014;

v. the Defendant's Submissions filed on 1 April 2014;

vi. the Plaintiff's Supplementary Submissions filed on 2 April 2014; and

vii. Reasons for Decision in *Frigger v Clavey Legal Pty Ltd [No 2]* [2014] WADC 44,

and because of the apparent urgency of the work completed, this item appears reasonable.

Based on the Court documents provided it is not apparent that there was a separate costs order made in the appeal of the Registrar's decision heard on 2 April 2014. Therefore, costs have been treated as following the event.

f. Item 77 – Allowed amount $1,761.01

There is insufficient information in the Draft Bill and the Court documents provided to determine that 53 minutes of SP1's time and 183 minutes of SP2's time was required to prepare for and attend and report to the client about the outcome of the Directions Hearing on 10 September 2014 in addition to Senior Counsel's time of $770 and that there has been no duplication of work.

Two (2) hours at SP2's rate of $340.56 including GST, being $681.12, appears reasonable.

The total reduction for this item is $357.59.

g. Item 84 – Allowed amount: $0

There is insufficient information in the Draft Bill to determine why it was necessary for Junior Practitioner 2 (listed in the Draft Bill) (**"JP2"**) to attend the hearing in CIV2265 of 2006.

h. Item 85 – Allowed amount: $462

At the Directions Hearing on 7 October 2014 the Court ordered that the plaintiff pay the defendant's costs forthwith fixed at $462.

Because the Court's Order made on 19 October 2015 did not vacate previous costs orders, the fixed costs order of $462 still applies.

Accordingly, I consider this item should be reduced by $949.98

i. Item 90 – Allowed amount: $16,364.92

There is insufficient information included in the Draft Bill to determine whether the amount claimed is reasonable and justified and whether the work completed required

the involvement of Senior Counsel and 2 senior practitioners. A copy of the written closing submissions do not appear to have been included in the Court documents provided. Further, item 90 does not detail the length of the written submissions.

I consider the amount be reduced by the amount of SP1's time claimed of $929.88.

j. Item 91 – Allowed amount: $1,224.88

It is unclear, from the Draft Bill, why correspondence was required with witnesses post-trial. I consider this item should be reduced by the amount of JP2's time claimed, being $60.46.

k. Item 93 – Allowed amount: $17,647.14

It is not apparent from the Court documents, the time spent and the amount claimed for in this item that the work completed was reasonable and justified. I consider that the time spent for each of SP1 and Senior Practitioner 5 (listed in the Draft Bill) (**"SP5"**) be reduced by 25% each to be $4,040.19 for SP1 and $13,204.20 for SP5. Accordingly, the total reduction for this item is $5,748.10.

l. Item 95 – Allowed amount: $0

There is insufficient information in the Draft Bill to determine that photocopying of $694.10 was completed.

m. Item 106 – Allowed amount: $0

There is insufficient information in the Draft Bill to determine that photocopying of $401.50 was completed.

11. The total reduction for items 44 to 110 of the Draft Bill referred to in paragraph 10 above is $11,476,84. Accordingly, the amount allowed with respect to the 2015 Order is $435,710.07.
12. Interest on the amount of $435,710.07 at the rate of 6% per annum pursuant to section 8 the *Civil Judgments Enforcement Act 2004* (WA) from 19 October 2015 to 20 July 2018 is $71,981.68.
13. Accordingly, I estimate the value of the claim the subject of Claim 2 pursuant to section 82(4) of the Act to be $507,691.75.

Claim 3 Assessment

14. Clavey Legal claims costs of $10,417.57 pursuant to the 2017 Order as referred to in the Proof of Debt, Annexure A.
15. Item 5 of Annexure A refers to attendance at the appeal hearing on 23 January 2017 by a senior practitioner of 30 minutes and a senior practitioner of 330 minutes, being 5.5 hours. It is apparent that the practitioner referenced in documents as SAD (**"SAD"**) as the senior practitioner appeared as Counsel.
16. There appears to be a discrepancy between:
    a. The amount stated for attendance at the hearing by a senior practitioner in item 5 compared with Tax Invoice 68519, SAD a senior practitioner attended at the appeal hearing for 165 units; and

b. The time spent by each of a junior practitioner of 30 minutes and the senior practitioner of 330 minutes.

17. However, the costs claimed by each of the junior practitioner and the senior practitioner appear reasonable.
18. I consider the costs claimed of $10,417.57 should be allowed in full.
19. Interest on the amount of $10,417.57 at the rate of 6% per annum pursuant to section 8 the *Civil Judgments Enforcement Act 2004* (WA) from 27 January 2017 to the date of bankruptcy is $924.74.
20. Accordingly, I estimate the value of the claim the subject of Claim 3 pursuant to section 82(4) of the Act to be $11,342.31.

Please note that pursuant to section 82(5) of the Act a person aggrieved by an estimate made pursuant to section 82(4) of the Act may appeal to the Court not later than 28 days after the day on which the person is notified of the estimate.

Dated this 11th day of September 2025



Kelly-Anne Trenfield

Trustee

Our Ref.: 464538.0001-12-06-11-l1

11 September 2025

Sandra May Banning & Banning Holdings Pty Ltd

c/- Eastwood Law
Level 1, 26 Railway Road
SUBIACO WA 6008

Attention: Mr Cameron Eastwood

By Email: cameron.eastwood@eastwood.legal

Dear Sir

Re: Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6
Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6 ("the Bankrupt Estates")

Notice pursuant to section 102(2) and section 82(4) of the *Bankruptcy Act 1966* (Cth)

I refer to previous correspondence regarding the undated proof of debt lodged by Sandra May Banning in her own capacity and as director of Banning Holdings Pty Ltd in the Bankrupt Estate for $102,852.29 (**"Proof of Debt"**).

The Proof of Debt has been allowed in the sum of $68,544.81 and rejected in the sum of $34,307.57. A notice of rejection and/or estimate outlining my decision is **enclosed** for your reference.

Should you have any queries, please contact Nick Hawthorne of this office on (07) 3225 4971 or by email at nick.hawthorne@fticonsulting.com.

Yours faithfully

Kelly-Anne Trenfield

Trustee

NOTICE OF REJECTION AND/OR ESTIMATE OF THE VALUE OF THE DEBT OR LIABILITY

section 102(2) of the *Bankruptcy Act 1966* (Cth)
section 82(4) of the *Bankruptcy Act 1966* (Cth)

Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6

Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6

("THE BANKRUPT ESTATES")

To: Sandra May Banning & Banning Holdings Pty Ltd

of c/- Mr Cameron Eastwood

Eastwood Law
Level 1, 26 Railway Road
SUBIACO WA 6008

Adjudication

1. Your claim against the Bankrupt Estates set out in the undated proof of debt lodged by Sandra May Banning in her own capacity and as director of Banning Holdings Pty Ltd in the Bankrupt Estates for $102,852.29 (**"Proof of Debt"**) has been allowed in the amount of $68,544.81 on the basis calculated below:

Claim	Date debt/s incurred	Details of debt	Amount claimed	Amount allowed
1.	09.02.2011	Costs order (taxed) and interest to 20 July 2018	$93,273.69	$62,168.32
2.	16.06.2014	Costs order (taxed) and interest to 20 July 2018	$5,337.51	$3,557.87
3.	18.09.2014 and 03.12.2014	Enforcement costs for PSSO's and interest to 20 July 2018	$2,385.14	$1,589.88
4.	24.09.2015	Order for extension of PSSO (untaxed) and interest to 20 July 2018	$731.19	$487.39
5	08.09.2015	Order for extension of PSSO (untaxed) and interest to 20 July 2018	$1,124.76	$741.26
TOTAL			**$102,852.29**	**$68,544.72**

Background

2. Angela Frigger and Hartmut Frigger (**"Friggers"**) commenced proceedings against Donald Campbell-Smith (as first defendant), Sandra May Banning (as second defendant), Banning Holdings Pty Ltd (as third defendant) and Graeme Trevor Lean (as fourth defendant).

3. In a letter from Eastwood Law to me dated 11 May 2023, Mr Eastwood said:

> *1. In relation to Mr Donald Campbell-Smith he was joined to the proceedings because he was a director and shareholder of BH, and, at the material time held his share in BH in his capacity as executor of the deceased estate of Martin Paul Banning (the former husband of our client Sandra May Banning). Due to the nature of his involvement, it was agreed by BH and Mrs Banning he was to be indemnified against his liability for the legal fees incurred in defending the proceedings by the other Defendants for whom we acted, and, if necessary out of the deceased estate of Mr Banning.*
>
> *2. Prior to his death Mr Campbell-Smith became incapable as a result of dementia and Mrs Banning was appointed administrator of the deceased estate of her late husband in around May 2018, and, she has since then undertaken the legal responsibilities on behalf of his deceased estate. Mr Campbell-Smith subsequently died, and his deceased estate has made and makes no claim to these debts because Mr Campbell-Smith was never required by the lawyers representing him to pay any amount for his representation in these proceedings even though he incurred a liability to do so.*
>
> *3. It is therefore our contention that since Mr Campbell-Smith never paid any amount for his legal representation and was to be indemnified against his liability by our other clients it is appropriate for the whole of the amounts pursuant to the judgments and certificates attached to be payable to Banning Holdings Pty Ltd and Mrs Banning and that the proof of debt be admitted on their behalf without regard to Mr Campbell-Smith or his deceased estate.*

4. Despite numerous requests for supporting information from Eastwood Law, I have not received any evidence to support the comments made by Mr Eastwood referred to in paragraph 3 above.

5. Accordingly, I consider a reduction of the amount claimed should be applied to account for the costs that would reasonably be attributable to the costs of Donald Campbell-Smith.

6. The calculation of the amounts allowed for each claim referred to in the table above are set out below.

Claim 1 Assessment

7. On 9 February 2011, Justice Martin made various orders that the plaintiffs pay the costs of the first, second and third defendants, to be taxed if not agreed (**"2011 Order"**).

8. The first, second and third defendants filed a draft bill of costs in respect of the 2011 Order in the amount of $78,103.41. On or about 27 June 2014, the costs were assessed and allowed in

the sum of $64,461.88 pursuant to the Certificate of Taxation dated 27 June 2014. I note that the costs allowed were in favour of the first, second and third defendants (which includes Donald Campbell-Smith who is not listed as a creditor in the Proof of Debt).

9. For the reasons set out in paragraphs 3 to 5 above, the amount claimed is reduced by 1/3 to account for the costs that would reasonably be attributed to the costs of Donald Campbell-Smith.

10. Pursuant to section 102(1)(b) of the Act, Claim 1 has been rejected in part to account for the reduction of costs attributable to Donald Campbell-Smith.

11. I have allowed the amount of $62,168.37 in respect of Claim 1 calculated as follows:

    a. $64,461.88 in taxed costs;

    b. plus interest on the amount of $64,461.88 at the rate of 6% per annum pursuant to section 8 the *Civil Judgments Enforcement Act 2004* (WA) from 9 February 2011 to the date of bankruptcy (being $28,790.60);

    c. less 1/3 of the costs (being $31,084.16).

12. Accordingly, the total amount allowed for Claim 1 is $62,168.32.

Claim 2 Assessment

13. On 16 June 2014, Registrar Davies reviewed the taxation of costs referred to in paragraph 8 above and gave judgment that:

    a. the plaintiffs' objections to the taxation be dismissed; and

    b. the defendants should have costs of the review.

14. On or about 18 June 2014 the first, second and third defendants prepared a draft bill of costs in relation to the plaintiffs' review of taxation in the amount of $4,725. On 3 December 2014, Registrar Davies issued a Certificate of Taxation assessing the draft bill of costs and allowing the sum of $4,284.

15. For the reasons set out in paragraphs 3 to 5 above, the amount claimed is reduced by 1/3 to account for the costs that would reasonably be attributed to the costs of Donald Campbell-Smith.

16. Pursuant to section 102(1)(b) of the Act, Claim 2 has been rejected in part to account for the reduction of costs attributable to Donald Campbell-Smith.

17. I have allowed the amount of $3,557.88 in respect of Claim 2 calculated as follows:

    a. $4,284 in taxed costs;

    b. plus interest on the amount of $4,284 at the rate of 6% per annum pursuant to section 8 the *Civil Judgments Enforcement Act 2004* (WA) from 16 June 2014 to the date of bankruptcy (being $1,052.81);

    c. less 1/3 of the costs (being $1,778.94).

18. Accordingly, the total amount allowed for Claim 2 is $3,557.87.

Claim 3 Assessment

19. On 18 September 2014, the Supreme Court of Western Australia issued a Property (Seizure and Sale) Order in respect of the costs order referred to in paragraphs 7 and 8 above (**"2014 PSSO"**). The order is referred to in the orders extending the PSSO dated 24 September 2015 and 8 September 2016. While I have not received a copy of the PSSO dated 18 September 2014, I am satisfied that the PSSO was made in light of the extension orders.

20. The 2014 PSSO was in favour of Donald Campbell-Smith, Sandra Banning and Banning Holdings. However, I note that Donald Campbell-Smith is not listed as a creditor in the Proof of Debt.

21. For the reasons set out in paragraphs 3 to 5 above, the amount claimed is reduced by 1/3 to account for the costs that would reasonably be attributed to the costs of Donald Campbell-Smith.

22. In respect of the 2014 PSSO, I have allowed the amount of $820.20 calculated as follows:

    a. $1,000 in costs;

    b. plus interest on the amount of $1,000 at the rate of 6% per annum pursuant to section 8 the *Civil Judgments Enforcement Act 2004* (WA) from 18 September 2014 to the date of bankruptcy (being $230.30);

    c. less 1/3 of the costs and interest (being $410.10).

23. On 23 December 2015 the Supreme Court of Western Australia issued a Property (Seizure and Sale) Order in respect of the costs order referred to in paragraphs 13 and 14 above (**"2015 PSSO"**). The enforcement costs referred to in the 2015 PSSO were $1,000.

24. The 2015 PSSO was in favour of Donald Campbell-Smith, Sandra Banning and Banning Holdings. However, I note that Donald Campbell-Smith is not listed as a creditor in the Proof of Debt.

25. For the reasons set out in paragraphs 3 to 5 above, the amount claimed is reduced by 1/3 to account for the costs that would reasonably be attributed to the costs of Donald Campbell-Smith.

26. In respect of the 2015 PSSO, I have allowed the amount of $769.68 calculated as follows:

    a. $1,000 in costs;

    b. plus interest on the amount of $1,000 at the rate of 6% per annum pursuant to section 8 the *Civil Judgments Enforcement Act 2004* (WA) from 23 December 2015 to the date of bankruptcy (being $154.52);

    c. less 1/3 of the costs (being $384.84).

27. Accordingly, the total amount allowed for Claim 3 is $1,589.88.

Claim 4 Assessment

28. On 24 September 2015 Registrar Davies made an order that:

    a. the PSSO dated 18 September 2014 be extended for 12 months pursuant to s.102(2) and (4) of the *Civil Judgments Enforcement Act 2004* (WA); and

    b. the judgment debtors (being the Friggers) pay the costs of the application.

29. The order lists the applicants as Donald Campbell-Smith, Sandra May Banning and Banning Holdings Pty Ltd. However, Donald Campbell-Smith is not listed as a creditor in the Proof of Debt.

30. I consider the amount of $625.23 in costs plus interest to be reasonable. However, for the reasons set out in paragraphs 3 to 5 above, the amount claimed is reduced by 1/3 to account for the costs that would reasonably be attributed to the costs of Donald Campbell-Smith.

31. Accordingly, I estimate the value of the Claim 4 set out in the Proof of Debt to be $487.39 calculated as follows:

    a. $625.23 in costs;

    b. plus interest on the amount of $625.23 at the rate of 6% per annum pursuant to section 8 the *Civil Judgments Enforcement Act 2004* (WA) from 24 September 2015 to the date of bankruptcy (being $105.85);

    c. less 1/3 of the costs (being $243.69).

32. Accordingly, the total amount allowed for Claim 4 is $487.39.

Claim 5 Assessment

33. On 8 September 2016 the Court made an order that:

    a. the PSSO dated 18 September 2014 be extended for 12 months pursuant to s.102(2) and (4) of the *Civil Judgments Enforcement Act 2004* (WA); and

    b. the judgment debtors (being the Friggers) pay the costs of the application.

34. The order lists the applicants as Donald Campbell-Smith, Sandra May Banning and Banning Holdings Pty Ltd. However, Donald Campbell-Smith is not listed as a creditor in the Proof of Debt.

35. The amount claimed in the Proof of Debt for costs pursuant to the order dated 8 September 2016 is $1,124.76 comprising costs of $1,011.53 plus interest.

36. No explanation has been provided as to why the costs of $1,011.53 in respect of the application to extend the PSSO are more than the costs of the initial PSSO.

37. I consider the amount of $1,000 in costs plus interest to be reasonable. However, for the reasons set out in paragraphs 3 to 5 above, the amount claimed is reduced by 1/3 to account for the costs that would reasonably be attributed to the costs of Donald Campbell-Smith.

38. Accordingly, I estimate the value of the Claim 5 set out in the Proof of Debt to be $741.26 calculated as follows:

a. $1,000 in costs;

b. plus interest on the amount of $1,000 at the rate of 6% per annum pursuant to section 8 the *Civil Judgments Enforcement Act 2004* (WA) from 8 September 2016 to the date of bankruptcy (being $111.89);

c. less 1/3 of the costs (being $370.63).

39. Accordingly, the total amount allowed for Claim 5 is $741.26.

Please note that pursuant to section 82(5) of the Act a person aggrieved by an estimate made pursuant to section 82(4) of the Act may appeal to the Court not later than 28 days after the day on which the person is notified of the estimate.

Dated this 11th day of September 2025



Kelly-Anne Trenfield

Trustee

Our Ref.: 464538.0001-12-06-12-l1

11 September 2025

Sandra May Banning and Professional Services of Australia Pty Ltd

c/- Eastwood Law

Level 1, 26 Railway Road

SUBIACO WA 6008

Attention: Mr Cameron Eastwood

By Email: cameron.eastwood@eastwood.legal

Dear Sir

Re: Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6
Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6 ("the Bankrupt Estates")

Notice of partial rejection of proof of debt – section 102(2) of the *Bankruptcy Act 1966* (Cth)

I refer to my appointment as Trustee of the above Bankrupt Estates by virtue of a Sequestration Order made by the Federal Court of Australia on 31 August 2018.

Further, I refer to previous correspondence regarding the Bankrupt Estates and the undated proof of debt lodged by Sandra May Banning in her capacity as a director of Professional Services of Australia Pty Ltd (**"PSA"**) and as executor of the deceased estate of Martin Banning, in the Bankrupt Estates for $21,893.26 (**"Proof of Debt"**) in the relation to the matter of **CACV 118 of 2008**.

The Proof of Debt has been allowed in the sum of $21,889.33 and rejected in the sum of $3.95. A notice of partial rejection outlining my decision is **enclosed** for your reference.

Should you have any queries, please contact Nick Hawthorne of this office on (07) 3225 4971 or by email at nick.hawthorne@fticonsulting.com.

Yours faithfully

Kelly-Anne Trenfield

Trustee

NOTICE OF PARTIAL REJECTION OF PROOF OF DEBT

section 102(2) of the *Bankruptcy Act 1966* (Cth)

Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6

Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6

("THE BANKRUPT ESTATES")

To: Sandra May Banning and Professional Services of Australia Pty Ltd

of c/- Mr Cameron Eastwood

Eastwood Law
Level 1, 26 Railway Road
SUBIACO WA 6008

1. Your claim against the Bankrupt Estates set out in the undated Proof of Debt lodged by Sandra May Banning in her capacity as executor of the estate of Martin Banning and in her capacity as a director of PSA in the Bankrupt Estates in relation to the matter of **CACV 118 of 2008** has been admitted in the amounts noted below

Details of debt / description	Amount ($)
Balance of costs order dated 22 April 2016 (Taxed)	7,743.70
Interest 6% pa	1,575.46
Costs Order dated 22 April 2016 (Fixed)	8,864.03
Interest 6% pa	1,193.81
Costs Order dated 21 June 2018 (Fixed)	2,500.00
Interest 6% pa	12.33
Total	**21,889.33**

2. With regards to the interest component, I have utilised the following interest calculations:

Balance of costs order dated 22 April 2016 (Taxed)
11,781.70 * 6%pa * 800 days (22 April 2016 to 1 July 2018) = **$1,550.00 interest**
7,743.80 * 6%pa * 20 days (1 July 2018 to 20 July 2018) = **$25.46 interest**

Costs Order dated 22 April 2016 (Fixed)
8,864.03 * 6%pa * 820 days (22 April 2016 to 20 July 2018) = **$1,193.81 interest**

Costs Order dated 21 June 2018 (Fixed)
2,500.00 * 6%pa * 30 days (21 June 2018 to 20 July 2018) = **$12.33 interest**

NOTE: *The per annum interest calculation considers 366 days for applicable leap years.*

As a result of the above, the difference in interest accrued of $3.95 has been rejected.

3. If you are dissatisfied with my determination as set out above, you may appeal against it, no later than 21 days after the service of this notice or, if the Court allows, within any further period.

Dated this 11th day of September 2025



Kelly-Anne Trenfield

Trustee

Our Ref.: 464538-12-06-13-l1

11 September 2025

Sandra May Banning and Professional Services of Australia Pty Ltd

c/- Eastwood Law

Level 1, 26 Railway Road

SUBIACO WA 6008

Attention: Mr Cameron Eastwood

By Email: cameron.eastwood@eastwood.legal

Dear Sir

Re: Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6
Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6 ("the Bankrupt Estates")

Notice pursuant to section 102(1) and section 82(4) of the *Bankruptcy Act 1966* (Cth)

I refer to previous correspondence regarding the undated proof of debt lodged by Sandra May Banning in her capacity as director of Professional Services of Australia Pty Ltd (**"PSA"**) and as executor of the deceased estate of Martin Banning, in the Bankrupt Estates in the amount of $294,225.63 (**"Proof of Debt"**).

The Proof of Debt has been allowed in the sum of $275,674.75 and rejected in the sum of $18,550.88. A notice of estimate outlining my decision is **enclosed** for your reference.

Should you have any queries, please contact Nick Hawthorne of this office on (07) 3225 4971 or by email at nick.hawthorne@fticonsulting.com.

Yours faithfully

Kelly-Anne Trenfield

Trustee

NOTICE OF ESTIMATE OF VALUE OF DEBT OR LIABILITY

section 102(1) of the *Bankruptcy Act 1966* (Cth)
section 82(4) of the *Bankruptcy Act 1966* (Cth)

Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6

Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6

("THE BANKRUPT ESTATES")

To: Sandra May Banning and Professional Services of Australia Pty Ltd

of c/- Mr Cameron Eastwood

Eastwood Law
Level 1, 26 Railway Road
SUBIACO WA 6008

1. **Adjudication**

Your claim against the Bankrupt Estates set out in the undated proof of debt lodged by Ms Sandra May Banning in her capacity as sole director of Professional Services of Australia Pty Ltd (**"PSA"**) and executor of the deceased estate of Martin Banning, for $294,225.63 (**"Proof of Debt"**), has been allowed in the amount of $275,674.75 on the basis calculated below:

Claim	Date debt/s incurred	Details of debt	Amount claimed	Amount allowed
1.	16.09.2014	Costs order in Supreme Court of Western Australia (CIV 2265 of 2006) plus interest	$12,307.94 (comprising $10,000 for costs plus interest at 6% p.a. from 16 September 2014 to the date of bankruptcy)	**$11,047.99** (comprising $8,977.50 for costs plus interest at 6% p.a. from 16 September 2014 to the date of bankruptcy)
2.	16.10.2012	Costs order in Supreme Court of Western Australia (CIV 2265 of 2006) assessed at taxation in the amount of $31,599.72 plus interest	$45,528.89 (comprising $31,599.72 for costs plus interest at 6% p.a. from 16 October 2012 to the date of bankruptcy)	**$42,522.59** (comprising $31,599.72 for costs plus interest at 6% p.a. from 16 October 2012 to the date of bankruptcy)

3.	Various	Enforcement of fixed costs noted in paragraphs 7, 8, and 9 of letter dated 12 May 2023	$67,696.39 (comprising $58,928.65 for costs plus interest at 6% p.a. from various Order dates to the date of bankruptcy)	**$65,997.72** (comprising $57,628.65 for costs plus interest at 6% p.a. from various Order dates to the date of bankruptcy)
4.	08.04.2014	Costs order in Supreme Court of Western Australia (CIV 2265 of 2006) plus interest	$168,692.41 (comprising $134,174.62 for costs plus interest at 6% p.a. from 8 April 2014 to the date of bankruptcy)	**$156,106.45** (comprising $124,180.24 for costs plus interest at 6% p.a. from 8 April 2014 to the date of bankruptcy).
TOTAL			**$294,225.63**	**$275,674.75**

Background

2. On or about 17 September 2003, Computer Accounting and Tax Pty Ltd (**"CAT"**) commenced proceedings against Professional Services of Australia Pty Ltd (as first defendant) and Martin Paul Banning (as second defendant). On or about 17 November 2006, the proceedings were transferred from the District Court to the Supreme Court and given proceeding number CIV 2265 of 2006.

3. Martin Banning passed away on 14 July 2008 and he was replaced as a party to the proceeding by the executor of his estate Mr Donald Campbell-Smith. Upon Donald Campbell-Smith's death on 3 August 2018, Mrs Sandra May Banning was appointed executor of the estate of Martin Banning.

4. The Proof of Debt has been lodged by Mrs Banning in her capacity as executor of the estate of Martin Banning and as director of PSA.

5. Each of the claims referred to in the table above are addressed in detail below.

Claim 1: Assessment of costs

6. On 16 September 2014, Justice Simmonds dismissed an application commenced by Angela Frigger and Hartmut Frigger (**"Friggers"**) to be joined as parties to proceeding CIV 2265 of 2006 in their own right(s). Orders included the following at paragraph 3:

   "The first and second defendants to have their costs, to be taxed if not agreed, in accordance with item 10 of the Legal Practitioners (Supreme Court) Contentious Business Determination 2014" (**"16 September 2014 Orders"**).

7. The maximum amount of costs claimable under the 16 September 2014 Orders on a party and party basis is the amount allowed under item 10 of the *Legal Practitioners (Supreme Court)*

(Contentious Business) Costs Determination 2014 (**"2014 Determination"**). That maximum amount is $11,550.

8. Notwithstanding this, to recover the maximum amount of costs for each of the relevant tasks under the 2014 Determination, the Defendants (here, PSA and Mr Donald Campbell-Smith respectively) must identify that it was reasonable for the tasks completed to take the maximum amount of time indicated in the 2014 Determination.

9. For this claim, I was provided and have reviewed the following documents:

    a. the Court Orders made on 16 September 2014;

    b. Eastwood Law's letter to me dated 12 May 2023 claiming costs of $10,000 (**"12 May 2023 Letter"**);

    c. the Reasons for Decision in the Proceedings [2014] WASC 360 (**"Reasons"**); and

    d. a copy of the various Court documents filed in the Proceedings.

10. I note that I have not been provided with some of the Court documents for the proceeding, namely:

    a. the application for joinder; and

    b. the affidavits of Mrs Frigger sworn on 7 August 2014, 11 August 2014 and 4 September 2014.

11. The absence of Court documents makes it difficult to assess the appropriate quantum of costs on a party and party basis. Therefore, the primary basis for assessment of quantum is by having regard to the Court's comments in the recent Federal Court decision in *Sharif v Vitruvian Investments Pty Ltd (No 5)* [2024] FCA 134 and taking a broad-brush approach.

12. The costs relate to Mr and Mrs Frigger's application to be joined in the proceeding.

13. The first and second defendants did not prepare a draft Bill of Costs for this claim item. Rather, the 12 May 2023 letter states the Defendants assessed their costs at $10,000 without specifying how the amount is arrived at. I have inferred from the quantum of costs claimed that the amount of $10,000 was the total amount of relevant costs incurred.

14. It is apparent from the Reasons that the material before the Court was:

    a. an application for joinder;

    b. an amended application for joinder; and

    c. the affidavits of Mrs Frigger sworn on:

        i. 24 June 2014;

        ii. 10 July 2014;

        iii. 7 August 2014;

        iv. 11 August 2014; and

        v. 4 September 2014;

    d. an affidavit of Mr Donald Campbell Smith sworn 25 July 2014;

e. an affidavit of Mervyn Jonathon Kitay sworn 8 August 2014;

f. an affidavit of Cameron Victor Eastwood, sworn 12 August 2014;

g. two (2) sets of submissions for Mr and Mrs Frigger dated 18 July 2014 and 7 September 2014;

h. submissions for the liquidator of the plaintiff, CAT dated 13 August 2014; and

i. submissions for the first and second defendants, dated 11 September 2014.

15. Further, the parties attended the hearing of the proceeding on 13 August and 4 September 2014. Other than these two (2) dates, the Friggers' application was determined by the Court on the papers.

16. The key issues for determination in the proceeding disclosed in the Reasons were:

a. whether the Friggers sought to be substituted as the plaintiffs in CIV 2265 of 2006 or joined as additional plaintiffs;

b. whether the Friggers should be substituted as the plaintiffs or joined as additional plaintiffs;

c. whether or not O 18 r 7(2) was confined to substitutions where there was no apparent authority for the addition of a party under O 18 r 7(2) of the Rules; and

d. whether or not the Court should exercise its discretion to permit joinder or not.

17. On the basis of the limited documentation and information provided to me by Eastwood Law, the starting point for the consideration of reasonable costs is $10,000.

18. Considering the documents provided to me, the Judgment in [2014] WASC 60 and that the matter was determined on the papers, from the $10,000 claimed, deductions should be made for:

a. expected solicitor and client costs of 10%;

b. duplication of work between Counsel and the instructing solicitor of 5%; and

c. plus 5% for skill, care and responsibility based on the experience of the lawyers involved.

19. Having regard to paragraph 18 above, a reasonable allowance for the fees the Defendants claim appears to be approximately $8,977.50 calculated as follows:

a. $10,000 less 10% ($1,000) for solicitor and client costs = $9,000.

b. $9,000 less 5% ($450) for duplication costs = $8,550.

c. $8,550 plus 5% ($427.50) for skill, care and responsibility = $8,977.50

20. Therefore, on the information provided, the amount of $8,977.50 seems reasonable as the amount allowed under the 16 September 2014 Orders on a party and party basis in accordance with the 2014 Determination.

21. Interest on the amount of $8,977.50 at the rate of 6% per annum pursuant to section 8 of the *Civil Judgments Enforcement Act 2004* (WA) from 16 September 2014 to 20 July 2018 is $2,070.49.

22. Accordingly, I estimate the value of the debt the subject of Claim 1 of the Proof of Debt, and pursuant to section 82(4) of the Act to be $11,047.99.

Claim 2: Assessment of costs

23. On 16 October 2012, Justice Simmonds made the following order:

> *"Mr and Mrs Frigger, joint and severally, pay Mr Campbell-Smith's costs of Mr Campbell-Smith's Application and the Friggers' Application (including the costs reserved on 24 January 2012 and 30 April 2012), to be taxed if not agreed, and paid forthwith. Pursuant to s 280(2) of the Legal Profession Act 2008 (WA) those costs be taxed on the basis that the limits fixe in item 10 of the Legal Practitioners (Supreme Court) (Contentious Business) Determination 2010 (WA) are removed."* (**"October 2012 Order"**)

24. On or about 11 April 2014, Registrar Boyle assessed the Bil of Costs lodged by Mr Campbell-Smith in respect of the October 2012 Order and allowed costs in the amount of $31,599.72. A Certificate of Taxation for this amount was issued on 9 May 2014.

25. Interest on the amount of $31,599.72 at the rate of 6% per annum from 16 October 2012 to 20 July 2018 is $10,922.87.

26. The costs order was in favour of Donald Campbell-Smith in his capacity as executor of the estate of Martin Banning (and not PSA). Accordingly, these costs are only payable to the executor of the estate of Martin Banning (Mrs Sandra Banning).

27. The costs plus interest referred to in paragraphs 24 and 25 total $42,522.59. Pursuant to section 102(1)(b) of the Act, Claim 2 is rejected in part to account for the difference in the calculation of interest set out in the Proof of Debt. Accordingly, I admit the debt the subject of Claim 2 in the amount of $42,522.59 payable to Mrs Sandra Banning in her capacity as executor of the estate of Martin Banning.

Claim 3: Assessment of costs

28. By claim 3 of the Proof of Debt, Ms Banning seeks to claim costs (and interest accrued) as fixed by the following Orders made in Proceeding CIV 2265 of 2006. These items are cited in the Proof of Debt by reference to paragraphs 7, 8 and 9 of 12 May 2023 letter.

    a. Orders by Simmonds J dated 19 September 2014, in the amount of $1,500 – payable by the Friggers (jointly and severally) to the PSA and Mr Donald Campbell-Smith (**"19 September 2014 Orders"**).

    b. Orders by Simmonds J dated 9 October 2015, in the amount of $43,328.65 – payable by the Friggers (jointly and severally) to the PSA and Mr Donald Campbell-Smith for costs and expenses of and incidental to the Friggers' Application dated 22 August 2014, and payable forthwith as costs of the Means Inquiry Summons issued 12 August 2014 (**"9 October 2015 Orders"**).

c. Orders effected by Registrar Davies dated 15 April 2016, in the amount of $1,300 – payable by PSA and Mr Campbell-Smith (Judgment Debtors) to CAT as Judgment Creditor (**"15 April 2016 Orders"**).

d. Orders effected by Registrar Davies dated 28 July 2016, in the amount of $2,800 – payable by the Friggers (jointly and severally) to Mr Donald Campbell-Smith only (**"28 July 2016 Orders"**).

e. Orders by Martino J dated 13 October 2017, in the amount of $10,000 – payable by the Friggers for the costs of the Means Inquiry (including disbursements) (**"13 October 2017 Orders"**).

29. The costs claimed for the 15 April 2016 Orders, being $1,300, are rejected on the basis that nothing in the 15 April 2016 Orders suggests that any money is payable by the Friggers. Rather, costs are payable by PSA and Mr Campbell-Smith (as Judgment Debtors) to CAT (as Judgment Creditor).

30. The costs claimed in Orders dated 19 September 2014, 9 October 2015, 28 July 2016 and 13 October 2017 are otherwise allowed. However, I note that the costs claimed pursuant to the 8 July 2016 Orders are payable to the executor of the estate of Martin Banning (and not to PSA).

31. Interest for these amounts calculated at a rate of 6% per annum pursuant to section 8 of the *Civil Judgments Enforcement Act 2004* (WA), from the date of the Order to the date of the bankruptcy (20 July 2018), is calculated as follows:

a. 19 September 2014 Orders, for the amount of $1,500 - interest amounts to $345.20;

b. 9 October 2015 Orders, for the amount of $43,328.65 – interest amounts to $7,229.36;

c. 28 July 2016 Orders, for the amount of $2,800 – interest amounts to $332.59;

d. 13 October 2017 Orders, for the amount of $10,000 – interest amounts to $461.92.

32. Accordingly, the total value of debt the subject of Claim 3, admitted in part pursuant to section 102(1)(b) of the Act, is $65,997.72.

Claim 4: Assessment of costs

33. On 8 April 2014, in the Supreme Court of Western Australia Court of Appeal, Pullin JA and Newnes JA made orders which included the following at paragraph 7 (**"8 April 2014 Order"**):

a. Order 2 of Simmonds J dated 16 March 2012 in CIV 2265 of 2006, being that the application by the first and second respondents that the appellants pay the first and second respondents' costs of the first and second respondents' application for freezing and ancillary orders be dismissed, be set aside;

b. Order 3 of Simmonds J dated 16 March 2012 in CIV 2265 of 2006 be set aside so far as it orders that there be 'no order as to the costs of the first and second respondents' application for freezing and ancillary orders'; and

c. In lieu of the orders referred to in (a) and (b) above, it is ordered that the appellants pay the first and second respondents' costs of the application dated 3 December 2009 in CIV 2265 of 2006 for freezing and ancillary orders and any reserved costs for freezing and

ancillary orders proceedings in CIV 2265 of 2006, including but not limited to any reserved costs of the hearings on 10 December 2009, 16 December 2009, 22 January 2010, 15 February 2010, 19 March 2010, 9 April 2010, 29 April 2010, 20 May 2010, 9 June 2010, 7 July 2010, 30 August 2010, 13 and 14 October 2010, 22 September 2011 and 16 March 2012, on an indemnity basis.

34. I have been provided with the following documents:

    a. the 8 April 2014 Order;

    b. the First and Second Respondents' draft Bill of Costs for taxation dated June 2016 (**"Draft Bill"**);

    c. the Reasons for Decision in *Frigger v Professional Services of Australia Pty Ltd [No 3]* [2014] WASCA 69 (**"Reasons"**);

    d. a letter from Eastwood Law dated 12 May 2023;

    e. Schedule A: Schedule of Untaxed Costs Orders;

    f. a List of Documents in the in the Court proceedings consisting of 23 pages; and

    g. a copy of various Court documents filed in the proceedings.

35. I note that I have not received, and therefore not considered, a copy of all of the Court documents filed in the proceedings. The absence of Court documents makes it difficult to assess the appropriate likely reasonable quantum of costs claimed.

36. The Draft Bill dated June 2016 claims $134,174.62 pursuant to the 8 April 2014 Order.

37. The Draft Bill does not specify which practitioner completed the work claimed, but it is assumed that items 1 to 220 relate to Counsel's time at $396/hr and a senior practitioner's time at $396/hr in relation to items 236 to 845.

38. The following sections address each of the items claimed by the Respondents in the Draft Bill to the extent that the costs claimed do not appear to be reasonably, necessarily or properly incurred, or do not appear to be fair and reasonable in amount based on a review of the documents.

    a. <u>Item 30 – Amount allowed: $0</u>

       Insufficient explanation in the Draft Bill has been provided about the link between the telephone call to the Court of Appeal in 2009 and the costs relating to the freezing order application. Therefore, this item is reduced to $0, being a reduction of $39.60.

    b. <u>Item 31 – Amount allowed: $0</u>

       Insufficient explanation in the Draft Bill has been provided about the link between the letter of advice regarding the Court of Appeal's jurisdiction and the costs relating to the freezing order application. Therefore, this item is reduced to $0, being a reduction of $165.

c. Item 55 – Amount allowed: $0

Insufficient explanation in the Draft Bill has been provided about the link between the Administrator's deed of indemnity and the costs relating to the freezing order application. Therefore, this item is reduced to $0, being a reduction of $188.

d. Item 57 – Amount allowed: $0

Insufficient explanation in the Draft Bill has been provided about the actual work done or need for the work in reviewing the executed documents referred to in this item and it is arguable that the work could be unnecessary or excessive. Therefore, this item is reduced to $0, being a reduction of $66.

e. Item 61 – Amount allowed: $0

Insufficient explanation in the Draft Bill has been provided about the link between the indemnity, the need for advice regarding the indemnity for Mr Campbell-Smith and the costs relating to the freezing order application. Therefore, this item is reduced to $0, being a reduction of $19.80.

f. Item 70 – Amount allowed: $0

Insufficient explanation in the Draft Bill has been provided about the link between the consideration of a "Registrar's Packet", the need for the advice regarding the "Registrar's Packet" and the costs relating to the freezing order application. Therefore, this item is reduced to $0, being a reduction of $33.

g. Items 76 and 77 – Amount allowed: $0

These items refer to an Undertaking. However, it is apparent that Mr Holbrook (the Third Defendant) signed his Undertaking on the First Defendant's behalf on 14 December 2009 and the Second Defendant signed an Undertaking on 10 December 2009.

These items are reduced by $221 to $0.

h. Item 141 – Amount allowed: $0

Insufficient explanation in the Draft Bill has been provided about the link between the superannuation issues and the costs relating to the freezing order application. Therefore, this item is reduced to $0, being a reduction of $99.

i. Item 143 – Amount allowed: $0

Insufficient explanation in the Draft Bill has been provided about the link between the superannuation issues and the costs relating to the freezing order application. Therefore, this item is reduced to $0, being a reduction of $66.

j. Item 231 – Amount allowed: $0

This item claims $550 for an appearance before Justice Simmonds on 30 August 2010. At item 757 of the Draft Bill there is a claim for a solicitor attending Court on 30 August 2010 for 120 minutes at $792.

The Orders of Justice Simmonds made on 30 August 2010 state that Mr Lenhoff appeared as Counsel for the First and Second Defendants, not Mr Stephensen.

Therefore, this item is reduced by $550 to $0.

k. Item 235 – Amount allowed: $0

Counsel was not required to attend a taxation of costs so this item is reduced by $770 to $0.

l. Items 263-264 – Amount allowed: $0

Insufficient explanation in the Draft Bill has been provided about the link between Mr Lenhoff drafting the Holbrook indemnity and the costs relating to the freezing order application. Therefore, these items are reduced to $0, being a reduction of $158.40.

m. Items 266-267 – Amount allowed: $0

Insufficient explanation in the Draft Bill has been provided about the link between the "Deed" and the costs relating to the freezing order application. Therefore, these items are reduced to $0, being a reduction of $79.20.

n. Item 308 – Amount allowed: $148

This item claims 30 minutes at $198 for drafting an Affidavit of Service. The Affidavit of Service is seven (7) pages, four (4) brief paragraphs and attaches three (3) attachments.

It is unclear from the explanation provided why the preparation of the Affidavit took half an hour for a senior practitioner, as it was not a complex document. It is also likely that at least some of the work could have been completed by a junior practitioner and that some of the work was administrative in collating attachments.

Therefore, this item is reduced by $50 to $148.

o. Item 354 – Amount allowed: $148

This item claims 42 minutes at $277.20 for drafting an Affidavit of Service. The Affidavit of Service is 17 pages, two (2) brief paragraphs and attaches seven (7) attachments.

It is unclear from the explanation provided why the preparation of the Affidavit took half an hour for a senior practitioner, as it was not a complex document. It is also likely that at least some of the work could have been completed by a junior practitioner and that some of the work was administrative in collating attachments.

Therefore, this item is reduced by $129.20 to $148.

p. Items 365 and 369 – Amount allowed: $0

These items refer to an Undertaking. However, it is apparent that Mr Holbrook signed his Undertaking on the First Defendant's behalf on 14 December 2009 and the Second Defendant signed an Undertaking on 10 December 2009. Therefore, these items are reduced by $79.20 to $0.

q. Items 86 and 402 – Amount allowed: $500

This item claims 72 minutes at $475.20 for settling affidavit re costs. At item 86 on the Draft Bill, Counsel is said to have settled Mr Lenhoff's affidavit regarding costs for 30 minutes at $188. The total claimed for the affidavit is $663.20.

Whilst it is noted that Mr Lenhoff has not claimed any time for preparing the affidavit as to costs (comprising three (3) pages and eight (8) paragraphs), a total claim of $663.20 appears high. Therefore, these items are reduced by $163.20 to $500.

r. Item 494 – Amount allowed: $188.50

It appears that this item is administrative work, being compiling and photocopying. Therefore, it would appear reasonable that this item be reduced by 50% to reflect that this work could have been carried out by a junior practitioner or administrative staff member.

s. Item 514 – Amount allowed: $43.50

This item appears to be administrative work. Therefore, it would appear reasonable that this item be reduced by 50% to reflect that this work could have been carried out by a junior practitioner or administrative staff member.

t. Item 753 – Amount allowed: $396

This item claims 120 minutes at $792 for "Draft Further Affidavit". An Affidavit of Mr Lenhoff was filed on 27 August 2010 which was 268 pages, at least five (5) paragraphs (noting page 2 of the copy of the Affidavit provided to me was missing) and appears to attach 10 attachments at paragraph 4 of the Affidavit.

On reviewing the contents of Mr Lenhoff's Affidavits dated 29 January 2010, 31 March 2010 and 20 May 2010, it is possible that at least the first paragraph of Mr Lenhoff's Affidavit of 27 August 2010 was a standard paragraph about capacity, knowledge, and approval.

On that basis, it is unclear from the explanation provided why it was necessary for Mr Lenhoff to spend two (2) hours in preparing his Affidavit dated 27 August 2010. It is likely that at least some of the work was administrative in collating attachments.

Therefore, this item is reduced by 50% to $396 from $792.

39. The total above reductions of the Draft Bill for the items specified is $3,504.60.

40. Having regard to *Sharif v Vitruvian Investments Pty Ltd (No 5)* [2024] FCA 134, in addition to the above deductions, it is reasonable that a further global deduction of 5% of the costs claimed in the Draft Bill, after deduction of $3,504.60 be made, for work that might not have been reasonably, necessarily or properly incurred, or that is not fair or reasonable in amount.

41. 5% of $129,795.55 (being $130,670.02 less $874 for disbursements) is $6,489.78.

42. The Draft Bill total of $129,795.55 less $6,489.78 is $123,305.77, plus the disbursements claimed in the Draft Bill of $847.47 (subject to these being verified by vouchers or receipts), gives a total of $124,180.24.

43. Interest on this amount of $124,180.24 at the rate of 6% per annum pursuant to section 8 the *Civil Judgments Enforcement Act 2004* (WA) from 30 November 2016 to 20 July 2018 is $31,926.21.

44. Accordingly, I estimate the value of the debt the subject of Claim 4 of the Proof of Debt, and pursuant to section 82(4) of the Act to be $156,106.45.

Please note that pursuant to section 82(5) of the Act a person aggrieved by an estimate made pursuant to section 82(4) of the Act may appeal to the Court not later than 28 days after the day on which the person is notified of the estimate.

Dated this 11th day of September 2025



Kelly-Anne Trenfield

Trustee

Our Ref.: 464538.0001-12-06-14-l1

11 September 2025

Sandra May Banning & Professional Services of Australia Pty Ltd

c/- Eastwood Law

Level 1, 26 Railway Road

SUBIACO WA 6008

Attention: Mr Cameron Eastwood

By Email: cameron.eastwood@eastwood.legal

Dear Sir

Re: Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6
Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6 ("the Bankrupt Estates")

Notice pursuant to section 102(1) and section 82(4) of the *Bankruptcy Act 1966* (Cth)

I refer to previous correspondence regarding the undated proof of debt lodged by Sandra May Banning in her capacity as a director of Professional Services of Australia Pty Ltd ("**PSA**") and as executor of the deceased estate of Martin Banning, in the Bankrupt Estates for $178,155 ("**Proof of Debt**").

The Proof of Debt has been allowed in the sum of $141,142.62 and rejected in the sum of $37,012.38. A notice of rejection outlining my decision is **enclosed** for your reference.

Should you have any queries, please contact Nick Hawthorne of this office on (07) 3225 4971 or by email at nick.hawthorne@fticonsulting.com.

Yours faithfully

Kelly-Anne Trenfield

Trustee

NOTICE OF REJECTION OF PROOF OF DEBT

section 102(1) of the *Bankruptcy Act 1966* (Cth)
section 82(4) of the *Bankruptcy Act 1966* (Cth)

Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6

Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6

("THE BANKRUPT ESTATES")

To: Sandra May Banning & Professional Services of Australia Pty Ltd (ACN 083 879 671)

of c/- Eastwood Law

Level 1, 26 Railway Road

SUBIACO WA 6008

Adjudication

1. Your claim against the Bankrupt Estates set out in the undated proof of debt lodged by Sandra May Banning in the Bankrupt Estates for $178,155 (**"Proof of Debt"**) has been allowed in the amount of $141,141 on the basis calculated below.

Claim	Date debt/s incurred	Details of debt	Amount claimed	Amount allowed
1.	24.01.2013	Costs Order in Supreme Court of Western Australia (CACV 23 of 2012) assessed at taxation in the amount of $3,542.91, and interest to 20.07.2018	$4,720.51 (comprising $3,542.91 for taxed costs plus interest at 6% p.a. from 24 January 2013 to the date of bankruptcy)	**$4,709.43** (comprising $3,542.91 for taxed costs plus interest at 6% p.a. from 24 January 2013 to the date of bankruptcy)
2.	09.04.2013	Costs order in Supreme Court of Western Australia Court of Appeal (CACV 23 of 2012) fixed at $2,332.00 and interest to 20.07.2018	$3,071.46 (comprising $2,332 for costs plus interest at 6% p.a. from 9 April 2013 to the date of bankruptcy)	**$3,071.08** (comprising $2,332 for costs plus interest at 6% p.a. from 9 April 2013 to the date of bankruptcy)

3.	01.10.2013	Costs order in Supreme Court of Western Australia Court of Appeal (CACV 23 of 2012) fixed at $1,500 and interest to 20.07.2018	$1,846.19 (comprising $1,500.00 for costs plus interest at 6% p.a. from 19 September 2014 to the date of bankruptcy)	**$1,932.24** (comprising $1,500.00 for costs plus interest at 6% p.a. from 1 October 2013 to the date of bankruptcy)
4.	08.04.2014	Costs order in Supreme Court of Western Australia Court of Appeal (CACV 23 of 2012) and interest to 20.07.2018	$168,516.84 (comprising $134,419.97 for costs plus interest at 6% from 8 April 2014 to the date of bankruptcy)	**$131,429.87** (comprising $104,550.40 for costs plus interest at 6% from 8 April 2014 to the date of bankruptcy)
TOTAL			**$178,155.00**	**$141,142.62**

Background

2. Proceeding CACV 23 of 2012 related to an application commenced by Angela Frigger and Hartmut Frigger ("**Friggers**") seeking for costs orders made in proceeding CIV 2265 of 2006 be set aside. The Friggers also sought costs against both Professional Services of Australia Pty Ltd ("**PSA**") and Mr Donald Campbell-Smith as executor of the estate of Martin Banning (the First and Second Respondents respectively), and Mr Kim Holbrook (the deed administrator of PSA) ("**Appeal Proceeding**").

3. PSA and Mr Campbell-Smith had also commenced a cross-appeal dated 17 September 2012 ("**Cross-Appeal**").

4. Upon Donald Campbell-Smith's death on 3 August 2018, Mrs Sandra May Banning was appointed executor of the estate of Martin Banning.

5. The Proof of Debt has been lodged by Mrs Banning in her capacity as executor of the estate of Martin Banning and as director of PSA.

6. Each of the claims referred to in the table above are addressed in detail below.

Claim 1

7. On 12 February 2013, the first and second respondents filed a bill of costs for taxation in relation to the appellants' application for leave to amend their appeal notice pursuant to the orders of Justice Pullin made on 24 January 2013.

8. On 29 May 2013, Registrar Bush issued a Certificate of Taxation certifying that the Bill of Costs had been taxed and allowed in the sum of $3,542.91.

9. Interest on the amount of $3,542.91 at the rate of 6% per annum pursuant to section 8 the *Civil Judgments Enforcement Act 2004* (WA) from 24 January 2013 to the date of bankruptcy is $1,166.52.

10. The costs plus interest referred to in paragraphs 8 and 0 total $4,709.43. Pursuant to section 102(1)(b) of the Act, Claim 1 is rejected in part to account for the difference in the calculation of interest set out in the Proof of Debt. Accordingly, I admit the debt the subject of Claim 1 in the amount of $4,709.43.

Claim 2

11. On 9 April 2013, the Supreme Court of Western Australia Court of Appeal made an order that the appellants (the Friggers) pay the first and second respondents' costs of the review fixed in the sum of $2,332.00. The first and second respondents being PSA and Donald Campbell Smith as executor of the estate of Martin Banning.

12. Interest on the amount of $2,332 at the rate of 6% per annum pursuant to section 8 the *Civil Judgments Enforcement Act 2004* (WA) from 9 April 2013 to the date of bankruptcy is $739.08.

13. The costs plus interest referred to in paragraphs 11 and 12 total $3,071.08. Pursuant to section 102(1)(b) of the Act, Claim 2 is rejected in part to account for the difference in the calculation of interest set out in the Proof of Debt. Accordingly, I admit the debt the subject of Claim 2 in the amount of $3,071.08.

Claim 3

14. On 1 October 2013, the Supreme Court of Western Australia Court of Appeal made an order that the appellants pay the first and second respondents' costs of the day fixed at $1,500.

15. The Proof of Debt records that the date this debt was incurred is 19 September 2014. However, on my review of the documents provided, the date of the order is 1 October 2013. This is consistent with the date of the order referred to in the covering letter from Eastwood Law to me dated 12 May 2023.

16. Interest on the amount of $1,500 at the rate of 6% per annum pursuant to section 8 the *Civil Judgments Enforcement Act 2004* (WA) from 1 October 2013 to the date of bankruptcy is $432.24.

17. The costs plus interest referred to in paragraphs 14 and 16 total $1,932.24. Accordingly, I admit the debt the subject of Claim 3 in the amount of $1,932.24.

Claim 4

18. On 8 April 2014, Pullin JA and Newnes JA dismissed the Appeal Proceeding, and made orders, among others, to the following effect (**"8 April Orders"**):

    a. Mr and Mrs Frigger pay PSA and Mr Donald Campbell-Smith's costs of the appeal (CACV 23 of 2012), including reserved costs, to be taxed without regard to the limits fixed in items 23(b), (d) and (f) of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2010* (WA) (**"2010 Determination"**) and the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2012* (WA) (**"2012 Determination"**) (**"Order 2"**).

b. Mr and Mrs Frigger pay PSA and Mr Donald Campbell-Smith's costs of the cross-appeal including reserved costs and including the costs of the first and second respondents' application for an extension of time and for leave to appeal dated 24 April 2013 (**"Order 8"**).

c. The taxing officer be directed to make a reasonable allowance for the costs of the first and second respondents' supplementary outline of submissions dated 20 February 2014 filed and served pursuant to the orders made on 23 January 2014 (**"Order 9"**).

19. I have been provided with the following documents:

a. the 8 April Orders;

b. a draft Bill of Costs (**"Draft Bill"**);

c. the Reasons for Decision in *Frigger v Professional Services Australia Pty Ltd [No 3]* [2014] WASCA 69 (**"Reasons"**);

d. letter from Eastwood Law dated 12 May 2023;

e. Schedule A: Schedule of Untaxed Costs Orders;

f. List of documents in the proceedings consisting of three (3) pages; and

g. a copy of various Court documents filed in the proceedings labelled documents 1 to 78.

20. From the Court documents provided and the Reasons it appears that the Court had the following documents before it:

a. Notice of Appeal unsigned but dated 30 March 2012;

b. an Affidavit of Mrs Frigger dated 23 September 2008;

c. an Affidavit of Mrs Frigger dated 20 January 2010;

d. written submissions filed on 29 January 2010;

e. written submissions filed on 19 February 2010;

f. an Affidavit of Mrs Frigger dated 22 June 2010;

g. an Affidavit of Mrs Frigger dated 12 October 2010;

h. the Appellants' case (various amended) consisting of:

i. Grounds of appeal;

ii. Submissions;

iii. Legal authorities;

iv. Orders wanted;

v. Draft Chronology; and

vi. Draft appeal book indexes; and

i. an Affidavit of Mrs Frigger dated 22 January 2013;

j. an Affidavit of Mrs Frigger dated 7 February 2013;

k. an Affidavit of Mrs Frigger dated 12 February 2013

l. an Affidavit of Mrs Frigger dated 21 February 2013;

m. an Affidavit of Mrs Frigger dated 15 March 2013;

n. an Affidavit of Mrs Frigger dated 26 September 2013;

o. an Affidavit of David Thompson dated 6 November 2013;

p. an Affidavit dated 13 November 2012, 24 April 2013, 13 May 2013, 10 December 2013 by a solicitor on behalf of the First Respondent and Second Respondent; and

q. the First and Second Respondents' Answer dated 4 July 2012.

21. The First and Second Respondents also made a cross-appeal dated 17 September 2012 which included Submissions, Legal Authorities, Orders wanted and Draft Chronology.

22. Some of the Court's comments in the Reasons give context to the nature of the proceedings including:

a. "the amount of costs allowable in respect of the appeal pursuant to the scales is inadequate because of the difficulty and complexity of the matter caused by Mrs Frigger's formulation of the appellants' cases and her insistence that 10 costs orders should come under the scrutiny of the court, even though some of the costs orders were only for a few hundred dollars" (Reasons, paragraph 54);

b. "proposed ground 4 in the document exhibited in Mrs Frigger's affidavit of 27 September 2013, and grounds 3 and 4 in the proposed reamended appellants' case dated 14 October 2013, which was not accepted for filing, had no reasonable prospect of succeeding and therefore leave to amend ground 4 of the amended appellants' case dated 11 July 2012 should be refused" (Reasons, paragraph 76);

c. "Normally, when a freezing order is made, costs will be made dependent on the outcome of the underlying dispute, but this is not a normal case" (Reasons, paragraph 110); and

d. "The conduct of the Friggers has been improper. Mrs Frigger's conduct in making false statements in either her affidavit of 23 September 2008 or in her affidavits of 12 October 2010 and 22 June 2010 must be marked by strong disapproval and as a result an indemnity costs order will be made. His Honour erred in failing to make such an order" (Reasons, paragraph 111).

23. Dealing with each of the items claimed in the Draft Bill:

a. <u>Item 1 – Amount allowed: $429</u>

The First and Second Respondents were required to file a Notice of Respondent's Intention. The amount claimed is the amount allowed under the 2010 Determination.

b. <u>Item 2 – Amount allowed: $23,019.13</u>

This Item 2 relates to Order 2.

The item claims an amount for "Appellants' Case", however, I have assumed that reference relates to the perusal of the "Appellants' Case" for preparation of the Respondent's Answer (see the claim for the cross-appeal below).

The First and Second Respondent's Answer was 23 pages and consisted of:

i. the First and Second Respondent's notice of contention;

ii. the First and Second Respondent's Submissions;

iii. the First and Second Respondent's Legal Authorities referring to one (1) case authority;

iv. a draft Chronology; and

v. the First and Second Respondent's Reply to the draft Indexes.

This item also claims an amount for drafting the Respondents' Substituted Answer; however, that document was not filed nor relied on "when appeal of 9 July 2013 struck out".

The amount claimed also appears high considering that much of the analysis and work done likely also related to the First and Second Respondent's Cross-Appeal made on 9 July 2012 claimed in item 2 of the Draft Bill.

Therefore, a deduction of 10% is made for this item and the total amount allowed is $23,019.13.

c. Item 3 – Amount allowed: $12,920.60

The Draft Bill states "Pt2-Special Costs Order applies". However, this item appears to relate to the cross-appeal and Order 8 which was not a Special Costs Order.

Despite Order 8 being a party and party costs order, the amount claimed in the Draft Bill is within the maximums allowed under item 23(b) of the 2010 Determination of $24,200 and 2012 Determination of $25,520.

The documents that were filed for the cross-appeal were:

i. First and Second Respondent's two (2) detailed grounds of appeal;

ii. First and Second Respondent's submissions of 38 pages;

iii. First and Second Respondent's legal authorities, including references to 21 case law authorities;

iv. First and Second Respondent's Orders wanted; and

v. draft chronology.

The amount claimed appears reasonable considering the nature and length of the cross-appeal documents, and the nature and complexity of the proceedings which give rise to the costs order.

Having regard to the above, it was reasonable in the circumstances for the involvement of both counsel and a senior practitioner.

d. Item 4 – Amount allowed: $6,970.48

This item relates to Order 2.

The amount claimed in this item appears reasonable considering the documents required to be filed in the Appeal Proceedings and the List of documents; and the nature and complexity of the proceedings.

A global reduction for unreasonable or unnecessary work has not been made considering the Court-ordered conferral relating to the appeal book indexes.

e. Item 5 – Amount allowed: $4,510.00

The Draft Bill states "Pt2-Special Costs Order applies". However, this item appears to relate to the cross-appeal and Order 8, which was not a Special Costs Order.

The maximum amount allowed under item 23(d) of the:

i. 2010 Determination is $2,376; and

ii. 2012 Determination is $3,608.

Therefore, the amount claimed of $6,748.94 is above the $3,140.94 allowed under the 2012 Determination.

The maximum allowed under the 2012 Determination is likely reasonable considering:

i. Four (4) appeal book indexes were required for the white, blue, green and yellow appeal books; and

ii. the nature and complexity of the proceedings.

An amount should be allowed under item 24 of each of the 2010 Determination and the 2012 Determination because of the Court-ordered conferral. A reasonable allowance for Court-ordered conferral could be up to two (2) hours at a Senior Practitioner rate of $451 per hour, totaling $902.

As such, I consider a total amount of $4,510.00 for Item 5 to be reasonable.

f. Item 6 – Amount allowed: $577.50

Considering the maximum amount allowed under the 2010 Determination of $3,410 the amount claimed appears reasonable.

g. Item 7 – Amount allowed: $0

No amount is claimed for this item.

h. Item 8 – Amount allowed: $3,630

The maximum amount allowed under the 2012 Determination for an application in an appeal is $3,630.

The maximum amount allowed under the 2012 Determination is likely reasonable considering:

i. the documents likely required to be filed for the application being:

a. a Form 9 Application seeking five (5) orders;

b. the supporting Affidavit of David Lenhoff dated 24 April 2013 of 14 pages, 13 paragraphs and nine (9) attachments; and

c. Minute of Proposed Orders;

ii. the Appellants preparing a "draft proposed Substituted Appellant's Case" which would have required consideration; and

iii. the nature and complexity of the proceedings.

Having regard to the above, it was reasonable to have the involvement of both counsel and a senior practitioner.

i. Item 9 – Amount allowed: $2,141.69

This Item 9 relates to Order 2 and appears to be an application in the case of the subject of the Reasons for the Decision in [2013] WASCA 26 and item 23(e) of the 2012 Determination the maximum of which is $3,630.

The amount claimed appears reasonable considering:

i. the application was the subject of a hearing and oral submissions;

ii. the number of Affidavits relied on in the application;

iii. there was Affidavit material which contradicted Mrs Frigger's submissions ([2013] WASCA 26, [2]); and

iv. the nature and the complexity of the proceedings.

j. Item 10 – Amount allowed: $0

No amount is claimed for this item.

k. Item 11 – Amount allowed: $0

No amount is claimed for this item.

l. Item 12 – Amount allowed: $3,630

The maximum amount allowed under the 2012 Determination for an application in an appeal is $3,630.

In support of the application for a Special Costs Order, the First and Second Respondents filed a Minute of Proposed Orders together with a cover letter.

The Affidavit of Mr Lenhoff dated 10 December 2013 of 11 pages with two (2) attachments also appears to relate to the application for costs and attaches a Chronology of the proceedings and a summary of costs and time spent in the appeal.

The amount claimed appears reasonable considering:

i. the documents prepared and filed;

ii. the nature and complexity of the proceedings; and

iii. Mr and Mrs Friggers' general conduct of legal proceedings.

m. Item 13 – Amount allowed: $18,396.32

This Item appears to relate to both Orders 2 and 8.

Where separate costs orders have been made with respect to CACV 24 of 2013, the assessment of costs claimed is made on the basis that no costs have been claimed in this item for that appeal.

Item 23(f) of the 2010 Determination and the 2012 Determination relate to the preparation of the case appeal for hearing. The maximum amount allowable without a Special Costs Order is $4,510 for a senior practitioner.

It is unclear from the description of item 13 what part of the preparation of case relates to the Appellants' appeal and what part relates to the Respondent's cross-appeal. Having regard to the Court documents and Reasons provided to me, I believe it reasonable that 50% of the time claimed should be allocated to each of the appeal and cross-appeal.

50% of the amount claimed of $34,715.80 is $17,357.90. In relation to the cross-appeal that amount should be reduced to $4,510.

Despite Order 2 being a Special Costs Order, a claim of $17,357.90 is substantial considering Counsel's involvement and the amount allowed for Counsel under item 23(g) of the 2012 Determination.

Notwithstanding this, the amount claimed appears reasonable, subject to a global reduction, considering:

i. the documents which require preparation and review in appeal proceedings;

ii. the nature and complexity of the proceedings; and

iii. Mr and Mrs Friggers' general conduct of legal proceedings.

I believe it reasonable for a global reduction of 20% of $17,357.90, being $3,471.58, to be made for potential duplication between the appeal, cross-appeal and CACV 24 of 2013, potential duplication between items 23(f) and 23(g) of the 2012 Determination, and administrative or unnecessary work.

The maximum amount allowed for the cross-appeal under item 23(f) of the 2012 Determination is $4,510.

The maximum amount allowed under the 2012 Determination is likely reasonable considering:

i. the nature and complexity of the proceedings; and

ii. Mr and Mrs Friggers' general conduct of legal proceedings.

Having regard to the above, it was reasonable for the involvement of both counsel and a senior practitioner.

The total amount allowed for this item is $18,396.32, being a reduction of $16,319.48.

n. Item 14 – Amount allowed: $7,965

The maximum amount allowed under the 2012 Determination for this item is $10,890. The maximum amount is likely appropriate considering:

i. the nature and complexity of the proceedings; and

ii. Mr and Mrs Friggers' general conduct of legal proceedings.

o. Item 15 – Amount allowed: $5,522

This item claims $13,569.60:

i. by analogy to item 33(a) of the 2012 Determination which is not allowed unless an indemnity costs order is made. A Special Costs Order is different to the indemnity costs order; and

ii. under the Special Costs Order. However, the Special Costs Order does not appear to respond.

On the information available, item 14 appears to relate to Order 9 which directs that a taxing officer make a reasonable allowance for the preparation of the additional submissions.

Mr and Mrs Frigger's written submissions were four (4) pages, 17 paragraphs and referred to one (1) case law authority. The First and Second Respondent's written submissions dated 13 February 2013 were four (4) pages, 11 paragraphs and refers to two (2) case law authorities. However, neither parties written submissions appear overly complex.

It is not clear why it was necessary to further brief Counsel when they had already been briefed. As such, I have made no allowance for that item and made a minimal allowance for correspondence.

In the circumstances, it would appear reasonable that:

i. Nine (9) hours be allowed for Counsel's time in preparing the written submissions, being $3,267; and

ii. Five (5) hours be allowed for a senior practitioner's time, being $2,255.

The total amount estimated for this item is $5,522, being a total reduction of $8,047.60.

p. Item 16 – Amount allowed: $1,623.60

The amount claimed is the amount allowed under the 2012 Determination for a senior practitioner of $451 per hour. The amount appears reasonable.

q. Item 17 – Amount allowed: $2,029.50

The amount claimed under this Item 17 appears reasonable considering the length of the Reasons, and the nature and complexity of the proceedings.

r. Item 18 – Amount allowed: $6,095.83

The amount claimed under this item appears reasonable considering:

i. the nature of the costs Orders made;

ii. the expected documents that were filed in the appeal and cross-appeal proceedings which required review; and

iii. the nature and complexity of the proceedings.

However, there is a risk that the amount claimed under this item claims work that is duplicated with the claim in Item 12 of the Draft Bill. Accordingly, a reduction of 5% ($320.83) appears reasonable.

s. Item 19 – Amount allowed: $0

Nothing has been allowed for this item because there has been no attendance at a taxation of costs.

t. Items 20 to 29 – Amount allowed: $5,359.78

These items appear reasonable.

24. Having regard to the above, I have allowed the amount of $104,550.40 in respect of the costs claimed in the Draft Bill.

25. Interest on the amount of $104,550.40 at the rate of 6% per annum pursuant to section 8 of the *Civil Judgments Enforcement Act 2004* (WA) from 8 April 2014 to 20 July 2018 is $26,879.47.

26. Accordingly, I estimate the value of Claim Item 4 pursuant to section 82(4) of the Act to be $131,429.87.

Please note that pursuant to section 82(5) of the Act, a person aggrieved by an estimate made pursuant to section 82(4) of the Act may appeal to the Court not later than 28 days after the day on which the person is notified of the estimate.

Dated this 11th day of September 2025



Kelly-Anne Trenfield

Trustee

Our Ref.: 464538.0001-12-06-15-l1

11 September 2025

Sandra May Banning & Professional Services of Australia Pty Ltd

c/- Mr Cameron Eastwood
Eastwood Law
Level 1, 26 Railway Road
SUBIACO WA 6008

Attention: Mr Cameron Eastwood

By Email: cameron.eastwood@eastwood.legal

Dear Sir/Madam

Re: Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6
Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6 ("the Bankrupt Estates")

Notice of estimate of the value of debt or liability – section 82(4) of the *Bankruptcy Act 1966* (Cth)

I refer to previous correspondence regarding the Bankrupt Estates and the undated proof of debt lodged by Sandra May Banning in her capacity as a director of Professional Services of Australia Pty Ltd (**"PSA"**) and on behalf of the deceased estate of Martin Banning, in the Bankrupt Estates for $34,404.04 (**"Proof of Debt"**).

Based on the information provided, I estimate the value of the debt or liability claimed in the Proof of Debt to be $27,128.09 pursuant to section 82(4) of the *Bankruptcy Act 1966* (Cth) (**"Act"**). The basis for my estimate is contained in the Annexure to this letter.

Please note that pursuant to section 82(5) of the Act a person aggrieved by an estimate so made may appeal to the Court not later than 28 days after the day on which the person is notified of the estimate.

Should you have any queries, please contact Nick Hawthorne of this office on (07) 3225 4971 or by email at nick.hawthorne@fticonsulting.com.

Yours faithfully

Kelly-Anne Trenfield

Trustee

NOTICE OF ESTIMATE OF VALUE OF DEBT OR LIABILITY

section 82(4) of the *Bankruptcy Act 1966* (Cth)

Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6

Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6

("THE BANKRUPT ESTATES")

To: Sandra May Banning (as executor of the estate of Martin Banning) & Professional Services of Australia Pty Ltd

of c/- Mr Cameron Eastwood

Eastwood Law
Level 1, 26 Railway Road
SUBIACO WA 6008

Estimate

1. I refer to the undated proof of debt lodged by Sandra May Banning in her capacity as executor of the estate of Martin Banning and in her capacity as a director of Professional Services of Australia Pty Ltd (**"PSA"**) in the Bankrupt Estates claiming the amount of $34,404.04 for untaxed costs pursuant to an order dated 8 April 2014 plus interest (**"Proof of Debt"**).

2. I estimate the value of the claim against the Bankrupt Estates set out in the Proof of Debt to be $27,128.09 comprising costs in the amount of $21,579.96 plus interest at the rate of 6% per annum pursuant to section 8 the *Civil Judgments Enforcement Act 2004* (WA) from 8 April 2014 to the date of bankruptcy in the amount of $5,548.13.

Background

3. On 8 April 2014, Pullin JA and Newnes JA dismissed an appeal commenced by the Friggers and ordered the Friggers (the appellants) pay the costs of PSA (the first respondent) and Donald Campbell Smith as Executor of the Estate of Martin Banning (the second respondent). In particular, the paragraph 3 of the order was:

> *"The appellants pay the first and second respondents' costs of the application for an extension of time and of the appeal, including reserved costs to be taxed."*

4. Donald Campbell-Smith was the executor of Mr Martin Banning's estate. However, upon Mr Donald Campbell-Smith's death on 3 August 2018, Ms Sandra May Banning was appointed executor of the estate of Martin Banning.

5. The Proof of Debt is executed by Ms Sandra May Banning as executor of the estate of Martin Banning and a director of PSA.

6. I have been provided with:

    a. a copy of the order dated 8 April 2014;

    b. the First and Second Respondent's draft Bill of Costs for Taxation dated 2015 (Draft Bill);

    c. the Court of Appeal's reasons for decision in *Frigger v Professional Services of Australia Pty Ltd [No 3]* [2014] WASCA 69 (**"Reasons"**);

    d. letter from Eastwood Law to me dated 12 May 2023;

    e. Schedule A: Schedule of Untaxed Costs Orders;

    f. list of Court documents in the proceedings; and

    g. a copy of various court documents filed in the proceeding.

7. In assessing the costs the subject of the Draft Bill I have had regard to the *Legal Profession (Supreme Court)(Contentious Business) Costs Determination 2012* (**"2012 Determination"**).

Assessment of costs

8. The Draft Bill claims costs in the amount of $27,749.30. The following sections address each of the items claimed by the Respondents in the Draft Bill:

    a. <u>Item 1 - Amount allowed: $451</u>

    Item 1 of the Draft Bill claims $451 under item 23(a) of the 2012 Determination.

    The Court documents provided do not include a copy of the Notice of Intention filed. However the list confirms that it was filed.

    b. <u>Item 2 - Amount allowed: $8,568.45.</u>

    Item 2 of the Draft Bill claims $8,568.45 under item 23(b) of the 2012 Determination for:

        i. Counsel of $5,862.45 for 16.15 hours (969 minutes) at $363 each hour; and

        ii. Senior Practitioner of $2,706 for 6 hours (360 minutes) at $451 each hour.

    The maximum amount allowed under item 23(b) of the 2012 Determination is $25,520 for Senior Counsel.

    The First and Second Respondent were required to file a Respondent's Answer which:

        i. responded to the Appellants' Case and each of the grounds of appeal raised addressing the Court's decision below;

        ii. supported arguments made with case law authorities; and

        iii. addressed the merits of the Appellants application for leave and the delay.

    Considering the issues in the appeal and the nature of appellate proceedings, it is reasonable for each of Counsel and a Senior Practitioner to undertake the work claimed at the hourly rates allowed under the 2012 Determination.

On that basis, the amount claimed of $8,568.45 under this Item 2 appears to be reasonable.

c. Item 3 - Amount allowed: $2,530

Item 3 of the Draft Bill claims the maximum amount of $3,630 allowed under item 23(e) of the 2012 Determination.

Item 3 of the Draft Bill states that the total actual time spent for item 3 of the Draft Bill was $5,323.45 and that:

i. Counsel spent 4.85 hours (292 minutes) at $363 per hour, totaling $1,760.55; and

ii. a Senior Practitioner spent 7.9 hours (474 minutes) at $451 per hour, totaling $3,562.90.

The documents filed in support of the Application included:

i. an Application in an Appeal;

ii. a supporting Affidavit of Mr Lenhoff made on 13 May 2013 (of which a copy has not been provided to me);

iii. a supplementary Affidavit of Mr Lenhoff made on 22 May 2013; and

iv. Minute of Proposed Orders.

On 21 June 2013, the Court ordered that the Application in the Appeal be referred to the hearing of the Appeal and that the costs of the application be costs in the appeal.

It is not apparent from the Reasons and from the information provided to me why the Application in the Appeal was necessary particularly considering the question of an extension of time was addressed in the Appeal Notice and subsequently in the Respondent's Answer.

However, considering the costs Order made on 21 June 2013, the costs of the Application are to be included as costs of the Appeal and, therefore, the subject of the Order.

Based on the above and the information provided to me, it is not apparent that the Application was sufficiently complex to justify the maximum amount claimed in the Draft Bill. Accordingly, I consider a reasonable amount for the Application would be 2 hours of Counsel's time ($726) and 4 hours for a Senior Practitioner ($1,804), totaling $2,530.

d. Item 4 - Amount allowed: $0

Item 4 of the Draft Bill claims $2,146.10 under item 23(e) of the 2012 Determination. The maximum amount allowed under this item is $3,630.

Item 4 of the Draft Bill states that the total actual time spent for item 4 included:

i. Counsel spent 4.85 hours (291 minutes) at $363 per hour, totaling $1,379.40; and

ii. a Senior Practitioner spent 1.7 hours (102 minutes) at $451 per hour, totaling $766.70.

Mr and Mrs Frigger did not file a separate application for an extension of time and that application was:

i. specified in Mr and Mrs Frigger's Appeal Notice;

ii. dealt with at the hearing of the Appeal; and

iii. the subject of the First and Second Respondents' Answer.

On the basis that Mr and Mrs Frigger did not make a separate application for an extension of time (based on the documents provided to me) outside of the Appeal Notice and the extension of time was heard at the Appeal, it appears unreasonable then, that a separate amount be claimed under this item.

Therefore, I consider the amount for this item should be $0.

e. Item 5 - Amount allowed: $181.50

This item claims $181.50 for attendance at a directions hearing on 21 June 2013. The Court's Orders made on 25 June 2013 confirm the attendance, with orders made for costs of the Application in the Appeal made on 13 May 2013 and of the appearance be costs in the appeal.

Having regard to the reduction for Item 3, I believe it is reasonable that a separate amount be allowed for the appearance in the amount of $181.50.

f. Item 6 - Amount allowed: $0

For the reasons identified in relation to Item 4 of the Draft Bill above, and that an allowance has been made for the appearance in Item 5 of the Draft Bill, I consider the amount for this item should be $0.

g. First Item 7 - Amount allowed: $4,510

The (first) Item 7 of the Draft Bill claims $4,510 under item 23(f) of the 2012 Determination which is the maximum amount allowed under this item.

The maximum allowed under the 2012 Determination is likely reasonable considering:

i. the apparent late changes to Appeal books;

ii. the expectation that parties confer; and

iii. the nature and complexity of the proceedings.

h. Second Item 7 - Amount allowed: $4,235

The maximum allowed under the 2012 Determination for Counsel's attendance at the hearing is $10,890 for 2 days preparation and a 1-day hearing.

Because the amount claimed is less than the maximum amount allowed under the 2012 Determination and Counsel was likely still required to prepare for a full appeal hearing of more than 70 minutes, it is likely the amount claimed is reasonable.

i. Item 8 - Amount allowed: $521.16

Item 8 of the Draft Bill claims $521.16 for attendance by a senior practitioner at the hearing of the Appeal for approximately 70 minutes. It is likely the amount claimed is reasonable.

j. Item 9 - Amount allowed: $733.70

Item 9 of the draft Bill claims $733.70 for settling the Appeal Books under item 23(d) of the 2012 Determination, being:

i. $508.20 for 1.4 hours (84 minutes) at $363 per hour for Counsel; and

ii. $225.50 for 0.5 hours (30 minutes) at $451 per hour for a Senior Practitioner.

The amount claimed is likely reasonable considering the four (4) appeal book indexes, the number of pages in the appeal books and the ongoing nature of legal proceedings between the respective parties.

k. Item 10 - Amount allowed: $375.10

Having regard to the length and detail of the Reasons for Decision in *Frigger v Professional Services of Australia* [No 3] [2014] WASCA 69, the amount claimed appears reasonable.

l. Item 11 - Amount allowed: $1,475.83

The amount claimed under this item appears reasonable considering:

i. the nature of the various costs Orders made;

ii. the documents that were filed in the appeal proceedings which required review for preparation of the Draft Bill; and

iii. the length of the proceedings.

m. Item 12 - Amount allowed: $0

Counsel has not attended at a taxation of costs. Therefore, no amount should be allowed for this Item 12.

n. Item 13 - Amount allowed: $379

This amount appears reasonable.

o. Item 14 - Amount allowed: $0

This amount is disallowed as the amount does not appear to relate to the photocopying of Court documents for the purposes of the Court proceedings.

p. Item 15 - Amount allowed: $16.99

Item 31 of the 2012 Determination allows $0.165 per page for photocopying. 103 pages is calculated at $16.99. This amount should be allowed.

9. The total of the amounts I consider should be allowed referred to in paragraphs 8.a to 8.p above is $23,977.73.

10. Because CACV 24 of 2013 was heard together with CACV 23 of 2013 there is a risk of overlap or duplication of costs. I consider the amount referred to in paragraph 9 above should be reduced by 10% to account for that risk together with the risk that some of the costs claimed are properly solicitor and client costs and not party and party costs (being $21,579.96).

11. Interest on the amount of $21,579.96 at the rate of 6% per annum pursuant to section 8 of the *Civil Judgments Enforcement Act 2004* (WA) from 8 April 2014 to 20 July 2018 is $5,548.13.

12. Accordingly, I estimate the value of the claim the subject of the Proof of Debt to be **$27,128.09** comprising costs in the amount of $21,579.96 plus interest in the amount of $5,548.13.

Please note that pursuant to section 82(5) of the Act, a person aggrieved by an estimate made pursuant to section 82(4) of the Act may appeal to the Court not later than 28 days after the day on which the person is notified of the estimate.

Dated this 11th day of September 2025

Kelly-Anne Trenfield

Trustee

Our Ref.: 464538.0001-12-06-16-l1

11 September 2025

Sandra May Banning & Professional Services of Australia Pty Ltd

c/- Eastwood Law

Level 1, 26 Railway Road

SUBIACO WA 6008

Attention: Mr Cameron Eastwood

By Email: cameron.eastwood@eastwood.legal

Dear Sir

Re: Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6
Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6 ("the Bankrupt Estates")

Notice of estimate of the value of debt or liability – section 82(4) of the *Bankruptcy Act 1966* (Cth)

I refer to previous correspondence regarding the undated proof of debt lodged by Sandra May Banning on her own behalf and in her capacity as a director of Professional Services of Australia (**"PSA"**) in the Bankrupt Estates for $39,229.78 (**"Proof of Debt"**).

Based on the information provided, I estimate the value of the debt or liability claimed in the Proof of Debt to be $29,797.66 pursuant to section 82(4) of the *Bankruptcy Act 1966* (Cth) (**"Act"**). The basis for my estimate is contained in the Annexure to this letter.

Should you have any queries, please contact Nick Hawthorne of this office on (07) 3225 4971 or by email at nick.hawthorne@fticonsulting.com.

Yours faithfully

Kelly-Anne Trenfield

Trustee

NOTICE OF ESTIMATE OF VALUE OF DEBT OR LIABILITY

section 82(4) of the *Bankruptcy Act 1966* (Cth)

Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6

Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6

("THE BANKRUPT ESTATES")

To: Sandra May Banning and Professional Services of Australia Pty Ltd

of c/- Mr Cameron Eastwood

Eastwood Law
Level 1, 26 Railway Road
SUBIACO WA 6008

Estimate

1. I refer to the undated proof of debt lodged by Sandra May Banning on her own behalf and in her capacity as a director of Professional Services of Australia Pty Ltd (**"PSA"**) in the Bankrupt Estates claiming the amount of $39,229.78 (**"Proof of Debt"**).

2. I estimate the value the claim against the Bankrupt Estates set out in the Proof of Debt to be $29,797.66 comprising costs in the amount of $25,761.87 plus interest at the rate of 6% per annum pursuant to section 8 the *Civil Judgments Enforcement Act 2004* (WA) from 10 December 2015 to the date of bankruptcy in the amount of $4,035.79.

Background

3. On or about 25 July 2008, PSA and Martin Paul Banning brought an appeal against Computer Accounting & Tax Pty Ltd (**"CAT"**), proceeding number CACV 76/2008. The appeal sought to reduce a compensation award that had been made by Justice Simmonds in favour of CAT on 10 July 2008.

4. The appeal was successful in late 2009 and final Orders were made by the Court of Appeal on 16 December 2009.

5. Martin Banning passed away on 14 July 2008 and he was replaced as a party to the proceeding by the executor of his estate Mr Donald Campbell-Smith. Upon Donald Campbell-Smith's death on 3 August 2018, Mrs Sandra May Banning was appointed executor of the estate of Martin Banning.

6. On 23 March 2010 Angela and Hartmut Frigger (**"Friggers"**) sought leave to intervene in CACV 76/2008. The application was adjourned and never re-listed. I am informed by Cameron Eastwood that the Court ordered the Friggers to personally pay the costs 'thrown away' as a

result of their adjourned application with the amount to be taxed (**"2010 Order"**). However, I have not been provided with a copy of the 2010 Order.

7. On 6 July 2015 the Friggers applied to intervene in CACV 76/2008 (**"6 July Application"**) again. The 6 July Application was dismissed, and the court made a costs order against the Friggers on the following terms (**"2015 Order"**):

> *"The applicants pay all of the first and second appellants' costs and expenses of and incidental to the application dated 6 July 2015 except in so far as they are of an unreasonable amount or have been unreasonably incurred, so that subject to the above exception the appellants are completely indemnified by the applicants in respect of its costs of opposing the application."*

8. In 2017 a draft Bill of Costs (**"Draft Bill"**) was prepared claiming $29,996.50, comprising solicitor and counsel fees in relation to the 6 July Application.

9. The Proof of Debt lodged by Sandra May Banning on her own behalf and in her capacity as a director of PSA in the Bankrupt Estates claims an amount of $39,229.78. This amount represents the combined costs awarded under the 2010 and 2015 orders, including accrued interest from the date each debt was incurred up to the date of bankruptcy.

2010 Order

10. As at the date of this notice, and despite requests made to Eastwood Law, I have not received a copy of the 2010 Order. Based on the information provided, there is insufficient evidence to allow the amount claimed under the 2010 Order.

2015 Order

11. The 2015 Order is an indemnity costs order and the Draft Bill claims $29,996.50.

12. With respect to the work Counsel completed:

    a. Item 9: Amount allowed: $49.50
    This item appears to be administrative work and has been reduced by 50% to reflect that the work could have been done by a more junior practitioner or administrative staff member. Therefore, this item is reduced to $49.50, a reduction of $49.50.

    b. Item 14: Amount allowed: $0
    It is unclear why this amount has been claimed in circumstances where the inspection at Court was declined. This item is reduced by $82.50.

    c. Item 26: Amount allowed: $123.75
    This item appears to be administrative work and has been reduced by 50% to reflect that the work could have been done by a more junior practitioner or administrative staff member. Therefore, this item is reduced to $123.75, a reduction of $123.75.

    d. Item 65: Amount allowed: $247.50

The amount claimed in item 65 of the Draft Bill is for attending at Court of Appeal for hearing which is said to be "less than 1 hour". However, $720.00 has been claimed for this item.

That amount should be adjusted to less than 1 hour of Counsel's time. Having regard to the length of hearing on 9 December 2015 of approximately 30 minutes (see item 68 of the Draft Bill it is assumed that the hearing Mr Forbes attended was the same hearing as Counsel), this item is reduced to $247.50, a reduction of $472.50.

e. Item 108: Amount allowed: $0.
This amount needs to be deducted because Counsel has not attended at a taxation of costs. This item has been reduced by $495.

13. The total reduction for Counsel's fees is $1,223.25.

14. With respect to the work completed by the solicitors:

a. Item 69: Amount allowed: $33.00
It is apparent from the description attributed to item 69 of the Draft Bill that the amount claimed for a senior practitioner does not appear to require the necessary skill of a senior practitioner. This item is reduced to six (6) minutes of a junior practitioner's time at $330 per hour, being $33, a reduction of $27.50.

b. Item 76: Amount allowed: $0
It is not apparent from this item in the Draft Bill what benefit the client received or what work was done resulting from the brief perusal of emails. Therefore, this item is arguably unreasonable. This item is reduced by $38.50.

c. Item 83: Amount allowed: $38.50
The claimed amount for this item appears high considering it is a service letter. It is reduced to $38.50, a reduction of $38.50.

d. Item 89: Amount allowed: $0
It is not apparent from the description of this item in the Draft Bill that the work could have been completed by an administrative staff member. This item is reduced to $0, a reduction of $66

e. Item 96: Amount allowed: $115.50
It is apparent from the description attributed to this item in the Draft Bill that the amount claimed for a junior practitioner does not appear to require the necessary skill of a junior practitioner, further it is reasonable that travel be claimed at 50%. This item is reduced to $115.50, a reduction of $77.

f. Items 101 and 102: Amount allowed: $1,028.50
At item 45 of the Draft Bill on 3 September 2015 Counsel was required to re-draft the Affidavit in reply and at item 49 undertake work for the final drafting of the Affidavit. Counsel spent 339 minutes in drafting the Affidavit.

At items 101 and 102 a senior practitioner spent an additional 204 minutes preparing the Affidavit in reply.

The Affidavit in reply was 166 pages, 14 paragraphs and included 11 attachments.

This is reduced to reflect the "re-drafting by Counsel" and other potential duplication or unnecessary work, to $1,028.50, being a reduction of $1,028.50.

g. Item 103: Amount allowed: $0
It is apparent from the amount claimed that the claim for a junior practitioner has been reduced to claim the time for a law clerk or paralegal. However, the amount claimed appears to relate to enforcement proceedings and those costs. Therefore, those costs are arguably not property costs of the application. This item is reduced to $0, a reduction of $66.00.

h. Items 106 and 107: Amount allowed: $181.50
These items do not appear to make an allowance for duplication or supervision and the administrative nature of the work. These items are reduced to $181.50, being a reduction of $313.50.

15. The total reduction for the solicitors' fees is $1,655.50.

16. Having regard to *Sharif v Vitruvian Investments Pty Ltd (No 5)* [2024] FCA 134 in addition to the above deductions, a global deduction is made of 5% of the costs claimed in the Draft Bill, after deduction of the amounts specified in paragraphs 13 and 15 above, totaling $2,878.75, for work that might not have been reasonably, necessarily or properly incurred or is not fair and reasonable in amount.

17. 5% of the allowed professional costs for the Draft Bill ($27,117.75) is $1,355.88.

18. $27,117.75 less $1,355.88 is $25,761.87.

19. Interest on the amount of $25,761.87 at the rate of 6% per annum pursuant to section 8 of the *Civil Judgments Enforcement Act 2004* (WA) from 10 December 2015 to 20 July 2018 is $4,035.79.

Estimate

20. I estimate the costs payable by the Friggers to Mrs Banning and PSA pursuant to the 2015 Order to be:

    a. the amount of $25,761.87 referred to in paragraph 188 above;

    b. plus the amount of $4,035.79 referred to in paragraph 199 above.

21. Accordingly, I estimate the costs payable to Sandra May Banning and PSA to be $29,797.66.

Please note that pursuant to section 82(5) of the Act a person aggrieved by an estimate so made may appeal to the Court not later than 28 days after the day on which the person is notified of the estimate.

Dated this 11th day of September 2025



Kelly Anne Trenfield

Trustee

Our Ref.: 464538.0001-12-06-22-l1

11 September 2025

Sandra May Banning and Professional Services of Australia Pty Ltd

c/- Eastwood Law

Level 1, 26 Railway Road

SUBIACO WA 6008

Attention: Mr Cameron Eastwood

By Email: cameron.eastwood@eastwood.legal

Dear Sir

Re: Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6
("the Bankrupt Estate")

Notice of admission of proof of debt – section 102(2) of the *Bankruptcy Act 1966* (Cth)

I refer to my appointment as Trustee of the above Bankrupt Estate by virtue of a Sequestration Order made by the Federal Court of Australia on 31 August 2018.

Further, I refer to previous correspondence regarding the Bankrupt Estate and the undated proof of debt lodged by Sandra May Banning in her capacity as a director of Professional Services of Australia Pty Ltd (**"PSA"**) and as executor of the deceased estate of Martin Banning, in the Bankrupt Estate for $535.35 (**"Proof of Debt"**) in the relation to the matter of **CIV 2265 of 2006**.

Please find **enclosed** formal notice of the admission, which includes the reasons for my decision.

Should you have any queries, please contact Nick Hawthorne of this office on (07) 3225 4971 or by email at nick.hawthorne@fticonsulting.com.

Yours faithfully

Kelly-Anne Trenfield

Trustee

NOTICE OF ADMISSION OF PROOF OF DEBT

section 102(2) of the *Bankruptcy Act 1966* (Cth)

Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6

("THE BANKRUPT ESTATE")

To: Sandra May Banning and Professional Services of Australia Pty Ltd

of c/- Mr Cameron Eastwood

Eastwood Law
Level 1, 26 Railway Road
SUBIACO WA 6008

1. Your claim against the Bankrupt Estate set out in the undated Proof of Debt lodged by Sandra May Banning in her capacity as executor of the estate of Martin Banning and in her capacity as a director of PSA in the Bankrupt Estates in relation to the matter of **CIV 2265 of 2006** has been admitted in the amounts noted below

Details of debt / description	Amount ($)
Balance of costs order dated 22 April 2016 (Taxed)	473.00
Interest 6% pa	62.31
Total	**535.31**

2. With regards to the interest component, I have utilised the following interest calculations:

   473.00 * 6%pa * 802 days (10 May 2016 to 20 July 2018) = **$62.31 interest**

   NOTE: *The per annum interest calculation considers 366 days for applicable leap years.*

Dated this 11th day of September 2025

Kelly-Anne Trenfield

Trustee

Our Ref.: 464538.0001-12-06-17-l1

11 September 2025

Sandra May Banning, Professional Services of Australia Pty Ltd & Banning Holdings Pty Ltd

c/- Eastwood Law

Level 1, 26 Railway Road

SUBIACO WA 6008

Attention: Mr Cameron Eastwood

By Email: cameron.eastwood@eastwood.legal

Dear Sir/Madam

Re: Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6
Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6 ("the Bankrupt Estates")

Notice of estimate of the value of debt or liability – section 82(4) of the *Bankruptcy Act 1966* (Cth)

I refer to previous correspondence regarding the Bankrupt Estates and the undated proof of debt lodged by Sandra May Banning on her own behalf and in her capacity as a director of Professional Services of Australia Pty Ltd ("**PSA**") and Banning Holdings Pty Ltd ("**BH**") in the Bankrupt Estates for $19,659.74 ("**Proof of Debt**").

Based on the information provided, I estimate the value of the debt or liability claimed in the Proof of Debt to be $13,530.91 pursuant to section 82(4) of the *Bankruptcy Act 1966* (Cth) (**Act**). The basis for my estimate is contained in the attached notice.

Should you have any queries, please contact Nick Hawthorne of this office on (07) 3225 4971 or by email at nick.hawthorne@fticonsulting.com.

Yours faithfully

Kelly-Anne Trenfield

Trustee

NOTICE OF ESTIMATE OF VALUE OF DEBT OR LIABILITY

section 82(4) of the *Bankruptcy Act 1966* (Cth)

Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6

Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6

("THE BANKRUPT ESTATES")

To: Sandra May Banning, Professional Services of Australia Pty Ltd & Banning Holdings Pty Ltd

of c/- Mr Cameron Eastwood

Eastwood Law
Level 1, 26 Railway Road
SUBIACO WA 6008

Estimate

1. I refer to the undated proof of debt lodged by Sandra May Banning on her own behalf and in her capacity as a director of Professional Services of Australia Pty Ltd (**"PSA"**) and Banning Holdings Pty Ltd (**"BH"**) in the Bankrupt Estates claiming the amount of $19,659.74 for untaxed costs pursuant to an order dated 21 December 2017 (**"Proof of Debt"**).

2. I estimate the value the claim against the Bankrupt Estates set out in the Proof of Debt to be $13,530.91.

Background

3. Angela Frigger and Hartmut Frigger (**Friggers**) commenced proceedings against Sandra May Banning, Donald Campbell-Smith, Professional Services of Australia Pty Ltd (**PSA**) and Banning Holdings Pty Ltd (**BH**) in the Federal Court of Australia on 12 March 2017 (proceeding number WAD178/2017).

4. Pursuant to the order of Justice Siopis dated 21 December 2017, the proceedings were dismissed and the Friggers were ordered to pay the Respondents' costs on an indemnity basis. These costs relate to both the Friggers' application for leave to appeal Justice Barker's orders of 8 March 2017, and the Friggers' interlocutory application dated 18 December 2017.

5. The relevant costs order is as follows:

> *The applicants are to pay all of the costs and expenses of the respondents of and incidental to the applications referred to in order 1 and order 2 above, including any reserved costs, except insofar as they are of an unreasonable amount or have been unreasonably incurred, so that subject to the above exception, the respondents are completely indemnified by the applicants in respect of their costs of opposing the applications, to be taxed if not agreed.*

6. In late 2018 a draft Bill of Costs (**"Draft Bill"**) was prepared claiming $19,659.74, comprising solicitor and counsel fees. The Proof of Debt claims an amount of $19,659.74, being the costs sought under the Draft Bill.

7. The Draft Bill was prepared in respect of the costs of the first to fourth respondents (which includes the costs of Donald Campbell-Smith). However, I note that Donald Campbell-Smith (or the executor of his estate Mrs Ann Marion Campbell-Smith) is not listed as a creditor in the Proof of Debt.

8. In a letter from Eastwood Law to me dated 12 May 2023, Mr Eastwood stated that:

> *4. Prior to his death Mr Campbell-Smith became incapable as a result of dementia and... after his death, we have not replaced him by joining his wife and executor Ann Marion Campbell-Smith as a party to the proceedings notwithstanding this is still possible. Ann Marion Campbell-Smith has undertaken the legal responsibilities on behalf of his deceased estate, but, his deceased estate has made and makes no claim to these debts because Mr Campbell-Smith was never required by the lawyers representing him to pay any amount for his representation in these proceedings even though he incurred a liability to do so.*
>
> *5. It is therefore our contention that even though he incurred a liability for costs as a party in his own right, since Mr Campbell-Smith never paid any amount for his legal representation, and, was to be indemnified against his liability by our other clients, or, from the deceased estate of Martin Paul Banning it is appropriate for the whole of the amounts pursuant to the costs Orders to be payable to Mrs Banning, PSA and BH and that the proof of debt be admitted on their behalf without regard to Mr Campbell-Smith or his deceased estate.*

9. Despite numerous requests for supporting information from Eastwood Law, I have not received any evidence to support the comments made by Mr Eastwood referred to in paragraph 8 above.

Assessment of costs

10. Dealing with each of the items claimed in the Draft Bill to the extent that the costs claimed do not appear to be reasonably, necessarily or properly incurred or do not appear to be fair and reasonable in amount based on a review of the documents provided:

    a. <u>Item 8 – allowable amount: $78.</u>

       The Draft Bill claims $117 for this item for work completed by a law clerk. The Form 10 Notice of Address for Service filed with the Federal Court is not a complex document. $78 is allowed for this item, a reduction of $39.

    b. <u>Item 13 - allowable amount: $351.</u>

       This item claims $546 for 1.4 hours in attending at Court on 18 May 2017. Counsel's time referred to in item 48 of the Draft Bill is for 50 minutes. Therefore, this item is reduced to 50 minutes for "OD" as a law clerk, being $351, a reduction of $185.

c. Item 15 - allowable amount: $0.

This item claims $390 for 1 unit to peruse the Court Orders made on 18 May 2017. The Court Orders consisted of 4 orders that were not complex. It might be that the claim of $390 is in error and that a claim of $39 was intended.

In any event, if no additional work was completed beyond perusing the non-complex Orders it is likely unreasonable to claim for that perusal. This item is reduced by $390.

d. Items 30 and 32 - allowable amount: $165

Item 30 claims $117 for 3 units in a telephone attendance with Counsel and conferring with partner (it is assumed the partner is "CVE"). Item 32 claims $220 for 4 units in a telephone attendance with Counsel.

Considering the discrepancy between the time claimed in these items, the amount claimed in item 32 is reduced to 3 units as opposed to 4, being $165 and a reduction of $55.

11. The total above reductions of the Draft Bill for the items specified is $669.

12. Having regard to *Sharif v Vitruvian Investments Pty Ltd (No 5)* [2024] FCA 134 in addition to the above deductions, I consider a global deduction of 5% of the costs claimed in the Draft Bill is reasonable, after deduction of $669 as referred to in paragraph 11 above, for work that might not have been reasonably, necessarily or properly incurred or is not fair and reasonable in amount.

13. 5% of the recommended professional costs referred to in the Draft Bill of $18,990.74 (being $19,659.74 less $669) is $949.53.

14. $18,990.74 less $949.53 is $18,041.21.

Estimate

I estimate the value of the claim against the Bankrupt Estate set out in the Proof of Debt to be $13,530.91 calculated on the following basis:

- the amount of $18,041.21 referred to in paragraph 14 above;
- less a portion of those costs that would reasonably be attributable to the costs of Donald Campbell-Smith (which I consider to be ¼ of the total costs in the amount of $4,510.30).

Please note that pursuant to section 82(5) of the Act a person aggrieved by an estimate so made may appeal to the Court not later than 28 days after the day on which the person is notified of the estimate.

Dated this 11th day of September 2025



Kelly-Anne Trenfield

Trustee

Our Ref.: 464538.0001-12-06-18-l1

11 September 2025

Sandra May Banning, Professional Services of Australia Pty Ltd & Banning Holdings Pty Ltd

c/- Cameron Eastwood
Eastwood Law
Level 1, 26 Railway Road
SUBIACO WA 6008

Attention: Mr Cameron Eastwood

By Email: cameron.eastwood@eastwood.legal

Dear Sir/Madam

Re: Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6
Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6 ("the Bankrupt Estates")

Notice of rejection of proof of debt – section 102(2) of the *Bankruptcy Act 1966* (Cth)

I refer to previous correspondence regarding the Bankrupt Estates and the undated proof of debt lodged by Sandra May Banning on her own behalf and in her capacity as a director of Professional Services of Australia Pty Ltd ("**PSA**") and Banning Holdings Pty Ltd ("**BH**") in the Bankrupt Estates for $125,000 ("**Proof of Debt**").

Based on the information provided, there is insufficient evidence to prove the full amount of the debt claimed in the Proof of Debt against the Bankrupt Estates. Accordingly, your claim against the Bankrupt Estates has been rejected in part.

Please find **enclosed** formal notice of the rejection, which includes the reasons for my decision.

Should you have any queries, please contact Nick Hawthorne of this office on (07) 3225 4971 or by email at nick.hawthorne@fticonsulting.com.

Yours faithfully

Kelly-Anne Trenfield

Trustee

FTI Consulting (Australia) Pty Limited
ABN 49 160 397 811 | ACN 160 397 811 | AFSL Authorised Representative # 001269325
Level 20, CP1 | 345 Queen Street | Brisbane QLD 4000 | Australia
Postal Address | GPO Box 3127 | Brisbane QLD 4001 | Australia
+61 7 3225 4900 telephone | fticonsulting.com

Liability limited by a scheme approved under Professional Standards Legislation.

NOTICE OF REJECTION OF PROOF OF DEBT

section 102(2) of the *Bankruptcy Act 1966* (Cth)

Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6

Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6

("THE BANKRUPT ESTATES")

To: Sandra May Banning, Professional Services of Australia Pty Ltd & Banning Holdings Pty Ltd

of c/- Cameron Eastwood

Eastwood Law
Level 1, 26 Railway Road
SUBIACO WA 6008

1. Adjudication

Your claim against the Bankrupt Estates set out in the undated proof of debt lodged by Sandra May Banning on her own behalf and in her capacity as a director of Professional Services of Australia Pty Ltd (**"PSA"**) and Banning Holdings Pty Ltd (**"BH"**) in the Bankrupt Estates for $125,000 (**"Proof of Debt"**) has been allowed in the sum of $14,094.04.

2. Background

a. Angela Frigger and Hartmut Frigger ("the **Friggers"**) commenced proceedings against Sandra May Banning, Donald Campbell-Smith, PSA and BH in the Federal Court of Australian on 19 October 2015 (proceeding number WAD607/2015).

b. Pursuant to an order of Colvin J dated 2 September 2020, the proceedings were dismissed and the Friggers were ordered to pay the costs of the proceedings including reserved costs to be assessed if not agreed.

c. There were numerous costs orders made in favour of Sandra Banning, Donald Campbell-Smith, PSA and Banning Holdings (**"Respondents"**) including 5 April 2016, 13 April 2016, 17 June 2016, 24 June 2016, 8 March 2017, 16 March 2018, 16 April 2018, 17 July 2018 and others after the date of bankruptcy.

d. On 24 June 2016, Justice Barker made an order for the payment of security in the sum of $60,000. In a letter from Mr Eastwood of Eastwood Law dated 12 May 2023, Mr Eastwood informed me that the security was paid into Court but has never been paid to the Respondents.

e. Pursuant to an order made by Colvin J in the proceeding on 21 August 2019, Donald Campbell-Smith was removed as a party and Ann Marion Campbell-Smith (in her capacity as executor of the estate of Donald Campbell-Smith) was added as the second

respondent in his place. Ann Marion Campbell-Smith has not lodged a proof of debt in the Bankrupt Estates.

f. The Proof of Debt lodged by Sandra May Banning on her own behalf and in her capacity as a director of PSA and BH in the Bankrupt Estates claims an amount of $125,000, comprising an amount of $185,000 owing pursuant to various costs orders less the amount of $60,000 (being an amount of security for costs paid into court by the Friggers).

g. On 3 November 2023, the Respondents filed an Amended Bill of Costs in the amount of $151,794.40 for costs pursuant to the orders of:

   i. the Hon. Justice Barker made on 5 April 2016, 13 April 2016, 17 June 2016, 24 June 2016 and 8 March 2017;

   ii. the Hon. Justice Colvin made on 16 March 2018, 16 April 2018, 17 July 2018, 12 June 2019, 21 August 2019, 26 September 2019 and 2 September 2020.

h. The taxation was heard on 1 July 2024 and 2 July 2024. On 2 July 2024, Registrar Segal ordered that the Respondents lodge draft certificates of taxation reflecting the decisions made by the taxing officer at the taxation of the Respondents' Amended Bill of Costs filed on 3 November 2023.

i. On 3 July 2024 the Deputy District Registrar issued a Certificate of Taxation which provided as follows:

   Pursuant to the Orders of Justice Barker made on 5 April 2016, 13 April 2016, 8 March 2017 and Justice Colvin made on 17 July 2018 that the Applicants pay the Respondents' costs, I certify that pursuant to rule 40.27 of the Federal Court Rules the Respondents' costs as between party and party have been taxed in the amount of $78,792.05.

j. On 16 January 2025, Mr Eastwood of Eastwood Law provided Johnson Winter Slattery with a copy of the Certificate of Costs related to the 'pre-bankruptcy' costs orders and noted that it was this amount which Mrs Banning, PSA and BH seek to prove as the debt in the bankruptcies. However, I note that the Certificate of Taxation was for all of the Respondents (including Ann Marion Campbell-Smith in her capacity as executor of the estate of Donald Campbell-Smith). Mrs Ann Marion Campbell-Smith is not listed as a creditor in the Proof of Debt.

k. On 3 July 2024 the Friggers applied to review the taxation including the taxation of the 'pre-bankruptcy' costs orders. On 18 October 2024, Colvin J ordered that the Friggers provide security for the Respondents' costs in the amount of $10,000 by payment into Court and the proceedings be stayed pending the provision of security. In the judgment of Colvin J delivered on 18 October 2024 (*Frigger v Banning (Application for Security for Costs on Review of Taxation)* [2024] FCA 1207), Colvin J said (at [2]) that the Friggers *"seek an order that the certificate of taxation be set aside and an amount of $62,000 that has been paid into Court by way of security for the costs of the proceedings to be paid out to them with accrued interest. Manifestly, they are seeking to raise an army of arguments in an effort to resist paying any costs."*

l. As at the date of this notice, and despite numerous requests for updates from Eastwood Law, I am not aware that the security for costs referred to in paragraph 2.k has been paid or that the review of the taxation has been listed for hearing.

m. In the letter from Eastwood Law to me dated 12 May 2023, Mr Eastwood stated that:

> *7. Prior to his death Mr Campbell-Smith became incapable as a result of dementia and... soon after his death his wife and executor Ann Marion Campbell-Smith replaced him as a party to the proceedings on 21 August 2019. She has since then undertaken the legal responsibilities on behalf of his deceased estate, but, his deceased estate has made and makes no claim to these debts because Mr Campbell-Smith was never required by the lawyers representing him to pay any amount for his representation in these proceedings even though he incurred a liability to do so.*
>
> *8. It is therefore our contention that even though he incurred a liability for costs as a party in his own right, since Mr Campbell-Smith never paid any amount for his legal representation, and, was to be indemnified against his liability by our other clients, or, from the deceased estate of Martin Paul Banning it is appropriate for the whole of the amounts pursuant to the costs Orders to be payable to Mrs Banning, PSA and BH and that the proof of debt be admitted on their behalf without regard to Mr Campbell-Smith or his deceased estate.*

n. Despite numerous requests for supporting information from Eastwood Law, I have not received any evidence to support the comments made by Mr Eastwood referred to in paragraph 2.m above.

o. The Certificate of Taxation referred to in paragraph 2.i above is made in favour of the Respondents (which includes Mrs Ann Marion Campbell-Smith in her capacity as executor of the estate of Donald Campbell-Smith). However, as noted above, Mrs Ann Marion Campbell-Smith is not included as a creditor in the Proof of Debt.

3. Grounds for Rejection

a. The claim against the Bankrupt Estate set out in the Proof of Debt has been allowed in the sum of $14,094.04 calculated on the following basis:

   i. the amount of $78,792.05 set out in the Certificate of Taxation referred to in paragraph 2.i above;

   ii. less a portion of those costs that would reasonably be attributable to the costs of Donald Campbell-Smith (which I consider to be ¼ of the taxed costs in the amount of $19,698.01);

   iii. less the amount of $45,000, being the security provided by the Friggers referred to in paragraph 2.d above, reduced to account for the portion attributable to any costs claimed by Donald Campbell-Smith (being a ¼ share of the security amount).

If you are dissatisfied with my determination as set out above, you may appeal against it, no later than 21 days after the service of this notice or, if the Court allows, within any further period.

Dated this 11th day of September 2025



Kelly Anne Trenfield

Trustee

Our Ref.: 464538.0001-12-06-04-l1

11 September 2025

Mr Kim David Holbrook

c/- Mr Gilbert Flynn
Hotchkin Hanly
Level 18/221 St Georges Terrace
PERTH WA 6000

Attention: Mr Kim David Holbrook

By Email: gflynn@hotchkinhanly.com.au

Dear Sir

Re: Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6
Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6 ("the Bankrupt Estates")

I refer to previous correspondence regarding the Statement of Claim lodged by you in the Bankrupt Estates dated 28 August 2018 claiming approximately $167,948.96 (**"Claim"**).

Despite Mr Holbrook's claim being articulated in a Statement of Claim pursuant to section 75-80 of the Insolvency Practice Rules (Bankruptcy) 2016, rather than the approved form for the purposes of section 82(4) of the *Bankruptcy Act 1966* (Cth) (**"Act"**), I have assessed the claim assuming Mr Holbrook will submit a proof of debt in the approved form on the same terms when I issue a Notice of Intention to Declare a Dividend.

Upon receipt of a proof of debt, the Claim will be allowed in the sum of $144,052.65 for the reasons set out in the annexure to this letter.

Should you have any queries, please contact Nick Hawthorne of this office on (07) 3225 4971 or by email at Nick.Hawthorne@fticonsulting.com.

Yours faithfully

Kelly-Anne Trenfield

Trustee

NOTICE OF REJECTION OF PROOF OF DEBT AND/OR ESTIMATE OF THE VALUE OF THE CLAIM

section 102(1) of the *Bankruptcy Act 1966* (Cth)
section 82(4) of the *Bankruptcy Act 1966* (Cth)

Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6

Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6

("THE BANKRUPT ESTATES")

To: Mr Kim David Holbrook

of C/- Mr Gilbert Flynn

Hotchkin Hanly
Level 18 Forrest Centre
221 St Georges Terrace
PERTH WA 6000

1. **Adjudication**

Subject to receipt of a proof of debt in the approved form, your claim against the Bankrupt Estate set out in the statement of claim dated 28 August 2018 for $167,948.96 (**"Claim"**) will be allowed in the amount of $144,052.65 on the basis calculated below:

Claim	Date debt/s incurred	Details of debt	Amount claimed	Amount allowed
1.	10.06.2015	Judgment Sum pursuant to judgment dated 10 June 2015 in CACV 24 of 2013 plus interest payable at 6% p.a.	$19,662.24 plus interest at 6% p.a. from 11 June 2015 to date of bankruptcy	$23,333.95 (comprising $19,662.24 plus interest at 6% p.a. from 11 June 2015 to date of bankruptcy in the amount of $3,671.71)
2.	24.08.2015	Judgment Sum pursuant to judgment dated 24 August 2015 in CIV 2265 of 2006 plus interest payable at 6% p.a.	$58,286.72 plus interest at 6% p.a. from 24 August 2015 to date of bankruptcy	$68,452.56 (comprising $58,286.72 plus interest at 6% p.a. from 24 August 2015 to date of bankruptcy in the amount of $10,165.84)

3.	27.11.2015	Costs order in Supreme Court of Western Australia (CIV1846/2015)	Approximately $25,000	$29,000.44 (comprising $25,026.39 in costs plus interest at 6% p.a. from 27 November 2015 to date of bankruptcy in the amount of $3,974.05)
4.	08.04.2014	Costs order in Supreme Court of Western Australia Court of Appeal (CACV23/2012)	Approximately $65,000 (subsequently reduced to $25,328.60)	$23,265.70 (comprising $18,507.50 in costs plus interest at 6% p.a. from 8 April 2014 to date of bankruptcy in the amount of $4,758.20)
TOTAL			**$167,948.96**	**$144,052.65**

Summary of claims

2. The debts the subject of claim items 1 and 2 referred to in the table above relate to judgment debts and are admitted in full pursuant to section 102(1)(a) of the Act.

3. The debts the subject of claim items 3 and 4 referred to in the table above relate to costs orders that have not been assessed at taxation and for which I make an estimate of the value of the debt pursuant to section 82(4) of the Act below.

Claim 3

4. On or about 27 November 2015, Mr and Mrs Frigger (**"Friggers"**) filed a notice of discontinuance in Supreme Court of Western Australia proceeding CIV 1846 of 2015.

5. The parties to proceeding CIV 1846 of 2015 were:

   a. the Friggers (as plaintiffs); and

   b. Kim David Holbrook (as defendant).

6. Order 23, rules 2 and 3 of the *Rules of the Supreme Court 1971* (WA) (**"Rules"**) requires a plaintiff who discontinues an action to pay the defendant's costs of the action on a party and party basis to be taxed.

7. The maximum amount of costs claimable under Order 23 of the Rules on a party and party basis is the amount allowed under the Legal Profession (Supreme Court) (Contentious Business) Costs Determination 2014 (**"2014 Determination"**).

8. However, to recover the maximum amount of costs for each of the relevant tasks under the 2014 Determination, Mr Holbrook must be able to identify that it was reasonable for the tasks completed to take the maximum amount of time indicated in the relevant items of the 2014 Determination.[1]

9. The key question on a party and party taxation is whether the amount claimed for particular items is a reasonable amount for necessary work. That assessment requires:[2]

    a. a determination that the services claimed for were required;

    b. a determination of the:

        i. complexity of the services;

        ii. the appropriate level of seniority of practitioners to deliver the services; and

        iii. the reasonable hourly rate for the services, as allowed under the 2014 Determination;

    c. the identification of what services were necessary in the particular case;

    d. an objective assessment of a reasonable amount for the services, having regard to the Rules, the legal costs determinations and the underlying principles as to costs; and

    e. a measure of the amount of costs claimed in the bill against an objective assessment to determine whether the claimed amount is reasonable or an adjustment to the claim is required.

10. Appropriate adjustments might also be required considering:[3]

    a. any expedited nature of the proceedings;

    b. the team involved in the work completed and whether there has likely been any duplication of work;

    c. any administrative tasks undertaken and charged for at practitioner hourly rates instead of lesser rates; and

    d. whether an allowance should be made for skill, care and responsibility.

11. To conclude what is a reasonable amount for necessary work, a consideration of the work product is required, almost all of which will be on the court file. The real weight or difficulty of factual and legal matters is also best judged by looking at delivered reasons.[4]

12. The Draft Bill claims $26,412.07 in legal costs from the Plaintiffs' Bankrupt Estates.

---

[1] Civil Procedure WA, [66.11.7].
[2] *Commonwealth Bank of Australia v Pankaj Oswal In His Own Capacity and atf The Burrup Trust [No 2]* [2012] WASC 180.
[3] *Sharif v Vitruvian Investments Pty Ltd (No 5)* [2024] FCA 134.
[4] *Soord v Yacoub* [2017] WASC 295.

13. Dealing with each of the items claimed in the Draft Bill:

a. Item 1 – Amount allowed: $99.

The Defendant needed to file a Memorandum of Appearance in the proceedings. The $99 claimed in this item is reasonable and is allowed under item 3(a) of the 2014 Determination.

b. Item 2 – Amount allowed: $8,143.85.

Item 2, Schedule B, of the Draft Bill claims $8,730.92 under item 17 of the 2014 Determination. Item 17 of the 2017 Determination allows costs for the preparation of a case for trial.

Preparation of the case for trial can include preparation of a brief or instructions for a brief but does not necessarily extend to preliminary work carried out by a defendant in response to a writ.[5] However, Order 66, rule 21 of the Rules allows reasonable remuneration for preliminary work done which cannot be properly described as preparing a case for trial.[6] Therefore, an allowance for the work claimed in item 2 should be properly allowed under Order 66, rule 21 of the *Rules*.

Concerning each of those items in Schedule B of the Draft Bill:

i. Item 1:

1. The Writ is:
    a. lengthy, being 22 pages;
    b. makes various claims of breach of the Corporations Act 2001, breach of a Deed of Company Arrangement and Collateral Abuse of Process;
    c. refers to at least nine (9) pleaded documents; and
    d. contains many "rolled up pleadings", is generally convoluted and in many respects liable to be struck out
2. The Writ and the documents referred to in it, required review and consideration. Considering the complexities of the allegations made and the causes of action in the Writ, it was appropriate for a senior practitioner to undertake that review and consideration at the hourly rate allowed under the 2014 Determination of $473 per hour.
3. The claim of $2,128.50 for a senior practitioner for this item appears reasonable and no adjustment is made.

ii. Item 2:

1. It is unclear from the Draft Bill what research the senior practitioner conducted and whether all of the research was necessary.

---

[5] *May v Smith* [2001] WASC 352, [18].
[6] *May v Smith* [2001] WASC 352.

2. Hotchkin Hanly's Tax Invoice numbered 115987 identifies 12 units, 1.2 hours of research some of which include "effect of appearance" and "rules". A senior litigation practitioner is expected to know such things as the "effect of appearance" and the Court "rules".

3. Therefore, I consider that three (3) units should be deducted from the claimed amount to allow 0.9 hours at $473 per hour for a senior practitioner, reducing the claimed item to $425.70.

iii. Item 3:

1. Conferences between an instructing practitioner and counsel can be claimed under item 24(e) of the 2014 Determination or under Order 66, rule 21 of the Rules where there has not been a trial.

2. However, despite the claim under item 17 of the 2014 Determination, having regard to the factors outlined above regarding the Writ and the complexity of the matter:

    a. it is appropriate for a senior practitioner to engage senior counsel and engage in conferences with senior counsel;
    b. the time claimed for a senior practitioner at the hourly rate allowed under the 2014 Determination appears reasonable;
    c. it is appropriate for senior counsel to engage in conferences with an instructor and prepare for those conferences by considering and reviewing the brief and/or instructions; and
    d. the time claimed for senior counsel appears reasonable, other than senior counsel's work in considering a draft letter for 10 minutes. That cost is a solicitor and client cost not a party and party cost.

3. Therefore, the amount allowed in item 3 of Schedule B for senior counsel is reduced to 6.85 hours, reducing the claim to $4,596.35, at $671 per hour allowed under the 2014 Determination.

iv. Items 4 and 5:

1. It is unclear from the Draft Bill what the internal attendances relate to and what attendances were required on the Plaintiffs that were not included in the time covered under Schedule C to the Draft Bill. Therefore, the need for that work is unclear.

2. However, considering the complexity of the matter and the Plaintiffs' litigious nature, it is reasonable for some attendance time to be allowed on the Plaintiffs and internal attendances.

3. Therefore, the amounts claimed in items 4 and 5 of the Draft Bill are reduced from 1 hour to 0.5 hours at $473 per hour, reducing the claim to $236.50.

c. Item 3 – Amount allowed: $11,550.

Item 3 of the Draft Bill claims the maximum amount allowed under item 10(a) of the 2014 Determination of $11,550. Schedule C of the Draft Bill identifies the total actual costs incurred in the Defendant's Summary Judgment application as $31,907.85.

Concerning each of the items in Schedule B of the Draft Bill requires consideration:

i. Item 2:

1. It is unclear from the Draft Bill what the 1.8 hours claimed for research relates to.
2. Hotchkin Hanly's Tax Invoice numbered 115987 identifies at least 15 units, and 1.5 hours of research some of which include a review of the Rules regarding Order 16 (summary judgment by a defendant) and Order 26 (discovery).
3. A senior litigation practitioner is expected to know the general rules about discovery.
4. Summary judgment applications by defendants under Order 16 of the Rules are less common than summary judgment applications made by a defendant under Order 14 of the Rules, however, many of the principles are the same or similar. A senior litigation practitioner is expected to know many of the general principles.
5. However, given the complexity of the matter:
    a. some research would reasonably be necessary regarding the abuse of process allegations, striking out applications and of the various other cases involving the plaintiffs; and
    b. it is appropriate for a senior practitioner to complete those tasks.
6. Therefore, the amount claimed in item 2 of 1.5 hours of research is reduced to 1 hour, reducing the claim to $473.
7. That reduction will not impact the final amount claimed because of the actual total costs incurred specified in Schedule C.

ii. Item 3:

1. Considering the complexity of the matter it is appropriate that senior counsel was engaged and for a senior practitioner to engage in conferences with senior counsel.
2. However, conferences between an instructing practitioner and counsel are usually claimed under item 24(e) of the 2014 Determination.
3. Any reduction of the amount claimed in item 3 of Schedule C will not impact on the final amount claimed in Schedule C because of the actual total costs incurred specified in Schedule C. Therefore, no reduction of the amount claimed is made.

iii. Item 4:

1. This item claims $1,560.90 for correspondence and attendance on the client.
2. Whilst reporting to the client can form part of a party and party costs assessment any allowance for reporting is not usually great.[7]
3. Therefore, the amount claimed in item 4 of 3.3 hours is reduced to 1.5 hours, reducing the claim to $709.50.
4. The reduction of this item does not impact the final amount claimed in Schedule C because of the actual total costs incurred specified in Schedule C.

iv. Item 5:

1. This item claims $116.60 for "internal attendances".
2. It is unclear from the Draft Bill what the "internal attendances" relate to and whether the work done was necessary.
3. However, where a junior practitioner undertakes research or is required to collate annexures to affidavits, it is reasonable to allow some time for "team" or "tiered" work.[8]
4. Therefore, there is no reduction of the amount claimed.

v. Item 6:

1. This item:
    a. claims $2,994.20 for preparation of the Chamber Summons, Memorandum of Conferral and the Defendant's Affidavit sworn on 24 June 2015;[9] and
    b. identifies some "team" or "tiered" work by a senior practitioner and clerk/paralegal.
2. The Chamber Summons sought orders for summary judgment against the Plaintiffs and two (2) alternative orders.
3. The Memorandum of Conferral outlines conferral with the Plaintiffs by correspondence and telephone conversation.
4. The Affidavit of Mr Flynn sworn on 24 June 2015 is five (5) paragraphs, 95 pages and contains nine (9) attachments.
5. The documents outlined above are necessary and required under the Court's Rules.

---

[7] *Barristers Board v Kwa* [1994] WASC 201.
[8] *May v Smith* [2001] WASC 352
[9] This item refers to the Affidavit of Mr Flynn "24 June 2016". This has been treated as a typographical error as the Affidavit is dated "24 June 2015".

6. Based on:

    a. the complexity of the matter; and

    b. the length and nature of the documents prepared for the summary judgment application,

    it is appropriate that a senior practitioner complete the majority of the work required for this item. The amount claimed appears reasonable.

vi. Item 7:

1. This item claims $4,798.90 for a senior practitioner to prepare the Affidavit of K Holbrook sworn on 28 August 2015, including collating attachments.
2. Mr Holbrook's Affidavit is 38 paragraphs, 128 pages and contains 23 attachments.
3. The Affidavit specifically addresses various contentions in the Plaintiffs' Statement of Claim which is appropriate.
4. It is appropriate for a senior practitioner to undertake the work necessary to take Mr Holbrook's instructions and prepare the Affidavit.
5. It is more appropriate for a junior practitioner to collate the attachments to the Affidavit resulting in charges at a junior practitioner's hourly rate.
6. However, item 7 has not been reduced because any reduction will not impact the final amount claimed because of the actual total costs incurred specified in Schedule C.

vii. Item 8:

1. This item claims $1,844.70 for considering the Affidavit of Mrs A Frigger dated 14 October 2015.
2. Mrs Frigger's Affidavit:

    a. is 16 paragraphs, 150 pages and contains 13 attachments;

    b. is purportedly in support of an application to join Ms Banning in the proceedings;

    c. attaches various Court documents and Affidavits filed in other Court proceedings; and

    d. refers to without-prejudice correspondence.

3. It is apparent from the contents of Mrs Frigger's Affidavit that a detailed review of Mrs Frigger's Affidavit was required.
4. Having regard to the contents of the Affidavit, the nature of the issues it raises, including issues regarding potential breaches of the "Harman

undertaking" and waiver of without prejudice privilege, and the complexity of the matter:

a. it is appropriate for a senior practitioner to complete the review of Mrs Frigger's Affidavit; and

b. the amount claimed for this item appears reasonable.

viii. Item 9:

1. Item 9 claims $2,317.70, 4.9 hours for a senior practitioner to attend Court on 21 July, 6 August, 8 October and 11 November 2015.
2. This item does not detail the length of each Court appearance and the time required for preparation for the appearance.
3. Hotchkin Hanly's Tax Invoice numbered 116312 identifies an appearance at Court on 21 July 2015 for eight (8) units.
4. Hotchkin Hanly's Tax Invoice numbered 116765 identifies an appearance at Court on 6 August 2015 for six (6) units.
5. Hotchkin Hanly's Tax Invoice numbered 117126 identifies an appearance at Court on 22 September 2015 for one (1) unit.
6. Hotchkin Hanly's Tax Invoice numbered 117461 identifies an appearance at Court on 8 October 2015 for eight(8) units.
7. Hotchkin Hanly's Tax Invoice numbered 117775 identifies an appearance at Court on 11 November 2015 for eight (8) units.
8. Those appearances total 3.18 hours with preparation time for each hearing before each appearance.
9. Considering the nature of the issues raised in the proceedings and the complexity of the matter, it is appropriate for a senior practitioner to prepare for and attend at these Court hearings.
10. Therefore, there is no reduction for this item.

ix. Item 10:

1. Item 10 claims $756.80 for correspondence with the Court.
2. It is unclear from the information provided what that correspondence is related to.
3. Hotchkin Hanly's Tax Invoice numbered 116312 identifies four (4) units spent reviewing correspondence with the Court.
4. Hotchkin Hanly's Tax Invoice numbered 116765 identifies three (3) units spent reviewing and sending correspondence to the Court.
5. Hotchkin Hanly's Tax Invoice numbered 117126 identifies five (5) units spent reviewing and sending correspondence to the Court.

6. Hotchkin Hanly's Tax Invoice numbered 117461 identifies six (6) units spent reviewing and sending correspondence to the Court.
7. Hotchkin Hanly's Tax Invoice numbered 117775 identifies 10 units spent reviewing and sending correspondence to the Court.
8. Correspondence to the Court and reviewing and considering correspondence from the Court is necessary work done in litigation. It is appropriate for that work to be completed by a senior practitioner.
9. Therefore, there is no reduction for this item.

x. Item 11:

1. This item claims a combined total of $1,100 for a senior practitioner's and clerk/paralegal's consideration of Court documents filed in the proceedings and previous Court judgments concerning the Plaintiffs and orders.
2. It is unclear from the detail provided in this item whether all of the work completed was necessary.
3. However, considering previous Court proceedings involving the Plaintiffs including:
    a. Supreme Court proceedings CIV 2265 of 2006;
    b. Supreme Court of Appeal proceedings CACV 76 of 2008;
    c. Supreme Court of Appeal proceedings CACV 23 of 2012;
    d. Supreme Court of Appeal proceedings CACV 24 of 2013; and
    e. District Court proceedings CIV 1221 of 2011,

    and the various judgments in those proceedings, it is reasonable that the work be undertaken in reviewing and considering those proceedings.
4. Therefore, there is no reduction of this item.

xi. Item 12:

1. This item claims $4,488.99 for senior counsel to prepare:
    a. written submissions dated 4 September 2015 of eight (8) pages, referring to 19 authorities; and
    b. written reply submissions dated 23 October 2015 of four (4) pages, referring to four (4) authorities.
2. Additionally, senior counsel would be required to review the Plaintiffs' written submissions in opposition to the summary judgment application consisting of 12 pages.
3. Considering the contents of the various written submissions, the nature of the issues raised and the complexity of the matter:

a. it was reasonable to engage senior counsel to prepare written submissions in the proceedings; and

b. the time claimed for senior counsel appears reasonable.

4. Therefore, no reduction has been made for this item.

d. Item 4 – Amount allowed: $3,807.64.

Item 4 claims $4,606.25 under item 10(a) for the Plaintiffs' application to transfer the Supreme Court proceedings to the Federal Court. The work done is outlined in Schedule D to the Draft Bill.[10]

Concerning each item identified in Schedule D:

i. Item 1:

1. This item claims $709.50 for correspondence with Plaintiffs.

2. It is not apparent from Hotchkin Hanly's Tax Invoices numbered 117775 and 118906 what correspondence to the Plaintiff was necessary and required. The majority of time spent appears to be for "considering" correspondence from the Plaintiffs.

3. Because of the nature and complexity of the proceedings it is appropriate for a senior practitioner to correspond with the Plaintiffs, but it is not apparent what work was done as a consequence of "considering" the Plaintiffs' correspondence.

4. Therefore, the amount claimed is reduced by 50% to $354.74.

ii. Item 2:

1. This item claims a combined total of $1,075.25 for correspondence between senior counsel and instructing senior practitioner about the Plaintiffs' application to transfer the Supreme Court proceedings to the Federal Court of Australia.

2. The Plaintiffs' Chamber Summons sought three (3) orders and Mrs Frigger's:

a. first Affidavit dated 17 November 2015 was four (4) pages, six (6) paragraphs and one (1) attachment;

b. second Affidavit dated 17 November 2015 was four (4) pages, nine (9) paragraphs and one (1) attachment.

3. Whilst some conferences should occur between the instructing practitioner and senior counsel it is not apparent that all work claimed for was necessary and required.

[10] It is noted that Schedule D refers to a total amount of $4,653.55.

4. Therefore, it is reasonable to reduce the claim to 0.5 hours for a senior practitioner and 0.8 hours for senior counsel, reducing the item to $773.30.

iii. Item 3 appears reasonable

iv. Item 4:

1. The Defendant's submissions concerning the Plaintiff's application were six (6) pages and referred to seven (7) authorities.
2. The Chronology prepared was one (1) page.
3. Given senior counsel's involvement in the preparation of the submissions and the issues raised by the *Jurisdiction of Courts (Cross-vesting) Act 1987*, the various case law authorities and the assessment of "interests of justice" it is appropriate:
    a. for senior counsel to continue to assist with the application; and
    b. for senior counsel to prepare the submissions.
4. In those circumstances the costs claimed appear reasonable and no reduction has been made for this item.

v. Item 5:

1. This item claims $189.20 for research.
2. Because of senior counsel's involvement in preparing the Submissions in response to the Plaintiff's application, it is not apparent that the research by a senior practitioner was necessary.
3. Therefore, this item is reduced to zero.

vi. Item 6: This item claims $47.30 for correspondence with the client. Whilst reporting to the client can form part of a party and party costs assessment any allowance for reporting to the client is not usually great. The amount claimed of $47.30 is minimal and appears reasonable.

e. <u>Item 5 – Amount allowed: $1,197.90.</u>

The amount claimed for preparing the Draft Bill appears reasonable.

f. <u>Item 6 – Amount allowed: $0.</u>

g. <u>Item 7 – Amount allowed: $0.</u>

The amount claimed for the lodgement fee for the Draft Bill does not apply.

14. Having regard to paragraph 0 above, the amount allowed for the Draft Bill is $25,026.39 calculated as follows:

Draft Bill Item	Amount Claimed	Allowed Amount
Item 1	$99.00	$99.00
Item 2	$8,730.92	$8,143.85
Item 3	$11,550.00	$11,550.00
Item 4	$4,606.25	$3,807.64
Item 5	$1,197.90	$1,197.90
Item 6	TBC	$0
Item 7	$352.00	$0
Item 8	$228.00	$228.00
	$26,412.07	**$25,026.39**

15. Interest on the amount of $25,026.39 at the rate of 6% per annum pursuant to section 8 the *Civil Judgments Enforcement Act 2004* (WA) from 27 November 2015 (being the date the notice of discontinuance was filed) to 20 July 2018 (the date of bankruptcy) is $3,974.05.

16. Accordingly, I estimate the value of the debt the subject of Claim 3 pursuant to section 82(4) of the Act to be $29,000.44.

Claim 4

17. Claim 4 relates to a costs order (**"Order"**) made in CACV 23 of 2012 in the following terms:

> *"12. The appellants together and separately do pay the third respondent's costs of and incidental to the application for leave to appeal (to be taxed as if an appeal), and the third respondent's costs of and incidental to the appeal, including:*
>
> *(a) all costs of and incidental to the application to show cause on 1 October 2013;*
>
> *(b) any reserved costs;*
>
> *(c) all appearances at appointments to settle the appeal book index;*
>
> *(d) appearing before the Court on 8 April 2014; and*
>
> *(e) settling and extracting this Order,*
>
> *with all such costs (including the costs of counsel, briefing counsel and obtaining transcript) to be taxed forthwith if not agreed."*

18. The parties to the proceeding are:

    a. the Friggers (as appellants);

    b. Professional Services of Australia Pty Ltd (as first respondent);

c. Donald Campbell-Smith as executor of the estate of Martin Banning (as second respondent); and

d. Kim Holbrook (as third respondent).

19. Whilst the language of the Order uses the words "costs of and incidental" it is not specified that the third respondent's costs are to be taxed on an indemnity basis. Therefore, I have treated the orders as being a party and party costs order with costs to be taxed.

20. The original amount claimed by Mr Holbrook of $65,000 has been reduced to $25,328.60 (confirmed in an email from Gilbert Flynn (Hotchkin Hanly) to my solicitors, Johnson Winter Slattery).

21. I have been provided with the following documents:

a. Statement of Claim with attachments dated 28 August 2018;

b. Email from Gilbert Flynn dated 11 March 2025 attaching the following documents:

i. Letter from Hotchkin Hanley dated 10 March 2025;

ii. A file note about the taxation of costs in CACV 24 of 2013;

iii. scanned Bill of Costs in CACV 24 of 2013; and

iv. scanned Bill of Costs in CACV 23 of 2012 (Draft Bill);

c. Reasons for Decision in [2014] WASCA 69 ("**Reasons**");

d. various court documents.

22. The Draft Bill (provided on 11 March 2025) is said to claim $25,328.60 in legal costs from the Bankrupt Estates. However, on my calculations the actual amount claimed is $25,982.

23. The maximum amount of costs claimable under the Order is the amount allowed under the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2010* (WA) ("**2010 Determination**") and the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2012* (WA) ("**2012 Determination**").

24. The Order states that the Third Respondent's costs for leave to appeal are to be taxed as if an appeal which means that the relevant item under each of 2010 Determination and the 2012 Determination is item 23.

25. Dealing with each of the items claimed in the Draft Bill:

a. <u>Item 1 – Amount allowed: $3,630.</u>

This item claims $10,560.
It is apparent from the Order made on 1 October 2013 that on 1 October 2023 the Third Respondent made an oral application for the appeal against the Third Respondent to be dismissed. That application was adjourned *sine die* and the costs of the appearance on 1 October 2013 were reserved under Order 3 of the Court's orders made on that date.
From the Reasons at [63] to [75], it appears that the hearing of the oral application was largely left to the hearing of the Friggers' application for leave to appeal and the appeal, although detailed written submissions appear to have been filed on or about 25 September 2013 (nine (9) pages) and oral submissions made on 1 October 2013.

Whilst this item claims an amount under item 10(a), it is more appropriate considering the Order that the application be treated as an application in an appeal under item 23(e) with a maximum amount allowed of $3,630.

Unless additional information can be provided in support of the claim for $10,560, the maximum amount of $3,630 is to be allowed.

It is clear from the Third Respondent's Answer dated 22 June 2012 of 20 pages that substantial work appears to have been done in preparation of that document. Despite seeking confirmation from Mr Flynn (on behalf of Mr Holbrook) as to whether the Third Respondent considers a claim under another item of the 2012 Determination (or the 2010 Determination) is more appropriate for the work done, no response has been received.

In the circumstances, the amount of $3,630 is allowed for this item.

b. Item 2 – Amount allowed: $108.90.
This item in the Draft Bill claims $108.90 for what appears to be the First and Second Respondents' application that the Friggers' application for an extension of time for leave to appeal be refused and other ancillary orders.
I consider the amount claimed in this item of $108.90 is reasonable.

c. Item 3 – Amount allowed: $0.
This item in the Draft Bill appears to be included in the amount to be allowed under item 1 of the Draft Bill. Therefore, the amount claimed has not been allowed.

d. Item 4 – Amount allowed: $3,608.
This item in the Draft Bill claims $3,608 for settling the appeal book indexes under item 23(d) of the 2012 Determination and is the maximum amount claimable.

Whilst it is not known what amount was allowed by the Taxing Registrar with respect to item 4 of Mr Holbrook's Bill of Costs in Appeal CACV 24 of 2013 (being Counsel fee on hearing (including preparation)), considering:

i. the Taxing Registrar's comments that CACV 23 of 2012 took up approximately 75% of the hearing time for both CACV 23 of 2012 and CACV 24 of 2013;

ii. that the Bill in CACV 24 of 2013 was only reduced by approximately 30%; and

iii. the amount claimed of $3,550.80 in CACV 24 of 2013 might have been proportionally reduced by $1,065.24 (30% of $3,550.80) to $2,485.56,

it is likely that the amount claimed in this item of $3,608 would be considered reasonable.

e. Item 5 – Amount allowed: $10,890.

This item claims the maximum amount allowed under item 23(g) of the 2012 Determination of $10,890 for Counsel.

Whilst it is not known what amount was allowed by the Taxing Registrar with respect to item 6 of Mr Holbrook's Bill of Costs in Appeal CACV 24 of 2013 (being Counsel fee on hearing (including preparation)), considering:

i. the Taxing Registrar's comments that CACV 23 of 2012 took up approximately 75% of the hearing time for both CACV 23 of 2012 and CACV 24 of 2013;

ii. that the Bill in CACV 24 of 2013 was only reduced by approximately 30%;

iii. the amount claimed of $6,167.70 in CACV 24 of 2013 might have been proportionally reduced by $1,850.31 (30% of $6,167.70) to $4,317,

it is likely that the amount claimed in this item of $10,890 would be considered reasonable.

f. Item 6 – Amount allowed: $270.60.

The amount claimed for an instructing practitioner's attendance at the appeal appears reasonable.

26. Having regarding to paragraph 25 above, I consider the amount that should be allowed for the Draft Bill is $18,507.50.

Draft Bill Item	**Amount Claimed**	**Allowed Amount**
Item 1	$10,560.00	$3,630.00
Item 2	$108.90	$108.90
Item 3	$544.50	$0
Item 4	$3,608.00	$3,608.00
Item 5	$10,890.00	$10,890.00
Item 6	$270.60	$270.60
	$25,980.00	**$18,507.50**

27. Interest on the amount of $18,507.50 at the rate of 6% per annum pursuant to section 8 the *Civil Judgments Enforcement Act 2004* (WA) from 8 April 2014 to 20 July 2018 is $4,758.20.

28. Accordingly, I estimate the value of the debt the subject of Claim 4 pursuant to section 82(4) of the Act to be $23,265.70.

Please note that pursuant to section 82(5) of the Act a person aggrieved by an estimate made pursuant to section 82(4) of the Act may appeal to the Court not later than 28 days after the day on which the person is notified of the estimate.

Dated this 11th day of September 2025



Kelly-Anne Trenfield

Trustee

Our Ref.: 464538.0001-12-06-01-l1

11 September 2025

Madgwicks Lawyers

c/- Ms Helen McNamara
Madgwicks Lawyers
Level 6/140 William Street
MELBOURNE VIC 3000

Attention: Ms Helen McNamara

By Email: helen.mcnamara@madgwicks.com.au

Dear Madam

Re: Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6
Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6 ("the Bankrupt Estates")

Notice of estimate of the value of debt or liability – section 82(4) of the *Bankruptcy Act 1966* (Cth)

I refer to previous correspondence regarding the Bankrupt Estates and the proof of debt lodged by you in the Bankrupt Estate for $12,313.49 dated 25 October 2018 (**"Proof of Debt"**).

Based on the information provided, I estimate the value of the debt or liability claimed in the Proof of Debt to be $451.25 pursuant to section 82(4) of the *Bankruptcy Act 1966* (Cth) (**"Act"**). The basis for my estimate is contained in the attached notice.

Should you have any queries, please contact Nick Hawthorne of this office on (07) 3225 4971 or by email at nick.hawthorne@fticonsulting.com.

Yours faithfully

Kelly-Anne Trenfield

Trustee

NOTICE OF ESTIMATE OF VALUE OF DEBT OR LIABILITY

section 82(4) of the *Bankruptcy Act 1966* (Cth)

Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6

Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6

("THE BANKRUPT ESTATES")

To: Madgwicks Lawyers

of c/- Ms Helen McNamara

Madgwicks Lawyers
Level 6/140 William Street
MELBOURNE VIC 3000

Estimate

1. I refer to the proof of debt you lodged in the Bankrupt Estate on 25 October 2018, claiming $12,313.49 for untaxed costs pursuant to an order of the Magistrates Court of Western Australia (**"Proof of Debt"**).

2. I estimate the value of the claim against the Bankrupt Estate, as set out in the Proof of Debt, to be $451.25.

Background

3. Angela and Hartmut Frigger were the claimants, and Madgwicks Lawyers (**"Madgwicks"**) was the defendant, in proceedings CTC 3252 of 2016 before the Magistrates Court of Western Australia (**"Proceedings"**).

4. On 14 October 2016, the Court made an order on following terms (**"Costs Order"**):

> *"The Claimants and/or the Defendant's allowable costs to be assessed if not agreed pursuant to section 25(a) of the Service and Execution of Process Act."*

5. On 8 March 2018, Madgwicks lodged a draft Bill of Costs for Assessment (**"Draft Bill"**) claiming $12,313.49, comprising $11,905.49 in solicitor fees and $408 in disbursements.

Approach

6. Under section 25(1) of the *Magistrates Court (Civil Proceedings) Act 2005* (**"MCCPA"**) the Court can order a party to a case to pay the whole or a part of another party's costs in the case.

7. The costs are to be assessed in accordance with the relevant *Legal Profession (Magistrates Court) (Civil) Determinations* relevant to the Proceedings being the:

a. *Legal Profession (Magistrates Court) (Civil) Determinations 2014*; and

b. *Legal Profession (Magistrates Court) (Civil) Determinations 2016*.

8. However, in particular Magistrates Court proceedings, such as Minor Case Claims for claims under $10,000, a party to proceedings cannot recover any costs from an unsuccessful party, without a special costs order, beyond "allowable costs".

9. "Allowable costs" are defined in section 31 of the MCCPA to be court fees and services

10. Further, where lawyers represents themselves in Court proceedings lawyers are usually limited to out-of-pocket expenses reasonably and properly incurred.[1]

11. That usual position does not apply:

    a. where the Court makes an order under section 25(9) of the MCCPA that the whole or a part of the expenses or losses incurred by the self-represented party in or in connection with conducting the case be included in the costs; or

    b. to a solicitor litigant who is represented by an incorporated legal practice of which he or she is the principal and the sole director and shareholder because of the separate legal personality of the incorporated legal practice.[2]

Consideration

12. The reference to the Service and Execution of Process Act in the Costs Order is unclear. Section 25 of the *Service and Execution of Process Act 1992* (**"SEPA"**) relates to the time for service of criminal proceedings and does not appear relevant.

13. It is assumed that the Costs Order should have referred to section 25(1) of the MCCPA.

14. However, the Costs Order also refers to Mr and Mrs Frigger paying Madgwicks' "allowable costs".

15. Considering:

    a. the definition of allowable costs under the MCCPA;

    b. the principle identified in above paragraph 10;

    c. the Court did not make an Order under section 25(9) of the MCCPA; and

    d. that Madgwicks appear to be "litigants in person" and does not fit within the scope of above paragraph 10(b),

    it appears that Madgwicks are limited to its "allowable costs" under the Order and as defined under the MCCPA.

---

[1] *Bertini, Re; Ex parte Bertini (No 2)* [2010] WASC 86; *Dobree v Hoffman* (1996) 18 WAR 36 and more recently *Bell Lawyers Pty Ltd v Pentelow* (2019) 269 CLR 333.
[2] *Soia v Bennett [No 5]* [2012] WASC 289 (S).

16. Therefore, I have assessed the 'allowable costs' at $408 for the costs claimed in items 1 to 3 on page 6 of the Bill.

Interest

17. Interest is payable on the amount of legal costs payable pursuant to the Costs Order at 6% per annum.

18. Interest from 14 October 2016 to 20 July 2018 is $43.25.

Estimate

19. I estimate the costs payable by the Bankrupt Estate to Madgwicks pursuant to the Costs Order to be:

    a. the amount of $408 referred to in paragraph 16 above;

    b. plus the amount of $43.25 referred to in paragraph **Error! Reference source not found.** above.

20. Accordingly, I estimate the costs payable to Madgwicks to be $451.25.

Please note that pursuant to section 82(5) of the Act a person aggrieved by an estimate made pursuant to section 82(4) of the Act may appeal to the Court not later than 28 days after the day on which the person is notified of the estimate.

Dated this 11th day of September 2025



Kelly-Anne Trenfield

Trustee

Our Ref.: 464538.0001-12-06-08-l1

11 September 2025

Mitsui Sumitomo Insurance Underwriting at Lloyds

Insurer of Graeme Trevor Lean

c/- Mr Richard Edwards
DLA Piper Australia
240 St Georges Terrace
PERTH WA 6000

Attention: Mr Richard Edwards

By Email: richard.edwards@dlapiper.com

Dear Sir

Re: Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6
Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6 ("the Bankrupt Estates")

Notice pursuant to section 102(1) and section 82(4) of the *Bankruptcy Act 1966* (Cth)

I refer to previous correspondence regarding the Bankrupt Estates and the proof of debt lodged by Mitsui Sumitomo Insurance Underwriting at Lloyds, insurer of Graeme Trevor Lean ("**Mitsui**") in the Bankrupt Estates for $341,339.73 dated 16 May 2023 ("**Proof of Debt**").

The Proof of Debt has been allowed in the sum of $296,778.11 and rejected in the sum of $44,561.62. A notice of rejection outlining my decision is **enclosed** for your reference.

Should you have any queries, please contact Nick Hawthorne of this office on (07) 3225 4971 or by email at nick.hawthorne@fticonsulting.com.

Yours faithfully

Kelly-Anne Trenfield

Trustee

NOTICE OF REJECTION OF PROOF OF DEBT

section 102(1) of the *Bankruptcy Act 1966* (Cth)
section 82(4) of the *Bankruptcy Act 1966* (Cth)

Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6

Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6

("THE BANKRUPT ESTATES")

To: Mitsui Sumitomo Insurance Underwriting at Lloyds, insurer of Graeme Trevor Lean (**"Mitsui"**)

of c/- Mr Richard Edwards
DLA Piper Australia
240 St Georges Terrace
PERTH WA 6000

1. Adjudication

Your claim against the Bankrupt Estates set out in proof of debt lodged by Mitsui in the Bankrupt Estates for $341,339.73 dated 16 May 2023 (**"Proof of Debt"**) has been allowed in the amount of $296,778.11 on the basis calculated below:

Claim	Date debt/s incurred	Details of debt	Amount claimed	Amount allowed
1.	09.02.2011	Costs order in Supreme Court of Western Australia (CIV 1727 of 2009) assessed at taxation in the amount of $47,523.30 plus interest	$68,740.83 (comprising $47,523.30 for costs plus interest at 6% p.a. from 9 February 2011 to the date of bankruptcy)	**$68,748.65** (comprising $47,523.30 for costs plus interest at 6% p.a. from 9 February 2011 to the date of bankruptcy)
2.	27.03.2012	Costs order in Supreme Court of Western Australia (CACV 27 of 2011) assessed at taxation in the amount of $26,073.51 plus interest	$35,952.87 (comprising $26,073.51 for costs plus interest at 6% p.a. from 27 March 2012 to the date of bankruptcy)	**$35,953.88** (comprising $26,073.51 for costs plus interest at 6% p.a. from 27 March 2012 to the date of bankruptcy)

3.	22.08.2014	Costs order in Supreme Court of Western Australia (CIV 2265 of 2006)	$132,329.83 (comprising $107,186.52 for costs plus interest at 6% p.a. from 22 August 2014 to the date of bankruptcy)	**$132,347.45** (comprising $107,186.52 for costs plus interest at 6% p.a. from 22 August 2014 to the date of bankruptcy)
4.	15.04.2015	Costs order in Supreme Court of Western Australia (CIV 2408 of 2014)	$59,397.95 (comprising $49,672.94 for costs plus interest at 6% p.a. from 2 April 2015 to the date of bankruptcy)	**$15,801.38** (comprising $13,188.90 for costs plus interest at 6% p.a. from 2 April 2015 to the date of bankruptcy)
5.	02.12.2016	Costs order in Supreme Court of Western Australia (CACV 65 of 2015)	$44,918.25 (comprising $40,916.30 for costs plus interest at 6% p.a. from 2 December 2016 to date of bankruptcy)	**$43,926.75** (comprising $39,995.70 for costs plus interest at 6% p.a. from 30 November 2016 to the date of bankruptcy)
TOTAL			**$341,339.73**	**$296,778.11**

2. Summary of claims

a. The debts the subject of claim items 1 and 2 referred to in the table above relate to costs orders that have been assessed at taxation and are admitted in full pursuant to section 102(1)(a) of the Act.

b. The debts the subject of claim items 3 to 5 referred to in the table above relate to costs orders that have not been assessed at taxation and for which I make an estimate of the value of the debt pursuant to section 82(4) of the Act below.

3. Claim 3

a. On 22 August 2014, Justice Simmonds made an order (**"Simmonds Order"**) that Mr and Mrs Frigger pay Graeme Lean's costs of the application for directions in Supreme Court proceeding CIV 2265 of 2006 without regard to the limits imposed in item 10 of the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2010* (WA) (**"2010 Determination"**) and *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2012* (WA) (**"2012 Determination"**).

b. In the Proof of Debt, Mitsui claims $132,329.83 made up of:

i. $107,186.52 in legal costs; and

ii. $25,143.31 in interest up to and including 20 July 2018.

c. The costs identified in paragraph 3.b.i above appear to be covered by DLA Piper's Tax Invoices from May 2012 to 31 August 2014 being Tax Invoices numbered:

i. 713009515 for $816;

ii. 713017038 for $8,629.50;

iii. 713020536 for $9,320;

iv. 713028121 for $10,220;

v. 713047869 for $5,988.70;

vi. 713047869 for $48,927.28;

vii. 713052862 for $7,798.78;

viii. 713058281 for $20,370.62;

ix. 713068985 for $10,145.21;

x. 713074874 for $8,953.31;

xi. 713083580 for $13,263;

xii. 713089246 for $7,981;

xiii. 713094598 for $5,165,

totalling $157,578.40.

d. Proceeding CIV 2265 of 2006 related to Mr and Mrs Frigger's application for directions under section 104 of the *Civil Judgments Enforcement Act 2004* ("**CJEA**") claiming compensation or damages under section 105 of the CJEA in relation to the order appointing Mr Lean as receiver.

e. It is appears from the Reasons the matter was complex. The Court had not previously considered many of the issues raised in the proceeding and there was no or limited case law authority: *Computer Accounting and Tax Pty Ltd (In Liq) v Professional Services of Australia Pty Ltd* [No 6] [2014] WASC 105, [98], [127].

f. The matter was heard over 4 days being 4 and 5 April and 3 and 7 July 2013.

g. Whilst the Simmonds Order is a special costs order (i.e. it removes the limits specified in item 10 of the 2010 Determination and the 2012 Determination), the hourly rates identified in Table A of the 2010 Determination and the 2012 Determination were unaltered. This means to the extent that a legal practitioner's or Counsel's actual hourly rate charged is more than that specified in Table A the amount claimed requires

re-calculation based on the hourly rates specified in Table A of the 2010 Determination and the 2012 Determination.

h. A claim for costs of $107,186.52 appears reasonable after:

   a. review of:

      i. the Reasons for Decision in *Computer Accounting and Tax Pty Ltd (In Liq) v Professional Services of Australia Pty Ltd [No 6]* [2014] WASC 105 and *Computer Accounting and Tax Pty Ltd (In Liq) v Professional Services of Australia Pty Ltd [No 6]* WASC 105(S);

      ii. the Court documents provided by Mitsui for the purpose of assessing the proof of debt; and

      iii. DLA Piper's itemised costs identified in the above referred to Tax Invoices,

   b. recalculation of each of:

      i. James Healy's hourly rate from $440 to $363 (total reduction of $2,740.50);

      ii. Clare Martin's hourly rate from $330 to $319 (total reduction of $1,446.50);

      iii. Jason Morris' hourly rate from $320 to $319 (total reduction of $68.50);

      iv. Amanda Bishop's hourly rate from $380 to $319 (total reduction of $54.90); and

      v. DLA Piper's Tax Invoices making deductions of approximately $32,120.91 for work that appears to be solicitor and client work and costs that are arguably not reasonable for the services said to be provided.

i. Interest on the amount of $107,186.52 at the rate of 6% per annum pursuant to section 8 the *Civil Judgments Enforcement Act 2004* (WA) from 22 August 2014 to 20 July 2018 is $25,160.93.

j. Accordingly, I estimate the value of the debt the subject of Claim 3 pursuant to section 82(4) of the Act to be $132,347.45.

4. Claim 4

a. On 2 April 2015, Justice Mitchell made an order that Mr and Mrs Frigger pay Graeme Lean's costs of Mr Lean's application for a stay of proceeding CIV 2408 of 2014 to be taxed (**"Mitchell Order"**).

b. $49,627.94 is claimed under the Mitchell Order plus interest of $9,725.01. The costs claimed appear to be covered by DLA Piper's Tax Invoices from October 2014 to April 2015 being Tax Invoices numbered:

   i. 713100785 for $12,740.71;

   ii. 713103070 for $13,718.88;

   iii. 713109808 for $13,467.63;

   iv. 713116413 for $14,245.72,

   totalling $54,172.94 less a credit note of $4,500.

c. Proceeding CIV 2408 of 2014 related to allegations made against Mr Lean that he agreed, as Receiver, to sell Mr and Mrs Frigger Martin Paul Banning's 50% share in Banning Holdings Pty Ltd and various alleged breaches of:

   i. the alleged agreement;

   ii. the constitution of Banning Holdings Pty Ltd; and

   iii. his duties as officer of Banning Holdings Pty Ltd.

d. Based on the Court documents provided, the apparent steps taken in the proceeding were:

   i. Mr and Mrs Frigger filing a Writ of Summons together with a Statement of Claim;

   ii. the attendance at a Directions Hearing on 12 or 26 November 2014;

   iii. a Chamber Summons seeking orders for summary judgment in Mr Lean's favour filed on 7 November 2014, or alternatively, amongst other orders a stay of proceeding or a strike out;

   iv. an Affidavit of Richard Edwards sworn on 7 November 2014 in support of the Chamber Summons filed on 7 November 2014. The Affidavit was 141 pages, 19 paragraphs and contained 6 attachments;

   v. a Memorandum of Conferral relating to the Chamber Summons filed on 7 November 2014;

   vi. an amended Chamber Summons for summary judgment filed on Mr Lean's behalf on 10 February 2015, which alternatively, amongst other orders, seeks a stay of proceeding, an order for security for costs or a strike out;

   vii. a Memorandum of Conferral relating to the amended Chamber Summons filed on 10 February 2015;

viii. an Affidavit of Richard Edwards sworn on 10 February 2015 in support of the amended Chamber Summons filed on 10 February 2015. The affidavit was 98 pages, 27 paragraphs and contained 10 additional attachments;

ix. an Affidavit of Mrs Frigger dated 3 March 2015 of 18 pages, 18 paragraphs and containing 4 attachments;

x. Mr Lean's written Outline of Submission dated 23 March 2015 of 25 pages referring to 12 case law authorities; and

xi. attendance at a hearing on 2 April 2015. According to the Transcript of the hearing, the hearing commenced at 10.40am and at 12.44pm was adjourned to 3pm on that day for judgment.

e. With respect to above paragraph 4.d.i, Order 66, rule 21 of the *Rules of the Supreme Court 1971* (WA) allows a reasonable allowance to be made for work completed where there is no substantial trial in proceeding. However, it appears that the Mitchell Order only covers the costs of the applications made under the Chamber Summons filed on 7 November 2014 and the Amended Chamber Summons filed on 10 February 2015, and, therefore, the costs for review and consideration of the Writ and Statement of Claim would not be recoverable pursuant to the Mitchell Order.

f. With respect to above paragraph 4.d.ii no amount is allowed under item 24(a) of the 2014 Scale for attendance at the Case Management Conference on 12 or 26 November 2014 because based on Tax Invoice 713109808 there was no attendance at Court on that date.

g. With respect to above paragraphs 4.d.iii to 4.d.xi, under item 10 of the 2014 Determination, the maximum amount allowed for an application in chambers is:

i. $11,550 for Counsel to prepare for and attend at the application in Chambers;

ii. hourly rates for attendance at a reserved judgment and all necessary work to obtain that judgment; and

iii. $495 for consent orders including conferral.

h. Therefore, the maximum amount which appears to be claimable under item 10 of the 2014 Determination is $12,648.90 made up of:

i. $11,550 for Counsel for preparation and attendance at the application for summary judgment on 2 April 2015; and

ii. $801.90 including GST, for the practitioner who attended at the reserved judgment on 2 April 2015 and completed the work necessary to obtain extracted orders as identified in Tax Invoice 713116413; and

iii. $297 including GST, for a practitioner's conferral with Mr and Mrs Frigger regarding the Consent Orders dated 27 January 2015.

i. Additional amounts can be claimed under item 24(a) of the 2014 Determination for conferral in relation to the Chamber Summons filed on 7 November 2014 and the Amended Chamber Summons filed on 10 February 2015 of $540 made up of:

   i. $405 for Tax Invoice 713103070; and

   ii. $135 for Tax Invoice 713109808.

j. Therefore, on the information provided the amount of $13,188.90 (above paragraphs 4.g and 4.h) seems reasonable as the amount allowed under the Mitchell Order on a party and party basis in accordance with the 2014 Determination.

k. Interest on the amount of $13,188.90 at the rate of 6% per annum pursuant to section 8 the *Civil Judgments Enforcement Act 2004* (WA) from 2 April 2015 to 20 July 2018 is $2,612.48.

l. Accordingly, I estimate the value of the debt the subject of Claim 4 pursuant to section 82(4) of the Act to be $15,801.38.

5. Claim 5

a. On 30 November 2016, Registrar Gilich ordered that Mr and Mrs Frigger pay Graeme Lean's costs of the appeal in CACV 65 of 2015 to be assessed (**"Gilich Order"**).

b. $40,916.30 is claimed under the Gilich Order plus interest of $4,001.95.

c. DLA Piper's Tax Invoices from April 2015 to 30 November 2016, being Tax Invoices numbered:

   i. 713121657 for $13,314.70;

   ii. 713129837 for $4,260;

   iii. 713135148 for $1,168.60;

   iv. 713145097 for $6,769;

   v. 713155882 for $1,165;

   vi. 713165623 for $11,897;

   vii. 713168517 for $2,342,

   total $40,916.30 including Counsel's fees.

d. Proceeding CACV 65 of 2015 was an appeal of the Mitchell Order that proceeding CIV 2408 of 2014 be stayed as an abuse of process and that Mr and Mrs Frigger pay Mr Lean's costs (**"Appeal Proceeding"**).

e. The following key Court documents were filed in the Appeal Proceeding:

   i. the Appellant's Case:

   ii. which contained 2 Grounds of Appeal alleging jurisdictional error and 10 errors of mixed fact and law;

   iii. consisting of 14 pages, referring to two (2) statutes, 11 case law authorities and one (1) text;

   iv. the Respondent's Answer consisting of 15 pages, referring to the Rules of the Supreme Court and 18 case law authorities;

   v. the Draft Appeal Book indexes, Reply to the Draft Appeal Book indexes and the approved Appeal Book indexes; and

   vi. Affidavits of Mrs Frigger of:

      1. 48 pages, 9 paragraphs and two (2) attachments; and

      2. Three (3) pages, seven (7) paragraphs and one (1) attachment,

   in support of the Appellants' application to rely on additional evidence and a decision of Master Sanderson.

f. From a consideration of the documents provided:

   i. it is apparent that the services claimed were required;

   ii. whilst the issues in the Appeal do not appear complex or difficult, it was appropriate for each of a senior and junior practitioner to have carriage of the matter. The Tax Invoices provided do not appear to include any duplication of work or charges for administrative work;

   iii. the hourly rates charged were either the amount allowed or less than those allowed under the relevant costs 2014 Determination and 2016 Determination; and

   iv. it is not apparent that any of the work completed was unnecessary.

g. Under 23(a) of the 2014 Determination a maximum amount allowed for the Notice of Intention is $473. The apparent fee relating to that item specified in DLA Piper's Tax Invoice is $54.

h. Under 23(b) of the 2014 Determination a maximum amount allowed for the Respondent's Answer is $26,840 for Senior Counsel. The apparent fees relating to that item specified in DLA Piper's Tax Invoice are $20,444 including Counsel's fees.

i. Under 23(c) of the 2014 Determination a maximum amount allowed for the Appeal Book indexes is $3,784. The apparent fees relating to that item in DLA Piper's Tax Invoice are $3,577.

j. Under 23(f) of the 2014 Determination a maximum amount allowed for preparation of case is $4,730. The apparent fees relating to that item specified in DLA Piper's Tax Invoice are $4,235.

k. Under 23(g) of the 2014 Determination a maximum amount allowed for Counsel's preparation for and attendance at the Appeal hearing is $11,550. The apparent fees relating to that item are $9,800.

l. Under 23(k) of the 2016 Determination a senior practitioner can claim $484 per hour for instructing at the Appeal hearing. The apparent fees relating to that item specified in DLA Piper's Tax Invoice are $792.

m. Under 23(l) of the 2016 Determination a senior practitioner can claim $484 per hour for attending at the reserved decision and obtaining final orders. The apparent fees relating to that item specified in DLA Piper's Tax Invoice are $716.

n. Above paragraphs 5.g to 5.m total $39,618 plus disbursements of $377.70, totaling $39,995.70.

o. Considering:

    i. each of the 2014 Determination and the 2016 Determination;

    ii. the Court documents provided; and

    iii. a review of DLA Piper's Tax Invoices provided,

    $39,995.70 appears to be a reasonable amount for the work completed in relation to the Appeal Proceeding, being a deduction of $920.60 from the amount claimed.

p. Interest on the amount of $39,995.70 at the rate of 6% per annum pursuant to section 8 the *Civil Judgments Enforcement Act 2004* (WA) from 30 November 2016 to 20 July 2018 is $3,931.05.

q. Accordingly, I estimate the value of the debt the subject of Claim 5 pursuant to section 82(4) of the Act to be $43,926.75.

Please note that pursuant to section 82(5) of the Act a person aggrieved by an estimate made pursuant to section 82(4) of the Act may appeal to the Court not later than 28 days after the day on which the person is notified of the estimate.

Dated this 11th day of September 2025



Kelly-Anne Trenfield

Trustee

Our Ref.: 464538.0001-12-06-09-l1

11 September 2025

Murfett Legal Pty Ltd
Level 2, 111 Wellington Street
EAST PERTH WA 6004

Attention: Mr Jason de Silva

By Email: Jason.desilva@murfett.com.au

Dear Sir

Re: Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6
Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6 ("the Bankrupt Estates")

Notice of admission of proof of debt – section 102(2) of the *Bankruptcy Act 1966* (Cth)

I refer to my appointment as Trustee of the above Bankrupt Estates by virtue of a Sequestration Order made by the Federal Court of Australia on 31 August 2018.

Further, I refer to previous correspondence regarding the Bankrupt Estates and your Proof of Debt dated 2 November 2018 in the amount of $85,952.56.

Please find **enclosed** formal notice of the admission, which includes the reasons for my decision.

Should you have any queries, please contact Nick Hawthorne of this office on (07) 3225 4971 or by email at nick.hawthorne@fticonsulting.com.

Yours faithfully

Kelly-Anne Trenfield

Trustee

NOTICE OF ADMISSION OF PROOF OF DEBT

section 102(2) of the *Bankruptcy Act 1966* (Cth)

Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6

Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6

("THE BANKRUPT ESTATES")

To: Murfett Legal Pty Ltd

of Level 2, 111 Wellington Street
EAST PERTH WA 6004

1. Your claim against the Bankrupt Estates set out in the Proof of Debt dated 2 November 2018 has been admitted in the amounts noted below:

Details of debt / description	Amount ($)
Magistrates Court Costs Order – GCLM 803 of 2013	46,850.29
Interest 6% pa	7,008.73
District Court Appeal – Cost Order – APP 4 of 2016	33,244.53
Interest 6% pa	2,967.42
Total	**90,070.97**

2. With regards to the interest component, I have utilised the following interest calculations:

GCLM 803 of 2013

48,850.85 * 6%pa * 911 days (22 January 2016 to 20 July 2018) = **$7,008.73 interest**

APP 4 of 2016

33,244.53 * 6%pa * 543 days (24 January 2017 to 20 July 2018) = **$2,967.42 interest**

NOTE: *The per annum interest calculation considers 366 days for applicable leap years.*

Dated this 11th day of September 2025

Kelly-Anne Trenfield

Trustee

Our Ref.: 464538.0001-12-06-10-l1

11 September 2025

Rowe Bristol Lawyers

PO Box 5259

St Georges Terrace

PERTH WA 6831

Attention: Mr Makan Mirzai & Mr Damien Bristol

By Email: mmirzai@rowebristol.com.au; dbristol@rowebristol.com.au

Dear Sir

Re: Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6

Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6 ("the Bankrupt Estates")

Notice of partial rejection of proof of debt – section 102(1)(b) of the *Bankruptcy Act 1966* (Cth)

I refer to previous correspondence regarding the proof of debt lodged by Rowe Bristol Lawyers (on behalf of Mr Damien Bristol) in the Bankrupt Estates for $18,775.65 (inclusive of GST) (incorrectly dated) (**"Proof of Debt"**).

For the reasons set out in the **enclosed** notice, the Proof of Debt has been allowed in the sum of $17,439.15.

Should you have any queries, please contact Nick Hawthorne of this office on (07) 3225 4971 or by email at nick.hawthorne@fticonsulting.com.

Yours faithfully

Kelly-Anne Trenfield

Trustee

NOTICE OF PARTIAL REJECTION OF PROOF OF DEBT

section 102(1)(b) of the *Bankruptcy Act 1966* (Cth)

Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6

Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6

("THE BANKRUPT ESTATES")

To: Mr Makan Mirzai, Rowe Bristol Lawyers

of PO Box 5259

St Georges Terrace

PERTH WA 6831

Adjudication

1. Your claim against the Bankrupt Estates set out in proof of debt lodged by Rowe Bristol Lawyers (on behalf of Mr Damien Bristol) in the Bankrupt Estates for $17,068.78 plus $1,706.87 for GST (**"Proof of Debt"**) has been rejected in part on the basis calculated below.

Claim	Date debt/s incurred	Details of debt	Amount claimed (inc GST)	Amount allowed (inc GST)
1.	19.06.2017	Invoice 15654 for the period of 07.03.2017 to 16.06.2017	$7,381.00	**$7,381.00**
2.	17.05.2018	Invoice 16329 for the period of 17.06.2017 to 30.10.2017	$6,231.50	**$6,231.50**
3.	21.12.2018	Unbilled work on LPA10/2018 – Frigger & Anor v RBL	$5,403.75	**$4,067.25**
4.	21.07.2017	Counsel's invoice 51	$1,016.40	**$1,016.40**
Less: Payments received in reduction of debts			$1,257.00	**$1,257.00**
TOTAL			**$18,775.65**	**$17,439.15**

Background

2. Rowe Bristol Lawyers Pty Ltd (**"Rowe Bristol"**) acted for Angela and Hartmut Frigger (**"Friggers"**) in various matters / claims arising from the liquidation of Computer Accounting & Tax Pty Ltd (**"CAT"**). The Friggers were directors and shareholders of CAT.

3. The terms of engagement between Rowe Bristol and the Friggers were set out in a letter of engagement dated 16 February 2017 (**"Engagement Letter"**) and a Costs Agreement dated 21 February 2017.

4. In the Proof of Debt, Rowe Bristol claims $17,068.78 (exclusive of GST) comprising of various legal costs incurred by solicitors and counsel between the period of 7 March 2018 and 4 February 2019.

5. For the costs identified in paragraph 4, I have been provided with, and have reviewed the following:

    a. the Engagement Letter;

    b. the Costs Agreement;

    c. Tax Invoice 015654 – for Rowe Bristol;

    d. Tax Invoice 016329 – for Rowe Bristol;

    e. Tax Invoice No.051 – for Tim Coyle (Counsel);

    f. Extract of 'Time Details' re: LPA10/2018 – Frigger v RBL – for Rowe Bristol;

    g. correspondence between Mrs Frigger and Rowe Bristol relating to trust funds;

    h. the trust ledger for matter 2074001;

    i. the debtors' ledger for matter 2074001; and

    j. Australian Securities and Investments Commission (**"ASIC"**) Current and Historical Organisation Extract – Rowe Bristol Lawyers Pty Ltd (ACN 140 318 519) dated 21 August 2025.

6. Each of the claims referred to in the table above are addressed in detail below.

Claims 1, 2 and 4

7. These claims relate to work carried out by Rowe Bristol Lawyers between 7 March 2017 to 16 June 2017 and 17 June 2017 to 30 October 2017 (Tax Invoices 15654, 16329), and Counsel's professional fees for the period ending 21 June 2017 (Tax Invoice No.051).

8. Pursuant to section 102(1)(b) of the Act, Claim Items 1, 2 and 4 are admitted in full.

Claim 3

9. Claim Item 3 of the Proof of Debt seeks to claim costs for "Unbilled work on LPA10/2018 – Frigger v Anor v RBL" in the amount of $4,912.50 (exclusive of GST).

10. Rowe Bristol seeks to establish this debt by way of an extract of 'Time Details' from LawWare, a legal practice management software, for matter 2074002 re: LPA 10/2018 – Frigger v RBL (**"LawWare Extract"**). This appears to show time and costs recorded by practitioners at Rowe Bristol between the period of 4 May 2018 and 4 February 2019.

11. Relevantly, I note that the Costs Agreement provides the following at clause 25.3:

> *"If the Law Practice is required to take any steps to recover any outstanding legal costs or other monies due to the Law Practice, the Law Practice is entitled to charge the client for the time spent taking these steps and to recover those costs from the Client on a full indemnity basis in accordance with the Agreement".*

12. Having considered this clause 25.3, the terms of engagement more generally, and the decisions in *Bell Lawyers Pty Ltd v Pentelow* [2019] HCA and *Birketu Pty Ltd v Atanaskovic* [2025] HCA 2, I consider it appropriate to allow the fees associated with work done by legal practitioners that are not shareholders or directors of Rowe Bristol Lawyers and costs that are considered to be out-of-pocket expenses.

13. The ASIC Extract records Damien Bristol as a director and shareholder of the company during the relevant period. The total time recorded in the LawWare Extract for Damien Bristol up to 20 July 2018 is $1,215 (exclusive of GST). Accordingly, I consider it appropriate to reduce Claim 3 by $1,336.50 (inclusive of GST).

14. The remaining practitioners recording time for matter 2074002 listed in the LawWare Extract do not appear to be shareholders or directors of Rowe Bristol Lawyers.

15. Accordingly, I admit the debt the subject of Claim Item 3 in the amount of $4,067.25. This amount reflects work done by legal practitioners who are not shareholders and directors of Rowe Bristol, and costs that are considered to be out-of-pocket expenses.

If you are dissatisfied with my determination as set out above, you may appeal against it, no later than 21 days after the service of this notice or, if the Court allows, within any further period. If you do not do so, your claim will be assessed in accordance with this determination.

Dated this 11th day of September 2025



Kelly-Anne Trenfield

Trustee

Our Ref.: 464538.0001-12-06-20

11 September 2025

The Estate of Evelyn Charlotte Reid

C/- Patricia Forsyth-Reid
33 Carossa Road
TAPPING WA 6065

By Email: phforsyth-reid4@bigpond.com

Dear Madam

Re: Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6
("the Bankrupt Estate")

Notice of admission of proof of debt – section 102(2) of the *Bankruptcy Act 1966* (Cth)

I refer to my appointment as Trustee of the above Bankrupt Estate by virtue of a Sequestration Order made by the Federal Court of Australia on 31 August 2018.

Further, I refer to previous correspondence regarding the Bankrupt Estate and the Proof of Debt dated 4 December 2020 in the amount of $3,749.85 you lodged in your capacity as executor of the estate of Evelyn Charlotte Reid.

Please find **enclosed** formal notice of the admission, which includes the reasons for my decision.

Should you have any queries, please contact Nick Hawthorne of this office on (07) 3225 4971 or by email at nick.hawthorne@fticonsulting.com

Yours faithfully



Kelly-Anne Trenfield

Trustee

NOTICE OF ADMISSION OF PROOF OF DEBT

section 102(2) of the *Bankruptcy Act 1966* (Cth)

Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6

("THE BANKRUPT ESTATE")

To: The Estate of Evelyn Charlotte Reid

of C/- Patricia Forsyth-Reid
33 Carossa Road
TAPPING WA 6065

1. Your claim against the Bankrupt Estate set out in the Proof of Debt dated 4 December 2020 lodged in your capacity as executor of the estate of Evelyn Charlotte Reid has been admitted in the amounts noted below

Details of debt / description	Amount ($)
Court costs awarded against Angela Frigger	3,749.85
Interest 6% pa	261.36
Total	**4,011.21**

2. With regards to the interest component, I have utilised the following interest calculations:

   3,749.85 * 6%pa * 424 days (23 May 2017 to 20 July 2018) = **$261.36 interest**

   NOTE: *The per annum interest calculation considers 366 days for applicable leap years.*

Dated this 11th day of September 2025



Kelly-Anne Trenfield

Trustee

Our Ref.: 464538.0001-12-06-21-l1

11 September 2025

Mervyn Kitay as liquidator of Computer Accounting and Tax Pty Ltd (In Liquidation)

PO Box 828

APPLECROSS WA 6153

Attention: Mr Mervyn Kitay

By Email: mervyn.kitay@worrells.net.au

Dear Sir

Re: Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6
("the Bankrupt Estate")

Notice pursuant to section 82(4) of the *Bankruptcy Act 1966* (Cth)

I refer to previous correspondence regarding the Bankrupt Estates and the proof of debt lodged by you in the Bankrupt Estate for $1,000 dated 17 April 2024 (**"Proof of Debt"**).

Based on the information provided, I estimate the value of the debt or liability claimed in the Proof of Debt to be $1,000 pursuant to section 82(4) of the *Bankruptcy Act 1966* (Cth) (**"Act"**). The basis for my estimate is contained in the attached notice.

Should you have any queries, please contact Nick Hawthorne of this office on (07) 3225 4971 or by email at nick.hawthorne@fticonsulting.com.

Yours faithfully

Kelly-Anne Trenfield

Trustee

NOTICE OF ESTIMATE OF VALUE OF DEBT OR LIABILITY

section 82(4) of the *Bankruptcy Act 1966* (Cth)

Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6

("THE BANKRUPT ESTATE")

To: Mervyn Kitay as liquidator of Computer Accounting and Tax Pty Ltd (In Liquidation) ("**CAT**")

of PO Box 828
APPLECROSS WA 6153

Estimate

1. I refer to the proof of debt lodged by you in the Bankrupt Estate for $1,000 dated 17 April 2024 claiming the amount of $1,000 for untaxed costs pursuant to an order dated 17 July 2018 ("**Proof of Debt**").
2. I estimate the value the claim against the Bankrupt Estates set out in the Proof of Debt to be $1,000 payable to CAT.

Background

3. On 17 July 2018, Master Sanderson made an order that Mrs Frigger pay the costs of the application, being an application of Mrs Frigger dated 14 May 2018 to vary an indemnity costs order.
4. I have been referred to the following material to provide context in relation to the order dated 17 July 2018:
   a. Paragraph 199 of *Kitay, in the matter of Frigger (No 2)* [2018] FCA 1032; and
   b. Paragraphs 42 to 54 of *Frigger v Kitay and CAT (in liq) (No 10)* [2025] WASC 214.
5. The parties to the proceeding were:
   a. Professional Services of Australia Pty Ltd (as first plaintiff);
   b. Donald Campbell-Smith as executor of the estate of Martin Banning (as second plaintiff): and
   c. CAT.
6. The creditor is listed as Mr Kitay as liquidator of CAT. The costs are payable to CAT.
7. I consider the amount of $1,000 is reasonable and estimate the value of the claim for costs pursuant to the order referred to in paragraph 3 above to be $1,000 pursuant to section 82(4) of the Act.

Please note that pursuant to section 82(5) of the Act a person aggrieved by an estimate made pursuant to section 82(4) of the Act may appeal to the Court not later than 28 days after the day on which the person is notified of the estimate.

Dated this 11th day of September 2025



Kelly-Anne Trenfield

Trustee

Our Ref.: 464538.0001.16-16-03

17 September 2025

Computer Accounting and Tax Pty Ltd (In Liquidation)

c/- Mr Mervyn Kitay
Liquidator
Worrells
PO Box 828
APPLECROSS WA 6153

Attention: Mr Mervyn Kitay

By Email: mervyn.kitay@worrells.net.au

Dear Sir

Re: Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6
Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6 ("the Bankrupt Estates")

Notice pursuant to section 102(1) of the *Bankruptcy Act 1966* (Cth)

I refer to previous correspondence regarding the proof of debt lodged by Computer Accounting and Tax Pty Ltd (In Liquidation) (**"CAT"**) in the Bankrupt Estates for $5,536,727 dated 17 April 2024 (**"Proof of Debt"**).

Pursuant to section 102 of the *Bankruptcy Act 1966* (Cth) (**"Act"**), the Proof of Debt has been rejected in the amount of $110,305 for the reasons set out at paragraph 4 of the annexed notice. My assessment of the claims arising from proceeding CIV 2765 of 2010 in the amount of $5,426,422 as set out in the Proof of Debt has been deferred to a later date.

Should you have any queries, please contact Nick Hawthorne of this office on (07) 3225 4971 or by email at nick.hawthorne@fticonsulting.com

Yours faithfully



Kelly-Anne Trenfield

Trustee

NOTICE OF REJECTION OF PROOF OF DEBT

section 102(1) of the *Bankruptcy Act 1966* (Cth)

Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6

Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6

("THE BANKRUPT ESTATES")

To: Computer Accounting and Tax Pty Ltd (In Liquidation) ("**CAT"**)

of c/- Mr Mervyn Kitay

Liquidator
Worrells
PO Box 828
APPLECROSS WA 6153

Adjudication

1. CAT's claim against the Bankrupt Estates set out in proof of debt lodged by CAT in the Bankrupt Estates for $5,536,727 dated 17 April 2024 ("**Proof of Debt"**) has been assessed on the basis set out below:

Claim	Date debt/s incurred	Details of debt	Amount claimed	Amount allowed
1.		Particulars of claims arising from CIV2765/2010	$5,426,422	Adjudication deferred
2.		Cost orders made in WAD40/2021	$36,000	$0
3.		Cost orders made in CIV2765/2010	$74,305	$0
TOTAL			**$5,536,727**	

Summary of claims

2. The claims the subject of claim item 1 referred to in the table above relate to claims made against Mr and Mrs Frigger by CAT and Mr Kitay in Supreme Court of Western Australia proceedings CIV 2765 of 2010, which are being prosecuted with leave granted by Jackson J on 6 May 2021 in *Kitay v Trenfield* [2021] FCA 508.

3. Claim item 1 is dependent on the resolution of a number of complex issues of fact and law which Jackson J concluded at [27] of his Honour's judgment in *Kitay v Trenfield* [2021] FCA 508, were not suitable for determination in the administration of the Bankrupt Estates. Accordingly, I do not consider it appropriate for me to adjudicate claim item 1 at this stage and have deferred my adjudication of claim item 1.

4. The claims the subject of claim items 2 and 3 referred to in the table above relate to costs orders made in favour of CAT and Mr Kitay in his capacity as liquidator of CAT. On 4 November 2024 David Lenhoff (the solicitor engaged to act in proceedings WAD 40 of 2021 and CIV 2765 of 2010) informed my solicitors, Johnson Winter Slattery, that the relevant costs agreements for WAD 40 of 2021 and CIV 2765 of 2010 were entered into by Mr Kitay in his capacity as liquidator of CAT. Accordingly, I have assessed the costs being claimed in items 2 and 3 as payable to Mr Kitay (in his capacity as liquidator of CAT) and not CAT. Accordingly, I have not allowed any amount for claim items 2 and 3 in CAT's Proof of Debt.

Please note that pursuant to section 104 of the Act, a creditor, or the bankrupt, may apply to the Court for review of a decision of the trustee under subsection 102(1), (3) or (4) in respect of a proof of debt and such an application is to be made within 21 days from the date of this Notice.

Dated this 17th day of September 2025



Kelly-Anne Trenfield

Trustee

Our Ref.: 464538.0001-12-06-07

17 September 2025

Mervyn Kitay as liquidator of Computer Accounting and Tax Pty Ltd (In Liquidation)
Worrells
PO Box 828
APPLECROSS WA 6153

Attention: Mr Mervyn Kitay

By Email: mervyn.kitay@worrells.net.au

Dear Sir

Re: Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6
Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6 ("the Bankrupt Estates")

Notice pursuant to section 102(1) and section 82(4) of the *Bankruptcy Act 1966* (Cth) ("Act")

I refer to previous correspondence regarding the proof of debt lodged by you in the Bankrupt Estates for $2,716,308 dated 17 April 2024 (**"Proof of Debt"**).

My assessment of the Proof of Debt is set out in the annexed Notice which provides that:

- the Proof of Debt has been allowed in the amount of $521,981.35;
- otherwise the claims the subject of proceeding CIV 2765 of 2010 set out in the Proof of Debt in the amount of $2,165,661 have been deferred to a later date.

Should you have any queries, please contact Nick Hawthorne of this office on (07) 3225 4971 or by email at nick.hawthorne@fticonsulting.com

Yours faithfully



Kelly-Anne Trenfield

Trustee

NOTICE OF REJECTION OF PROOF OR ESTIMATE OF VALUE OF DEBT OR LIABILITY

section 102(1) of the *Bankruptcy Act 1966* (Cth)
section 82(4) of the *Bankruptcy Act 1966* (Cth)

Angela Cecilia Theresa Frigger – Bankrupt Estate No. WA 1272 of 2018/6

Hartmut Hubert Josef Frigger – Bankrupt Estate No. WA 1272 of 2018/6

("THE BANKRUPT ESTATES")

To: Mr Mervyn Kitay as liquidator of Computer Accounting and Tax Pty Ltd (In Liquidation) (**"Liquidator"**)

of Worrells
PO Box 828
APPLECROSS WA 6153

Adjudication

1. Your claim against the Bankrupt Estates as set in the proof of debt lodged by you dated 17 April 2024 for $2,716,308 (**"Proof of Debt"**), has been allowed in the amount of $541,981.35 on the basis calculated below:

Claim	Details of debt	Amount claimed	Amount allowed
A.	Particulars in relation to various cost orders set out in annexure "MJK1"	$476,342.00	$446,362.61
B.	Particulars in relation to cost orders in CIV 2675 of 2010	$74,305.00	$75,618.74
C.	Particulars with regards to contingent claim being claims the subject of proceeding CIV 2765 of 2010	$2,165,661.00	Adjudication deferred
TOTAL		**$2,716,308.00**	**$521,981.35** (plus any further amounts assessed or admitted following adjudication of the deferred claim)

Summary of claims

2. The claims the subject of claim item A referred to in the table above relate to 12 separate cost orders (set out in annexure "MJK1" to the Proof of Debt). My assessment of each of the 12 separate cost orders is set out in section A below.

3. The claims the subject of claim item B referred to in the table above relate to 12 separate cost orders made in proceeding CIV 2675 of 2010. A proof of debt was lodged by Computer Accounting & Tax Pty Ltd (**"CAT"**) for the same claims. On 4 November 2024, David Lenhoff (the solicitor engaged to act in proceeding CIV 2765 of 2010) informed my solicitors, Johnson Winter Slattery, the relevant costs agreement for CIV 2765 of 2010 were entered into by you in your capacity as liquidator of CAT and therefore the costs are those of the Liquidator. Accordingly, I have assessed the costs being claimed in item B as payable to you (in your capacity as liquidator of CAT) and not CAT. My assessment of each of the 12 separate cost orders is set out in section B below.

4. The claims the subject of claim item C referred to in the table above relate to claims made against the Mr and Mrs Frigger (**"Friggers"**) by CAT and Mr Kitay in Supreme Court of Western Australia proceedings CIV 2765 of 2010, which are being prosecuted with leave granted by Jackson J on 6 May 2021 in *Kitay v Trenfield* [2021] FCA 508.

5. Claim item 3 is dependent on the resolution of a number of complex issues of fact and law which Jackson J concluded at [27] of his Honour's judgment in *Kitay v Trenfield* [2021] FCA 508, were not suitable for determination in the administration of the Bankrupt Estates. Accordingly, I have not adjudicated claim item C at this stage and have deferred my adjudication.

6. Definitions used throughout this Notice are specific to each separate claim. In particular, references to orders are a reference to the costs order applicable to the relevant claim item, unless otherwise specified. Definitions are applicable only to the sections within which they are defined.

A. Claim Item A - Assessment of Costs

7. My assessment of each of the 12 separate cost orders which form claim A are set out in the table below:

	Particulars	**Claim Amount**	**Amount Allowed**
A1.	Order of Master Sanderson in COR 2 of 2010 dated 12 June 2014, the subject of a Certificate of Taxation dated 6 July 2015	$76,051.65	$76,031.61
A2.	Order of Justice Martino in COR 2 of 2010 dated 21 July 2017	$38,244.80	$24,089.56
A3.	Order of Justice Le Miere in CIV 1606 of 2015 dated 12 May 2016	$135,800.55	$122,737.74
A4.	Order of Court of Appeal in CIV 45 of 2016 dated 24 November 2017	$62,745.38	$64,236.85
A5.	Order of Justice Barker dated 17 June 2016 in WAD 674 of 2015	$7,800.00	$7,800.00

A6.	Order of Justice Gilmore dated 21 August 2017 in in WAD 674 of 2015	$4,000.00	$4,000.00
A7.	Order of Colvin J dated 1 March 2018 in WAD 674 of 2015	$21,500.00	$21,500.00
A8.	Order for security for costs made by Colvin J dated 7 May 2018 in WAD 674 of 2015, which gives rise to an entitlement to costs pursuant to Order 40.04 of the Federal Court Rules	$18,000.00	$18,000.00
A9.	Order of Deputy District Registrar Trott dated 28 February 2017 in WAD 428 of 2016	$20,000.00	$20,000.00
A10.	Order of Siopsis J dated 1 November 2017 in WAD 428 of 2016	$11,200.00	$11,200.00
A11.	Sequestration Order of Colvin J in WAD 616 of 2017	$45,000.00	$46,245.00
A12.	Order of Jackson J for leave under s.58(3) of the Act in WAD 40 of 2021	$36,000.00	$30,521.85
TOTAL		**$476,342.38**	**$446,362.61**

8. My reasons in respect of each of the cost orders are set out below.

A1: Order of Master Sanderson in COR 2 of 2010 dated 12 June 2014

9. On 12 June 2014, Master Sanderson made an order that the Friggers should pay the costs, including reserved costs of the Applicants on a full indemnity basis, save insofar as those costs have been properly incurred. The 'Applicants' listed in the proceeding were Mervyn Jonathan Kitay in his capacity as liquidator of CAT and CAT.

10. On 6 July 2015, Registrar Boyle issued a Certificate of Assessment in respect of the Applicant's Bill of Costs filed 19 January 2015 pursuant to the order of Master Sanderson made on 12 June 2014. Registrar Boyle assessed the Applicant's Bill of Costs and allowed the bill in the amount of $61,000.42.

11. Interest on the amount of $61,000.42 at the rate of 6% per annum from 12 June 2014 to 20 July 2018 is $15,031.19.

12. Accordingly, pursuant to section 102(1)(a) of the Act, I admit claim item A1 in the amount of $76,031.61.

A2: Order of Justice Martino in COR 2 of 2010 dated 21 July 2017

13. On 21 July 2017, Justice Martino made orders that the Friggers pay the Liquidator's costs of their application for an order that they have leave to rely on and refer to the confidential affidavit of the Liquidator dated 5 January 2012 to be taxed if not agreed.

14. For this claim, I was provided with and have reviewed the following documents:

    a. a spreadsheet labelled "Annexure MJK1" referring to:

        i. costs claimed of $36,080; and

        ii. interest claimed of $2,164.80;

    b. a copy of the Order;

    c. Reasons for Decision, [2014] WASC 169;

    d. Reasons for Decision, [2017] WASC 120;

    e. Reasons for Decision, [2017] WASC 120 (S); and

    f. Court documents in the Proceedings numbered 1 to 40.

15. The Liquidator claims costs of $36,080 by analogy under item 11(a)(3) of the *Legal Profession (Supreme Court) (Contentious Business) Costs Determination 2016* (**"2016 Scale"**).

16. Item 11 of the 2016 Scale covers all originating applications and summonses for hearings in chambers and all work related to the proceedings up to the disposal of the matter at a final hearing.

17. The maximum amount allowed under item 11(a)(3) of the 2016 Scale is $36,080 for Counsel, with 2 days preparation and 1 day hearing.

18. Also relevant to the Liquidator's costs claimed are:

    a. item 10(a) of the 2016 Scale which allows a maximum amount of $11,880 for 2 days preparation and 1 day hearing;

    b. item 10(b) of the 2016 Scale for attending on a reserved judgment in Chambers; and

    c. item 10(c) of the 2016 Scale for Consent Orders including conferral.

19. Interlocutory hearings within the originating process, which are described in item 11 of the 2016 Scale or a Writ of Summons, including programming hearings, attract separate allowances under item 10 of the 2016 Scale. Item 10 of the 2016 Scale covers:

    a. all work done for interlocutory applications heard in chambers; and

    b. any relevant minute of orders or initiating chamber summons, affidavits in support or in opposition to the application, preparation of written submissions and appearances relevant to the application (including preparation for argument in court).

20. The key question on a party and party taxation is whether the amount claimed for particular items is a reasonable amount, having regard to necessary work. That assessment requires:[1]

    a. a determination that the services claimed for were required;

    b. a determination of the:

[1] See Civil Procedure WA, [66.11.9].

i. complexity of the services;

ii. the appropriate level of seniority of practitioners to deliver the services; and

iii. the reasonable hourly rate for the services as allowed under the relevant Scale;

c. the identification of what services were necessary in the particular case;

d. an objective assessment of a reasonable amount for the services having regard to the Rules, the legal costs determinations and the underlying principles as to costs; and

e. a measure of the amount of costs claimed in the bill against an objective assessment is required to determine whether the claimed amount is reasonable or an adjustment to the claim required.

21. Appropriate adjustments may also be required, in consideration of the following:[2]

a. any expedited nature of the proceedings;

b. the team involved in the work completed and whether there has likely been any duplication of work;

c. any administrative tasks undertaken and charged for at practitioner hourly rates instead of lesser rates; and

d. whether an allowance should be made for skill, care and responsibility.

22. To conclude what is a reasonable amount for necessary work, a consideration of the work product is required, almost all of which will be on the court file. The real weight or difficulty of factual and legal matters is also best judged by looking at delivered reasons.

23. Under Order 66, rule 18 of the *Rules of the Supreme Court 1971* (**"SC Rules"**) in any matter not specially provided for in the 2016 Scale, the Court or the taxing officer can allow costs by way of analogy according to the item in the 2016 Scale which is most nearly applicable.

24. Whether item 10 or item 11 (by analogy) of the 2016 Scale applies requires consideration of whether Mr and Mrs Frigger's application for an order that they have leave to rely on and refer to the confidential affidavit of the Liquidator dated 5 January 2012 ("**5 January 2012 Application"**) was final or interlocutory.

25. Considering the Reasons for Decision in 2017 WASC 120 (**"Reasons"**), the 5 January 2012 Application was titled: "Interlocutory Process for Orders" filed in proceedings already commenced in 2010 for an order that CAT be wound up.

26. The confidential affidavit of the Liquidator (**"Affidavit"**) the subject of the 5 January 2012 Application was filed in the Proceedings in support of an Order under section 477(2B) that the liquidator has leave to enter into an agreement in which the term of the agreement or an obligation of a party under the agreement ends 3 months after the date the agreement was entered into.

[2] *Commonwealth Bank of Australia v Pankaj Oswal in his own capacity and atf The Burrup Trust*[No 2] [2012] WASC 180.

27. The parties' rights in the Proceedings were the 'rights of the parties' with respect to the winding up of CAT.

28. In the Reasons, Justice Martino states:

    a. that confidentiality orders were made by Acting Master Chapman and Master Sanderson made orders giving effect to the confidentiality orders (at [43]); and

    b. Mr and Mrs Frigger have not established any basis to vary the confidentiality orders (at [52]).

29. There is nothing in the Reasons that appears to involve the final determination of the rights of the parties relating to the Affidavit. The effect of the Order was that Mr and Mrs Frigger were not granted leave to rely on the Affidavit. However, that does not mean that Mr and Mrs Frigger could not again apply to the Court for leave to rely on the Affidavit on other grounds or if they established a basis to vary the confidentiality orders as made.

30. Additionally, in the Liquidator's Submissions on costs dated 11 May 2017 (**"Costs Submissions"**) it is accepted that the 5 January 2012 Application was interlocutory in nature.

31. Having regard to the above, and from an assessment of the Proceedings based on the information provided to me for this claim, it is likely that the 5 January 2012 Application was interlocutory. Therefore, item 10 of the 2016 Scale will apply to the assessment of this claim, and not item 11.

32. The maximum amounts allowed under item 10 of the 2016 Scale are:

    a. $11,880 under item 10(a) to prepare for and attend the hearings on 30 November 2016 (**"First Hearing"**) and 30 January 2017 (**"Second Hearing"**);

    b. an hourly rate under item 10(b) to prepare for and attend at the reserved judgment on by a senior practitioner on 28 April 2017 (**"Reserved Judgment"**); and

    c. $506 for any consent orders, including conferral.

First Hearing and Second Hearing

33. According to the Associate's Record of the First Hearing, the First Hearing lasted for 41 minutes. The costs of the First Hearing were reserved.

34. The Liquidator filed written submissions dated 29 November 2016 consisting of six (6) pages, 19 paragraphs and referring to five (5) authorities.

35. I have not been provided with any information regarding the actual time taken to prepare the submissions filed for the First Hearing other than item 1 of the Schedule to the Costs Submissions (**"Schedule"**) which claims $2,244.

36. However, because item 10 of the 2016 Scale applies and the Order did not make a separate allowance or special costs order for the First Hearing, the costs of the First Hearing are included in the maximum amount allowed under item 10 of the 2016 Scale for the First Hearing and the Second Hearing.

37. The maximum amount allowed under item 10(a) of $11,880 is justified based on the documents provided because:

a. the work that would have been required is:

   i. a review and consideration of the 5 January 2012 Application and two (2) amended Applications;

   ii. a review and consideration of Mrs Frigger's three (3) affidavits filed in support of the 5 January 2012 Application;

   iii. preparation of written submissions, including in response to Mr and Mrs Frigger's written submissions in support of the 5 January 2012 Application; and

   iv. attendance at the First Hearing and the Second Hearing;

b. the matter was complex, Mr and Mrs Frigger raised seven (7) grounds as to why the Court should make the order sought in the 5 January 2012 Application and filed numerous lengthy documents in support of the 5 January 2012 Application; and

c. it is appropriate for a senior practitioner or Counsel to deliver the services required by the 5 January 2012 Application at the hourly rate of Counsel of $396 per hour.

38. Further, under item 10(b) of the 2016 Scale an hourly rate of $484 is allowed for a senior practitioner's attendance at the Reserved Judgment. The Reasons are 19 pages.

39. The Associate's Record of hearing on 28 April 2017 discloses that the hearing time for the Reserved Judgment was 30 minutes.

40. Considering the length of the hearing and the Reasons, it is likely that up to four (4) hours for a senior practitioner to prepare for and attend the Reserved Judgment is reasonable, despite only one (1) hour being claimed in the Schedule. Four (4) hours at $484 per hour is $1,936.

41. No allowance has been made under item 10(c) of the 2016 Scale for Consent Orders where no Consent Orders were provided to me in the documents for this claim.

42. Therefore, it is reasonable that the amount allowed under items 10(a) and 10(b) of the 2016 Scale for the First Hearing, the Second Hearing and the Reserved Judgment is $13,816, being $11,880 (paragraph 37 above) plus $1,936 (paragraph 40 above).

Costs Application

43. The Liquidator also made an application for a special costs order (**"Costs Application"**) and prepared and filed the Costs Submissions in support of that application (paragraph 30 above). Relevantly, the Costs Submissions:

a. comprise of eight (8) pages, 21 paragraphs, and refer to three (3) authorities;

b. include an analysis of Mr and Mrs Frigger's claims and costs submissions filed on 4 May, 9 and 11 May 2017, analysed in paragraphs 13 to 21 of the Costs Submissions; and

c. attach the Schedule.

44. The maximum amount allowed for the Costs Application is $11,880 under item 10(a) of the 2016 Scale, accounting for the preparation of the Costs Submissions and the Schedule and conferral with Mr and Mrs Frigger.

45. The Schedule claims $16,060 including GST in costs, which is inconsistent with the amount the Liquidator now claims under the Order and the spreadsheet titled: "Annexure MJK1".

46. Leaving aside the inconsistency between the Schedule and the now costs claimed of $36,080, it is apparent based on the documents provided that:

    a. the work that would have been required for the Costs Application required:

        i. a review and consideration of Mr and Mrs Frigger's submissions filed on 4 May, 9 and 11 May 2017; and

        ii. preparation of the Costs Submissions, including the Schedule;

    b. the matter was complicated by Mr and Mrs Frigger's conduct of the Proceedings and filing of various documents outside of the Court's Orders; and

    c. it would be appropriate that a:

        i. senior practitioner or Counsel prepare the written Costs Submissions; and

        ii. a Junior Practitioner prepare the Schedule.

47. Further, it was appropriate for the Costs Application to be made in accordance with the Liquidator's lawyers' duty to seek appropriate costs orders on moving for judgment.

48. Having regard to:

    a. the maximum amount allowed under item 10(a) of the 2016 Scale;

    b. the work that would have been required in preparation of the Costs Submissions and the Schedule;

    c. some conferral was undertaken between the Liquidator's lawyers and Mr and Mrs Frigger;

    d. that question of costs was heard on the papers not requiring the parties' attendance; and

    e. the risk that administrative tasks have been undertaken and charged for at practitioner hourly rates instead of lesser rates or where there has been a duplication of work,

    it is reasonable for the maximum amount allowed under the 2016 Scale in respect of the Costs Application to be reduced by 25% to $8,910.

49. Therefore, on the information provided, the amount of $22,726 is reasonable as the amount allowed under the Order dated 21 July 2017 of Martino J for Proceeding COR 2 of 2010, in accordance with the 2016 Scale. This accounts for:

    a. $13,816 for the First Hearing, Second Hearing and Reserved Judgment; and

    b. $8,910 for the Costs Application

50. Interest on the amount of $22,726 at the rate of 6% per annum pursuant to section 8 of the *Civil Judgments Enforcement Act 2004* (WA) from 21 July 2017 to 20 July 2018 is $1,363.56

51. Accordingly, pursuant to section 82(4) of the Act, I estimate the value of the claim the subject of claim A2 to be $24,089.56.

A3: Order of Justice Le Miere in CIV 1606 of 2015 dated 12 May 2016

52. On 12 May 2016, Justice Le Miere made orders in CIV 1606 of 2015 that Mr and Mrs Frigger pay the Liquidator's costs of the proceeding, including any reserved costs and the costs of each of the defendants' application dated 30 June 2015, the plaintiffs' application for leave to commence or continue the proceedings, and the plaintiffs' application for an injunction set out in the plaintiffs' Minute of Orders for Injunction dated 22 October 2015 on the following basis:

    a. on or before 10 June 2015 on a party and party basis (**"Party and Party Order"**); and

    b. on or before 11 June 2015 on an indemnity basis (**"Indemnity Order"**),

    to be taxed.

53. For this claim, I was provided with and have reviewed the following documents:

    a. a spreadsheet labelled "Annexure MJK1" referring to:

        i. approximate costs of $130,000 of which $120,000 is claimed; and

        ii. interest claimed of $15,800.55;

    b. a copy of the Order;

    c. Reasons for Decision, [2016] WASC 60 (**"Reasons"**);

    d. Reasons for Decision, [2017] WASC 60(S) (**"Costs Reasons"**); and

    e. various court documents in the proceeding.

54. The rationale underlying an award of indemnity costs is that a party is to be indemnified against costs actually incurred. That is, they are thought to be reasonable in the special circumstances of the case in hand because of some conduct that has imposed an additional or extraordinary strain upon the party entitled to the benefit of the costs order.

55. The approach to indemnity costs orders is that all costs will generally be allowed other than those that have not been reasonably, necessarily or properly incurred or are not fair and reasonable in amount. An indemnity costs order does not permit recovery of extravagant or unreasonable costs such as, for example, costs which are obviously collateral or unrelated to the litigation.

56. Appropriate adjustments might also be required, having consideration of the following:[3]

    a. the complexity, novelty or difficulty of the work undertaken;

    b. any expedited nature of the proceedings;

    c. the team involved in the work completed and whether there has likely been any duplication of work;

    d. any administrative tasks undertaken and charged for at practitioner hourly rates instead of lesser rates;

---

[3] *Sharif v Vitruvian Investments Pty Ltd* (No 5) [2024] FCA 134

e. whether any work has been unnecessary or excessive; and

f. whether an allowance should be made for skill, care and responsibility.

57. The maximum amount of costs claimable under the Party and Party Order is the amount allowed under the *Legal Profession (Supreme Court) (Contentious Business) Report 2014* (**"2014 Scale"**). Further considerations for these Costs, have been outlined in paragraphs 20 to 22 above which are applicable to other claims set out in this Notice (for which I will not repeat).

58. Mr Kitay claims costs of $120,000 with an approximate deduction of 8.3% from the alleged actual estimated costs of $130,000 (**"Actual Estimate"**) for the work that was completed the subject of the Party and Party Order.

59. From the documents provided to me, the apparent work done on or before 10 June 2015 the subject of the Party and Party Order was the:

a. filing of an appearance;

b. consideration of the Statement of Claim and Amended Statement of Claim;

c. preparation of the Defence; and

d. preparation of the Affidavit of D John sworn on 11 June 2015 regarding service of the Amended Statement of Claim.

60. The maximum amount allowed under items 3(a) and (b) of the 2014 Scale for the work done in paragraphs 15(a) to (c) is $4,829 (**"Scale Amount"**). It appears reasonable that $10,000 has been reduced from the Actual Estimate to account for that work.

61. With respect to the Indemnity Order, from the documents provided to me, the matter appears to be complex and difficult which ultimately impacts the costs incurred in the proceeding. The factors supporting the complexity and difficulty of the work undertaken, likely requiring the skill of more than one legal practitioner, include:

a. the various and serious allegations made against Mr Kitay in the Proceedings in the 24-page Statement of Claim, including 12 alleged contraventions consisting of breach of duties under the Corporations Act, fiduciary duties and swearing false affidavits;

b. the Plaintiffs being self-represented in the Proceedings reflecting on the:

i. content and quality of the Court documents and correspondence; and

ii. likely additional time required to confer and correspond with the Plaintiffs;

c. the numerous iterations of the Statement of Claim;

d. the consideration of other Court proceedings concerning the parties;

e. the allegations of abuse of process and/or that various pleadings ought to be struck out as giving rise to no cause of action the subject of an application for a stay and/or strike out (**"Application"**);

f. the length of various Affidavits filed in support of and response to the Application of more than 600 pages;

g. the length of and numerous authorities referred to in 6 sets of submissions filed in support of and response to the Application and the application for costs of the Application; and

h. the factual analysis required of the allegations made in the Proceedings to the conclusion that the Proceedings were a collateral attack on previous Court decisions, an abuse of process and/or gave rise to no cause of action.

62. Having regard to:

a. Federal Court cases including *Sharif v Vitruvian Investments Pty Ltd (No 5)* [2014] FCA 134 and *LLC BryanskAgrostroy v Mackies Asia Pacific Pty Limited (No 2)* [2021] FCA 1419;

b. the factors outlined in paragraph 61 above;

c. the deduction of $10,000 relating to the Party and Party Order; and

d. the present circumstances where no information has been provided to me about:

i. the number of legal practitioners, clerks or paralegals involved in the work completed for the Proceedings;

ii. the hourly rates for each of those team members; and

iii. the actual time spent by each of those team members,

it would appear reasonable that a global deduction of 10%, for costs of an unreasonable amount or that have been unreasonably incurred, of 10% of the claimed costs of $120,000 less the Scale Amount be applied.

63. Having regard to paragraph 62 above, a reasonable allowance for this claim is $108,482.90 calculated as follows:

a. $120,000 less the Scale Amount of $4,829 = $115,171.

b. $115,171 less 10% ($11,517.10) for costs unreasonably incurred = $103,653.90.

c. $103,653.90 plus the Scale Amount ($4,829) = $108,482.90.

64. Interest on the amount of $108,482.90 at the rate of 6% per annum pursuant to section 8 of the *Civil Judgments Enforcement Act 2004* (WA) from 12 July 2017 to 20 July 2018 is $14,254.84.

65. Accordingly, pursuant to section 82(4) of the Act, I estimate the value of the debt the subject of claim item A3 to be $122,737.74.

A4: Order of Court of Appeal in CACV 45 of 2016 dated 24 November 2017

66. On 18 October 2017, the Court of Appeal of Western Australia made an order in proceeding CACV 45 of 2016, that the Friggers pay the Liquidator's costs of the appeal to be assessed on an indemnity basis so that the Liquidator is fully indemnified for his costs except in so far as the costs may have been unreasonably incurred or are unreasonable in amount.

67. The Liquidator claims costs of $60,363 under the Order made on 18 October 2017 plus interest. The costs of $60,363 are calculated on the following basis:

a. costs taxed at the amount of $85,363.90;

b. less recovery of security for costs in the amount of $25,000 (which was drawn down after the commencement of the bankruptcy).

68. I have been provided with a copy of:

a. a spreadsheet labelled "Annexure MJK1";

b. a copy of the order of the Court of Appeal made on 18 October 2017; and

c. a copy of the Certificate of Taxation dated 18 September 2018.

69. On 18 September 2018 Registrar Whitbread certified that the Respondent's amended bill of costs dated 13 June 2018 had been taxed and allowed in the sum of $85,363.90.

70. Given the security was drawn down after the commencement of the bankruptcy, I calculate the amount of the debt as:

a. costs taxed at the amount of $85,363.90;

b. plus interest on the amount of $85,363.90 at the rate of 6% per annum pursuant to section 8 the *Civil Judgments Enforcement Act 2004* (WA) from 18 October 2017 to 20 July 2018 (being $3,872.95);

c. less security in the amount of $25,000.

71. Accordingly, pursuant to section 102(1)(a) of the Act, I admit the debt the subject of claim item A4 in the amount of $64,236.85.

A5: Order of Justice Barker dated 17 June 2016

72. On 17 June 2016, Justice Barker made an order in proceeding WAD 674 of 2015 that the plaintiffs (being the Friggers) pay the liquidator's costs of the plaintiff's amended interlocutory process and the liquidator's interlocutory application, to be taxed if not agreed (**"Barker Order"**).

73. The Liquidator claims $7,800 under the Barker Order.

74. The Barker Order is a party and party costs order. Party and party costs in the Federal Court are defined as costs "fairly and reasonably incurred" and are governed by the amounts allowed in Schedule 3 to the Rules.

75. The relevant amounts allowed under Schedule 3 of the Rules as of June 2016 include:

a. $58 for each six (6) minutes for attendances (item 1.1);

b. $52 per 100 words for the preparation of documents (item 2.1);

c. $58 for each six (6) minutes for reading documents other than correspondence (item 3.1);

d. $21 for up to 50 words of correspondence (item 3.2);

e. $42 for up to 100 words of correspondence (item 3.3);

f. $58 for each six (6) minutes for delegation and supervision (item 4.1);

g. $58 for appropriate research of a legal question of some complexity that is not procedural in nature (item 5.1); and

h. An additional amount allowed for skill, care and responsibility (item 11).

76. The information provided for the costs claimed relating to the Barker Order is:

a. the hearing in the matter was 2.5 hours with a 15-minute hearing for the delivery of judgment; and

b. the claim is for 17 hours for a practitioner of more than 10 years' experience at $580 per hour with a 20% discount.

77. The hearing on 3 June 2016 related to the Liquidator's application to set aside the Friggers' amended interlocutory process on the ground of an abuse of process. The Court documents filed in the application were:

a. an interlocutory application seeking five (5) Orders consisting of one (1) page and approximately 454 words;

b. the Friggers' Outline of Submissions dated 1 June 2016 of 13 pages and approximately 4,345 words:

i. outlining the reasons for each of the orders sought in the amended interlocutory process; and

ii. approximately 12 cases, totaling approximately 189 pages;

c. an Affidavit of Mrs Frigger of five (5) pages, six (6) paragraphs, one (1) attachment and approximately 639 words; and

d. the Liquidator's Outline of Submissions:

i. of approximately 1,140 words; and

ii. referring to two (2) cases of approximately 20 pages.

78. An approximate allowable amount for the following work is estimated at $14,516.88 comprising:

a. an approximate amount allowable of $236.08 to prepare the interlocutory application;

b. an approximate allowable amount of $145 to read and consider the body of Mrs Frigger's Affidavit estimated at 12 minutes and three (3) minutes to read the attachment;

c. an approximately allowable amount of $696 based on approximately six (6) minutes to read each page of the Friggers' Outline of Submissions of 12 pages;

d. an approximately allowable amount of $10,962 to read each page of the case law authorities the Friggers relied on in their Outline of Submissions of approximately 189 pages based on an average of six (6) minutes for each page;

e. an approximately allowable amount of $592.80 for the preparation of the Liquidator's Outline of Submissions of approximately 1,140 words;

f. an amount of $1,450 for the attendance at Court on 3 June 2016 for 2.5 hours;

g. an approximate allowable amount of $290 to read the Reasons for Decision in *Kitay, in the matter of Computer Accounting & Tax Pty Ltd (in liq)* [2016] FCA 720; and

h. an amount of $145 for the attendance at Court on 17 June 2016 for 15 minutes.

79. Because the estimated allowable amount exceeds the amount claimed, reasonable allowances have not been made for:

a. skill, care and responsibility;

b. reading or drafting correspondence; and

c. collating documents.

80. The amount claimed of $7,800 is reasonable. Accordingly, pursuant to section 82(4) of the Act, I estimate the value of the claim the subject of claim item A5 to be $7,800.

A6: Order of Justice Gilmore dated 21 August 2017

81. On 21 August 2017, Justice Gilmour made an order in proceeding WAD 674 of 2015 that the applicants (being the Friggers) pay the respondent's costs of the interlocutory application filed on 1 August 2017, to be taxed if not agreed, and paid forthwith (**"Gilmour Order"**).

82. The Liquidator claims $4,000 under the Gilmour Order. The respondent in the proceeding is Mervyn Kitay as liquidator of CAT.

83. The Gilmour Order is a party and party costs order. Party and party costs in the Federal Court are defined as costs "fairly and reasonably incurred" and are governed by the amounts allowed in Schedule 3 to the Rules.

84. The information provided for the costs claimed relating to the Gilmour Order is:

a. the parties attended a hearing for 45 minutes on 21 August 2017; and

b. the claim of $4,000 is for 8.6 hours for a practitioner of more than 10 years' experience at $580 per hour with a 20% discount.

85. It appears from the Court documents that the interlocutory application related to Mr and Mrs Frigger's application filed on 27 July 2017 seeking various orders under the Insolvency Practice Schedule (Corporations).

86. The Court documents relating to that application were:

a. an application seeking 11 Orders consisting of two (2) pages and approximately 747 words; and

b. an Affidavit of Mrs Frigger sworn on 27 July 2017 of 277 pages, 83 paragraphs and 34 attachments.

87. An approximate allowable amount for the following work is estimated at $5,964 made up of:

a. an approximate allowable amount of $174 allowing 18 minutes to read and consider the orders sought in the application;

b. an approximate allowable amount of $5,355 to read each page of the Mrs Frigger's Affidavit based on two (2) minutes per page because many of the documents would likely have been known to the Liquidator's lawyers from previous Court proceedings; and

c. an amount of $435 for attending at Court for the hearing on 21 August 2017.

88. Because the estimated allowable amount exceeds the amount claimed, reasonable allowances have not been made for:

    a. reading and considering the Liquidator's authorities relied on;

    b. skill, care and responsibility; and

    c. reading or drafting correspondence.

89. The amount claimed of $4,000 is reasonable. Accordingly, pursuant to section 82(4) of the Act, I estimate the value of the claim the subject of claim item A6 to be $4,000.

A7: Order of Justice Colvin dated 1 March 2018

90. On 1 March 2018, Colvin J delivered judgment in proceeding WAD 674 of 2015 and made an order that the applicants (being the Friggers) pay the respondent's costs that are costs only of the claim to relief in the original application forthwith, to be taxed if not agreed (**"Colvin March Order"**).

91. The respondent in the proceeding was Mervyn Jonathan Kitay, Liquidator of Computer Accounting & Tax Pty Ltd (In Liquidation).

92. The Liquidator claims $21,500 in respect of the Colvin March Order.

93. The information the Liquidator has provided about the quantum of costs claimed under the Colvin March Order is as follows:

    a. 30 minutes attending a hearing on 13 January 2016;

    b. 30 minutes attending a hearing on 27 September 2017;

    c. One (1) hour attending a hearing on 13 November 2017;

    d. 57 hours is claimed for a senior practitioner at $580 per hour, totaling $33,060;

    e. 12 hours is claimed for a practitioner of less than six (6) years' experience at $250 per hour, totaling $3,000; and

    f. A 40% discount is applied accounting for aspects of the matter relating to the claim for final relief under the original application filed 24 November 2016 (Original Application).

94. I have been provided with the following documents:

    a. a spreadsheet labelled "Annexure MJK1" referring to the amounts claimed;

    b. a copy of the Colvin March Order;

    c. Justice Colvin's Reasons for Decision delivered on 1 March 2018 (**"Reasons"**);

    d. the Court documents in the Proceeding; and

    e. an email from David John dated 10 February 2025 summarising why the Liquidator believes he is entitled to the costs of:

        i. the Friggers' application for leave to amend the Originating Process in terms of the draft Amended Originating Process filed and dated 14 September 2017 (**"Amendment Application"**); and

        ii. hearing on 13 January 2016.

95. The Colvin March Order is a party and party costs order. Party and party costs in the Federal Court are defined as costs "fairly and reasonably incurred" and are governed by the amounts allowed in Schedule 3 (**"Scale"**) to the *Federal Court Rules 2011* (**"Rules"**).

96. The relevant amounts allowed under Schedule 3 of the Rules as of June 2016 include:

    a. $58 for each six (6) minute of attendances (item 1.1);

    b. $52 per 100 words for the preparation of documents (item 2.1);

    c. $22 for the preparation of correspondence of up to 50 words (item 2.2);

    d. $42 for the preparation of correspondence of up to 100 words (item 2.3);

    e. $52 for the preparation of correspondence of more than 100 words (item 2.4);

    f. $58 for each six (6) minutes for reading documents other than correspondence (item 3.1);

    g. $16 for up to 50 words of correspondence (item 3.2);

    h. $32 for up to 100 words of correspondence (item 3.3);

    i. $58 for each six (6) minutes for delegation and supervision (item 4.1);

    j. $58 for appropriate research of a legal question of some complexity that is not procedural in nature (item 5.1);

    k. $11 for collating, paginating and indexing (item 8); and

    l. an additional amount allowed for skill, care and responsibility (item 11).

97. To determine what is meant by the Colvin March Order consideration must be had to:

    a. the Orders of Justice Gilmour made on 5 December 2017 which required the parties to file written submissions about the appropriate costs order about the Orders that:

        i. Order 2 of the Orders made by Barker J on 4 April 2016 (stay order) be set aside; and

        ii. Amendment Application;

    b. the Liquidator's Submissions on Costs filed on 12 December 2017 seeking an order that Mr and Mrs Frigger pay the costs of the proceedings up to and including 4 April 2016, to be taxed if not agreed, forthwith; and

    c. the Reasons. The Reasons state:

        i. "Mr and Mrs Frigger submit that the only order that should be made is an order for costs thrown away because of the amendment" (at [8]);

        ii. on behalf of Mr Kitay, "it is submitted that the liquidator is entitled to an order that the plaintiffs do pay his costs up to and including 4 April 2016 to be taxed if no agreed and to be paid forthwith (that is to say the assessment and payment of the costs should not abide the outcome in these proceedings)" (at [9]);

        iii. "I uphold the submissions for Mr Kitay that the amendment involves a complete abandonment of the whole case as previously advanced. Therefore, it is

appropriate for those costs to be paid forthwith and if necessary for them to be taxed" (at [12]);

iv. "The amendment involves a complete abandonment of the whole case as previously advanced. Therefore, it is appropriate for those costs to be paid forthwith and if necessary for them to be taxed. There is no sense in which those costs should abide the event. The case as originally formulated is no longer pursued. The amended application is an entirely new claim. Allowing the new case to proceed by way of amendment is procedurally convenient, but should not affect the usual approach to costs where a party withdraws a claim. However, I am not prepared to find that none of the costs before 4 April 2016 related to consideration of allegations of misconduct which Mr and Mrs Frigger now seek to pursue"; and

v. "It will be for the taxing officer to consider which costs are only costs of the claim (now not pursued) that the liquidation should be brought to an end" (at [12]).

Hearing on 13 January 2016 – Amount: $870

98. The Liquidator claims 30 minutes for attending a hearing on 13 January 2016 (**"13 January Hearing"**).

99. At the 13 January Hearing, the Court ordered, amongst other things, that:

a. the Liquidator file and serve an application for summary judgment by 20 January 2016; and

b. costs of today be reserved.

100. Under Rule 40.03 of the *Federal Court Rules 2011* if costs are reserved and no further order is made, costs follow the event.

101. It is apparent from the Court's Orders made on 4 April 2016 that:

a. the hearing of the application for summary judgment listed for 5 April 2016 did not proceed; and

b. Mr and Mrs Frigger sought orders in the Amendment Application to amend their Originating Process, the subject of the Orders of Justice Gilmour made on 5 December 2017.

102. I consider the Liquidator is entitled to his costs of the 13 January Hearing consider Justice Colvin's Reasons and the Liquidator's costs incurred in the summary judgment application are:

a. "costs only of the claim to relief in the original application'; or

b. the Colvin March Order is a "further order" for the purposes of Rule 40.03 of the *Federal Court Rules 2011*.

103. In the circumstances, it is likely that:

a. considering the nature of the relief sought in the proceedings and the complexity of some of the issues, it is reasonable for a senior practitioner to attend at the 13 January Hearing;

b. an allowance of $290 for an attendance is reasonable for that senior practitioner;

c. the senior practitioner would have prepared for the 13 January Hearing. Based on a hearing time of 30 minutes, one (1) hour is likely reasonable for a senior practitioner to prepare for the 13 January Hearing; and

d. an allowance of $870 is reasonable, being 1.5 hours at $580 each hour.

Hearing on 27 September 2017 – Amount: $3,045

104. The Liquidator claims 30 minutes for attending a hearing on 27 September 2017 (**"27 September Hearing"**).

105. The Court's order made on 27 September 2017 refers to the adjournment of:

a. the plaintiffs' interlocutory application filed on 18 September 2017; and

b. the liquidator's application filed on 22 September 2017 (**"Security for Cost Application"**).

106. It appears from the Court documents provided that the application relates to the Amendment Application seeking Orders:

a. setting aside Consent Orders made on 4 April 2016;

b. amending the originating application in the form of the filed amended originating application; and

c. restraining Mr Kitay from continuing to conduct the liquidation of CAT.

107. Based on the information provided, it appears that the 30 minutes claimed might have related to both the Amendment Application and the Liquidator's security for costs application, in which case the costs of attendance on 27 September 2017 of $290 should be divided by 50% to be $145.

108. Filed before the 27 September Hearing was the:

a. Amendment Application of one (1) page seeking four (4) Orders;

b. Amended Originating Process of three (3) pages;

c. Genuine Steps Statement of three (3) pages;

d. non-prescribed certificate dated 15 September 2017 of one (1) page;

e. Affidavit of Mrs Frigger dated 14 September 2017 of 212 pages, 44 paragraphs and containing 25 attachments;

f. Applicant's Schedule of Prima Facie Contraventions filed on 22 September 2017 of 10 pages; and

g. Affidavit of Mrs Frigger dated 25 September 2017 of eight (8) pages, 15 paragraphs and containing one (1) attachment.

109. It is reasonable for:

a. the above documents to be reviewed and considered before and in preparation for the 27 September Hearing, to allow a proper analysis of the issues raised in the Amendment Application; and

b. considering the nature of the relief sought in the proceedings and the complexity of some of the issues, it is reasonable for a senior practitioner to undertake that review.

110. Based on the Scale, the Liquidator could have incurred costs of $2,900 or more made up of:

a. an approximate amount of $116 based on approximately 12 minutes to read and consider the September Application;

b. an approximate amount of $290 based on approximately 30 minutes to read and consider the Friggers' proposed Amended Originating Process;

c. an approximate amount of $174 based on approximately 18 minutes to read and consider the Genuine Steps Statement;

d. an approximate amount of $1,276 based on approximately 132 minutes to read and consider Mrs Frigger's Affidavit dated 14 September 2017;

e. an approximate amount of $58 based on approximately six (6) minutes to read and consider the non-prescribed certificate;

f. an approximate amount of $580 based on approximately 60 minutes to read and consider the Schedule of Contraventions; and

g. an approximate amount of $406 based on approximately 42 minutes to read and consider Mrs Frigger's Affidavit dated 25 September 2024.

111. It is assumed that the costs outlined in above paragraph 110 might fit within the ambit of the 57 hours claimed for a senior practitioner in dot point four in item c) of the spreadsheet labelled "Annexure MJK1" and/or dot point five.

112. In those circumstances, it is reasonable for the Liquidator to claim an approximate amount of costs of $3,045 (being the total of paragraphs 107 and 110) for a senior practitioner to prepare for and attend at the 27 September Hearing.

Hearing on 13 November 2017 – Amount: $7,767.56

113. The Liquidator claims $580 for a 1-hour attendance at the hearing on 13 November 2017 (**"13 November Hearing"**).

114. The Colvin March Order is silent about who is to pay the costs of the Amendment Application, including the 13 November Hearing, as are each of the parties' Submissions on Costs filed 12 December 2017.

115. The Orders of Justice Gilmore made on 13 November 2017:

a. require the Liquidator to provide to Mr and Mrs Frigger a minute of proposed consent orders covering various questions including:

i. the setting aside of the consent orders made by Justice Barker on 4 April 2016;

ii. the proposed amendments to the originating process;

iii. pre-hearing directions;

iv. security for costs; and

b. parties to confer about the proposed orders; and

c. reserve the costs of the 13 November Hearing.

116. Under Rule 40.03 of the *Federal Court Rules 2011* if costs are reserved and no further order is made, costs follow the event.

117. However, where a party to the proceedings is seeking an indulgence of the Court, it is usual that the party seeking the indulgence pay the other party's costs of the application, unless a party has acted unreasonably in no consenting to the application for an indulgence.[4]

118. The Liquidator should be entitled to his costs of the 13 November Hearing consider Justice Colvin's Reasons and the Liquidator's costs incurred in the 13 November Hearing are:

a. "costs only of the claim to relief in the original application"; or

b. The Colvin March Order is a "further order" for the purposes of Rule 40.03 of the *Federal Court Rules 2011*.

119. Further, the Liquidator should be entitled to his costs of the appearance on 13 November 2017 as part of the Amendment Application considering the principle above referred to regarding seeking an indulgence of the Court particularly where the Liquidator did not unreasonably refuse his consent to the indulgence.

120. It is not apparent that the one (1) hour claimed includes preparation for and attendance at the 13 November Hearing or what portion of the hearing related to the Security for Costs Application. Therefore, considering that the Orders related to 4 items of conferral, it appears reasonable:

a. for a senior practitioner to attend the 13 November Hearing considering the nature of the relief sought in the proceedings and the complexity of some of the issues; and

b. for an allowance of $435, being 75% of the amount claimed, to be made for the attendance at the 13 November Hearing.

121. The following documents were filed before the 13 November Hearing:

a. Affidavit of Mrs Frigger dated 3 November 2017 of 177 pages, 18 paragraphs and eight (8) attachments;

b. Affidavit of Mrs Frigger dated 5 November 2017 of 140 pages, 23 paragraphs and three (3) attachments;

c. the Friggers' Submissions on the Liquidator's Contraventions dated 5 November 2017 of three (3) pages referring to 14 authorities and approximately 42 pages of case law available to me;

---

[4] *Khoury v Sidhu* [2011] FCA 857, [31] and [32]

d. the Friggers' Submissions on the Threshold Question dated 6 November 2017 of four (4) pages referring to six (6) case law authorities and approximately 19 pages of case law available to me;

e. the Liquidator's Submissions dated 10 November 2017 of six (6) pages and approximately 2,214 words;

f. the Liquidator's List of Authorities dated 10 November 2017 referring to five (5) case law authorities and approximately two (2) pages of case law available to me;

g. the Affidavit of David John sworn on 8 November 2017 of 25 pages, five (5) paragraphs, four (4) attachments and approximately 1,039 words; and

h. the Affidavit of Mrs Frigger dated 10 November 2017 of three (3) pages and 11 paragraphs.

122. Based on the Scale, the Liquidator could have incurred costs of the 13 November Hearing of $7,332.56 or more made up of:

a. an approximate amount of $783 based on approximately 81 minutes to read and consider the Affidavit of Mrs Frigger dated 3 November 2017 of 177 pages;

b. an approximate amount of $696 based on approximately 72 minutes to read and consider the Affidavit of Mrs Frigger dated 3 November 2017 of 141 pages;

c. an approximate amount of $638 based on approximately 66 minutes to read and consider the Friggers' Submissions;

d. an approximate amount of $1,914 based on approximately 198 minutes to read and consider the Friggers' case law authorities relied on;

e. an approximate amount of $1,151.28 prepare the Liquidator's Submissions dated 10 November 2017;

f. an approximate amount of $1,334 based on approximately 138 minutes to read and consider the case law authorities relied on in the Liquidator's Submissions;

g. an approximate amount of $584.28 to prepare the Affidavit of David Johns dated 8 November 2017 and collate the attachments; and

h. an approximate allowable amount of $232 based on approximately 24 minutes to read and consider the Affidavit of Mrs Frigger dated 10 November 2017 of 3 pages.

123. It is assumed that the costs outlined in above paragraph 122 whilst not expressly claimed might fit within the ambit of the 57 hours claimed for a senior practitioner in dot point four in item c) of the spreadsheet labelled "Annexure MJK1" and/or dot point five.

124. Considering the above, a reasonable amount for the above-described work would be approximately $7,767.56 (being the totals of paragraphs 120 and 123) for a senior practitioner to prepare for and attend at the 13 November Hearing.

Costs of the Application for Costs of the Amendment Application - $1,065.48

125. On 5 December 2017 Justice Gilmore ordered that the parties file written submissions in support of the appropriate costs order considering that:

a. the Order of Justice Barker made on 4 April 2016 was set aside; and

b. the Friggers obtained leave to file their Amended Originating Process.

126. Filed in support of the argument as to costs and additional programming orders were:

a. the Friggers' Submissions on Costs filed 12 December 2017 of three (3) pages of approximately 830 words relating to the question of costs and referring to one (1) authority; and

b. the Liquidator's Submissions on Costs dated 12 December 2017 of approximately 599 words relevant to the submissions on costs.

127. Based on the Scale, the Liquidator could have incurred costs about the argument as to costs of approximately $1,065.48 or more, made up of:

a. an approximately amount of $522 based on approximately 54 minutes to read and consider the Friggers' Submissions and case law authority;

b. an approximate amount of $311,48 to prepare the Liquidator's Submissions on Costs; and

c. an approximately amount of $232 based on 24 minutes to read and consider the Reasons and Orders.

128. Considering the nature of the relief sought in the proceedings and the complexity of some of the issues, it is reasonable for a senior practitioner to undertake the above work.

129. It is assumed that the costs outlined in above paragraph 41 whilst not expressly claimed might fit within the ambit of the 57 hours claimed for a senior practitioner in dot point four in item c) of the spreadsheet labelled "Annexure MJK1" and/or dot point five.

130. In the circumstances, I consider that $1,065.48 for a senior practitioner is a reasonable amount for the above-described work.

Additional Costs Likely Arising from Costs of the Claim to relief in the Original Application - $8,269.78

131. In addition to the above-outlined documents, the following documents were filed in the proceedings which appear, based on the Court documents, to relate to the claim made in the Original Application and be subject to the Colvin March Order:

a. Originating Application seeking two (2) orders;

b. Affidavit of Mrs Frigger dated 18 November 2015 in support of the Originating Application of 243 pages, 49 paragraphs and 18 attachments;

c. Affidavit of Mrs Frigger dated 21 December 2015 of three (3) pages, eight (8) paragraphs and one (1) attachment;

d. Affidavit of Mrs Frigger dated 11 January 2016 of 63 pages, 19 paragraphs and nine (9) attachments;

e. the Liquidator's Submissions dated 12 January 2016 in support of the application for the proceedings to be dismissed of 2,024 words, six (6) pages and referring to approximately 10 case law authorities of approximately 127 pages;

f. Interlocutory Application dated 20 January 2016 seeking six (6) Orders of approximately 446 words;

g. Affidavit of Michelle Guy dated 20 January 2016 of approximately 4,527 words, 80 pages, 32 paragraphs and 15 attachments;

h. Affidavit of Mervyn Kitay dated 20 January 2016 of approximately 2,676 words, 113 pages, 14 paragraphs and nine (9) attachments;

i. Affidavit of Mrs Frigger sworn on 15 March 2016 of 44 pages, 67 paragraphs and 10 attachments;

j. Affidavit of Mrs Frigger sworn on 23 March 2016 of four (4) pages, 11 paragraphs and two (2) attachments; and

k. the Friggers' Submissions dated 4 April 2016 of 10 pages referring to three (3) case law authorities of approximately 26 pages.

132. Based on the Scale, the Liquidator could have incurred costs of $13,782.96 or more made up of:

a. an approximate amount of $174 based on approximately 18 minutes to review and consider the Originating Process and relevant law;

b. an approximate amount of $116 based on approximately 12 minutes to review and consider the Court's Orders made on 20 January and 4 April 2016;

c. an approximate amount of $986 based on approximately 102 minutes to review and consider the Affidavit of Mrs Frigger sworn on 18 November 2015;

d. an approximate amount of $58 based on approximately six (6) minutes to review and consider the Affidavit of Mrs Frigger sworn on 21 December 2015;

e. an approximate amount of $464 based on approximately 48 minutes to review and consider the Affidavit of Mrs Frigger dated 11 January 2016;

f. an approximate amount of $1,052.48 to prepare the Liquidator's Submissions in support of the application for the proceedings to be dismissed of 2,024 words;

g. an approximate amount of $3,683 in reading approximately 127 pages of case law authorities referred to in the Liquidator's Submissions;

h. an approximate amount of $231.92 for preparation of the Liquidator's Interlocutory Application dated 20 January 2016 seeking six (6) Orders;

i. an approximate amount of $2,464.04 for:

    i. $2,354.04 preparation of the Affidavit of Michelle Guy dated 20 January 2016; and

    ii. $110 for collating the attachments to the Affidavit;

j. an approximate amount of $1,479.52 for:

    i. $1,391.52 for preparation of the Affidavit of Mervyn Kitay dated 20 January 2016; and

    ii. $88 for collating the attachments to the Affidavit;

k. an approximate amount of $696 is approximately 72 minutes to review and consider the Affidavit of Mrs Frigger dated 15 March 2016;

l. an approximate amount of $174 is 15 minutes to review and consider the Affidavit of Mrs Frigger dated 23 March 2016; and

m. an approximate amount of $2,204 being approximately 228 minutes to review and consider the Friggers' Submissions dated 4 April 2016 and case law authorities.

133. It is assumed that the costs outlined in paragraph 132 above are within the ambit of the 57 hours claimed for a senior practitioner in dot point four in item c) of the spreadsheet labelled "Annexure MJK1" and/or dot point five.

134. Assuming that the Liquidator's proposed deduction of 40% relates to the legal work completed on the Liquidator's behalf that did not relate to the originating claim only, then $13,782.96 reduced by 40%, being $5,513.18, is $8,269.78.

135. Based on that assumption it is reasonable:

a. Considering the nature of the relief sought in the proceedings and the complexity of some of the issues, for a senior practitioner to undertake or be involved in the completion of the majority of the work referred to above; and

b. That approximately $8,269.78 be allowed for the work outlined in paragraph 132 above.

136. Accordingly, I consider the amounts referred to in paragraphs 103, 112, 124, 130 and 135 are reasonable for the work completed on the Liquidator's behalf and the subject of the Colvin March Order, totalling $21,017.82.

137. In addition, reasonable allowances could also be made for:

a. the work undertaken by the practitioner of less than 6 years' experience for 12 hours;

b. other teamwork;

c. delegation and supervision;

d. skill, care and responsibility; and

e. reading and/or drafting correspondence.

138. No allowances have been made for the items outlined in paragraph 137 above. Reasonable amounts for those items would likely far exceed the difference between the amount the Liquidator claims of $21,500 and $21,017.82, of $482.18.

139. The amount of costs claimed by the Liquidator of $21,500 appears reasonable. Accordingly, pursuant to section 82(4) of the Act, I estimate the value of the claim the subject of claim item A7 to be $21,500.

A8: Order of Justice Colvin dated 7 May 2018

140. On 7 May 2018, Justice Colvin made an order in proceeding WAD 674 of 2015 that the plaintiffs (being the Friggers) pay security for costs by 21 May 2018 (**"Colvin May Order"**).

141. Under Rule 40.04 of the Rules, if no order for costs is made on an interlocutory application or hearing, the costs of the application or hearing follow the event. Rule 40.13 of the Rules as above referred to applies.

142. The information provided for the costs claimed relating to the security for costs application is:

a. the parties attended a hearing for 2.5 hours;

b. the claim of $18,000 is for:

i. 27 hours for a practitioner of more than 10 years' experience at $580 per hour; and

ii. 18 hours for a practitioner of between six (6) to 10 years' experience at $370 per hour,

with a 20% discount.

143. The Court documents filed in the application for security for costs were:

a. an interlocutory application for security for costs of approximately 394 words;

b. an amended interlocutory application for security for costs with an additional 23 words;

c. an Affidavit of David Johns sworn on 22 September 2017 of approximately 916 words, three (3) attachments, totalling 12 pages;

d. an Affidavit of Michelle Shepard sworn on 22 December 2017 of approximately 5,504 words, 21 attachments, totaling 161 pages;

e. the Friggers' Outline of Submissions dated 21 January 2018 of three (3) pages;

f. an Affidavit of Mrs Frigger sworn on:

i. 19 January 2018 of 116 pages, 16 paragraphs and 21 attachments; and

ii. 25 January 2018 of 82 pages, 39 paragraphs and 15 attachments;

g. an Affidavit of Michelle Shepard sworn on 20 February 2018 of approximately 908 words, two (2) attachments, totalling 44 pages;

h. the Liquidator's:

i. Outline of Submissions dated 20 February 2018 of approximately 2,086 words; and

ii. List of Authorities of approximately 63 words;

i. Mr and Mrs Frigger's Outline of Submissions dated 9 March 2018;

i. of nine (9) pages; and

ii. referring to seven (7) cases of approximately 57 pages;

j. Affidavit of Mrs Frigger of 9 March 2018 of 76 pages, 12 paragraphs and 5 attachments;

k. the Friggers' Supplementary Submissions dated 2 May 2018 of four (4) pages;

l. Affidavit of Mrs Frigger of 30 April 2018 of six (6) pages, eight (8) paragraphs and four (4) attachments; and

m. Affidavit of Matthew Di Maco sworn on 30 April 2018 of approximately 906 words and four (4) attachments.

144. An approximately allowable amount for the following work is estimated at $15,834.13 made up of:

a. an approximate amount allowable of $204.88 to prepare the interlocutory application;

b. an approximate amount allowable of $11.96 to prepare the amended interlocutory application;

c. an approximate allowable amount of $955, being:

i. $916 to prepare the Affidavit of David John; and

ii. $39 to collate the attachments to that Affidavit;

d. an approximate allowable amount of $2,992.08, being:

i. $2, 862.08 to prepare the Affidavit of Michelle Shepard sworn on 22 December 2017; and

ii. $130 to collate the attachments to that Affidavit;

e. an approximate allowable amount of $232 based on approximately 24 minutes to read the Friggers' Outline of Submissions dated 21 January 2018;

f. an approximate allowable amount of $534.89 to read and consider the Affidavit of Mrs Frigger sworn on 19 January 2018 based on approximately 18 minutes to read the body of the Affidavit and 37 minutes to read the attachments;

g. an approximate allowable amount of $638 to read and consider the Affidavit of Mrs Frigger sworn on 25 January 2018 based on approximately 48 minutes to read the body of the Affidavit and 18 minutes to read the attachments to that affidavit;

h. an approximate allowable amount of $511.16, being:

i. $472.16 to prepare the Affidavit of Michelle Shepard sworn on 20 February 2018; and

ii. $39 to collate the attachments to the that Affidavit;

i. an approximate amount allowable of $2,045.48, being:

i. $1,084.72 to prepare the Outline of Submissions in support of the security for costs application;

ii. $32.76 to prepare the List of Authorities; and

iii. $928 relating to cases researched not related to previous proceedings between the parties;

j. an approximately amount allowable of $3,770, being:

i. $464 to read and consider Mr and Mrs Frigger's Outline of Submissions dated 9 March 2018; and

ii. $3,306 to read and consider the case law authorities Mr and Mrs Frigger rely on in their Outline of Submissions;

k. an approximate allowable amount of $515.56 to read and consider the Affidavit of Mrs Frigger sworn on 9 March 2018 based on approximately 30 minutes to read the body of the Affidavit and 23 minutes to read the attachments to that Affidavit;

l. an approximate allowable amount of $348 to read and consider the Affidavit of Mrs Frigger of 30 April 2018 based on approximately 18 minutes to read the body of the Affidavit and 18 minutes to read the attachments to that Affidavit;

m. an approximate allowable amount of $523.12, being:

   i. $471.12 to prepare the Affidavit of Matthew Di Marco sworn on 30 April 2018; and

   ii. $52 to collate the attachments to the that Affidavit;

n. an approximate allowable amount of $290 to read and consider Mr and Mrs Frigger's Supplementary Submissions dated 2 May 2018;

o. an amount of $145 for the attendance at Court on 27 September 2017;

p. an amount of $1,450 for the attendance at Court on 1 May 2018 for 2.5 hours; and

q. an approximate allowable amount of $667 to read the Reasons for Decision in *Kitay, in the matter of Computer Accounting & Tax Pty Ltd (in liq) (No 2)* [2018] FCA 612.

145. In addition to the above, additional reasonable amounts could be allowed for:

a. reading or drafting correspondence to and from Mr and Mrs Frigger and/or the Court of up to $840 for 2,000 words under items 3.2 or 3.3 of the Federal Court Scale;

b. delegation and supervision of the practitioner with six (6) to 10 years' experience of nine (9) hours of $522 because it is likely appropriate for more than one (1) lawyer to be involved in the conduct of the matter; and

c. considering the number and importance of the documents prepared and read, regardless of length of the documents, up to five (5) hours at $580 per hour, of $2,900 particularly given the nature of the Proceedings and seriousness of the allegations of misconduct against the Liquidator; and

d. the general care and conduct by the senior practitioner with the conduct of the matter having regard to the seriousness of the allegations of misconduct against the Liquidator of 10% of $15,834.13 as above referred to in paragraph 26, being $1,583.41.

146. The amounts referred to in paragraphs 144 and 145 total $21,679.54. In those circumstances, the amount claimed of $18,000 is reasonable.

147. Accordingly, pursuant to section 82(4) of the Act, I estimate the value of the claim the subject of claim item A8 to be $18,000.

A9: Order of Deputy District Registrar Trott dated 28 February 2017

148. On 28 February 2017, Deputy District Registrar Trott made an order in proceeding WAD 428 of 2016 that the applicants (being the Friggers) pay the respondents' costs, to be taxed if not agreed (**"Trott Order"**). The respondents in the proceeding were Mervyn Jonathan Kitay as liquidator of CAT and CAT (In Liquidation).

149. I have been provided with the following documents:

a. a spreadsheet labelled "Annexure MJK1" referring to the amounts claimed for item A9;

b. a copy of the Trott Order;

c. relevant Court documents in proceeding WAD 428 of 2016.

150. The Trott Order is a party and party costs order. Party and party costs in the Federal Court are defined as costs "fairly and reasonably incurred" and are governed by the amounts allowed in Schedule 3 to the Rules.

151. The relevant amounts allowed under Schedule 3 of the Rules as of February 2017 include:

a. $58 for each six (6) minutes for attendances (item 1.1);

b. $52 per 100 words for the preparation of documents (item 2.1);

c. $58 for each six (6) minutes for reading documents other than correspondence (item 3.1);

d. $21 for up to 50 words of correspondence (item 3.2);

e. $42 for up to 100 words of correspondence (item 3.3);

f. $58 for each six (6) minutes for delegation and supervision (item 4.1);

g. $58 for appropriate research of a legal question of some complexity that is not procedural in nature (item 5.1); and

h. an additional amount allowed for skill, care and responsibility (item 11).

152. The information provided for the costs claimed relating to the Trott Order is:

a. the hearing in the matter was 3.5 hours plus a 30-minute hearing for the delivery of judgment; and

b. the claim is for:

i. 34 hours for a practitioner of more than 10 years' experience at $580 per hour with a 20% discount;

ii. Three (3) hours for a practitioner of between six (6) and 10 years' experience at $370 per hour with a 20% discount; and

iii. 20 hours for a practitioner of less than six (6) years' experience at $250 per hour with a 20% discount.

153. The Trott Order relates to the hearing of the Friggers' application to set aside Bankruptcy Notice BN 196967 issued on 29 August 2016. The Court documents filed in the application were:

a. an originating application seeking two orders consisting of one (1) page;

b. an Affidavit of Mrs Frigger sworn on 19 September 2016 of 13 pages, five (5) paragraphs and four (4) attachments;

c. an Affidavit of Mrs Frigger sworn on 3 October 2016 of 15 pages, 14 paragraphs and five (5) attachments;

d. an Affidavit of Michelle Shepard sworn on 11 October 2016 of approximately 1,247 words, three (3) attachments, totalling 125 pages;

e. Mr and Mrs Frigger's Outline of Submissions filed on 8 November 2016 of six (6) pages:

    i. relying on three (3) grounds to set aside the Bankruptcy Notice; and

    ii. 15 cases, totalling at least 170 pages;

f. an Affidavit of Mrs Frigger filed on 8 November 2016 of 42 pages, 13 paragraphs and two (2) attachments;

g. an Affidavit of Michelle Shepard filed on 21 November 2016 of approximately 1,296 words, three (3) attachments, totalling 18 pages;

h. the Liquidator's Outline of Submissions:

    i. of approximately 2,905 words; and

    ii. referring to 12 cases of at least 80 pages;

i. an Affidavit of Mrs Frigger filed on 6 December 2016 of 18 pages, 10 paragraphs and two (2) attachments; and

j. an Affidavit of Mrs Frigger filed on 6 February 2017 of 20 pages, 47 paragraphs and two (2) attachments.

154. An approximate allowable amount for the following work is estimated at $21,608.65 made up of:

a. an approximate allowable amount of $58 to review and consider the originating application;

b. an approximate allowable amount of $116 to read and consider the body of Mrs Frigger's Affidavit sworn on 19 September 2016 estimated at six (6) minutes and six (6) minutes to read the attachments;

c. an approximate allowable amount of $193.33 to read and consider the body of Mrs Frigger's Affidavit sworn on 3 October 2016 estimated at 12 minutes and eight (8) minutes to read the attachments;

d. an approximate allowable amount of $778.44:

    i. $648.44 for the preparation of the Affidavit of Ms Shepard sworn on 11 October 2016 of approximately 1,247 words; and

    ii. $130 for collating the attachments to that Affidavit;

e. an approximate allowable amount of $10,150, being:

    i. $290 to read the Outline of Submissions; and

    ii. $9,860 to read 15 cases, totalling at least 170 pages at six (6) minutes each page;

f. an approximate allowable amount of $444.66 to read and consider the body of Mrs Frigger's Affidavit filed on 8 November 2016 estimated at 30 minutes and 16 minutes to read the attachments;

g. an approximate allowable amount of $778.44, being:

    i. $648.44 for the preparation of the Affidavit of Ms Shepard sworn on 21 November 2016 of approximately 1,296 words; and

ii. $130 for collating the attachments to that Affidavit;

h. an approximate allowable amount of $6,151.12, being:

i. $1,511.12 to prepare the Liquidator's Outline of Submissions; and

ii. $4,640 in reading 12 cases of at least 80 pages;

i. an approximate allowable amount of $618.66 to read and consider the body of Mrs Frigger's Affidavit filed on 6 December 2016 estimated at 60 minutes and four (4) minutes to read the attachments;

j. an amount of $2,030 for the attendance at Court on 1 February 2017 for 3.5 hours; and

k. an amount of $290 for the attendance at Court on 28 February 2017 for 30 minutes

155. Because the estimated allowable amount exceeds the amount claimed, reasonable allowances, which would usually be made, have not been made for:

a. skill, care and responsibility;

b. reading or drafting correspondence; and

c. delegation and supervision.

156. The amount claimed of $20,000 appears reasonable. Accordingly, pursuant to section 82(4) of the Act, I estimate the value of the claim the subject of claim item A9 to be $20,000.

A10: Order of Justice Siopsis dated 1 November 2017

157. On 1 November 2017, Siopsis J made an order that the applicant's pay the respondents' costs associated with the:

a. the applicant's application for review of Deputy District Registrar Trott's decision of 28 February 2016; and

b. the applicants' application filed 20 September 2016 to set aside the bankruptcy notice of 29 August 2016,

(**"Siopsis Order"**).

158. The information provided for the costs claimed relating to the Siopsis Order is:

a. the parties attended a hearing for 2.5 hours on 15 June 2017;

b. the parties attended the judgment hearing for 10 minutes on 1 November 2017; and

c. the claim is fore:

i. 21 hours for a practitioner of more than 10 years' experience at $580 per hour with a 20% discount; and

ii. Nine (9) hours for a practitioner of less than six (6) years' experience at $250 per hour with a 20% discount.

159. The hearing on 15 June 2017 related to the Friggers' application to review Deputy Registrar Trott's decision made by the Trott Orders.'

160. The Court documents relating to that application were:

a. an application for review consisting of two (2) pages seeking four (4) orders;

b. Mr and Mrs Frigger's Submissions filed on 6 April 2017 of seven (7) pages referring to seven (7) case law authorities totalling at least 104 pages;

c. the Liquidator's Outline of Submissions of 3,647 words referring to 17 cases most of which were referred to in the Outline of Submissions before Deputy Registrar Trott; and

d. an Affidavit of David Johns sworn on 15 June 2017 of 1,317 words, four (4) paragraphs and five (5) attachments.

161. An approximate allowable amount for the following work is estimated at $14,390.88 made up of:

a. an approximate allowable amount of $58 allowing six (6) minutes to read and consider the orders sought in the application for review;

b. an approximate allowable amount of $6,612, being:

i. $580 to read and consider Mr and Mrs Frigger's Submissions filed on 6 April 2017; and

ii. $6,032 to read and consider the cases relied on in the Submissions not previously relied on by the other parties;

c. an approximate allowable amount of $4,216.44, being:

i. $1,896.44 to prepare the Liquidator's Outline of Submissions; and

ii. $2,320 in reading the cases previously relied on before Deputy Registrar Trott

d. an approximate allowable amount of $778.44 of:

i. $648.44 for the preparation of the Affidavit of Mr John; and

ii. $130 for collating the attachments to that Affidavit;

e. an amount of $1,450 for the attendance at Court on 14 June 2017 for 2.5 hours;

f. an approximate allowable amount of $1,160 for reading and considering the Reasons for Decision in *Frigger v Kitay* [2017] FCA 1278; and

g. an amount of $116 for the attendance at Court on 1 November 2017 for 10 minutes.

162. Because the estimated allowable amount exceeds the amount claimed, reasonable allowances, which would usually be made, have not been made for:

a. reading and considering the Liquidator's authorities relied on;

b. skill, care and responsibility; and

c. reading or drafting correspondence.

163. The amount claimed of $11,200 appears reasonable. Accordingly, pursuant to section 82(4) of the Act, I estimate the value of the claim the subject of claim item A10 to be $11,200.

A11: Order of Justice Colvin dated 20 July 2018

164. On 8 August 2025, the Federal Court issued a Certificate of Taxation in respect of the costs claimed pursuant to the Order of Justice Colvin made on 20 July 2018. In the Certificate of Taxation the Registrar certified that pursuant to rule 40.20 of the Federal Court Rules, the

Liquidator's costs as between the Liquidator and the Respondents (being the Friggers) were deemed to be $46,245.

165. Accordingly, pursuant to section 102(1)(a) of the Act, I admit the debt the subject of claim item A11 in the amount of $46,245.

A12: Order or Jackson J in WAD 40 of 2021

166. On 6 May 2021, Justice Jackson made the following order (**"Order"**):

> *"The applicants' costs of this application are costs, jointly and severally, in and are to be paid from the bankrupt estates of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger and are to be assessed".*

167. Proceeding WAD 40 of 2021 involved an application for leave under section 58(3) of the *Bankruptcy Act 1966* (Cth) to take further steps in the prosecution of a counterclaim against two bankrupt persons in an action in the Supreme Court of Western Australia.

168. The parties to the proceeding were:

a. Mervyn Kitay in his capacity as liquidator of CAT, as First Applicant;

b. CAT, as Second Applicant;

c. Myself as Trustee of the property of the Angela Frigger, as First Respondent, and as Trustee of the property of Hartmut Frigger, as Second Respondent;

d. Mrs Frigger, as Third Respondent; and

e. Mr Frigger, as Fourth Respondent.

169. The Liquidator claims $36,000 under the Order.

170. For this claim, I was provided with and have reviewed the following documents:

a. a spreadsheet labelled "Annexure MJK1" referring to the $36,000 claimed by the Liquidator under the Orders;

b. a copy of the Order;

c. the Affidavit of David Lenhoff sworn on 8 July 2021 (**"Lenhoff Affidavit"**) enclosing a draft Bill of Costs (**"Draft Bill"**), and tax invoices for disbursements including an Application filing fee, process server's fees and Counsel's fees (dated 21 June 2021);

d. relevant Court documents in the proceeding.

171. Each of the Orders are party and party costs orders. Party and party costs in the Federal Court are defined as costs "fairly and reasonably incurred"[5] and are governed by the amounts allowed in Schedule 3 to the *Federal Court Rules 2011* (Cth) (**"FC Rules"**).

172. To determine what costs have been "fairly and reasonably incurred" requires consideration of:[6]

---

[5] FC Rule, 40.01.
[6] *Innes v AAL Aviation Limited (No 2)* [2018] FCAFC 130, [37], [39] and [42].

a. the nature and complexity of the litigation, including whether a fresh analysis of the issues, law or evidence was required or where the subject matter required specialist knowledge;

b. the conduct of the parties in the litigation, including whether a deduction should be made for costs of an unreasonable amount or that have been unreasonably incurred;[7]

c. the requirements of the Court;

d. proportionality; and

e. the Court documents including cost orders and any reasons for the decision.[8]

173. Appropriate adjustments to costs claimed might also be required considering:[9]

a. any expedited nature of the proceedings;

b. the team involved in the work completed and whether there has likely been any duplication of work;

c. any administrative tasks undertaken and charged for at practitioner hourly rates instead of lesser rates; and

d. whether an allowance should be made for skill, care and responsibility considering:

i. the complexity of the matter;

ii. the difficulty or novelty of the questions involved in the matter;

iii. the skill, specialised knowledge and responsibility involved and the time and labour expended by the lawyer;

iv. the number and importance of the documents prepared and read, regardless of their length;

v. the amount or value of money or property involved;

vi. research and consideration of questions of law and fact;

vii. the general care and conduct of the lawyer, having regard to the lawyer's instructions and all relevant circumstances;

viii. the time within which the work was required to be done; and

ix. any other relevant matter.

174. Costs that are not allowed are costs that have been incurred or increased through impropriety, unreasonableness or negligence, overcaution or other unnecessary expenses (FC Rules, 40.30).

175. The relevant amounts allowed under Schedule 3 of the FC Rules as of February 2021 (**"FC 2021 Scale"**) include:

---

[7] *LLC BryanskAgrostroy v Mackies Asia Pacific Pty Limited* (No 2) [2021] FCA 1419 which refers to 15%.
[8] Federal Court Costs Practice Note (GPN-COSTS).
[9] *Sharif v Vitruvian Investments Pty Ltd* (No 5) [2024] FCA 134.

a. $65 for each six (6) minutes for attendances (item 1.1);

b. $59 per 100 words for the preparation of documents (item 2.1);

c. $24 for preparing up to 50 words of correspondence (item 2.2);

d. $48 for preparing up to 100 words of correspondence (item 2.3);

e. $59 for preparing correspondence over 100 words (item 2.4);

f. $65 for each six (6) minutes for reading documents other than correspondence (item 3.1);

g. $18 for reading up to 50 words of correspondence (item 3.2);

h. $36 for reading up to 100 words of correspondence (item 3.3);

i. $65 for appropriate research of legal questions of some complexity that are not procedural in nature (item 5.1);

j. $11 for collating and paginating documents (item 8.1);

k. copying at the taxing officer's discretion (item 9.1);

l. $119 for personal service (item 10.1); and

m. an additional amount allowed for skill, care and responsibility (item 11).

176. Counsel's fees are allowed in accordance with the Federal Court's National Guide to Counsel Fees.

177. The Draft Bill dated 8 July 2021 claims costs amounting to $36,241.56.

178. It is difficult to assess whether the costs claimed in the Draft Bill are "fairly and reasonably incurred" because the Draft Bill lacks the usual detail and particulars of the work completed. I have relied on the accuracy of Mr Lenhoff's statements on oath made in the Lenhoff Affidavit.

179. Dealing with each of the items claimed in the Draft Bill (to the extent that the fees claimed do not appear to comply with the FC 2021 Scale or Federal Court's National Guide to Counsel Fees or be "fairly and reasonably incurred") requiring a reduction in the amount claimed:

a. <u>Item 1 - Amount allowed: $48</u>

The length of the email to Counsel is not apparent from the information provided to me. If the length of the email was more than 100 words, then the proper FC 2021 Scale items are together items 2.1 and 2.4.

On the basis that item 2.4 has not been relied on in the Draft Bill, it appears reasonable for $59 be reduced to $48 based on item 2.3 of the FC 2021 Scale, being a reduction of $11.

b. <u>Items 3, 13, 14 – Amount allowed: $691</u>

These items claim a total amount of $1,495 for:

i. $520 for reading the draft application and affidavit on 17 February 2021;

ii. $325 for reading final drafts of application and affidavit on 26 February 2021; and

iii. $650 for settling the application and affidavit on 26 February 2021.

Counsel spent at least 14 hours and 55 minutes in preparing the application and affidavit in support of the application between 1 December 2020 and 17 February 2021 at a cost of $7,383.75 including GST.

The total costs claimed for the originating application and the Affidavit of Mr Kitay sworn on 1 March 2021 are $8,878.75 including GST.

The originating application and the Affidavit of Mr Kitay were together 5,442 words. The amount allowed under item 2.1 of the FC 2021 Scale is $3,210.78 including GST.

Reasonable allowances can be made under item 11 of the FC 2021 Scale, item 19 of the FC 2021 Scale for fees not otherwise provided for under the Scale and the National Guide for Counsel's fees, for additional amounts beyond the amount allowed under item 2.1 of the FC 2021 Scale.

Because of the litigation history between the parties, it is likely that the matter would be considered complex or difficult requiring additional time to be allowed for skill, care and responsibility, however:

i. a fresh analysis of the issues and evidence was not required because of that litigation history between the parties; and

ii. it appears unreasonable or an unnecessary expense for an instructing practitioner to settle Counsel's work.

Therefore, it appears reasonable that:

i. $3,210.78 be allowed for drafting the originating application and Affidavit of Mr Kitay for Counsel's time;

ii. $845 be allowed for the instructing practitioner as claimed in items 3 and 13 of the Draft Bill;

iii. $1,485 be allowed as an additional amount for Counsel's fees of 3 hours; and

iv. $330 be allowed for collating and paginating the Affidavit of Mr Kitay.

The above items (i) to (iv) total $5,870.78 being a deduction of $3,007.97:

i. $320 including GST relates to the instructing practitioner's time claimed; and

ii. $2,697.97 including GST relates to Counsel's time claimed.

c. <u>Item 21 – Amount allowed: $110</u>

A clerk or paralegal could have completed the electronic lodgment of the originating application and Affidavit of Mr Kitay. Therefore, it would appear reasonable that $110 be allowed for this item, being a reduction of $540.

d. <u>Items 32 and 33 – Amount allowed: $407.10</u>

The total claimed for these items in the Draft Bill is $608.

The Affidavit of Service was 690 words. The amount allowed under item 2.1 of the FC 2021 Scale is $407.10.

Further, in item 33, the Affidavit of Service appears to have been emailed to Counsel at a cost of $18 and on 10 March 2021 Counsel reviewed the Affidavit of Service at a cost of $37.50.

Mr Lenhoff is an experienced practitioner so it is unnecessary for his Affidavit of Service to be sent to and settled by Counsel.

Therefore, it would appear reasonable that $407.10 be allowed for these items, being a reduction of $200.90.

e. Item 57: Amount allowed: $250.16

The preparation of the Minute of Consent Orders should be claimed under item 2.1 of the FC 2021 Scale. The Minute was 424 words, therefore, the amount allowed should be $250.16, being a reduction of $79.84.

f. Item 66: Amount allowed - $65

This item in the Draft Bill claims $118 for reading Court Orders which appears high given the Court Orders only contained seven (7) short programming orders. I consider only $65 be allowed for this item, being a reduction of $53.

g. Item 67: Amount allowed - $0

This item does not appear to require the skill and experience of a legal practitioner. This item is reduced to $0, being a reduction of $36.

h. Item 97: Amount allowed - $2,360

4 hours is claimed in the Draft Bill at $650 per hour for drafting the Bill of Costs. However, the preparation rate for documents under item 2.1 of the FC 2021 Scale is $590 per hour. This item is reduced to $2,360, being a reduction of $240.

i. Counsel's Fee: Amount allowed - $4,238.97

Considering the documents referred to in Counsel's time entry on 24 March 2021 for considering the submitting appearance, this item does not appear to require the skill and experience of Counsel and appears administrative. This item is reduced to $0, being a reduction of $60, $66 including GST.

Counsel's time claimed also includes preparation for and attendance at the originating application of 10 hours at $450 per hour, totaling $4,950 including GST. Whilst that amount is less than the maximum amount under the Federal Court's National Guide for a "Fee on Brief", including preparation and the first day of hearing which is a maximum of $5,100, considering:

i. the conclusion in above paragraph 179.b; and

ii. that Counsel only claims 1.5 hours for the hearing of the originating application on 6 May 2021, not a full day allowed by the maximum amount,

Counsel's Fee on Brief is reduced to $3,465 including GST, which is a reduction in Counsel's time of $1,485 including GST.

The total recommended reduction for Counsel's time is $4,238.97 including GST, being $66, plus $1,485 and $2,687.97, as referred to in paragraph 179.b.

180. Having regard to the above and based on the information provided to me, it would appear reasonable to allow an amount of $30,521.85 in respect of claim item A12. This would account for the following:

a. amount claimed under the Draft Bill: $36,241.56

b. total reduction in Instructor Fees: $1,480.74

c. total reduction in Counsel Fees: $4,238.97

181. Accordingly, pursuant to section 82(4) of the Act, I estimate the value of the debt the subject of claim item A12 to be $30,521.85.

B. Claim Item B – Assessment of Costs

182. My assessment of each of the 12 separate cost orders in proceeding CIV 2765 of 2010 which form claim B are set out in the table below:

	Particulars	**Claim**	**Amount Allowed**
B1.	Order of Mitchell JA and Beech JA in CACV 3 of 2018 dated 21 June 2018	$2,000.00	$2,009.86 (being costs of $2,000 plus interest at 6% p.a. pursuant to section 8 of the CJEA from 21 June 2018 to 20 July 2018)
B2.	Costs taxed on 6 March 2014	$7,378.97	$9,316.11 (being costs of $7,378.97 plus interest at 6% p.a. pursuant to section 8 of the CJEA from 6 March 2014 to 20 July 2018)
B3.	Order of Justice Allanson dated 30 March 2016	$9,500.00	$8,077.31 (being costs of $7,095.00 plus interest at 6% p.a. pursuant to section 8 of the CJEA from 30 March 2016 to 20 July 2018)
B4.	Order of Justice Martino dated 21 July 2017	$16,000.00	$14,644.96 (being costs of $13,816.00 plus interest at 6% p.a. pursuant to section 8 of the CJEA from 21 July 2017 to 20 July 2018)
B5.	Order of Justice Allanson dated 7 December 2017	$3,750.00	$2,509.91 (being costs of $2,420.00 plus interest at 6% p.a. pursuant to section 8 of the CJEA from 7 December 2017 to 20 July 2018)
B6.	Order of Justice Allanson dated 18 July 2018	$1,892.00	$1,892.93 (being costs of $1,892.00 plus interest at 6% p.a. pursuant to section 8 of the CJEA from 18 July 2018 to 20 July 2018)

B7.	Order of Justice Allanson dated 30 March 2016	$1,892.00	$2,153.95 (being costs of $1,892 plus interest at 6% p.a. pursuant to section 8 the CJEA from 30 March 2016 to 20 July 2018)
B8.	Order of Justice Allanson dated 17 March 2016	$3,500.00	$3,992.03 (being costs of $3,500 plus interest at 6% p.a. pursuant to section 8 the CJEA from 17 March 2016 to 20 July 2018)
B9.	Order of Justice Allanson dated 1 May 2013	$4,000.00	4,738.44 (being costs of $3,608 plus interest at 6% p.a. pursuant to section 8 the CJEA from 1 May 2013 to 20 July 2018)
B10.	Order of Justice Allanson dated 25 September 2014	$1,892.00	$2,325.55 (being costs of $1,892 plus interest at 6% p.a. pursuant to section 8 the CJEA from 25 September 2014 to 20 July 2018)
B11.	Order dated 11 November 2016 in CACV 62 of 2016	$15,000.00	$16,521.03 (being costs of $15,000 plus interest at 6% p.a. pursuant to section 8 of the CJEA from 11 November 2016 to 20 July 2018)
B12.	Order dated 11 November 2016 in CACV 80 of 2016	$7,500.00	7,436.66 (being costs of $6,752 plus interest at 6% p.a. pursuant to section 8 of the CJEA from 11 November 2016 to 20 July 2018)
TOTAL		**$74,304.97**	**$75,618.74**

183. Items B1, B7 and B10 are costs orders where the amount has been fixed. Accordingly, these claims have been admitted in full under section 102(1)(a) of the Act plus interest at the rate of 6% per annum pursuant to section 8 the *Civil Judgments Enforcement Act 2004* (WA) from the date of the relevant order to 20 July 2018.

184. My reasons in respect of the remaining cost orders referred to in the table above are set out below.

B2: Certificate of Taxation dated 6 March 2014

185. On 14 January 2014, Mervyn Kitay as liquidator of CAT and CAT (being the Respondents) filed a Bill of Costs for taxation pursuant to rule 59(4) of the *Supreme Court (Court of Appeal) Rules 2005* (WA).

186. The Bill of Costs was assessed on 6 March 2014 and allowed in the amount of $7,378.97. These costs are referred to in the judgment of Allanson J dated 30 March 2016: *Frigger v Mervyn Jonathon Kitay in his capacity as liquidator of Computer Accounting & Tax Pty Ltd (In Liquidation) [No 9]* [2016] WASC 92 wherein Allanson J notes at [28] that these costs have

been taxed and allowed in an appeal by the plaintiffs in CACV 120 of 2013, an appeal which the Friggers discontinued.

187. Interest on the amount of $7,378.97 at the rate of 6% per annum from 6 March 2014 to 20 July 2018 is $1,937.14.

188. Accordingly, pursuant to section 102(1) of the Act, I admit the amount of $9,316.11 for claim item B2.

B3: Order of Justice Allanson dated 30 March 2016

189. On 30 March 2016, Justice Allanson ordered that the Friggers pay the Liquidator's costs of each parties' application for security of costs to be taxed if not agreed (**"Second Allanson Order"**).

190. For this claim, I was provided with the following documents:

    a. a spreadsheet labelled "Annexure MJK1" referring to this $9,500 claimed under the Second Allanson Order;

    b. a copy of the Second Allanson Order; and

    c. relevant Court documents in the proceeding.

191. The information provided about the Second Allanson Order is that a senior practitioner spent approximately $9,500 of time in:

    a. reviewing all relevant Court documents. Based on the documents provided those documents appear to be:

        i. an Affidavit of Angela Frigger sworn on 2 February 2015 of 17 pages, 24 paragraphs and three (3) attachments (**"2 February Affidavit"**); and

        ii. an Affidavit of Angela Frigger sworn on 12 February 2015 of 64 pages, 22 paragraphs and nine (9) attachments (**"12 February Affidavit"**);

    b. preparation of an Affidavit of David Lenhoff sworn on 16 January 2015 of 53 pages, 19 paragraphs and 21 attachments;

    c. preparation of written submissions dated 12 February 2015 of nine (9) pages, referring to 14 authorities;

    d. attending at a special appointment of approximately 2.45 hours on 13 February 2015; and

    e. an appearance of Counsel at a hearing on 30 March 2016 for approximately 25 minutes.

192. (**"2014 Scale"**), the maximum amount allowed for:

    a. an interlocutory application under item 10 is $11,550 including two (2) days of preparation and one (1) day hearing for Counsel; and

    b. a senior practitioner per hour is $473 including GST.

193. The Reasons for Decision [2016] WASC 92(S) outline at:

    a. [11] that Mr Lenhoff spent 18 hours and 36 minutes at $8,797.80 in preparing for and attending at the hearing on 13 February 2015;

b. [12] that Mr Lenhoff spent a further two (2) hours and 48 minutes considering the "plaintiffs' affidavits" at a cost of $1,324.40;

c. [13] that Mr Lenhoff sought a further 2.5 hours for considering the judgment, preparing an affidavit and attending at the reserved decision at $1,182.50; and

d. [14] that the total claim for costs was $11,304.70.

194. Considering the contents of the documents provided:

a. it appears that the legal services claimed for were required regarding the competing applications for security for costs;

b. it would have taken some time to review and consider the affidavits of Mrs Frigger filed in the application because:

i. the 2 February Affidavit referred to:

A. "CAT" financial resources;

B. other affidavits filed in the proceedings; and

C. various interlocutory steps;

ii. the 12 February Affidavit referred to:

A. other affidavits filed in the proceedings;

B. various attempts Mr and Mrs Frigger had made to obtain finance;

C. an apparent set off entitlements; and

D. addressed the bona fides of the Plaintiffs' claims;

iii. of the combined length of the affidavits;

c. the work was not complex;

d. it would be appropriate for a senior practitioner to undertake the work required, particularly given the nature of the Proceedings and the jurisdiction in which they are being heard;

e. Mr Lenhoff's Affidavit was required in support of the security for costs application;

f. the written submissions could have aided the Court and reduced the hearing time required for the determination of the applications;

g. there does not appear to be any urgency required in the matter; and

h. an allowance should be made for skill, care and responsibility.

195. However, when considering:

a. the maximum amount allowed under the 2014 Scale for an interlocutory application based on two (2) days of preparation and 1 day of hearing for Counsel, the claim of $9,500 appears disproportionate to the actual time spent at Court on 13 February 2015 of 2.45 hours and 30 minutes on 30 March 2015; and

b. his Honour's comments about dispensing with the requirement to file written submissions, the time claimed for this should be reduced.

196. The time allowed for this item is reduced to 15 hours at $473 per hour, totaling $7,095.

197. Interest on the amount of $7,095 at the rate of 6% per annum pursuant to section 8 of the *Civil Judgments Enforcement Act 2004* (WA) (**"CJEA"**) from 30 March 2016 to 20 July 2018 is $982.31.

198. Accordingly, pursuant to section 82(4) of the Act, I estimate the value of the claim the subject of claim item B3 to be $8,077.31.

B4: Order of Justice Martino dated 21 July 2017

199. On 21 July 2017, Justice Martino ordered that the Friggers pay the defendants' costs of the plaintiffs' application for access to the confidential affidavit of Mr Kitay dated 5 January 2012 filed in COR 2 of 2010, other than the costs of the hearings on 18 July 2016 and 29 September 2016, to be taxed and paid forthwith (**"Martino Order"**).

200. I have been provided with the following documents:

    a. a spreadsheet labelled "Annexure MJK1";

    b. a copy of the Martino Order;

    c. Reasons for Decision, [2017] WASC 120 (**"Reasons"**);

    d. Reasons for Decision, [2017] WASC 120 (S) (**"Costs Reasons"**); and

    e. various Court documents in the proceeding.

201. Under the 2016 Scale, the maximum amount allowed for:

    a. an interlocutory application under item 10 of the 2016 Scale is $11,880 including two (2) days of preparation and one (1) day hearing for Counsel; and

    b. a senior practitioner per hour is $484 including GST.

202. It is apparent that the maximum amount allowed under item 10(a) of $11,880 is justified based on the documents provided because:

    a. it appears that the legal services claimed for were required in response to Mr and Mrs Frigger's application for access to the confidential affidavit of Mr Kitay;

    b. the work that would have been required is:

        i. a review and consideration of the Application and two (2) amended Applications;

        ii. a review and consideration of Mrs Frigger's three (3) Affidavits filed in support of the Application, being:

            A. an Affidavit filed on 1 August 2016 of 11 pages, 16 paragraphs and including three (3) attachments;

            B. an Affidavit filed on 12 September 2016 of 78 pages, 12 paragraphs and including four (4) attachments; and

            C. an Affidavit filed on 15 September 2016 of five (5) pages, nine (9) paragraphs and including one (1) attachment;

iii. preparation of written submissions, including in response to Mr and Mrs Frigger's written submissions in support of the Application; and

iv. attendance at hearings on 29 September 2016, 30 November and 30 January 2017;

c. the matter appears to have been complicated by Mr and Mrs Frigger filing numerous filing numerous lengthy documents in support of the Application;

d. it would be appropriate for a senior practitioner or Counsel to deliver the service required by the Application, particularly given the nature of the Proceedings and the jurisdiction in which they are being heard; and

e. an allowance should be made for skill, care and responsibility.

203. Further, under item 10(b) of the Scale an hourly rate of $484 is allowed for a senior practitioner's attendance at the reserved judgment on 28 April 2017. The Reasons are 19 pages.

204. No allowance has been made under item 10(c) of the Scale for Consent Orders because there does not appear to have been any Consent Orders filed.

205. Therefore, it would appear reasonable that:

a. $11,880 be allowed under item 10(a) of the 2016 Scale;

b. $484 be allowed under 10(b) of the 2016 Scale; and

c. an allowance be made of $1,452 for the costs submissions dated 12 May 2017 in accordance with page 6 of the costs submissions.

206. This would amount to a total of $13,816 allowed under the Martino Order.

207. Interest on the amount of $13,816 at the rate of 6% per annum pursuant to section 8 of the *Civil Judgments Enforcement Act 2004* (WA) from 21 July 2017 to 20 July 2018 is $828.96.

208. Accordingly, I estimate the value of the claim the subject of claim item B4 to be $14,644.96.

B5: Order of Justice Allanson dated 7 December 2017

209. On 7 December 2017, Justice Allanson ordered that the Friggers pay the Liquidator's costs of the appearance on 7 December 2017 (**"Third Allanson Order"**).

210. The information provided to me regarding the Third Allanson Order is that:

a. the costs related to an application by Mr and Mrs Frigger for a stay of the proceedings and an adjournment of the Defendants' summary judgment application;

b. two (2) hours was spent in a senior practitioner perusing all relevant documentation for two (2) hours, being:

i. Two (2) Minutes of Proposed Orders:

A. dated 15 November 2017, seeking two (2) Orders; and

B. dated 7 December 2017 seeking five (5) Orders; and

ii. an Affidavit of Mrs Frigger dated 4 December 2015 of 68 pages, 11 paragraphs and seven (7) attachments; and

c. six (6) hours was spent in preparation for and attendance at the hearing on 7 December 2017 to oppose the application.

211. Under the 2016 Scale, the maximum amount allowed for:

a. an interlocutory application under item 10 of the 2016 Scale is $11,880 including two (2) days of preparation and one (1) day hearing for Counsel; and

b. a senior practitioner per hour is $484 including GST.

212. No information has been provided to me about the actual costs incurred for the appearance on 7 December 2017 and all work required for that appearance.

213. Having regard to the contents of the documents provided to me:

a. it appears that the legal services claimed for were required in response to Mr and Mrs Frigger's application;

b. it would have taken time to review and consider the Affidavit of Mrs Frigger which summarised the Federal Court proceedings commenced to replace the Liquidator and alleged various failures by him;

c. the work was not complex;

d. it would be appropriate for a senior practitioner to undertake the work required, particularly given the nature of the Proceedings and the jurisdiction in which they are being heard;

e. there does not appear to be any urgency required; and

f. an allowance should be made for skill, care and responsibility.

214. Notwithstanding the above, when considering the Court documents and the actual work said to be completed, a claim of eight (8) hours appears high.[10]

215. Therefore, I have reduced this item to five (5) hours at $484 per hour totaling $2,420.

216. Interest on the amount of $2,420 at the rate of 6% per annum pursuant to section 8 of the *Civil Judgments Enforcement Act 2004* (WA) from 7 December 2017 to 20 July 2018 is $89.91.

217. Accordingly, pursuant to section 82(4) of the Act, I estimate the value of the claim the subject of claim item B5 to be $2,509.91.

B6. Order of Justice Allanson dated 18 July 2018

218. On 18 July 2018, Justice Allanson ordered that *"The costs of today are the defendant's/plaintiff by counterclaim's in any event"* (**"Fourth Allanson Order"**). The defendants in the proceeding were Mervyn Jonathan Kitay as liquidator of CAT and CAT.

[10] See the Reasons for Decision, [2017] WASC 120), [14], which stated that the preliminary assessment of the matter falls far short of requiring two days preparation

219. Based on the information provided it is not known whether the "event" has occurred. Costs payable "in any event" are costs payable after the proceeding, the costs being considered in the ultimate taxation of costs.

220. However, if the "event" has occurred, the information provided about the Fourth Allanson Order is that a senior practitioner spent approximately $1,892 of time in:

    a. reviewing all relevant Court documents for two (2) hours, based on the documents provided those documents appear to be:

        i. a Minute of Proposed Orders dated 12 July 2018 seeking three (3) orders; and

        ii. an Affidavit of Angela Frigger sworn on 12 July 2018 being 55 pages, 12 paragraphs and six (6) attachments; and

    b. preparation for and attending at Court for two (2) hours.

221. Under the 2016 Scale, the maximum amount allowed for:

    a. an interlocutory application under item 10 of the 2016 Scale is $11,880 including two (2) days of preparation and one (1) day hearing for Counsel; and

    b. a senior practitioner per hour is $484 including GST.

222. Having regard to the contents of the documents provided to me:

    a. it appears the legal services claimed for were required in response to Mr and Mrs Frigger's application for the listing of trial and provision of an audit report;

    b. it would have taken time to review and consider the affidavit of Mrs Frigger filed because of the of the length of the attachments to the affidavit;

    c. the work does not appear to be complex;

    d. it would be appropriate for a senior practitioner to undertake the work required for the appearance, particularly given the nature of the Proceedings and the jurisdiction in which they are being heard;

    e. there does not appear to be any urgency required; and

    f. an allowance should be made for skill, care and responsibility.

223. Based on the above information, four (4) hours would appear reasonable for the work done.

224. This would amount to a total of $1,892 allowed under the Fourth Allanson Order.

225. Interest on the amount of $1,892 at the rate of 6% per annum pursuant to section 8 of the *Civil Judgments Enforcement Act 2004* (WA) from 18 July 2018 to 20 July 2018 is $0.93.

226. Accordingly, pursuant to section 82(4) of the Act, I estimate the value of the claim the subject of claim item B6 to be $1,892.93.

B8. Order of Justice Allanson dated 17 March 2016

227. On 17 March 2016, Justice Allanson ordered that the Friggers pay the costs of the plaintiffs' application, to be taxed if not agreed and to be paid forthwith ("**Order"**). The Defendants to the proceeding were Mervyn Kitay as liquidator of CAT and CAT.

228. The information provided in respect of this Order is that a senior practitioner spent approximately $3,500 of time, being 7.4 hours at the applicable scale of $473, in:

    a. reviewing Mr and Mrs Frigger's Minute of Proposed Orders dated 8 March 2016 seeking two (2) orders;

    b. reviewing the Chambers Summons dated 10 March 2016 (seeking two (2) Orders) and supporting Affidavit of Mrs Frigger sworn on 8 March 2016 of nine (9) pages, 12 paragraphs and two (2) attachments;

    c. drafting and settling the Defendant's submissions of four (4) pages referring to numerous authorities; and

    d. preparing for and attending the hearing on 17 March 2016.

229. Under the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2014* (**"2014 Scale"**), the maximum amount allowed for:

    a. an interlocutory application under item 10 of the 2014 Scale is $11,550 including two (2) days of preparation and one (1) day hearing for Counsel; and

    b. a senior practitioner per hour is $473 including GST.

230. The claim of $3,500 appears reasonable having regard to:

    a. the contents of the documents provided:

        i. it appears the legal services claimed for were required in response to the Friggers' application for a stay;

        ii. the work does not appear complex, however, it would be appropriate for a senior practitioner to undertake the work required, particularly given the nature of the Proceedings and the jurisdiction in which they are being heard;

        iii. it is likely that the Submissions would have aided the Court. The Submissions also made considered arguments about why the application for the stay should be dismissed; and

        iv. the costs claimed in the draft Bill of Costs provided, appear reasonable; and

    b. an allowance being made for skill, care and responsibility.

231. Interest on the amount of $3,500 at the rate of 6% per annum pursuant to section 8 of the *Civil Judgments Enforcement Act 2004* (WA) from 17 March 2016 to 20 July 2018 is $492.03

232. Therefore, pursuant to section 82(4) of the Act, I estimate the value of the claim the subject of claim item B8 to be $3,992.03.

B9: Order of Justice Allanson dated 1 May 2013

233. On 1 May 2013, Justice Allanson ordered that the Friggers pay the first and second defendants' costs of the application for leave to sell the property to be taxed if not agreed (**"First Allanson Order"**)

234. The information provided about the First Allanson Order is that a senior practitioner spent approximately $4,000 of time in:

a. reviewing all relevant Court documents, which based on the documents provided appears to be an Affidavit of Angela Frigger sworn on 29 April 2013 being at least 62 pages, 17 paragraphs and 5 attachments;

b. preparation of two (2) opposing affidavits:

i. an Affidavit of David Lenhoff sworn on 30 April 2013 of 14 pages, six (6) paragraphs and four (4) attachments; and

ii. a supplementary Affidavit of David Lenhoff sworn on 30 April 2013 of five (5) pages, three (3) paragraphs and one (1) attachment; and

c. an appearance of Counsel at the hearing on 1 May 2013.

235. Under the *Legal Practitioners (Supreme Court) (Contentious Business) Determination 2012* (**"2012 Scale"**) the maximum amount allowed for:

a. an interlocutory application under item 10 of the 2012 Scale is $10,560 including two (2) days of preparation and one (1) day hearing for Counsel; and

b. a senior practitioner per hour is $451 including GST.

236. No information has been provided about:

a. the time spent at the hearing on 1 May 2013; and

b. the actual costs incurred for the appearance on 1 May 2013 and all work done required for that appearance.

237. Having regard to the contents of the documents provided:

a. it appears that the legal services claimed were required in response to Mr and Mrs Frigger's application;

b. the work does not appear complex, however, it would be appropriate for a senior practitioner to undertake the work required at the 2012 Scale rates, particularly given the nature of the Proceedings and the jurisdiction in which they are being heard;

c. it is apparent that responsive affidavits were required to respond to the issues about whether the "offer" as referred to in Mrs Frigger's Affidavit was in the interests of creditors; and

d. there was no apparent urgency in the work completed.

238. Therefore, I consider:

a. a reasonable amount of time to review and consider the Affidavit of Angela Frigger sworn on 29 April 2013 and the attachments is up to three (3) hours;

b. it would be reasonable to allow for two (2) hours to prepare the two (2) Affidavits of David Lenhoff sworn on 30 April 2013 because:

i. the Affidavits largely attach documents only; and

ii. the collating of the attachments for the Affidavits is administrative in nature; and

c. an allowance be made for skill, care and responsibility of two (2) hours.

239. On the assumption that some oral argument was made before Justice Allanson on 1 May 2013 and having regard to the usual quantum of fixed costs orders made for a 1-hour attendance at a Directions Hearing or Case Management Conference for a senior practitioner, I allow one (1) hour of time for the attendance.

240. Therefore, the amount of $3,608 seems reasonable as the amount allowed under the First Allanson Orders on a party and party basis in accordance with the 2012 Determination.

241. Interest on the amount of $3,608 at the rate of 6% per annum pursuant to section 8 of the *Civil Judgments Enforcement Act 2004* (WA) from 1 May 2013 to 20 July 2018 is $1,130.44.

242. Accordingly, pursuant to section 82(4) of the Act, I estimate the value of the claim the subject of claim item B9 to be $4,738.44.

B11: Order of the Court of Appeal dated 11 November 2016 in CACV 62 of 2016

243. On 11 November 2016, the Court of Appeal made, among others, the following orders:

    a. an order that the appellants (being the Friggers) pay the respondents' costs of the appellants' application filed 17 October 2016 to vacate the hearing on 11 November 2016 and to stay the appeal (**"Order 1"**); and

    b. an order that the appellants are to pay the respondents' costs of the respondents' application for security for costs dated 27 September 2016 (**"Order 2"**);

    c. an order that if the appellants have not paid into court the sum of $22,000 by way of security by 4;00pm on 19 December 2016, the appeal is dismissed and the appellants are to pay the respondents' costs of the appeal (including any reserved costs) to be taxed if not agreed (**"Order 3"**).

244. On 20 December 2016, the Court of Appeal issued a Certificate of Conclusion of Civil Appeal which records that:

    "The appellants have failed to comply with the order of the Court of Appeal made on 11 November 2016, the appeal stands dismissed."

245. I have been provided with the following documents:

    a. a spreadsheet labelled "Annexure MJK1" referred to the amount claimed pursuant to the order dated 11 November 2016;

    b. a copy of the orders referred to in paragraphs 243 and 244 above (**"CACV 62 Orders"**);

    c. a copy of the Reasons for Decision in [2016] WASCA 204 (**"Reasons"**); and

    d. a copy of various Court documents filed in each of CACV 62 of 2016 and CACV 80 of 2016 (together, the **"Proceedings"**).

246. The Proceedings were heard together and this has been taken into account in my assessment. The parties to the Proceedings are:

    a. Angela Frigger (First Appellant);

    b. Hartmut Frigger and Angela Frigger in their capacity as Trustees of the Frigger Superannuation Fund (Second Appellant);

c. Hartmut Frigger (Third Appellant);

d. Mervyn John Kitay in his capacity as liquidator of Computer Accounting & Tax Pty Ltd (First Respondent); and

e. Computer Accounting & Tax Pty Ltd (in liq) (Second Respondent).

247. The costs orders contained in the order dated 11 November 2016 are party and party costs orders. The maximum amount of costs claimable pursuant to a party and party costs order is the amount allowed under the relevant 2016 Scale.

Order 1

248. The Respondents claim global costs of $15,000.

249. Under item 23 of the 2016 Scale, the maximum amount for an interlocutory application in an appeal is $3,960 for Counsel applying to Mr and Mrs Frigger's application to vacate and stay.

250. The apparent documents before the Court were:

a. an application for vacation and stay in CACV 62 of 216 filed 17 October 2016;

b. an affidavit sworn by Mrs Frigger on 14 October 2016 of 50 pages, 38 paragraphs and nine (9) attachments;

c. an affidavit sworn by Mrs Frigger on 21 October 2016;

d. Mr and Mrs Frigger's submissions of 12 pages; and

e. an unsworn affidavit of Mrs Frigger which the Court received by facsimile on 10 November 2016.

251. It is not apparent that the Respondents filed any documents in opposition to the application or actively opposed the application for a stay. However, the Respondents would still have been required to prepare for the application in:

a. reviewing and considering the above documents;

b. being prepared to respond to Mr and Mrs Frigger's written submissions and any oral submissions made by them had they appeared at the hearing on 11 November 2016; and

c. being prepared to respond to any questions from the Court.

252. Considering the number and the length of documents filed in relation to the application for a stay, it appears that the maximum amount for an application in a case of $3,960 is reasonable.

Order 2

253. Under item 23 of the 2016 Scale, the maximum amount for an interlocutory application in an appeal is $3,960 for Counsel.

254. The documents before the Court in the CACV 62 of 2016 security for costs application were:

a. an affidavit sworn by David Abraham Lenhoff on 27 September 2016 (65 pages, 23 paragraphs and 20 attachments;

b. an affidavit sworn by Mrs Frigger on 14 October 2016 (50 pages, 38 paragraphs and nine (9) attachments;

c. the Respondent's written submissions of 10 pages referring to 21 authorities; and

d. the Friggers' written submissions of 12 pages.

255. It is apparent from the Court documents that:

a. the services claimed for in the security for costs application were required to bring the application;

b. the application required an interlocutory application supported by affidavit;

c. the skill of a senior practitioner was appropriate; and

d. an allowance should be made for skill, care and responsibility given the length of the documents and the nature of the proceedings.

256. It appears that the maximum amount for an application in a case of $3,960 is reasonable considering:

a. the number and the length of documents filed in relation to the application; and

b. the Respondents would have prepared for the application in:

i. reviewing and considering the above documents filed in relation to the security for costs application;

ii. preparing to respond to Mr and Mrs Frigger's written submissions and any oral submissions made by them had they appeared at the hearing on 11 November 2016; and

iii. preparing to respond to any questions from the Court.

Order 3 – Costs of the Appeal

257. Considering the conclusions reached in above paragraphs 252 and 256, the balance of the Respondents' costs claimed is $7,080.

258. The apparent steps taken in the CACV 62 Appeal before 11 November 2016 and other matters are summarized in [33] to [47] of the Reasons.

259. The following Court documents relate to the Appeal:

a. Appeal Notice dated 24 June 2016;

b. Amended Appellants Case dated 28 June 2016 (15 pages);

c. Affidavit of Mrs Frigger made on 28 June 2016 (22 pages, 15 paragraphs and four (4) attachments);

d. Notice of Respondent's Intention;

e. Amended Notice of Appeal dated 4 August 2016;

f. the Respondents' application in a case dated 7 September 2016 that the notice of appeal be struck out and other ancillary orders and an amended Application dated 13 September 2016;

g. Affidavit of David Lenhoff made on 13 September 2016 in support of the strike out application (40 pages, 17 paragraphs and 11 attachments);

h. the Appellants' application in a case to dispense with various appeal requirements, expedite the matter for hearing and that the appeal be heard together with CACV 80 of 2016;

i. an affidavit of Mrs Frigger made on 22 September 2016 in support of an expedited appeal hearing (24 pages, 12 paragraphs and six (6) attachments); and

j. a Re-amended Appellants' Case.

260. At:

a. [94] of the Reasons the Court commented that: "it was unlikely that the applications for leave to appeal, or, if leave were granted, the appeals themselves, would enjoy reasonably good prospects of success"; and

b. [95] of the Reasons the Court commented that: "the appellants' appeals would likely range over a variety of matters, circumstances and proceedings, which would not ordinarily arise in relation to appeals form interlocutory orders of the kind under challenge."

261. Ultimately, the First and Second Respondents' application for security for costs was successful, despite the quantum of security being reduced from $30,000 as claimed to $22,000.

262. Based on a review of the Court documents referred to in above paragraph 259, it is apparent that the First and Second Respondents' lawyers would have been required to:

a. consider, review and analyse the Appellants' various length documents filed;

b. prepare and file with the Court a Notice of Intention;

c. prepare the required response documents including the request to strike out and the supporting Affidavit material; and

d. review and consider the Appellants' application and supporting Affidavit material to dispense with various Court of Appeal requirements and for expedition.

263. It is appropriate for that work to be completed by a senior practitioner and a separate allowance should be made for skill, care and responsibility given the length of the documents and the nature of the proceedings.

264. In those circumstances, considering the two (2) additional applications in an appeal and the documents the Appellants filed, it appears that an amount of costs of $7,080 is reasonable.

265. The amount allowed in satisfaction of the CACV 62 Orders are the totals referred to in paragraphs 252, 256 and 264, being $15,000.

266. Interest on the amount of $15,000 at the rate of 6% per annum pursuant to section 8 of the *Civil Judgments Enforcement Act 2004* (WA) from 11 November 2016 to 20 July 2018 is $1,521.03.

267. Accordingly, pursuant to section 82(4) of the Act, I estimate the value of the claim the subject of claim item B11 to be $16,521.03.

B12: Order of the Court of Appeal of Western Australia dated 11 November 2016 in CACV 80 of 2016

268. On 11 November 2016, the Court of Appeal made, among others, the following orders:

    a. an order that the appellants (being the Friggers) pay the respondents' costs of the appellants' application filed 17 October 2016 to vacate the hearing on 11 November 2016 and to stay the appeal (**"Order 1"**); and

    b. an order that the appellants are to pay the respondents' costs of the respondents' application for security for costs dated 27 September 2016 (**"Order 2"**);

    c. an order that if the appellants have not paid into court the sum of $22,000 by way of security by 4;00pm on 19 December 2016, the appeal is dismissed and the appellants are to pay the respondents' costs of the appeal (including any reserved costs) to be taxed if not agreed (**"Order 3"**).

269. On 20 December 2016, the Court of Appeal issued a Certificate of Conclusion of Civil Appeal which records that:

    "The appellants have failed to comply with the order of the Court of Appeal made on 11 November 2016, the appeal stands dismissed."

270. As noted in paragraph 246, the Proceedings were heard together and this has been taken into account in my assessment. However, separate orders were made for the separate proceedings.

Order 1

271. The First and Second Respondents claim global costs of $7,500 with respect to Order 1 in the CACV 80 Orders.

272. Mr and Mrs Frigger relied on the same documents described in paragraph 250 above to the application for vacation and stay in CACV 80 of 2016.

273. It is not apparent that the Respondents filed any documents in opposition to the application or actively opposed the application for a stay. Whilst acknowledging the Respondents would still have been required to prepare for the application in:

    a. reviewing and considering the above documents;

    b. being prepared to respond to the Friggers' written submissions and any oral submissions made by them had they appeared at the hearing on 11 November 2016; and

    c. being prepared to respond to any questions from the Court,

    there would be a duplication of costs with expected limited or nominal additional costs incurred in relation to the application to vacate and stay in CACV 80 of 2016.

274. Therefore, it is recommended that a nominal allowance be made of $880, being one (1) hour for a senior practitioner at $484 and one (1) hour for Counsel at $396.

Order 2

275. The comments in relation to above paragraphs 271 to 274 equally apply to the application for security for costs in CACV 80 of 2016. However, it is reasonable to allow an additional three (3)

hours for a senior practitioner, being $1,452, in preparing and filing the necessary Court documents relevant to the security for costs application specific to CACV 80 of 2016.

276. The total amount allowed in respect of Order 2 in CACV 80 of 2016 being $2,332 (comprising $1,452 plus $880).

Order 3 – Costs of the Appeal

277. The apparent steps taken in the CACV 80 Appeal before 11 November 2016 and other matters are summarized in [48] to [51] of the Reasons.

278. It is apparent from the Court documents provided and the Reasons that Mr and Mrs Frigger filed less documents in CACV 80 of 2016 and, therefore, there was less complexity and less documents to review, consider and analyse.

279. In the circumstances, an amount of 50% of the amount referred to as reasonable for CACV 62 of 2016 appears reasonable, being $3,540.

280. The amount allowed in satisfaction of the CACV 80 Orders are the totals referred to in paragraphs 274, 276, 275 and 279, being $6,752.

281. Interest on the amount of $6,752 at the rate of 6% per annum pursuant to section 8 of the *Civil Judgments Enforcement Act 2004* (WA) from 11 November 2016 to 20 July 2018 is $684.66.

282. Accordingly, pursuant to section 82(4) of the Act, I estimate the value of the claim the subject of claim item B11 to be $7,436.66.

Please note that:

- pursuant to section 82(5) of the Act, a person aggrieved by an estimate made pursuant to section 82(4) of the Act may appeal to the Court not later than 28 days after the day on which the person is notified of the estimate;
- pursuant to section 104 of the Act, a creditor, or the bankrupt, may apply to the Court for review of a decision of the trustee under subsection 102(1), (3) or (4) in respect of a proof of debt and such an application is to be made within 21 days from the date of this Notice.

Dated this 17th day of September 2025



Kelly-Anne Trenfield

Trustee

FEDERAL COURT OF AUSTRALIA

Kitay (Liquidator) v Trenfield (Trustee) [2021] FCA 508

File number:	WAD 40 of 2021
Judgment of:	**JACKSON J**
Date of judgment:	6 May 2021
Date of publication of reasons:	13 May 2021
Catchwords:	**BANKRUPTCY AND INSOLVENCY** - application for leave under s 58(3) of the *Bankruptcy Act 1966* (Cth) to continue Supreme Court proceedings - provable claims linked with other claims - complex facts and law - leave granted
Legislation:	*Bankruptcy Act 1966* (Cth) ss 58, 60, 82, 104
Cases cited:	*7Steel Building Solutions Pty Ltd v Wright* [2011] FCA 328 *Ashala v Featherstone* [2016] QSC 121; [2017] 2 Qd R 1 *Auto Group Ltd v England* [2008] NSWSC 402 *Commissioner of Taxation v Yeo (Trustee)* [2018] FCA 635 *Commissioner of Taxation v Yeo (Trustee) (No 2)* [2019] FCA 1188 *Cummings v Claremont Petroleum NL* (1996) 185 CLR 124 *Fraser v Deputy Commissioner of Taxation* (1996) 69 FCR 99 *Free v Ma* [2020] FCA 226 *Frigger v Kitay (Liquidator)* [2020] FCA 482 *Health Services Union v Jackson (No 3)* [2015] FCA 694 *Hudson v Sigalla* [2015] FCAFC 140; (2015) 235 FCR 122 *Kattirtzis v Zaravinos* [2001] FCA 1158 *Mango Media Pty Ltd v Velingos* [2008] NSWSC 202; (2008) 216 FLR 176 *Melnik v Melnik* [2005] FCAFC 160; (2005) 144 FCR 141 *Mercedes Holdings Pty Ltd v Waters (No 5)* [2011] FCA 1428 *Otvosi v Ferella* [2008] FMCA 1250; (2008) 219 FLR 472 *Pedersen v Delaveris* [2010] FCA 536 *Re McMaster; Ex parte McMaster* (1991) 33 FCR 70 *Re Rose; Ex parte Devaban Pty Ltd* [1994] FCA 1082

	Re Sharp; Ex parte Tietyens Investments Pty Ltd (in liq) [1998] FCA 1367 *SBA Music Pty Ltd v Hall (No 2)* [2014] FCA 1116 *Taylor (liquidator) v Trustee, bankrupt estate of Heading, in the matter of Heading* [2020] FCA 1450 *Van Dyke v Lo Pilato, in the matter of Sidhu* [2016] FCA 1347 *Westpac Banking Corporation v Victor Warren Ollis* [2007] FCA 1194 *Wilson v Sellers* [2016] FCCA 1425 *Zervas v Burkitt* [2019] NSWCA 112
Division:	General Division
Registry:	Western Australia
National Practice Area:	Commercial and Corporations
Sub-area:	General and Personal Insolvency
Number of paragraphs:	29
Date of hearing:	6 May 2021
Counsel for the Applicants:	Mr BW Ashdown
Solicitor for the Applicants:	Lenhoff & Hotz
Counsel for the First and Second Respondents:	The first and second respondents filed submitting notices
Counsel for the Third Respondent:	The third respondent appeared in person
Counsel for the Fourth Respondent:	The fourth respondent did not appear

ORDERS

WAD 40 of 2021

BETWEEN:	**MERVYN JONATHAN KITAY IN HIS CAPACITY AS LIQUIDATOR OF COMPUTER ACCOUNTING & TAX PTY LTD (ACN 009 470 490) (IN LIQ)** First Applicant
	COMPUTER ACCOUNTING & TAX PTY LTD (ACN 009 470 490) (IN LIQ) Second Applicant
AND:	**KELLY-ANNE TRENFIELD AS TRUSTEE OF THE PROPERTY OF ANGELA CECILIA THERESA FRIGGER, A BANKRUPT** First Respondent
	KELLY-ANNE TRENFIELD AS TRUSTEE OF THE PROPERTY OF HARTMUT HUBERT JOSEF FRIGGER, A BANKRUPT Second Respondent
	ANGELA CECILIA THERESA FRIGGER, A BANKRUPT Third Respondent
	HARTMUT HUBERT JOSEF FRIGGER, A BANKRUPT Fourth Respondent
ORDER MADE BY:	**JACKSON J**
DATE OF ORDER:	**6 MAY 2021**

THE COURT ORDERS THAT:

1. If and to the extent that leave is necessary under s 58(3) of the *Bankruptcy Act 1966* (Cth), the applicants have leave to take all and any further steps in connection with the prosecution of the counterclaim in Supreme Court of Western Australia proceedings CIV 2765 of 2010, and all or any interlocutory applications and steps, including as against the bankrupt estates of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger.

2. The applicants' costs of this application are costs, jointly and severally, in and are to be paid from the bankrupt estates of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger and are to be assessed.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

JACKSON J:

1 This is an application for leave under s 58(3) of the *Bankruptcy Act 1966* (Cth) to take further steps in the prosecution of a counterclaim against two bankrupt persons in an action in the Supreme Court of Western Australia. The applicants were Computer Accounting and Tax Pty Ltd (**CAT**) and its liquidator, Mervyn Kitay. The respondents were the bankrupts, Angela and Hartmut Frigger, and their trustee in bankruptcy, Kelly-Anne Trenfield.

2 Mrs Trenfield neither opposed nor consented to leave to proceed and she filed a submitting notice. But one of the bankrupts, Mrs Frigger, sought leave to be heard in opposition. Despite having named the bankrupts as respondents, the applicants submitted that Mrs Frigger had no right to be heard.

3 At the hearing on 6 May 2021 I made orders allowing the application. These are my reasons for having done so, as well as my reasons for determining that Mrs Frigger had no right to be heard on the application.

The Supreme Court proceeding

4 Mrs Frigger commenced the Supreme Court action against Mr Kitay and CAT in 2010. The present issues are defined by an amended substituted statement of claim (**SOC**), a further re-amended substituted defence and counterclaim (**DAC**), and an amended substituted reply and defence to counterclaim.

5 The Friggers were directors of CAT and say that they are trustees of their self-managed superannuation fund, the Frigger Super Fund (**FSF**). Mr Kitay became liquidator of CAT on 6 May 2010. CAT is the registered proprietor of real property in Perth and real property in Armadale. It is common ground that CAT was trustee of the FSF at material times (it claims that it is and has been the only trustee). The Friggers made claims, among others, that they contributed the Perth and Armadale properties to the FSF as *in specie* contributions to be held on trust by CAT or that, in other ways, CAT came to hold the properties on trust on the terms of the FSF.

6 The DAC is a long and involved document and it would be a substantial task to describe fully all of the different claims made in it. There are claims that CAT owns the Perth land in its own right and is entitled to the proceeds from the sale of the Armadale land,

which are held in an escrow account. There are also claims to the proceeds of the sale of a business conducted on the Armadale land, claims of estoppel, claims to rights of indemnity out of assets as trustee, claims about the identity of trustees and members of the FSF at certain times and claims of breach of fiduciary duty and voidable transactions. But it is not necessary to go into detail about these, because for reasons that appear below it is sufficient in this application to focus on a claim based on an alleged loan account between CAT and the Friggers, and the manner in which that claim is dependent on other issues of fact and law in the Supreme Court action.

7 The DAC claims a declaration that the Friggers owe CAT $2,600,801, alternatively $2,356,283, as the balance of the loan account. The loan account is said to be comprised of a large number of transactions; it is only necessary to focus on the most material ones here. The first of these is an amount of $435,000 which the Friggers are said to have provided to CAT for the purchase of the Perth property. The second is a sum of $665,000 which they are said to have provided to CAT for the purchase of the Armadale property. The DAC pleads that both of these advances are properly characterised as loans by the Friggers to CAT. The third is a sum of $80,000 which Mrs Frigger is said to have paid to St George Bank to secure a bank guarantee needed for the service station business operated on the Armadale land. This too is said to be a loan from Mrs Frigger. (Note, the DAC has a schedule which appears to contain all alleged transactions concerning the loan account. There are discrepancies between the figures in that schedule and corresponding figures in the body of the pleading, but they are not material for present purposes.)

8 The fourth transaction material to the loan account was an alleged transfer by CAT to the Friggers, in January 2009, of a sum of $999,999 which CAT had on deposit with ING Direct Bank. The fifth material transaction is an alleged payment by CAT to the Friggers, on or about 30 June 2009, of the entire amount of a sum paid to CAT pursuant to judgment in different Supreme Court proceedings, alternatively $900,000 of that judgment sum. These are both pleaded (as one of many alternative pleas) to be unsecured loans by CAT to the Friggers.

9 However these transactions are not the only matters potentially material to the balance of the loan account that are pleaded in the DAC. For example there are allegations raised in the alternative that, when alleged *in specie* contributions of the real property were made to the FSF, they occurred via transfers of the land from CAT to the Friggers, in return for the

reduction of money which at that time CAT owed to the Friggers, so that the Friggers could then personally contribute the land to the FSF. The reductions of CAT's debt to the Friggers are claimed to have taken place at a time when CAT was insolvent, and so to have been unfair preferences or otherwise voidable. If that allegation is made good, it may result in the effective reversal of the decreases in moneys owing to the Friggers, and so will affect the ultimate balance of the loan account. Allegations are also made that the alleged payment to the Friggers of the ING amount of $999,999 in January 2009, and of some or all of the judgment sum on 30 June 2009, are both voidable transactions. If those claims are established, that will also affect the balance of the loan account.

10 Mrs and Mr Frigger became bankrupt by order of this court on 20 July 2018. On 1 November 2018, Mr Kitay's solicitor gave notice under s 60(3) of the *Bankruptcy Act* effectively requiring Mrs Trenfield to elect within 28 days whether to prosecute or discontinue Supreme Court action CIV 2765 of 2010. She did not make that election within that time so, Mr Kitay asserts, pursuant to s 60(3) she is deemed to have abandoned the claims made in the SOC. But if that is so, it does not directly affect the status of the counterclaim; although it could conceivably require amendment, the counterclaim remains a distinct claim which (subject to s 58(3)) remains on foot: see *Frigger v Kitay (Liquidator)* [2020] FCA 482 at [27]-[28].

Whether Mrs Frigger had a right to be heard on the application for leave to proceed

11 Section 58(3) of the Act provides that:

> Except as provided by this Act, after a debtor has become a bankrupt, it is not competent for a creditor:
>
> (a) to enforce any remedy against the person or the property of the bankrupt in respect of a provable debt; or
>
> (b) except with the leave of the Court and on such terms as the Court thinks fit, to commence any legal proceeding in respect of a provable debt or take any fresh step in such a proceeding.

12 In *Commissioner of Taxation v Yeo (Trustee) (No 2)* [2019] FCA 1188 at [30]-[44] (***Yeo No 2***), Anderson J discussed the principles as to whether a bankrupt must be heard on an application for leave under s 58(3). His Honour did so in the context of an application by a bankrupt to set aside orders giving leave under the section which had been made in his absence. The application was dismissed, due to 'the fundamental feature of bankruptcy law, as reflected in the *Bankruptcy Act* ... that, upon a sequestration order, a bankrupt is divested

of both his or her interest in his or her property and liability for his or her provable debts': see [3], [30], relying on *Cummings v Claremont Petroleum NL* (1996) 185 CLR 124 at 136.

13 I respectfully agree with Anderson J's views on the question. To summarise those views:

(1) The consequence of the fundamental feature of bankruptcy just mentioned is that 'a bankrupt has no right to bring or prosecute proceedings to protect, enhance or add to the property of which he has been divested on bankruptcy': at [35], quoting *Cummings* at 136.

(2) The policy of s 58(3) is to stay proceedings in the absence of leave of the court, so that the bankrupt may be freed from any claims in respect of the period before the bankruptcy, the trustee in bankruptcy may deal with the claim through the proof of debt process along with all other claims on the estate so that assets are in due course divided among creditors, and the trustee is not put to the expense of defending proceedings. The Act does, however, contemplate that the court will grant leave in appropriate cases; this permits the bankruptcy court to screen claims: at [39], relying (ultimately) on *Re Rose; Ex parte Devaban Pty Ltd* [1994] FCA 1082 (Hill J); and see also *Fraser v Deputy Commissioner of Taxation* (1996) 69 FCR 99 at 114 (Beaumont J); and *Mango Media Pty Ltd v Velingos* [2008] NSWSC 202; (2008) 216 FLR 176 at [13] (Barrett J).

(3) It is not necessary for the bankrupt to be heard on an application for leave to proceed in respect of a provable claim: see [10]. The bankrupt being named as a party is not itself a sufficient basis to grant standing: at [38].

(4) The trustee in bankruptcy, acting in the interests of the creditors as a whole, may oppose an application for leave under s 58(3): at [42]. But such an application is not a matter in which the bankrupt has sufficient interest in the requisite sense: at [43].

14 The effective stay for which s 58(3) provides, and the court's power to except a given claim from that stay, are matters that concern provable claims from which the bankrupt will be released and the property divisible among creditors of the estate in which the bankrupt no longer has any interest. The bankrupt has no right to be heard on those matters. It is true that Anderson J was considering the question specifically through the prism of whether the bankrupt was a 'person who has a sufficient interest in the proceeding' within the meaning of r 1.40(b) of the *Federal Court Rules 2011* (Cth) to make an application under r 39.05 for the order giving leave to be set aside. But the same conclusion follows in cases where leave has not yet been granted or refused, and the bankrupt seeks to be heard. That is reflected in a

number of cases, including: *Kattirtzis v Zaravinos* [2001] FCA 1158 at [5] (Gyles J); *Commissioner of Taxation v Yeo (Trustee)* [2018] FCA 635 at [3] (Moshinsky J; *Yeo No 2* was a sequel to this case); ***Free v Ma*** [2020] FCA 226 at [13] (Abraham J).

15 Mrs Frigger sought to distinguish *Yeo No 2* and *Free v Ma* on the basis that in those cases, the bankrupts were overseas. But that is not a relevant distinction; a person has a right to be heard, or not, regardless of his or her location. She also relied on a number of cases in which, she submitted, the court had permitted the bankrupt to be heard. In three of these, the bankrupt appears to have been heard in relation to a question of leave under s 58(3), but in none of them does it appear that the bankrupt's right to be heard was raised as an issue: *Taylor (liquidator) v Trustee, bankrupt estate of Heading, in the matter of Heading* [2020] FCA 1450; *Westpac Banking Corporation v Victor Warren Ollis* [2007] FCA 1194; *Otvosi v Ferella* [2008] FMCA 1250; (2008) 219 FLR 472. In three of the other cases on which Mrs Frigger relied, it appears that orders had been made for the service on the bankrupts of the application for leave, but none of the decisions indicate why that was thought to be necessary or appropriate: *Van Dyke v Lo Pilato, in the matter of Sidhu* [2016] FCA 1347 at [16]; *Wilson v Sellers* [2016] FCCA 1425; *7Steel Building Solutions Pty Ltd v Wright* [2011] FCA 328 at [5]. In the final case on which Mrs Frigger relied, *Pedersen v Delaveris* [2010] FCA 536, there was simply no appearance by the bankrupt.

16 I therefore do not accept Mrs Frigger's submission that these cases show that the law on whether a bankrupt must be heard is unsettled. The law is settled as set out in *Yeo No 2*. It may be that in other cases the court considers it appropriate to exercise a discretion to permit the bankrupt to be heard. But Mrs Frigger's submissions advanced no reason why any such discretion should be exercised in her favour in the present case. Instead, her written submissions traversed the question of whether the counterclaim in CIV 2675 of 2010 was complex and other matters said to be relevant to whether leave under s 58(3) should be given, and the underlying merits of the counterclaim. None of these matters are relevant to the preliminary issue of whether Mrs Frigger must or should be heard in opposition to the application.

17 For those reasons I determined that Mrs Frigger was not to be heard in the present application.

Application for leave to proceed - principles

18 In *Hudson v Sigalla* [2015] FCAFC 140; (2015) 235 FCR 122 at [25] the Full Court set out the purposes of the requirement for leave to proceed under s 58(3) of the *Bankruptcy Act* as:

> to assist in the orderly administration of the insolvent estate by protecting a bankrupt, and the property of the erstwhile debtor (as now vested in the trustee), against the enforcement of remedies. This is done by enabling the court to supervise the handling of claims through the procedure of proof of debt (administered by the trustee or liquidator), by ensuring that the assets of the estate are not expended on costs in a multiplicity of litigation, and by ensuring that no one creditor gets an advantage over the others …

And see also [13(2)] above.

19 For leave under s 58(3) to be necessary, the claim must be 'in respect of a provable debt'. The phrase 'in respect of' in s 58(3)(b) has a wide meaning: *Melnik v Melnik* [2005] FCAFC 160; (2005) 144 FCR 141 at [34]-[35] (Spender, Hill and Finn JJ), citing *Re McMaster; Ex parte McMaster* (1991) 33 FCR 70 (Hill J).

20 Whether a liability is a provable debt or not is determined by reference to s 82(1) of the *Bankruptcy Act*, which provides that:

> … all debts and liabilities, present or future, certain or contingent, to which a bankrupt was subject at the date of the bankruptcy, or to which he or she may become subject before his or her discharge by reason of an obligation incurred before the date of the bankruptcy, are provable in his or her bankruptcy.

21 Section 82(2), however, provides that demands 'in the nature of unliquidated damages arising otherwise than by reason of a contract, promise or breach of trust are not provable in bankruptcy'. So it will not always be clear what is a provable debt; there is, for example, uncertainty about whether a claim for damages for breach of statutory directors' duties falls within s 58(3): see ***SBA Music*** *Pty Ltd v Hall (No 2)* [2014] FCA 1116 at [23]-[24] (Wigney J).

22 The discretion conferred on the Court by s 58(3) is unfettered: ***Health Services Union*** *v Jackson (No 3)* [2015] FCA 694 at [17] (Tracey J). The relevant factors affecting the exercise of the discretion to grant leave to proceed cannot be stated exhaustively: see *Zervas v Burkitt* [2019] NSWCA 112 at [16].

Consideration

23 I am satisfied that there is at least one claim made by the applicants in the Supreme Court counterclaim which makes it a 'legal proceeding in respect of a provable debt'. That is the claim to the balance of the loan account which, straightforwardly enough, is a claim for debt.

24 The status of other claims as claims in respect of provable debts is less certain. For example, it may be doubted whether the claims for breach of fiduciary duty are claims for 'breach of trust' within the meaning of s 82(2), so that even if they are claims to unliquidated damages, they are still provable debts: see *Re Sharp; Ex parte Tietyens Investments Pty Ltd (in liq)* [1998] FCA 1367 at 4; and *Health Services Union* at [15]; but, contra, ***Auto Group** Ltd v England* [2008] NSWSC 402 at [21]; and *Mercedes Holdings Pty Ltd v Waters (No 5)* [2011] FCA 1428 at [158]. It may be that a claim for breach of fiduciary duties can be provable if it can be characterised as a claim for an equitable debt: see *Auto Group* at [4], [23]. Similarly, as I have already indicated by reference to *SBA Music*, there is doubt about whether claims for damages for breach of statutory directors' duties are provable. There are similar doubts about unfair preference claims: see e.g. *Ashala v Featherstone* [2016] QSC 121; [2017] 2 Qd R 1 at [2]-[8]. But it is not necessary for the court on an application for leave to finally determine complex questions of fact and law which may thus arise; it is appropriate for the court to proceed on the assumption that leave is required: *SBA Music* at [24].

25 If the claim in debt were a minor or severable part of the counterclaim, that would point against exercising the discretion in favour of granting leave to proceed. But, to the contrary, the claim is a significant part of the overall claims, and is entangled with the factual and legal issues that arise in other aspects of the counterclaim. The quantum of the claim in debt is substantial. And the description of the issues I have given above shows the entanglement of that claim with other issues. To quantify the claim requires characterisation of the first two transactions mentioned in [7] above as loans to CAT for the acquisitions of the real property, or not. That directs attention to the circumstances surrounding those acquisitions which will bear on the (non-provable) claims that CAT owns or owned the properties in its own right. For example, one alternative pleaded is that the correct conclusion is that CAT acquired the properties, not in its own right, but on resulting trust for the Friggers. If so, then the moneys they are said to have contributed would not be accounted for as a loan to CAT, but would simply be the payments which gave rise to resulting trusts in

their favour. That would affect the balance of the loan account. Similarly, resolution of the dispute about ownership of the St George Bank account of $80,000 may affect whether that amount was a loan from Mrs Frigger to CAT and so may affect the balance of the loan account.

26 Further, the circumstances of the alleged payments of part or all of the judgment sum and the $999,999 held in the ING account may determine whether those should be treated as amounts owing by the Friggers to CAT. And I have already described how the outcome of the claims that those payments were unfair preferences or otherwise voidable may affect the balance of the account. A link can also be seen between the factual and legal issues that need to be determined in relation to those claims and aspects of the claims for breach of fiduciary or statutory directors' duties; for example, the question of whether CAT was insolvent at the time of the payments of the judgment sum and the ING amount, or became so as a result of those payments, may be relevant to both the preference claims and the claims that the Friggers breached duties in connection with them.

27 It is not necessary to multiply the examples further. I was satisfied that the undoubtedly provable claim in debt which the applicants wish to pursue against the Friggers is a substantial part of a complicated web of claims, so that it would be impracticable to try to separate it out. If, for example, leave to proceed was not given, then the applicants would need to prove for that claim in the bankruptcy, but quantification of that proof may require determination of numerous other non-provable aspects of the counterclaim. The complexity and contestability of many of those aspects make them unsuited to determination as part of the bankruptcy administration and it is likely that they would end up back in court, especially since the bankrupts have a right to apply to the court for review of any decision of the trustee in bankruptcy to admit a proof of debt: s 104(1). That situation would be contrary to the orderly administration of the bankrupt estate, would in the end have little or no effect in protecting the estate from costs and a multiplicity of claims, and would be likely to produce delay.

28 It is also relevant to the exercise of the discretion that the Supreme Court proceedings have been on foot for more than 10 years and it is likely to add to waste of time and cost if further aspects of them are permanently stayed. The uncertainty I have noted about whether other claims are provable is likely to compound that cost considerably if leave is not granted.

Conclusion

29 For those reasons, I determined that it was appropriate to grant CAT and Mr Kitay leave to proceed with the counterclaim in the Supreme Court Action, if and to the extent that such leave was necessary under s 58(3) of the *Bankruptcy Act*.

I certify that the preceding twenty-nine (29) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Jackson.

Associate:

Dated: 13 May 2021

IN THE SUPREME COURT OF WESTERN AUSTRALIA
"COMMERCIAL AND MANAGED CASES LIST"

CIV 2765 of 2010

IN THE MATTER OF SECTION 78 OF THE TRUSTEES ACT 1962 AND SECTION 1321 OF THE CORPORATIONS ACT 2001

B E T W E E N:

ANGELA CECILIA THERESA FRIGGER

First Plaintiff

and

ANGELA CECILIA THERESA FRIGGER
and HARTMUT HUBERT JOSEPH FRIGGER
IN THEIR CAPACITIES AS TRUSTEES OF
THE FRIGGER SUPERANNUATION FUND

Second Plaintiff

and

HARTMUT HUBERT JOSEPH FRIGGER

Third Plaintiff

and

MERVYN JONATHON KITAY
IN HIS CAPACITY AS LIQUIDATOR OF
COMPUTER ACCOUNTING & TAX PTY LTD
(ACN 009 470 491) (IN LIQUIDATION)

First Defendant

and

COMPUTER ACCOUNTING & TAX PTY LTD
(ACN 009 470 491) (IN LIQUIDATION)

Second Defendant

MINUTE OF PROPOSED
FURTHER RE-AMENDED SUBSTITUTED DEFENCE AND COUNTERCLAIM

Case Manager: The Hon Justice Allanson
Date of Document: 6 July 2017
Filed on behalf of: The First and Second Defendants
Date of Filing:

Filed by:
Holborn Lenhoff Massey
Barristers & Solicitors
Level 3, Irwin Chambers
16 Irwin Street
PERTH WA 6000

Telephone: 9325 9905
Facsimile: 9225 5244

Ref: DAL0742

DEFENCE

1 As to paragraph 1 of the Amended Substituted Statement of Claim (**Statement of Claim**) the First Defendant (**the Liquidator**) and the Second Defendant (**CAT**) (together the Defendants):

(a) in relation to the First Plaintiff (**Mrs Frigger**):

(1) admit that Mrs Frigger is a director of CAT;

(2) say that Mrs Frigger has been a director and company secretary of CAT since 15 November 1997;

(3) say that since on or about 15 November 1997, Mrs Frigger has beneficially owned one of the two shares in CAT on issue; and

(4) say that Mrs Frigger is a related entity of CAT for the purposes of the *Corporations Act*;

(b) in relation to the Third Plaintiff (**Mr Frigger**):

(1) admit that Mr Frigger is a director of CAT;

(2) say that Mr Frigger has been a director of CAT since 15 November 1997;

(3) say that Mr Frigger is the husband of Mrs Frigger;

(4) say that since on or about 15 November 1997, Mr Frigger has beneficially owned one of the two shares in CAT on issue; and

(5) say that Mr Frigger is a related entity of CAT for the purposes of the *Corporations Act*; and

(c) do not admit any of the allegations in paragraph 1(d) of the Statement of Claim; and

(d) otherwise deny each and every allegation contained in paragraph 1 of the Statement of Claim.

2 As to paragraph 2 of the Statement of Claim, the Defendants:

(a) admit that the Liquidator is the official liquidator of CAT appointed by order of the Supreme Court of Western Australia made on or about 6 May 2010;

(b) say that the Liquidator was appointed as provisional liquidator of CAT, by the Supreme Court of Western Australia, on or about 21 January 2010, and ceased being provisional liquidator of CAT on or about 6 May 2010, when he became Liquidator of CAT; and

(c) say that the winding up application, which resulted in the Liquidator being appointed official liquidator of CAT, was filed with the Supreme Court of Western Australia on or about 8 January 2010.

3 As to paragraph 3 of the Statement of Claim the Defendants:

(a) say that CAT has two shares on issue;

(b) say that CAT is able to sue; and

(c) otherwise admit paragraph 3 of the Statement of Claim.

4 As to paragraph 4 of the Statement of Claim, the Defendants:

(a) admit that some time prior to 7 May 2009, a document was created (**the Deed**) which:

(1) purports to be dated 1 July 1997; and

(2) is entitled 'Superannuation Trust Deed for Self-Managed Super Fund for Frigger Super Fund';

(b) say that the Deed attaches an application by each of Mr and Mrs Frigger to be members of the superannuation fund created by the Deed; and

(c) otherwise do not admit any of the allegations contained in paragraph 4 of the Statement of Claim.

5 The Defendants do not admit any of the allegations contained in paragraph 5 of the Statement of Claim.

6 The Defendants admit paragraphs 6 and 7 of the Statement of Claim and will refer to the self-managed superannuation trust fund pleaded therein as the '**Frigger Super Fund**'.

7 As to paragraph 8 of the Statement of Claim, the Defendants:

(a) admit the terms of the Frigger Super Fund pleaded in paragraphs 8.1 of the Statement of Claim;

(b) admit the terms of the Frigger Super Fund pleaded in paragraph 8.2 of the Statement of Claim and say that, by reason of the term of the Frigger Super Fund pleaded in paragraph 8.2(b) of the Statement of Claim, which incorporated the provisions of *Superannuation Industry (Supervisor) Act 1993 (Cth)* (**Super Act**) into the Frigger Super Fund, and by reason of definition of 'self managed superannuation fund' contained in Section 17A of the Super Act, it is a term of the Frigger Super Fund that:

(1) CAT can only act as trustee of the Frigger Super Fund if the members of the Frigger Super Fund are the directors of CAT; or

(2) alternatively to (1), if CAT is not the trustee of the Frigger Super Fund, each member of the Frigger Super Fund must be a trustee of the Frigger Super Fund;

(c) admit the terms of the Frigger Super Fund pleaded at paragraphs 8.3 to 8.4 of the Statement of Claim;

(d) as to paragraph 8.5 of the Statement of Claim, say that the term of the Deed is that CAT may appoint the members of the Frigger Super Fund as trustees of the Frigger Super Fund, but only if they are appointed in place of CAT (clause 166);

(e) deny that the term of the Deed pleaded at paragraph 8.6 of the Statement of Claim, so far as it provides that CAT might vary the Deed retrospectively or by oral declaration, is effective at law;

(f) say that the Frigger Super Fund has the following additional terms:

(1) CAT can only make decisions under the Deed by resolution of the directors of CAT or by a person authorised by the directors by resolution (clause 4);

(2) CAT may appoint, as a replacement trustee of the Frigger Super Fund, a trustee corporation, but only if the directors of that trustee corporation are members of the Frigger Super Fund (clause 167); and

(3) if CAT varies the terms of the Deed, if the Super Act requires it, CAT must promptly give a certified copy of the resolution effecting the variation or a copy of the deed effecting the resolution to the regulator of the Super Act (**Regulator**)(clause 174); and

Particulars of variations which must be notified to the Regulator

Pursuant to Regulation 11.07AA of the *Superannuation Industry (Supervision) Regulations 1994* (**Regulations**), CAT must give notice to the Regulator of changes in the following:

(1) the membership of the Frigger Super Fund;

(2) the trustee of the Frigger Super Fund; and

(3) the directors of CAT.

(g) will refer to the terms of the Frigger Super Fund at trial for their full terms and effect.

8 The Defendants admit paragraphs 9 and 10 of the Statement of Claim, and say further that in point of law any such disqualification of a corporate trustee from continuing to act as trustee of the Frigger Super Fund does not remove or extinguish:

(a) any right of exoneration and/or indemnity out of the Frigger Super Fund of such trustee whether pursuant to law, in equity and/or pursuant to section 71 of the *Trustees Acct 1962 (WA)*; or

(b) the entitlement of such trustee to exercise a lien and/or equitable charge over all assets of the Frigger Super Fund to secure such rights of exoneration and/or indemnity.

9 The Defendants do not admit any of the allegations in paragraphs 11 and 12 of the Statement of Claim.

10 The Defendants admit paragraph 13 of the Statement of Claim.

11 The Defendants deny each and every allegation contained in paragraph 14 of the Statement of Claim.

12 As to paragraph 15 of the Statement of Claim the Defendants:

(a) Repeat paragraph 1(a)(2) and 1(b)(2) hereof;

(b) Admit that Mr and Mrs Frigger were directors of CAT during the pleaded time;

(c) Repeat paragraphs 6 and 7(f)(1) hereof;

(d) Admit that CAT was the trustee of the Frigger Super Fund during the pleaded time;

(e) Otherwise deny each and every allegation contained in paragraph 15 of the Statement of Claim.

13 Save to admit that Mr and Mrs Frigger in their personal capacities agreed to make payment of the sum of $435,000.00 (**First Advance**) the Defendants otherwise deny each and every allegation contained in paragraph 16 of the Statement of Claim, and say further:

(a) CAT purchased the Perth Property in its own right; and

(b) Such payment comprising the First Advance constituted a loan by Mr and Mrs Frigger in their personal capacities to CAT.

Particulars

The purchase of the Perth Property by CAT in its own right and the existence of the loan by Mr and Mrs Frigger to CAT is recorded in, arises from or is evidenced by:

(a) Paragraph 4 of the affidavit of Mrs Frigger sworn 16 December 2009 in CIV 2265 of 2006;

(b) Paragraph 8 of the affidavit of Mrs Frigger sworn 22 June 2010 in CIV 2265 of 2006;

(c) Paragraphs 14 – 18 of the affidavit of Mrs Frigger sworn 18 January 2011 in CIV 2765 of 2010;

(d) Paragraphs 10 and 13(a) of the affidavit of Mrs Frigger sworn 16 November 2012 in CIV 2765 of 2010;

(e) Paragraphs 7 and 16 – 22 of the affidavit of Mrs Frigger sworn 23 September 2008 in CACV 76 of 2008;

(f) The reasons for decision in Professional Services of Australia Pty Ltd v Computer Accounting and Tax Pty Ltd [2008] WASCA 222 at [24] and [27];

(g) The reasons for decision in Computer Accounting and Tax Pty Ltd v Professional Services of Australia Pty Ltd (No 3) [2010] WASC 2 at [25] – [26] and [28];

(h) The Defendants repeat the matters pleaded at paragraphs 81, 82(a), 82A and 83, 90 – 93 and 102 – 108 hereof,

Further, or in the alternative, the existence of a loan is to be inferred from:

(i) The matters specified in the particulars subjoined to paragraph 18(c) herein as to the existence of a loan to CAT for the purchase of the Armadale Property;

(j) The matters pleaded in paragraphs 51, 52(b) and 116 hereof.

13A. Further, or in the alternative, to the matters pleaded in paragraphs 13 and 103 to 105 hereof the Plaintiffs are estopped from denying that:

(a) CAT purchased the Perth Property in its own right; and

(b) the payment of the First Advance constituted a loan by Mr and Mrs Frigger to CAT.

Particulars

The estoppel arises by operation of law pursuant to:

(i) the determination by this Honourable Court of the issue as to the ownership of the Perth Property; and

(ii) the statements of Mrs Frigger on behalf of CAT that CAT was the owner of the Perth Property in its own right and the characterisation of the funds provided to CAT to facilitate the purchase of the Perth Property as a loan,

as set out in the particulars subjoined to paragraph 13 hereof.

14 The Defendants deny each and every allegation contained in paragraph 17 of the Statement of Claim.

15 Save to admit that Mr and Mrs Frigger in their personal capacities paid the sum of $435,000.00, the Defendants otherwise deny each and every allegation contained in paragraph 18 of the Statement of Claim.

16 As to paragraph 19 of the Statement of Claim, the Defendants:

(a) refer to paragraphs 13(a) and 90 hereof; and

(b) otherwise admit paragraph 19 of the Statement of Claim.

17 The Defendants deny each and every allegation contained in paragraph 20 of the Statement of Claim, and say further that if (which is denied) CAT held the title to the Perth Property on express trust or pursuant to a "Quistclose" trust, as alleged or at all, then:

(a) by operation of law, in equity and/or pursuant to section 71 of the *Trustees Act 1962 (WA)* CAT is entitled to exercise rights of exoneration

and/or to be indemnified out of any trust, including the Perth Property with respect to all debts, liabilities, costs and expenses incurred by CAT in connection with, or in or about the execution of, the trust or powers; and

(b) CAT is entitled to exercise a lien and/or equitable charge over all assets of the trust, including the Perth Property, to secure such rights of exoneration and/or indemnity.

18 Save to admit that Mr and Mrs Frigger in their personal capacities agreed to make payment of the sum of $665,000.00 (**Second Advance**) the Defendants deny each and every allegation contained in paragraph 21 of the Statement of Claim, and say further:

(a) The written contracts for sale of land by offer and acceptance in respect of the Armadale Property **(Armadale Land Contracts)** were contracts between Professional Services Australia Pty Ltd and CAT;

(b) The Armadale Land Contracts do not state that they are entered into by CAT as a trustee, whether of the Frigger Super Fund or any other trust;

(c) CAT purchased the Armadale Property in its own right; and

(d) Such payment comprising the Second Advance constituted a loan by Mr and Mrs Frigger in their personal capacities to CAT.

Particulars

The purchase of the Armadale Property by CAT in its own right and the existence of the loan by Mr and Mrs Frigger to CAT is recorded in, arises from or is evidenced by:

(a) Paragraph 4 of the affidavit of Mrs Frigger sworn 16 December 2009 in CIV 2265 of 2006;

(b) Paragraph 18 of the affidavit of Mrs Frigger sworn 22 June 2010 in CIV 2265 of 2006;

(c) Paragraphs 25 – 26 of the affidavit of Mrs Frigger sworn 18 January 2011 in CIV 2765 of 2010;

(d) Paragraphs 10 and 13(a) of the affidavit of Mrs Frigger sworn 16 November 2012 in CIV 2765 of 2010;

(e) Paragraphs 5 and 16 – 22 of the affidavit of Mrs Frigger sworn 23 September 2008 in CACV 76 of 2008;

(f) The entry of judgment in Supreme Court Action CIV 2265 of 2006 (**the Proceedings**) in favour of CAT in its own right and not in any capacity as trustee as pleaded in paragraph 78 hereof;

(g) The reasons for decision in Computer Accounting and Tax Pty Ltd v Professional Services of Australia Pty Ltd [2008] WASC 133 at [65], [88] and [89];

(h) The reasons for decision in Computer Accounting and Tax Pty Ltd v Professional Services of Australia Pty Ltd [2008] WASC 133(S) at [39];

(i) The reasons for decision in Professional Services of Australia Pty Ltd v Computer Accounting and Tax Pty Ltd [2008] WASCA 222 at [24] and [27];

(j) The reasons for decision in Computer Accounting and Tax Pty Ltd v Professional Services of Australia Pty Ltd (No 3) [2010] WASC 2 at [25] – [28] and [28];

(k) The Defendants repeat the matters pleaded at paragraphs 81, 82(b), 82A and 83, 96 – 99 and 102 – 108 hereof,

Further, or in the alternative, the existence of a loan is to be inferred from:

(l) The matters specified in the particulars subjoined to paragraph 13(b) herein as to the existence of a loan to CAT for the purchase of the Perth Property;

(m) The matters pleaded in paragraphs 51, 52(b) and 116 hereof.

18A. In Supreme Court action CIV 2265 of 2006 this Honourable Court found and determined that CAT was the owner of the Armadale Property in its own right.

Particulars

The Defendants rely upon:

(a) the reasons for decision in Computer Accounting and Tax Pty Ltd v Professional Services of Australia Pty Ltd [2008] WASC 133 at [65], [88] and [89];

(b) the entry of judgment in Supreme Court Action CIV 2265 of 2006 (the Proceedings) in favour of CAT in its own right on 9 July 2008 as pleaded in paragraph 78 hereof; and

(c) the reasons for decision in Computer Accounting and Tax Pty Ltd v Professional Services of Australia Pty Ltd [2008] WASC 133(S) at [39] delivered on 6 May 2009.

18B. By the conduct of the proceedings in Supreme Court Action CIV 2265 of 2006 on behalf of CAT, together with the evidence of Mrs Frigger given on behalf of CAT at the trial of the Proceedings, Mr and Mrs Frigger represented to CAT at all material times up to and including 6 May 2009 that CAT owned the Armadale Property in its own right (**First Representation**).

Particulars

The Defendants rely upon:

(a) the reasons for decision in Computer Accounting and Tax Pty Ltd v Professional Services of Australia Pty Ltd [2008] WASC 133 at [65], [88] and [89];

(b) the reasons for decision in Computer Accounting and Tax Pty Ltd v Professional Services of Australia Pty Ltd [2008] WASC 133(S) at [39] delivered on 6 May 2009; and

(c) the matters pleaded in paragraphs 103 to 105 hereof; and

(d) the particulars subjoined to paragraph 18 hereof.

18C. As intended by Mr and Mrs Frigger, in reliance upon the First Representation, CAT acted to its detriment in that:

(a) CAT pursued the claim in Supreme Court Action CIV 2265 of 2006 in its own right;

(b) CAT in its own right obtaining the entry of judgment following trial in Supreme Court Action CIV 2265 of 2006 as pleaded in paragraph 78 hereof;

(c) CAT opposed the Stay Application as pleaded in paragraph 104(a) hereof;

(d) CAT in its own right received payment of the Judgment Sum as pleaded in paragraph 83 hereof; and

(e) CAT opposed the appeal in Court of Appeal matter CACV 76 of 2008 and became liable to make repayment of the sum of $800,917.08 as pleaded in paragraph 87 hereof.

18D. Further, or in the alternative, to the matters pleaded in paragraphs 18 and 103 to 105 hereof, as a consequence of the matters pleaded at paragraphs 18A to 18C hereof the Plaintiffs are estopped from denying that:

(a) CAT purchased the Armadale Property in its own right;

(b) CAT retained ownership of the Armadale Property in its own right until at least 6 May 2009; and

(c) the payment of the Second Advance constituted a loan by Mr and Mrs Frigger to CAT.

Particulars

The estoppel arises by:

(i) operation of law pursuant to the determination by this Honourable Court of the issues as set out in paragraph 18A and the particulars subjoined to paragraph 18 hereof;

(ii) operation of law pursuant to the statements of Mrs Frigger on behalf of CAT that CAT was the owner of the Armadale Property in its own right and the characterisation of the funds provided to CAT to facilitate the purchase of the Armadale Property as a loan as set out in the particulars subjoined to paragraph 18 hereof; and/or

(iii) the detrimental reliance by CAT upon the First Representation.

19 The Defendants deny each and every allegation contained in paragraph 22 of the Statement of Claim.

20 Save to admit that Mr and Mrs Frigger in their personal capacities paid the sum of $665,000.00, the Defendants otherwise deny each and every allegation contained in paragraph 23 of the Statement of Claim.

21 As to paragraph 24 of the Statement of Claim, the Defendants:

(a) refer to paragraphs 18(a), (b) and (c), and 96 hereof; and

(b) otherwise admit paragraph 24 of the Statement of Claim.

22 The Defendants deny each and every allegation contained in paragraph 25 of the Statement of Claim, and say further that if (which is denied) CAT held the title to the Armadale Property on express trust or pursuant to a "Quistclose" trust, as alleged or at all, then:

(a) by operation of law, in equity and/or pursuant to section 71 of the *Trustees Act 1962 (WA)* CAT is entitled to exercise rights of exoneration and/or to be indemnified out of any trust, including the Armadale Property with respect to all debts, liabilities, costs and expenses incurred by CAT in connection with, or in or about the execution of, the trust or powers; and

(b) CAT is entitled to exercise a lien and/or equitable charge over all assets of the trust, including the Armadale Property, to secure such rights of exoneration and/or indemnity.

23 The Defendants deny each and every allegation contained in paragraph 26 of the Statement of Claim.

24 The Defendants deny each and every allegation contained in paragraph 27 of the Statement of Claim, and say further that if (which is denied) CAT held the title to the Perth Property and/or the Armadale Property on trust, as alleged or at all, then:

(a) by operation of law, in equity and/or pursuant to section 71 of the *Trustees Act 1962 (WA)* CAT is entitled to exercise rights of exoneration and/or to be indemnified out of any trust, including the Perth Property and the Armadale Property with respect to all debts, liabilities, costs and expenses incurred by CAT in connection with, or in or about the execution of, the trust or powers; and

(b) CAT is entitled to exercise a lien and/or equitable charge over all assets of the trust, including the Perth Property and the Armadale Property, to secure such rights of exoneration and/or indemnity.

25 As to paragraph 28 of the Statement of Claim, the Defendants:

(a) deny that Mrs Frigger made the oral declaration alleged;

(b) even if (which is denied) the oral declaration occurred as alleged, deny that it was made:

(1) in Mrs Frigger's capacity as a director of CAT;

(2) for and on behalf of CAT; and

(c) even if (which is denied) the oral declaration occurred as alleged, deny that it is effective or binding under the Deed or on CAT.

Particulars

If the alleged declaration was made, it is not binding because:

(1) clause 166 of the Deed is not effective to make an oral declaration binding and effective; and/or

(2) in any event, the declaration is not in accordance with the terms of the Deed, as it is not in accordance with clause 4 of the Deed as pleaded at paragraph 7(f)(1) hereof; and/or

(3) in any event, the amendment to the Frigger Super Fund to allow members to be trustees in addition to CAT is inconsistent with the definition of self managed superannuation fund in clause 17A of the Super Act and is therefore severed from the Deed pursuant to clause 6 of the Deed, as pleaded in paragraph 8.2(b) of the Statement of Claim.

26 The Defendants deny each and every allegation contained in paragraph 29 of the Statement of Claim.

27 As to paragraph 30 of the Statement of Claim, save to admit that:

(a) there is a document purporting to be the minutes of a meeting of the members of CAT dated 3 January 2008, which purports to appoint the members of the Frigger Super Fund as trustees, effective from 1 January 2008;

(b) there is a document entitled 'Deed of Amendment Frigger Super Fund' dated 1 January 2008, pursuant to which Mr and Mrs Frigger, Jessica Anne Frigger (**Jessica Frigger**) and Michael Jonathan Frigger (**Michael Frigger**) purport to be appointed as trustees of the Fund,

the Defendants deny each and every allegation contained in paragraph 30 of the Statement of Claim.

28 In relation to Jessica Frigger and Michael Frigger, the Defendants say:

(a) Jessica Frigger, was born on 9 October 1990 and is a child of Mr and Mrs Frigger; and

(b) Michael Frigger, was born on 22 February 1992 and is also a child of Mr and Mrs Frigger.

29 The Defendants deny each and every allegation contained in paragraph 31 of the Statement of Claim.

30 In further answer to paragraphs 30 and 31 of the Statement of Claim, the Defendants say:

(a) any purported appointment of Jessica Frigger and Michael Frigger as members of the Frigger Super Fund was invalid or of no effect in that:

(1) it breached the prohibition in the Deed on the appointment of new members to the Frigger Super Fund, as pleaded at paragraph 8.3 of the Statement of Claim;

(2) further, or in the alternative, there was no resolution of the directors of CAT effecting such an appointment, as required by clause 4 of the Deed, as pleaded at paragraph 7(f)(1) hereof;

(3) further, or in the alternative, in circumstances where Jessica Frigger and Michael Frigger were, as at 1 January 2008, minors, such an appointment breached clause 18 of the Deed, which required that an application be made for minors to be members of the Frigger Super Fund by their parents, which had not occurred;

(4) further, or in the alternative, such an appointment breached the provision of the Frigger Super Fund pleaded at paragraph 7(b)(1) hereof, in that, in circumstances where Jessica Frigger and Michael Frigger:

(A) were not, and had never been, appointed directors of CAT; and

(B) by reason of Section 201B(1) of the *Corporations Act*, could not be directors of CAT, whilst they were minors,

Jessica Frigger and Michael Frigger could not be members of the Frigger Super Fund whilst CAT was trustee thereof; and

(5) it is to be inferred that no such appointment occurred by reason of the fact that:

(A) the purported appointment of Jessica Frigger and Michael Frigger as members of the Frigger Super Fund was not notified to the Australian Taxation Office (**ATO**) pursuant to Regulation 11.07AA of the regulations to the Super Act; and

(B) both the Perth Property Declaration of Trust pleaded in paragraph 34 hereof and the Armadale Property Declaration of Trust pleaded in paragraph 35 hereof did not record Jessica Frigger and Michael Frigger as beneficiaries or members; and

(b) any purported appointment of Mr and Mrs Frigger and/or Jessica Frigger and Michael Frigger as trustees of the Frigger Super Fund was invalid or of no effect in that:

(1) it is to be inferred that no such appointment occurred by reason of the fact that the purported appointment of Mr and Mrs Frigger and Michael Frigger and Jessica Frigger as trustees of the Frigger Super Fund was not notified to the ATO pursuant to Regulation 11.07AA of the Super Act;

(2) further, or in the alternative, such an appointment breached the clause of the Frigger Super Fund pleaded at paragraph 7(b) hereof, which provided that CAT could only appoint the members of the Frigger Super Fund as trustee in place of CAT, but the purported appointment of Mr and Mrs Frigger and Jessica Frigger and Michael Frigger was to be trustees of the Frigger Super Fund in addition to CAT.

Particulars

CAT continued to act as trustee of the Frigger Super Fund after 1 January 2008 in that CAT purported to make the Declarations of Trust, as trustee of the Frigger Super Fund, pleaded at paragraphs 33 and 34 of the Statement of Claim.

Further particulars will be provided after discovery and interrogatories;

(3) further, or in the alternative, the purported appointment was by the purported members of the Frigger Super Fund, but pursuant to the clauses of the Deed pleaded at paragraphs 7(b) and 7(d)(1)

hereof, the appointment of a new trustee to the Frigger Super Fund can only be effected by CAT;

(4) further, or in the alternative, to the extent that it is alleged that the purported appointment was effected by a variation of the Deed, the purported variation did not comply with the clauses of the Frigger Super Fund pleaded at paragraph 7 hereof, in that:

(A) the purported variation was not effected by a resolution of the directors of CAT;

(B) the purported variation was not effected by CAT; and

(C) the purported variation was not notified to the Regulator; and

(5) further, or in the alternative, pursuant to the provisions of the Frigger Super Fund pleaded at paragraph 7(b)(2) hereof, only members of the Frigger Super Fund can be appointed as trustees of the Frigger Super Fund and, for the reasons pleaded at paragraph 30(a) hereof, Jessica Frigger and Michael Frigger were not ever validly appointed as members of the Frigger Super Fund; and

(6) further, or in the alternative, pursuant to the provisions of the Frigger Super Fund as pleaded at paragraph 8.5 of the Statement of Claim (clause 166) the appointment of the members of the Frigger Super Fund as trustees could only be effected by replacing the trust deed for the Frigger Super Fund Deed with another deed which provided the mechanisms to enable the members of the fund to act as trustees.

Particulars

(A) clause 4 of the Frigger Super Fund requires the existence of a corporate trustee for the making of decisions, and does not recognise nor provide for the existence of an individual or individuals as trustee, or to make decisions and exercise

powers as trustee, whether in conjunction with a corporate trustee or in lieu thereof.

31 Alternatively to paragraph 30 hereof, if, which is denied, the appointment of Mr and Mrs Frigger as trustees of the Frigger Super Fund was valid, it was reversed, which reversal was effective as from the date it was effected.

Particulars

The Plaintiffs rely upon the affidavit of Mrs Frigger dated 23 September 2008 filed in the Appeal (as that term is defined in particular (1) to paragraph 44 hereof), in which Mrs Frigger swears that although she and her husband became trustees of the Frigger Super Fund, this was a temporary measure which was retrospectively reversed as at the date it was made.

32 In the premises pleaded at paragraphs 25 to 31 hereof:

(a) CAT is, and has been, the only trustee of the Frigger Super Fund; and

(b) Mr and Mrs Frigger are, and have been, the only members thereof.

33 The Defendants do not admit paragraph 32 of the Statement of Claim.

34 As to paragraph 33 of the Statement of Claim, the Defendants:

(a) admit that by a document entitled 'Declaration of Trust', CAT purported to declare that it held the Perth Property on trust on behalf of Mr and Mrs Frigger and the powers of CAT as trustee thereof were contained in the Deed for the Frigger Super Fund (**Perth Property Declaration of Trust**);

(b) say that the Perth Property Declaration of Trust:

(1) records that it is effective from 1 October 2008;

(2) was not executed as a deed;

(3) was stamped on 26 October 2009 for nominal duty;

(4) was signed by Mrs Frigger as a director of CAT, was not executed under seal by CAT, nor pursuant to or in accordance with section 127 of the *Corporations Act*;

(5) was also signed by Mr and Mrs Frigger as beneficiaries; and

(6) records no consideration for the Perth Property Declaration of Trust;

(c) admit that the document was executed some time in or after May ~~April~~ 2009; and

(d) otherwise deny each and every allegation contained in paragraph 33 of the Statement of Claim.

35 As to paragraph 34 of the Statement of Claim, the Defendants:

(a) say that by a document entitled 'Declaration of Trust', CAT purported to declare that it held the Armadale Property on trust on behalf of Mr and Mrs Frigger and that the powers of CAT as trustee thereof were contained in the Deed for the Frigger Super Fund (**Armadale Property Declaration of Trust);**

(b) say that the Armadale Property Declaration of Trust:

(1) records that it is effective from 1 October 2008;

(2) was not executed as a deed;

(3) was stamped on 26 October 2009 for nominal duty;

(4) was signed by Mrs Frigger as a director of CAT, was not executed under seal by CAT, nor pursuant to or in accordance with section 127 of the *Corporations Act*;

(5) was also signed by Mr and Mrs Frigger as beneficiaries; and

(6) records no consideration for the Armadale Property Declaration of Trust;

(c) admit that the document was executed some time in or after May ~~April~~ 2009; and

(d) otherwise deny each and every allegation contained in paragraph 34 of the Statement of Claim.

36 The Defendants do not admit any of the allegations contained in paragraph 35 of the Statement of Claim.

37 As to paragraph 36 of the Statement of Claim the Defendants:

(a) Refer to paragraphs 94 and 100 hereof; and

(b) Otherwise admit paragraph 36 of the Statement of Claim.

38 As to paragraph 37 of the Statement of Claim the Defendants:

(a) Refer to paragraphs 95 and 101 hereof; and

(b) Otherwise admit paragraph 37 of the Statement of Claim.

39 The Defendants deny each and every allegation contained in paragraph 38 of the Statement of Claim.

40 As to paragraphs 39, 40 and 41 of the Statement of Claim, the Defendants:

(a) say that on or about 3 December 2009, Mr and Mrs Frigger as the shareholders of CAT, passed a resolution purporting to appoint Glen Douglas Trinick (**Trinick**) as the liquidator of CAT under section 491 of the *Corporations Act*, for the purpose of conducting a members voluntary winding up of CAT;

(b) say that at the meeting held on 12 December 2009, Mr and Mrs Frigger as the shareholders of CAT passed a resolution purporting to revoke the resolution pleaded at (a) hereof; and

(c) otherwise admit paragraphs 39, 40 and 41 of the Statement of Claim.

41 The Defendants do not admit any of the allegations in paragraph 42 of the Statement of Claim.

42 As to paragraph 43 of the Statement of Claim, the Defendants:

(a) admit that on or about 1 July 2010, each of Mr and Mrs Frigger, Jessica Frigger and Michael Frigger, purportedly as trustees of the Frigger Super Fund, executed a document entitled 'Deed of Amendment – Frigger Super Fund', which document purported to remove CAT as trustee of the Frigger Super Fund; and

(b) in the premises pleaded at paragraph 25 to 31 hereof, deny that Mr and Mrs Frigger, Jessica Frigger and Michael Frigger were trustees of the Frigger Super Fund and, therefore, deny that the purported removal of CAT as trustee of the Frigger Super Fund by the document pleaded in paragraph 43 of the Statement of Claim, was effective.

43 The Defendants deny each and every allegation contained in paragraphs 44 and 45 of the Statement of Claim, and say further that:

(a) The document pleaded in paragraph 43 of the Statement of Claim purports to be an exercise of the power under clause 166 of the Frigger Super Fund, and not the exercise of power under clause 174 (the existence of which as a power to remove a trustee of the Frigger Super Fund is denied);

(b) pursuant to the provisions of the Frigger Super Fund as pleaded at paragraph 8.5 of the Statement of Claim (clause 166) the retirement or removal of CAT as trustee of the Frigger Super Fund requires the decision and act of CAT itself;

(c) the removal of CAT as trustee, and the appointment of the members of the Frigger Super Fund as trustees, could only be effected in any event by replacing the trust deed for the Frigger Super Fund Deed with another deed which provided the mechanisms to enable the members of the fund to act as trustees;

Particulars

(1) clause 4 of the Frigger Super Fund requires the existence of a corporate trustee for the making of decisions, and does not recognise nor provide for the existence of an individual or individuals as trustee, or to make decisions and exercise powers as trustee, whether in conjunction with a corporate trustee or in lieu thereof.

(d) if, which is denied, there existed more than 1 trustee of the Frigger Super Fund then any decision or exercise of power required the unanimous agreement of all trustees to be valid.

43A. The Defendants deny each and every allegation contained in paragraph 46 of the Statement of Claim.

43B. In further answer to paragraphs 42 to 46 of the Statement of Claim the Defendants say that if:

(a) CAT ceased to be qualified to act as trustee of the Frigger Super Fund;

(b) The document pleaded in paragraph 43 of the Statement of Claim is valid and effective, as pleaded in paragraph 44 of the Statement of Claim or at all;

(c) CAT ceased to be a trustee of the Frigger Super Fund from 1 July 2010 as alleged in paragraph 45 of the Statement of Claim or at all;

(d) CAT held the title to the Perth Property and/or the Armadale Property on trust, as alleged or at all,

Each of which are denied, then in any event:

(e) by operation of law, in equity and/or pursuant to section 71 of the *Trustees Act 1962 (WA)* CAT is entitled to exercise rights of exoneration and/or to be indemnified out of any trust, including the Perth Property and the Armadale Property with respect to all debts, liabilities, costs and expenses incurred by CAT in connection with, or in or about the execution of, the trust or powers; and

(f) CAT is entitled to exercise a lien and/or equitable charge over all assets of the trust, including the Perth Property and the Armadale Property, to secure such rights of exoneration and/or indemnity,

And further, such rights of exoneration and/or indemnity, and the lien and/or equitable charge, have priority over the entitlement of any continuing or replacement trustee of the Frigger Super Fund to a transfer of title to, possession of, or right to dispose or receive the proceeds of, the assets of the Frigger Super Fund including the Armadale Property and the Perth Property.

44 As to paragraph 47 of the Statement of Claim, the Defendants:

(a) admit that by a document purportedly dated 1 December 2009, signed by Mr and Mrs Frigger as directors of CAT, CAT purportedly executed a Land Transfer Form by which CAT purported to transfer the Perth Property to Mr Frigger (**Second Perth Property Transfer Form**);

(b) admit that the Second Perth Property Transfer Form was lodged at Landgate on or about 7 September 2010;

(c) say that the Second Perth Property Transfer Form:

(1) records the consideration paid to CAT as being $1; and

(2) was stamped for nominal duty on 7 September 2010;

(d) say that the Second Perth Property Transfer Form has not been registered against the Perth Property and that CAT remains the registered proprietor of the Perth Property as at the date hereof; and

(e) say that the Second Perth Property Transfer Form was signed by Mr and Mrs Frigger purportedly as directors of and on behalf of CAT, after the appointment of the Liquidator to CAT (as provisional liquidator) on 21 January 2010; and

Particulars

The fact that the Second Perth Property Transfer Form and the Second Armadale Property Transfer Form (pleaded at paragraph 45(a) hereof) were signed by Mr and Mrs Frigger, purportedly as directors of and on behalf of CAT, after 21 January 2010 is to be inferred from the following:

(1) by an affidavit dated 6 December 2009 filed in Supreme Court of Western Australia Appeal CACV 76 of 2008 (**Appeal**) Mrs Frigger swore, in solemn terms, as to the assets of CAT as at the date of that affidavit, and attached to her affidavit the First Perth Property Transfer Form (as pleaded in paragraph 92 hereof) and the First Armadale Property Transfer Form (as pleaded in paragraph 98 hereof), but did not refer to any transfer of the Perth Property or Armadale Property pursuant to the Second Perth

Property Transfer Form or the Second Armadale Property Transfer Form;

(2) on 20 January 2010, Mrs Frigger swore an affidavit in action CIV 2265 of 2006 (**the Proceedings**), in response to an order of Simmonds J dated 16 December 2009 requiring that she file an affidavit as to the assets of CAT, to the effect that the Perth Property and the Armadale Property were owned by CAT as trustee of the Frigger Super Fund [paragraph 4] and made no reference to any transfer of either the Perth Property or the Armadale Property pursuant to the Second Perth Property Transfer Form or the Second Armadale Property Transfer Form;

(3) by affidavits dated 3 March 2010 and 27 April 2010 filed in Action COR 2 of 2010 (being the proceedings to wind up CAT), and by an affidavit dated 22 June 2010 filed in the Proceedings, Mrs Frigger deposed as to the status of the Perth Property and the Armadale Property, and in none of those affidavits did Mr Frigger depose as to the transfer of either the Perth Property or the Armadale Property pursuant to, nor the existence of, the Second Perth Property Transfer Form or the Second Armadale Property Transfer Form;

(4) the Second Perth Property Transfer Form and the Second Armadale Property Transfer Form were only stamped on 7 September 2010;

(5) neither of the Second Perth Property Transfer Form nor the Second Armadale Property Transfer Form were delivered up to the Liquidator as part of the books and records of CAT, upon the commencement of the liquidation of CAT; and

(6) further and better particulars will be provided after discovery and interrogatories; and

(f) otherwise deny each and every allegation contained in paragraph 47 of the Statement of Claim.

45 As to paragraph 48 of the Statement of Claim, the Defendants:

(a) admit that by a document purportedly dated 1 December 2009, signed by Mr and Mrs Frigger as directors of CAT, CAT purportedly executed a Land Transfer Form by which CAT purported to transfer the Armadale Property to Mr Frigger (**Second Armadale Property Transfer Form**);

(b) admit that the Second Armadale Property Transfer Form was lodged at Landgate on or about 7 September 2010;

(c) say that the Second Armadale Property Transfer Form:

(1) records the consideration paid to CAT as being $1; and

(2) was stamped for nominal duty on 7 September 2010;

(d) say that the Second Armadale Property Transfer Form has not been registered against the Armadale Property and that CAT remains the registered proprietor of the Armadale Property as at the date hereof;

(e) say that the Second Armadale Property Transfer Form was signed by Mr and Mrs Frigger, purportedly as directors of CAT, after the appointment of the Liquidator to CAT (as provisional liquidator) on 21 January 2010; and

Particulars

The Defendants repeat the particulars to paragraph 44(e) hereof.

(f) otherwise deny each and every allegation contained in paragraph 48 of the Statement of Claim.

46 Save to say that the reasons why the Acting Commission of Titles would not register the Second Perth Property Transfer Form and the Second Armadale Property Transfer Form, as recorded in his letter dated 8 November 2010, were not limited to the fact that the Liquidator had not consented to the transfers, the Defendants admit paragraph 49 of the Statement of Claim.

47 As to paragraphs 50 and 51 of the Statement of Claim, the Defendants:

(a) say that the request by Mrs Frigger that the Liquidator consent to the registration of the Second Armadale Property Transfer Form and Second Perth Property Transfer Form occurred in October 2010 by an email to the Liquidator dated 27 October 2010 from Mr and Mrs Frigger, Jessica Frigger and Michael Frigger;

(b) say that as at the date of the commencement of the proceedings herein, the Liquidator had not refused to consent to the registration; and

Particulars

By an email dated 2 November 2010 from Mr and Mrs Frigger and Jessica Frigger and Michael Frigger, the consent of the Liquidator to the transfers was sought, but before the time specified for the Liquidator to respond had expired, namely on 3 November 2010, the proceedings herein were commenced.

(c) otherwise deny each and every allegation contained in paragraphs 50 and 51 of the Statement of Claim;

(d) and say further that if (which is denied) the Perth Property and/or the Armadale Property constituted property of the Frigger Super Fund then the First Defendant, as liquidator of the Second Defendant, was entitled to decline the request for consent to the registration of the Second Armadale Property Transfer Form and the Second Perth Property Transfer Form on account of CAT's entitlement to exercise:

(1) rights of exoneration and/or to be indemnified out of any trust, including the Perth Property and the Armadale Property with respect to all debts, liabilities, costs and expenses incurred by CAT in connection with, or in or about the execution of, the trust or powers; and

(2) a lien and/or equitable charge over all assets of the trust, including the Perth Property and the Armadale Property, to secure such rights of exoneration and/or indemnity.

48 The Defendants deny each and every allegation contained in paragraph 52 of the Statement of Claim and deny that Mr and Mrs Frigger are entitled to the relief sought, or any relief at all, with respect to the Perth Property or the Armadale Property.

48A. In further answer to paragraphs 9, 10, 20, 25, 27, 33, 34, 38, 46, 50 and 51 of the Statement of Claim, and further or in the alternative to the matters pleaded in paragraphs 17, 22, 24, 43B, 47(d) and 48A to 48E herein, if, which is denied:

(a) the Perth Property and/or the Armadale Property are assets of the Frigger Super Fund or are otherwise held on trust for Mr and Mrs Frigger as members of the Frigger Super Fund; and/or

(b) the Armadale Property is held pursuant to a "Quistclose" resulting trust for Mr and Mrs Frigger,

as alleged by the Plaintiffs, or at all, then by operation of law, in equity and/or pursuant to section 71 of the *Trustees Act 1962 (WA),* CAT is entitled to exercise rights of exoneration and/or to be indemnified out of such trust, including such of the Perth Property and/or Armadale Property as comprise assets of that trust, with respect to all debts, liabilities, costs and expenses incurred by CAT in connection with, or in or about the execution of, the trusts or powers of such trust.

Particulars

The debts, liabilities, costs and expenses incurred by CAT include inter alia:

(1)	Australian Taxation Office:	$2,166.00
(2)	Professional Services of Australia Pty Ltd and/or the Estate of the late Martin Paul Banning (deceased):	$800,917.08
(3)	Sheriff (costs and commission on PSSO):	$27,881.28
(4)	Mr Glen Trinick:	$17,712.52

(5) Vogt Graham Lawyers: $9,561.40

(6) Chris Stokes & Associates: $12,457.00

(7) Bowen Buchbinder Vilensky: $159,457.56

(8) Interest as accruing upon the above sums;

(9) The legal costs incurred by the Defendants in Supreme Court Action COR 2 of 2010 and these Proceedings;

(10) The liability of the Second Defendant to make payment of party and party legal costs in connection with Court of Appeal matter CACV 76 of 2008;

(11) The liability of the Second Defendant to make payment of party and party legal costs in connection with Supreme Court Action CIV 2265 of 2006 to the extent that such costs are not set-off by or against any costs awarded in favour of the Second Defendant;

(12) The liability of the Second Defendant to make payment of solicitor and own client legal costs in connection with Supreme Court Action CIV 2265 of 2006, Court of Appeal matter CACV 76 of 2008 and/or High Court of Australia Special Leave Application P47 of 2009, to the extent that a liability exists in addition to particulars (5), (6) and (7) above; and

(13) Amounts found due (if any) to Mr and / or Mrs Frigger not otherwise included within the running balance of the Loan Account as particularised in Schedule 1.

Further particulars will be provided after discovery and interrogatories.

48B. In the premises pleaded in paragraph 48A herein, CAT is entitled to a lien, and further or alternatively an equitable charge, over all property of such trust, including such of the Perth Property and/or Armadale Property as comprise assets of that trust, to secure the rights of exoneration and/or indemnity.

48C. By virtue of the matters pleaded in paragraphs 48A and 48B herein:

(a) CAT is entitled to retain possession and control of all property of such trust, including such of the Perth Property and/or Armadale Property as comprise assets of that trust;

(b) CAT is entitled to sell or otherwise realise the property of such trust, including such of the Perth Property and/or Armadale Property as comprise assets of that trust;

(c) all proceeds of such sale or realisation are available for distribution to the creditors of CAT, and in meeting the costs of the liquidation of CAT; and

48D. In point of law the rights and entitlement of CAT, as pleaded in paragraphs 48A to 48C herein, have priority to and take precedence over any right or entitlement of either a successor trustee or any beneficiary of such trust, including Mr and Mrs Frigger.

48E. By virtue of the matters pleaded in paragraphs 48A to 48D herein, the Defendants deny that Mr and Mrs Frigger are entitled to the relief sought, or any relief at all, with respect to the Perth Property or the Armadale Property.

Term Deposit

49 The Defendants admit paragraphs 53 and 54 of the Statement of Claim.

50 The Defendants do not admit any of the allegations contained in paragraph 55 of the Statement of Claim.

51 As to paragraph 56 of the Statement of Claim, the Defendants:

(a) admit that on or about 16 September 2008, Mrs Frigger paid, inter alia, an amount of $80,000 to St George Bank (**St George**) as security for the

issue by St George of a bank guarantee in favour of BP Australia Pty Ltd (**BP**);

(b) say that the said sum of $80,000 was placed in St George Bank account number 0348829979, in the name of CAT (**Account**);

(c) say that the said payment of $80,000 was a loan by Mrs Frigger to CAT of that sum of $80,000; and

Particulars

The fact that the payment was a loan by Mrs Frigger to CAT is to be inferred from:

(1) the Particulars to paragraph 52(b) hereof;

(2) the manner in which the debts and obligations of CAT have been dealt with by Mr and Mrs Frigger, as pleaded in particular (c) to paragraph 116 hereof.

(d) otherwise deny each and every allegation contained in paragraph 56 of the Statement of Claim.

52 As to paragraph 57 of the Statement of Claim, the Defendants:

(a) admit that St George placed the said sum of $80,000 in the Account as a term deposit (**Term Deposit**);

(b) say that the funds the subject of Term Deposit were an asset of CAT;

Particulars of Ownership of Term Deposit

(1) In the application to open the Term Deposit, signed on behalf of CAT by Mr and Mrs Frigger:

(A) it is recorded that the name of the account is 'Computer Accounting & Tax Pty Ltd';

(B) it was expressly recorded that the funds are not held on trust;

(C) the ACN for CAT was used; and

(D) the Tax File Number of the 'account holder' for the Term Deposit is the Tax File Number of CAT;

(2) In the 30 June 2008 balance sheet for CAT provided to the Liquidator by Mr and Mrs Frigger in March 2010, the Term Deposit is recorded as an asset of CAT.

(3) By an affidavit dated 23 September 2008, filed in the Appeal, Mrs Frigger swore that the Term Deposit was an asset of CAT.

(4) In the balance sheet for CAT for the period ended 30 June 2009, provided to the Liquidator by Mrs Frigger in May 2010, it is recorded that the Term Deposit is an asset of CAT;

(5) In the declaration of solvency sworn by Mrs Frigger on 12 December 2009, for the purposes of the shareholders meeting of CAT pleaded at paragraph 40 of the Statement of Claim, it is recorded that the Term Deposit is an asset of CAT;

(6) In the affidavit dated 20 January 2010 sworn by Mrs Frigger in the Proceedings it is recorded that the Term Deposit is an asset of CAT;

(7) In the Report as to Affairs sworn by Mrs Frigger dated 21 January 2010 and provided to the Liquidator, it is recorded that the Term Deposit is an asset of CAT;

(8) In attachment 3 to the affidavit sworn by Mrs Frigger dated 16 February 2010 and filed in the Proceedings, it is recorded that the Terms Deposit is an asset of CAT;

(9) In the loan account attached to and verified by Mrs Frigger's affidavit dated 22 June 2010 and filed in the Proceedings, it is recorded that the sum of $80,000 was a loan by Mrs Frigger to CAT;

(10) By a letter dated 15 July 2010 from Mrs Frigger to the Liquidator, it is asserted that the Term Deposit was held in the name of CAT; and

(11) in the charge purportedly granted by CAT in favour of Mr and Mrs Frigger and purportedly dated 10 September 2009 (**Charge**), it is recorded that one of the assets of CAT, the subject of the Charge, was the sum of $80,000 the subject of the Term Deposit; and

(c) otherwise deny each and every allegation contained in paragraph 56 of the Statement of Claim.

53 As to paragraph 58 of the Statement of Claim, the Defendants:

(a) say that, in circumstances where the funds the subject of the Term Deposit were in the name of CAT, and were an asset of CAT, the obligation on St George was, subject to conditions, to repay to CAT the sum of $80,000 upon the expiry of the Term Deposit (and any extension thereof);

(b) say that, in the premises, CAT was entitled to any interest accruing on the Term Deposit; and

(c) otherwise deny each and every allegation contained in paragraph 58 of the Statement of Claim.

54 The Defendants do not admit any of the allegations contained in paragraph 59 of the Statement of Claim, and say further that:

(a) the service station business conducted on the Armadale Property (**Service Station Business**) comprised part of the subject matter purchased by CAT in conjunction with the Armadale Property, and the plant, equipment, fixtures and fittings at the Armadale Property, pursuant to the Armadale Land Contracts;

Particulars

(1) The Defendants will refer to the 2 written contracts for sale of land by offer and acceptance in respect of the Armadale Property with PSA at trial; and

(2) The Defendants repeat the matters pleaded at paragraphs 77, 96(a), 97 and 116 (particular (c)(1) dot point 2) hereof;

(b) the Service Station Business was not transferred, assigned nor disposed of by CAT to Mr and Mrs Frigger; and

(c) Mr and Mrs Frigger did not make any payment to CAT by way of consideration for the acquisition of the Service Station Business or the right to conduct the Service Station Business; and

(d) Mr and Mrs Frigger have not accounted to CAT for, nor paid to CAT, the profits arising from the conducting of the Service Station Business, and further or alternatively have failed to make payment of monetary compensation or rent for the use of the Armadale Property including the plant, equipment, fixtures and fittings at the Armadale Property, for the period Mr and Mrs Frigger have conducted the Service Station Business.

55 As to paragraph 60 of the Statement of Claim, the Defendants:

(a) say that in or about early September 2009, CAT renewed the Term Deposit for a further period of 4 months, expiring on 1 January 2010;

(b) say that the Term Deposit was automatically renewed for a further period of 4 months on 1 January 2010, expiring on 1 May 2010;

(c) say that in early May 2010, the Term Deposit was renewed at the request of the Liquidator on behalf of CAT, for a further period of 4 months, expiring on 1 September 2010; and

(d) otherwise deny each and every allegation contained in paragraph 60 of the Statement of Claim.

56 The Defendants deny each and every allegation contained in paragraphs 61 and 62 of the Statement of Claim.

57 As to paragraph 63 of the Statement of Claim, the Defendants:

(a) say that on or about 25 January 2010, the Liquidator wrote to St George, and advised St George of the appointment of the Liquidator as provisional liquidator of CAT and requested that St George freeze all accounts held by CAT;

(b) say that, as a consequence of the letter referred to at (a), and consistent with section 471A of the *Corporations Act*, St George have not dealt with the Term Deposit in accordance with the instructions of Mrs Frigger; and

(c) otherwise deny each and every allegation contained in paragraph 63 of the Statement of Claim.

58 As to paragraph 64 of the Statement of Claim, the Defendants:

(a) say that, by a letter dated 2 August 2010, Mrs Frigger made demand upon the Liquidator requesting that the Liquidator write to St George advising that CAT no longer claimed an interest in the Term Deposit;

(b) say that, by a response dated 10 August 2010 from the Liquidator's solicitors to Mrs Frigger's solicitors, the Liquidator sought an explanation as to why it was asserted that the Term Deposit was owned by Mrs Frigger and not CAT;

(c) say that, by a letter dated 20 August 2010, Mrs Frigger again requested that the Liquidator release the Liquidator's 'hold' on the Term Deposit;

(d) admit that by a letter dated 26 August 2010 from the Liquidator's solicitors to Mrs Frigger's solicitors, the Liquidator alleged that the Term Deposit was an asset of CAT; and

(e) otherwise deny each and every allegation contained in paragraph 64 of the Statement of Claim.

59 The Defendants do not admit any of the allegations in paragraph 65 of the Statement of Claim.

60 As to paragraph 66 of the Statement of Claim, the Defendants:

(a) deny that the Liquidator's conduct, as pleaded in paragraph 58 hereof, constitutes an act, omission or decision of a liquidator within the terms of section 1321(1) of the *Corporations Act*; and

(b) otherwise deny each and every allegation contained in paragraph 66 of the Statement of Claim.

61 As to paragraph 67 of the Statement of Claim, if, which is denied, the conduct of the Liquidator referred to in paragraph 66 of the Statement of Claim constitutes an act, omission or a decision of the Liquidator within the terms of section 1321(1) of the *Corporations Act*, then the Defendants admit that Mrs Frigger is the person aggrieved within the terms of section 1321(1) of the *Corporations Act*.

62 The Defendants deny each and every allegation contained in paragraph 68 of the Statement of Claim and deny that Mrs Frigger is entitled to the relief sought with respect to the Term Deposit or any relief at all.

Claim for Repayment of Taxing Fee

63 The Defendants admit paragraph 69 of the Statement of Claim, but will refer to proceedings CIV 2265 of 2006 as **the Proceedings**.

64 As to paragraph 70 of the Statement of Claim, the Defendants:

(a) admit that on or about 4 June 2009, Mrs Frigger, in her capacity as a director of CAT, caused CAT to lodge a Bill of Costs (**the Bill**) for taxation in the Proceedings;

(b) admit that the prescribed fee for lodging the Bill of $15,952.15 (**the Fee**) was paid;

(c) admit that the fee was paid out of Mrs Frigger's personal funds;

(d) say that the transaction contemplated at (b) and (c) above constituted a loan by Mrs Frigger of a sum amounting to the Fee to CAT; and

Particulars

The existence of a loan is to be inferred from the matters pleaded in paragraphs 13, 18, 51, 52(b) and 116 hereof.

(e) otherwise deny each and every allegation contained in paragraph 70 of the Statement of Claim.

65 As to paragraph 71 of the Statement of Claim, the Defendants:

(a) admit that the loan by Mrs Frigger to CAT pleaded in paragraph 64(d) hereof was made for the purpose of enabling CAT to lodge the Bill for taxation; and

(b) otherwise deny each and every allegation contained in paragraph 71 of the Statement of Claim.

66 As to paragraph 72 of the Statement of Claim, the Defendants:

(a) admit that on or about 23 October 2009 the Court of Appeal in the Appeal handed down its decision (**Reasons**);

(b) plead the full effect of the Reasons at paragraph 86 hereof;

(c) say that on or about 7 December 2009, the Court delivered supplementary reasons regarding, inter alia, the issue of costs and ordered that the costs order in the Proceedings be set aside and the question of the costs of the trial of the Proceedings be remitted to the Trial Judge for reconsideration in light of the Reasons; and

(d) otherwise deny each and every allegation contained in paragraph 72 of the Statement of Claim.

67 As to paragraph 73 of the Statement of Claim, the Defendants:

(a) say that, as a consequence of the Reasons and the supplementary reasons pleaded at paragraph 66(c) hereof, upon the question of the costs of the trial of the Proceedings being remitted to the Trial Judge, the Trial Judge will make an order under which CAT will be entitled to certain costs of the Proceedings at first instance;

(b) as a consequence, in due course, a new bill of costs will be filed in the Proceedings, to replace the Bill, and CAT will be entitled to request that the Fee be applied in satisfaction of its obligation to pay a fee upon the filing of the replacement bill of costs for taxation; and

(c) otherwise deny each and every allegation contained in paragraph 73 of the Statement of Claim.

68 As to paragraph 74 of the Statement of Claim, if, which is not admitted, in or about October 2010 Mrs Frigger applied to the Court for a refund of the Fee, the Defendants say that the application, which could only be made by CAT, was not authorised by the Liquidator and was therefore made by Mrs Frigger in breach of Section 471A of the *Corporations Act*.

69 The Defendants deny each and every allegation in paragraph 75 of the Statement of Claim.

70 As to paragraph 76 of the Statement of Claim, the Defendants:

(a) admit that on 8 November 2010, Mrs Frigger sent an email to the Liquidator in which she stated that she had received a request from the Supreme Court for the Liquidator's consent to a refund of fees paid on a bill of costs (although not specifically referring to the Bill) and urgently sought the Liquidator's written consent for the Fee to be refunded to Mrs Frigger, which Fee Mrs Frigger had alleged was paid by her on her credit card; and

(b) otherwise deny each and every allegation contained in paragraph 76 ~~75~~ of the Statement of Claim.

71 As to paragraph 77 of the Statement of Claim, the Defendants:

(a) admit that by an email dated 10 November 2010, the Liquidator advised Mrs Frigger that the Liquidator considered that she had no entitlement to a refund of the Fee; and

(b) otherwise deny each and every allegation contained in paragraph 77 of the Statement of Claim.

72 The Defendants deny each and every allegation contained in paragraphs 78 and 79 of the Statement of Claim.

73 As to paragraph 80 of the Statement of Claim, the Defendants:

(a) deny that the Liquidator's conduct, as pleaded in paragraph 66 hereof, constitutes an act, omission or decision of a Liquidator within the terms of section 1321(1) of the *Corporations Act*; and

(b) otherwise deny each and every allegation contained in paragraph 80 of the Statement of Claim.

74 As to paragraph 81 of the Statement of Claim, if, which is denied, the conduct of the Liquidator pleaded in paragraph 71 hereof constitutes an act, omission or decision of a Liquidator within the terms of section 1321(1) of the *Corporations Act*, then the Defendants admit that Mrs Frigger is a person aggrieved within the terms of section 1321(1) of the *Corporations Act*.

Relief

75 The Defendants deny that the Plaintiffs are entitled to the relief sought in the Statement of Claim or any relief at all and say that:

(a) by reason of the matters set out in paragraphs 13, 13A, 18, 18A and 44 to 47 above, the Armadale Property was at all material times and the Perth Property is ~~are~~ owned by CAT in its own right;

(b) further, or in the alternative, by reason of the matters set out in paragraphs 90 to 108 below, the Armadale Property was at all material times and Perth Property is ~~are~~ owned by CAT in its own right;

(c) further, or in the alternative, if, which is denied, the Armadale Property and/or the Perth Property are held by CAT on trust, then by reason of the matters set out in paragraphs 17, 22, 24, 43B, 47(d) and 48A to 48E hereof CAT is entitled to exercise a right of exoneration and/or indemnity against the Armadale Property and/or the Perth Property as assets of the trust, and to exercise a lien and/or equitable charge over the Armadale Property and/or the Perth Property;

(d) by reason of the matters set out in paragraphs 49 to 62 hereof, the Term Deposit is an asset of CAT and that Mrs Frigger is an unsecured creditor of CAT to the extent of the loan of $80,000 pleaded in paragraph 51(c) hereof; and

(e) by reason of the matters pleaded in paragraphs 63 to 74 hereof, to the extent that the Fee is to be refunded, it is to be refunded to CAT and

that Mrs Frigger is an unsecured creditor of CAT with respect to the loan pleaded in paragraph 64(d) hereof.

76 In further answer to the whole of the Statement of Claim:

(a) save as expressly pleaded to above, the Defendants deny each and every allegation of fact and point of law pleaded in the Statement of Claim as if the same were set out herein in full and traversed seriatim; and

(b) the Defendants plead as follows.

Proceedings

77 By the Proceedings, which were originally commenced by way of Local Court Proceedings No. 17065 of 2003 on 17 September 2003, but which proceedings ultimately went to trial in this Honourable Court as Action CIV 2265 of 2006, CAT claimed that Professional Services of Australia Pty Ltd (**PSA**) and Martin Paul Banning (**Banning**) had engaged in misleading and deceptive conduct in breach of the *Trade Practices Act* and/or the *Fair Trading Act*, in relation to the sale by PSA to CAT of the Armadale Property (and the business conducted on the Armadale Property).

78 On 9 July 2008, by orders made in the Proceedings after trial, Simmonds J of this Honourable Court found in favour of CAT and ordered that Banning and PSA pay to CAT:

(a) the sums of $287,125, $4,999.50 and $675,078;

(b) interest on the amounts referred to in (a) hereof; and

(c) costs,

(together **the Orders)**.

79 On 25 July 2008, Banning and PSA appealed against aspects of the Orders, being the Appeal.

80 On or about 8 September 2008, Banning died, and thereafter his executor, Mr Donald Campbell-Smith conducted the Appeal on behalf of Banning's

estate (which estate will hereinafter be referred to as **Banning**).

81 On 24 September 2008, the Court of Appeal refused the application of Banning and PSA to suspend or stay the Orders (**Stay Application**), pending the outcome of the Appeal.

82 In opposition to the Stay Application, by an affidavit filed in the Appeal and dated 23 September 2008 (**Stay Affidavit**), Mrs Frigger swore, in solemn terms, that as at 23 September 2008, inter alia:

(a) at [paragraph 16] that:

(1) the Perth Property was worth $1,100,000;

(2) CAT owned the Perth Property in its own right; and

(3) that the Perth Property was unencumbered;

(b) at [paragraph 17] that:

(1) the Armadale Property was worth $615,030;

(2) CAT owned the Armadale Property in its own right; and

(3) the Armadale Property was unencumbered;

(c) at [paragraph 18] that, in its own right, CAT held a term deposit of an amount of $999,999 with ING Direct Bank (**ING Funds**);

(d) at [paragraph 20] that, in its own right, CAT held the Term Deposit; and

(e) at [paragraph 22], that save for quarterly GST liabilities, CAT had no liabilities.

82A The Court of Appeal relied upon the Stay Affidavit as the basis for refusing the Stay Application.

Particulars

The Defendants rely upon:

(a) the reasons for decision of Buss JA with respect to the Stay Application in Professional Services Australia Pty Ltd v Computer Accounting and

Tax Pty Ltd [2008] WASCA 222, particularly at [24] and [27]; and

(b) the reasons for decision of the Court of Appeal in Frigger v Professional Services of Australia Pty Ltd (No 3) [2014] WASCA 69, particularly at [88] and [89]

83 On or about 2 and 5 June 2009, PSA and Banning paid to CAT substantially the whole of the amount due to CAT as a consequence of the Orders, being the sum of $1,165,661.54 (**Judgment Sum**).

84 On or about 30 June 2009:

(a) the whole of the Judgment Sum; or

(b) alternatively, $900,000 out of the Judgment Sum,

was paid by CAT to Mr and Mrs Frigger.

Particulars

The matters pleaded at paragraph 84 are recorded in an affidavit of Mrs Frigger sworn and filed in Action COR 2 of 2010 (being the proceedings to wind up CAT) and dated 3 March 2010. Further particulars of the payment will be provided after discovery and interrogatories.

85 On 22 July 2009, the Court of Appeal of this Honourable Court heard the Appeal.

86 The effect of the Reasons delivered by the Court of Appeal in the Appeal on Friday, 23 October 2009 was:

(a) that the Appeal should be allowed in part;

(b) that to the extent that the Orders provided that Banning and PSA should pay to CAT the sum of $675,078 and interest thereon, the Orders should be set aside; and

(c) to further reduce the awarded damages made pursuant to the Orders by $6,500, with the corresponding reduction in interest.

87 As a consequence of the Reasons, on 7 December 2009, the Court of Appeal, in the Appeal, made orders which had the effect, inter alia, that CAT was

obliged to repay to Banning and PSA, the sum of $800,917.08 plus interest (**CoA Orders**).

88 On 28 May 2010, CAT's application for leave to appeal to the High Court of Australia, from the CoA Orders was refused.

89 CAT has not paid to Banning or PSA the amount pleaded at paragraph 87 hereof, nor any other amount, pursuant to the CoA Orders.

Ownership of the Properties

90 On or about 29 November 2001, CAT, in its own right, purchased the Perth Property from Bestcorp Investments Pty Ltd for $435,000.

91 For the purpose of enabling CAT to purchase the Perth Property, on or about 19 December 2001, Mr and Mrs Frigger made the First Advance to CAT.

92 Under the hand of Mr and Mrs Frigger as directors of CAT, CAT executed a land transfer form by which CAT, in its own right, purported to transfer the Perth Property to CAT (**First Perth Property Transfer Form**), on or about:

(a) 1 July 2007, being the date appearing on the First Perth Property Transfer Form; or

(b) in the alternative, 21 May 2007, being the date indorsed on the First Perth Property Transfer Form on behalf of the Commissioner of Stamp Duties, as being the date of the First Perth Property Transfer Form,

Particulars

A copy of the First Perth Property Transfer Form can be inspected at the offices of the solicitors' of the Defendants on prior appointment.

93 The First Perth Property Transfer Form:

(a) records the consideration paid to CAT by CAT as being the sum of $1;

(b) has never been lodged for registration at Landgate; and

(c) was stamped on 13 July 2007 for nominal duty.

94 On or about 26 October 2009, in reliance upon the Perth Property Declaration of Trust, Mrs Frigger made application to the Registrar of Titles for the lodgement of a Registrar's Caveat under the *Transfer of Land Act* over the Perth Property, to protect the alleged interest of Mr and Mrs Frigger as beneficiaries under the Perth Property Declaration of Trust, and/or as beneficiaries of the Frigger Super Fund.

Particulars

A copy of the application for the issue of a Registrar's Caveat may be inspected at the offices of the solicitors for the Defendants on prior appointment.

95 On or about 13 November 2009, the Registrar of Titles lodged and recorded Registrar's Caveat No L137645 against the Perth Property.

96 On or about 17 September 2003, CAT, in its own right, purchased from PSA:

(a) the Armadale Property together with the business conducted on the Armadale Property for $365,000; and

(b) the plant and equipment, and fixtures and fittings at the Armadale Property for $300,000.

97 For the purpose of enabling CAT to purchase the Armadale Property and the business conducted on the Armadale Property, together with the plant equipment fixtures and fittings, on or about 31 May 2003 Mr and Mrs Frigger made the Second Advance to CAT.

98 On or about 21 May 2007, alternatively 1 July 2007, or in the further alternative 1 July 2008, under the hand of Mr and Mrs Frigger as directors of CAT, CAT executed a Land Transfer Form by which CAT in its own right purported to transfer the Armadale Property to CAT (**First Armadale Property Transfer Form**).

Particulars

A copy of the First Armadale Property Transfer Form can be inspected at the offices of the solicitors' for the Defendants upon prior appointment;

99 The First Armadale Property Transfer Form:

(a) records the consideration paid to CAT by CAT as being $1;

(b) has never been lodged for registration at Landgate; and

(c) was stamped on 8 May 2009 for nominal duty.

100 On or about 26 October 2009, in reliance upon the Armadale Property Declaration of Trust, Mrs Frigger made application to the Registrar of Titles for the lodgement of a Registrar's Caveat under the *Transfer of Land Act* over the Armadale Property, to protect the alleged interest of Mr and Mrs Frigger as beneficiaries under the Armadale Property Declaration of Trust, and/or as the beneficiaries of the Frigger Super Fund.

Particulars

A copy of the application for the issue of a Registrar's Caveat may be inspected at the offices of the solicitors for the Defendants upon prior appointment.

101 On or about 13 November 2009, the Registrar of Titles lodged and recorded Registrar's Caveat No L137646 against the Armadale Property.

102 Further, or in the alternative to the matters pleaded at paragraphs 44 to 47 hereof, in the premises pleaded at paragraphs 103 to 108 hereof, the Perth Property and the Armadale Property (together **the Properties**) are owned by CAT in its own right.

103 On or about 23 September 2008, Mr and Mrs Frigger represented to CAT that, as at 23 September 2008, CAT owned the Properties in its own right (**Second Representation**).

Particulars

(a) The Second Representation is contained in the Stay Affidavit of Mrs Frigger, which was sworn by Mrs Frigger on behalf of herself and Mr Frigger, as pleaded at paragraph 82 hereof;

(b) The Second Representation is consistent with and repeated in:

(1) the findings on the evidence of Mrs Frigger at the trial of the Proceedings and the determination upon the issue as set out in the reasons for decision in Computer Accounting and Tax Pty Ltd v Professional Services of Australia Pty Ltd [2008] WASC 133 at [65], [88] and [89] delivered 9 July 2008 which position was not challenged or corrected by Mr and Mrs Frigger following the delivery of the previous reasons for decision on 9 July 2008;

(2) the findings as set out in the reasons for decision in Computer Accounting and Tax Pty Ltd v Professional Services of Australia Pty Ltd [2008] WASC 133 (S) at [39] delivered 6 May 2009, which position was not challenged or corrected by Mr and Mrs Frigger following the delivery of the previous reasons for decision on 9 July 2008.

104 As intended by Mr and Mrs Frigger, in reliance upon the Second Representation, CAT acted to its detriment in that:

(a) CAT opposed the Stay Application on the basis that it had substantial assets which would enable it to repay any portion of the Judgment Sum which might be payable to Banning and PSA if the Appeal was successful; and

(b) CAT effected the transactions pleaded at paragraph 84 hereof, or in the alternative, paragraph 121 of the Counterclaim, on the basis that even without those assets, CAT owned the Armadale Property and the Perth Property and could realise the Properties to satisfy any liability CAT may have to PSA and Banning arising out of an adverse outcome in the Appeal.

105 As a consequence of the matters pleaded at 103 and 104 hereof, Mr and Mrs Frigger are estopped from asserting that the Properties were transferred by CAT to the Frigger Super Fund prior to 23 September 2008.

106 Neither of the Armadale Property Declaration of Trust nor the Perth Property Declaration of Trust, (together, the **Declarations of Trust**) bound CAT in that:

(a) no consideration was received by CAT in consideration for the purported transfer, effected by the Declarations of Trust, of beneficial ownership

of the Properties to Mr and Mrs Frigger; and

(b) the Declarations of Trust were not deeds and were not executed as deeds.

107 Neither the:

(a) Second Perth Property Transfer Form; nor

(b) Second Armadale Property Transfer Form,

are binding, so far as CAT is concerned, being documents executed on behalf of CAT in breach of section 471A of the *Corporations Act*, in that, notwithstanding the purported date of those documents, the Second Perth Property Transfer Form and the Second Armadale Property Transfer Form were executed by CAT after the date of the commencement of the winding up of CAT.

Particulars

The Defendants repeat the particulars to paragraph 44(e) hereof.

108 In the alternative to the matters pleaded at paragraph 107 hereof, if, which is denied, the Second Armadale Property Transfer Form and Second Perth Property Transfer Form were executed on or about the date thereof, then to the extent that those transfers purport to be transfers to Mr Frigger as trustee of the Frigger Super Fund, in the premises pleaded at paragraph 32 hereof, the transfers are not effective as Mr Frigger is not a trustee of the Frigger Super Fund.

Sale of Armadale Property and Service Station Business

108A. Pursuant to:

(a) a written agreement for the sale of the Armadale Property by offer and acceptance between Viva Energy Australia Pty Ltd ("**Viva Energy**"), the First Plaintiff, the Third Plaintiff, the First Defendant and the Second Defendant ("**Land Contract**"); and

(b) a written agreement for the sale of the Business Assets of the service

station at 269 Albany Highway Armadale in the State of Western Australia entitled "Business Sale Agreement" between Viva Energy the First Plaintiff, the Third Plaintiff, the First Defendant and the Second Defendant ("**Business Contract**"),

The Armadale Property and the Service Station Business (including plant and equipment) was sold to Viva Energy.

108B. Material terms of the Land Contract included:

(a) The purchase price means $1,070,000.00 plus GST (clause 1.2 definition "Purchase Price");

(b) Viva Energy, as purchaser, will be entitled to vacant possession of the Armadale Property on settlement (clause 8.1);

(c) The First Plaintiff and Third Plaintiff (including in their capacity as Second Plaintiffs as trustees of the Frigger Super Fund), First Defendant and Viva Energy acknowledge that the proceeds from the sale of the Armadale Property under the Land Contract are subject to a claim by the First Plaintiff and Third Plaintiff in their capacity as the Second Defendant (as trustees of the Frigger Super Fund) (clause 16.5(a));

(d) Viva Energy, the First Defendant, the First Plaintiff and the Third Plaintiff (including in their capacity as Second Plaintiffs as trustees of the Frigger Super Fund) agree that the entry into of the Land Contract does not constitute an acknowledgement by either of them as to the true, beneficial owner of the Armadale Property;

(e) The Property sold pursuant to the Land Contract includes all improvements, infrastructure, fixtures, fittings and chattels on the land other than those items specifically identified, which include inter alia those fixtures, fittings and equipment owned by the First Plaintiff, Second Plaintiff and/or Third Plaintiff as specified in the schedule (clause 7(a));

The Defendants will refer to the Land Contract at trial for its full terms and true effect.

108C. Material terms of the Business Contract included:

(a) The purchase price means $1,330,000.00 plus GST (clause 1.1 definition "Purchase Price");

(b) the Business Assets means all assets of the Business, and the assets used in the carrying on of the Business, including inter alia the Business Records, Plant and Equipment, and goodwill but excluding the Excluded Assets (clause 1.1 definition "Business Assets");

(c) Plant and Equipment means the plant, equipment, machinery, tools, fittings and motor vehicles owned by the Seller and used exclusively in the Business except any plant and equipment specified as an Excluded Asset (clause 1.1 definition "Plant and Equipment");

(d) Excluded Assets includes, inter alia:

(i) cash;

(ii) Intellectual Property Rights;

(iii) Receivables (being trade debts owed in respect of the business);

(iv) Excluded Records;

(v) all fixtures, fittings, chattels and equipment owned by the Seller as specified in Annexure A ("Excluded Assets").

(vi) equipment owned by BP PLC or a subsidiary of BP PLC (including the dispensers and signage);

(ii) fridges owned by third parties as specified in Annexure A ("Excluded Assets"),

(clause 1.1 definition "Excluded Assets");

(d) the parties acknowledge that the Second Defendant is in liquidation and the proceeds from the sale of the Business Assets under the Business Contract are subject to a claim by the First Defendant and/or the Second Defendant (clause 13(a));

(e) Viva Energy, the First Defendant, the First Plaintiff and the Third Plaintiff (including in their capacity as Second Plaintiffs as trustees of the Frigger Super Fund) agree that the entry into of the Business Contract does not constitute an acknowledgement by either of them as to the true, beneficial owner of the Business Assets (clause 13(h));

The Defendants will refer to the Business Contract at trial for its full terms and true effect.

108D. By a written agreement comprising a letter from the Defendants' solicitors, Herbert Smith Freehills, dated 26 November 2015 ("**Letter Agreement**") the Plaintiffs and the Defendants agreed that the sale proceeds from the Land Contract and the Business Contract would be paid into an interest bearing bank account pending orders being made with respect to the ownership of the Armadale Property and the Service Station Business in this action. The Defendants will refer to the Letter Agreement at trial for its full terms and true effect.

108E. The Land Contract proceeds in the sum of $1,070,000.00 and the Business Contract proceeds in the sum of $1,330,000.00, together with interest accruing thereon, are held in BankWest account BSB 302-162 account number 091493-6 and BankWest term deposit 162-093889-7 ("**BankWest Accounts**") pursuant to the Letter Agreement.

108F. By reason of the matters pleaded in paragraphs 18, 18A, 54(a) to (c), 75(a), 77 and 108A to 108E herein CAT in its own right is entitled to the Armadale Property and the Service Station Business and further is thereby entitled to the entire proceeds of the Land Contract and the Business Contract, together with accrued interest thereon, being the whole of the amounts standing to the credit of the BankWest Accounts.

COUNTERCLAIM

109 The Defendants repeat paragraphs 1 to 108F of the Defence.

Duties

110 In the period whilst they have been directors of CAT, each of Mr and Mrs Frigger owed CAT each of the following duties:

(a) a duty under section 181(1)(a) of the *Corporations Act*, and a fiduciary duty under general law, to exercise their powers and discharge their duties in good faith in the best interests of CAT;

(b) a duty under section 181(1)(b) of the *Corporations Act*, and a fiduciary duty under general law, to exercise their powers and discharge their duties for proper purposes;

(c) a duty under section 182(1) of the *Corporations Act*, and a fiduciary duty under the general law, not to use their position improperly to:

(1) gain an advantage for themselves; or

(2) cause detriment to CAT,

(d) a fiduciary duty under the general law not to have an interest that conflicts or might possibly conflict with their duty to CAT in any manner falling within the scope of their office, except, subject to the duty pleaded at paragraph (f) hereof, with CAT's fully informed consent;

(e) a fiduciary duty under the general law not to misappropriate CAT's property for their personal benefit, or for the benefit of a third party; and

(f) a fiduciary duty under the general law, when CAT is insolvent, near insolvent, or of doubtful solvency, to the creditors of CAT, to consider the interests of the creditors of CAT when dealing with the assets of CAT.

Solvency of CAT

111 CAT was insolvent from, at the latest, 23 October 2009 when the Reasons were delivered, in that:

(a) as a consequence of the Reasons, CAT was liable to Banning and PSA for an amount of $800,917.08, plus interest thereon;

Particulars

The Defendants repeat the matters pleaded at paragraph 87 above.

(b) the debt pleaded at paragraph (a) hereof was a liability which would fall due for payment within a short timeframe, namely within 2 months or so of delivery of the Reasons, namely upon the delivery of the CoA Orders as pleaded in paragraph 87 above;

(c) in addition to the amount referred to at (a), as at 23 October 2009, CAT was also liable to at least the following creditors:

(1) Bowen Buchbinder Vilensky (**BBV**), being the solicitors for CAT in the Proceedings, for legal services provided with respect to the Proceedings, for an amount claimed by BBV to be $205,528.92 plus the costs of the taxation;

(2) Stokes & Associates for the sum of $12,457.00 for unpaid legal services provided to CAT;

(3) Stuart Forbes for the sum of $17,488.59 being taxed costs pursuant to an order in Supreme Court Action CIV 1216 of 2009 (together with interest accumulated thereon);

(4) Vogt Graham for $9,092.20 for legal services provided to CAT; and

(5) the Sherriff for $28,000, being the costs incurred by the Sherriff in relation to an interpleader and in relation to the unsuccessful enforcement of a PSSO;

(d) as at 23 October 2009, the only assets held by CAT which were available to pay the debts owed by CAT pleaded at (a) to (c) hereof, were:

(1) the Perth Property and the Armadale Property, which real property assets could not be realised in time to enable CAT to pay the debts pleaded at (a) to (c) hereof, as and when those debts fell due;

(2) any amounts due from Mr and Mrs Frigger on the Loan Account,

as pleaded at paragraph 116 hereof, which liability has been denied by Mr and Mrs Frigger and, therefore, that asset of CAT was not able to be realised in time to enable CAT to pay the debts pleaded at (a) to (c) hereof as and when they arose;

(3) the entitlement of CAT as a consequence of certain costs awards made in the Proceedings and in related proceedings against Banning and/or PSA, but which entitlement for costs was less than, and entitled to be set off against, the entitlement of Banning and PSA pleaded at paragraph (a) hereof;

Particulars

Full particulars will be provided after discovery and interrogatories.

(4) the proceeds of certain legal proceedings being pursued by CAT (**Legal Proceedings**), which proceedings would not, even if successful, be completed in time to realise funds which would enable CAT to pay its debts as and when they fell due;

Particulars of Legal Proceedings

The best particulars of the Legal Proceedings that the plaintiffs can provide prior to discovery and interrogatories are:

(A) Claim against Vogt Graham in Magistrates Court Action No 7493 of 2009; and

(B) Claim against BBV in Magistrates Court Action 1129 of 2009.

(5) certain units in the Becton Office Fund, in circumstances where:

(A) the units in that fund did not mature until 2014; and

(B) distributions from that fund had been suspended since June 2008,

and therefore, value from those units could not be realised in time to enable CAT to pay its debts hereof as and when they fell due;

and

(6) the Term Deposit, which funds were not available to be used by CAT whilst the bank guarantee in favour of BP remained in place;

(e) in the alternative to (d) above, if, (which is denied), the Perth Property and the Armadale Property were not, as at 23 October 2009, owned by CAT in its own right, the only assets of CAT which were available to pay the debts owed by CAT pleaded at (a) to (c) hereof, were:

(1) the amounts due from Mr and Mrs Frigger on the Loan Account, as pleaded at paragraph 116 hereof, which liability has been denied by Mr and Mrs Frigger and therefore that asset of CAT would not be able to be realised in time to enable CAT to pay its debts as and when they arise;

(2) the entitlement of CAT as a consequence of certain costs awards made in the Proceedings and in related proceedings against Banning and/or PSA, but which entitlement for costs was less than, and entitled to be set off against, the entitlement of Banning and PSA pleaded at paragraph (a) hereof;

Particulars

Full particulars will be provided after discovery and interrogatories.

(3) the Legal Proceedings, which proceedings would not be completed within time to enable CAT to pay the debts pleaded at (a) to (c) hereof as and when they fell due;

(4) certain units in Becton Office Fund, in circumstances where:

(A) the units in that fund did not mature until 2014; and

(B) distributions from that fund had been suspended since June 2008,

and, therefore, value from those units could not be realised in time to enable CAT to pay the debts pleaded at (a) to (c) hereof as

and when they fell due;

(5) the Term Deposit, which funds were not available to be used by CAT whilst the bank guarantee in favour of BP remained in place;

(f) in the alternative to (d) and (e) above, if (which is denied), as at 23 October 2009:

(1) the Perth Property and the Armadale Property were not owned by CAT in its own right; and

(2) the status of the Loan Account was that CAT owed monies to Mr and Mrs Frigger,

then the only assets of CAT were:

(3) the entitlement of CAT as a consequence of certain costs awards made in the Proceedings and in related proceedings against Banning and/or PSA, but which entitlement for costs was less than, and entitled to be set off against, the entitlement of Banning and PSA pleaded at paragraph (a) hereof;

Particulars

Full particulars will be provided after discovery and interrogatories.

(4) the Legal Proceedings, which proceedings would not be completed, in time to enable CAT to meet the debts pleaded at (a) to (c) and (f)(2) hereof as and when they fell due;

(5) certain units in Becton Office Fund, in circumstances where:

(A) the units in that fund did not mature until 2014; and

(B) distributions from that fund had been suspended since June 2008,

and, therefore, value from those units could not be realised in time to enable CAT to pay the debts pleaded at (a) to (c) and (f)(2) hereof as and when they fell due; and

(6) the Term Deposit, which funds were not available to be used by CAT whilst the bank guarantee in favour of BP remained in place.

112 CAT was insolvent, nearly insolvent or of doubtful solvency from, at the latest, 30 June 2009 when Mr and Mrs Frigger, as the directors of CAT, caused CAT to transfer:

(1) the Judgment Sum; or

(2) alternatively, the sum of $900,000 out of the Judgment Sum,

to Mr and Mrs Frigger in the manner pleaded at paragraph 84 hereof, in that upon transferring the Judgment Sum (or, the sum of $900,000 out of the Judgment Sum) to Mr and Mrs Frigger, CAT no longer had any cash resources available to it to satisfy any liability that it had, or may have, to:

(a) PSA and Banning, if PSA and Banning succeeded in the Appeal; or

(b) meet any of its other liabilities pleaded at paragraphs 111(b) and (c) hereof.

Particulars

The Plaintiffs repeat the matters pleaded at paragraph 111(b) to 111(f) hereof.

113 In the alternative to paragraph 112 hereof, CAT was insolvent, nearly insolvent or of doubtful solvency from 1 January 2009, when Mr and Mrs Frigger, as the directors of CAT, caused CAT to transfer the sum of $999,999, being the ING Fund pleaded in paragraph 114 hereof, to Mr and Mrs Frigger in the manner pleaded at paragraph 115 hereof, in that upon transferring the ING Fund to Mr and Mrs Frigger, CAT no longer had any cash resources available to it to satisfy any liability that it had, or may have, to meet any of its liabilities pleaded at paragraphs 111(a) to (c) hereof, in that if CAT was paid the Judgment Sum, but the Appeal succeeded, all of, or substantially all of, the Judgment Sum needed to be repaid to PSA and Banning, and CAT would not have any cash resources available to it to satisfy any liability that it had or may have to meet its liabilities as pleaded in paragraphs 111(a) to (c) hereof.

ING Fund

114 In the period prior to 22 September 2008, CAT, in its own right, accumulated funds amounting to $999,999, which it had placed on deposit with ING Direct Bank (**ING Fund**).

Particulars

The best particulars that the Plaintiffs can provide of the ING Funds at this time are set out at paragraph 82(c) hereof. Further particulars will be provided after discovery and interrogatories.

115 In or about January 2009, CAT transferred the funds in the ING Fund to Mr and Mrs Frigger.

Particulars

The matters pleaded at paragraph 115 hereof are recorded in a letter from Mrs Frigger to Trinick dated 18 December 2009 and Mrs Frigger's affidavit dated 22 June 2010, which was filed in the Proceedings.

Further particulars of the transfer will be provided after discovery and interrogatories.

Loan Account

116 From no later than 19 December 2001, there was a loan account between CAT and Mr and Mrs Frigger (**Loan Account**).

Particulars of Existence of Loan Account

(a) The Plaintiffs' repeat the matters pleaded at paragraphs 13(b), 13A, 18(c), 18A, 91 and 97 hereof.

(b) CAT did not have any bank accounts in its name other than with respect to the ING Funds and the Term Deposit, both of which were term deposit accounts.

(c) As a consequence of the matters pleaded at (b) above:

(1) all monies received by CAT from:

- the ownership of the Perth Property;
- the ownership of the Armadale Property (including the business conducted on the Armadale Property);
- the accounting practice operated by CAT;
- the other services provided on behalf of CAT by employees/directors of CAT; and
- any other source,

were received by Mr and/or Mrs Frigger into bank accounts in their name and were accounted for by entries on a Loan Account with CAT;

Particulars of monies received by CAT

Particulars of monies received by CAT but paid into the bank accounts of Mr and Mrs Frigger will be provided after discovery and interrogatories.

Particulars of Bank Accounts of Mr and Mrs Frigger

Particulars of the Bank Accounts of Mr and Mrs Frigger will be provided after discovery and interrogatories.

(2) all expenses incurred by CAT were paid by Mr and/or Mrs Frigger and accounted for by entries on the Loan Account; and

Particulars of expenses paid

Particulars of expenses of CAT paid on behalf of CAT by Mr and/or Mrs Frigger will be provided after discovery and interrogatories.

(3) the Judgment Sum was received by Mr and Mrs Frigger pursuant to the transaction pleaded at paragraph 84 hereof and accounted for by transactions on the Loan Account.

(d) The Plaintiffs refer to the matters pleaded at paragraph 111 hereof.

117 As at 21 January 2010, when the Liquidator was appointed to CAT, Mr and Mrs Frigger owed to CAT the sum of $1,824,703, alternatively $1,518,739, on the Loan Account, the best details of which Loan Account known to the Defendants are set out at schedule 1 hereto.

Particulars

Further particulars of the Loan Account will be provided after discovery and interrogatories.

Recovery of Unfair Preferences and Related Claims

118 In the alternative to the matters pleaded at:

(i) Paragraphs 34 and 35 hereof, if, which is denied, the Declarations of Trust are valid and effective; and

(ii) paragraphs 44 to 47 hereof and 90 to 108 hereof, if, which is denied, the Properties have been transferred by CAT in its own right to CAT as trustee of the Frigger Super Fund,

then:

(a) any transfer of the Perth Property occurred on or after 30 June 2007 as follows:

(1) Mr and Mrs Frigger agreed to pay $800,000 to CAT for the Perth Property;

(2) Mr and Mrs Frigger agreed that that payment should be effected by CAT reducing the quantum of the debt owed by CAT to them on the Loan Account by $800,000; and

(3) Mr and Mrs Frigger agreed, in turn, to transfer the Perth Property to CAT as trustee of the Frigger Super Fund;

Particulars

In pleading the matters set out at paragraph 118(a) hereof, the Defendants rely upon the affidavit of Mrs Frigger dated 22 June 2010 and filed in the Proceedings. Further particulars will be provided after discovery and interrogations.

(aa) at the time of the payment pleaded at paragraph 118(a)(2), Mr and Mrs Frigger were unsecured creditors of CAT; and

Particulars

The Defendants rely upon the details of the Loan Account set out in Schedule 1 hereto.

(b) CAT gave effect to any transfer of the Perth Property to CAT as trustee of the Frigger Super Fund, as pleaded at paragraph 118(a) hereof, by way of executing the Perth Property Declaration of Trust;

(c) any transfer of the Armadale Property occurred on or after 31 July 2008 as follows:

(1) Mr and Mrs Frigger agreed to pay $523,000 to CAT for the Armadale Property;

(2) Mr and Mrs Frigger agreed that that payment should be effected by CAT reducing the quantum of the debt owed by CAT to them on the Loan Account by $523,000; and

(3) Mr and Mrs Frigger agreed, in turn, to transfer the Armadale Property to CAT as trustee of the Frigger Super Fund;

Particulars

In pleading the matters set out at paragraph 118(c) hereof, the Defendants rely upon the affidavit of Mrs Frigger dated 22 June 2010 in the Proceedings. Further particulars will be provided after discovery and interrogatories.

(ca) at the time of the payment pleaded at paragraph 118(c)(2), Mr and Mrs Frigger were unsecured creditors of CAT; and

Particulars

The Defendants rely upon the details of the Loan Account set out in Schedule 1 hereto.

(d) CAT gave effect to any transfer of the Armadale Property to CAT as trustee of the Frigger Super Fund, as pleaded at paragraph 118(c) hereof, by executing the Armadale Property Declaration of Trust; and

(e) notwithstanding the terms of the Declarations of Trust, the Defendants say that the Declarations of Trust were executed on or after 23 October 2009.

Particulars

The fact that the Declarations of Trust were executed on or after 23 October 2009 is to be inferred from the following:

(1) the Reasons were delivered by the Court of Appeal on 23 October 2009;

(2) the Declarations of Trust were stamped on 26 October 2009 (being the next business day after 23 October 2009);

(3) the Registrar's Caveats, attaching the Declarations of Trust, were lodged with Landgate on 26 October 2009;

(4) the matters set out in [paragraphs 44 and 45] of the affidavit of Mrs Frigger dated 18 January 2011, sworn in Action CIV 2765 of 2010 (this Action); and

(5) further particulars will be provided after discovery and interrogatories.

119 In the premises pleaded at paragraph 118(e) hereof:

(a) the execution of the Declarations of Trust was an act done at a time when CAT was insolvent, for the purpose of giving effect to the transfer of the beneficial ownership of the Properties from CAT in its own right to CAT as trustee of the Frigger Super Fund, within the meaning of section 588FC(a)(ii) of the *Corporations Act*; and

(b) in the alternative to paragraph (a) hereof, if, which is denied, the Declarations of Trust were executed prior to 23 October 2009, the stamping of the Declarations of Trust (as pleaded at paragraphs 34(b)(3) and 35(b)(3) hereof) on 26 October 2009, at a time when CAT was insolvent, constituted acts done for the purpose of giving effect to the transfer of the beneficial interest in the Properties from CAT in its own right to CAT as trustee of the Frigger Super Fund, within the meaning of section 588FC(a)(ii) of the *Corporations Act*.

Particulars

Until stamped, the Declarations of Trust cannot be lodged at Landgate to give effect to the change in beneficial title to the Properties.

120 As at the date hereof, and subject to the outcome of the proceedings herein, CAT has no assets, and the return to creditors in the liquidation of CAT will therefore be nil.

121 In these premises:

(a) the reductions in the debt owed by CAT to Mr and Mrs Frigger on the Loan Account pleaded at paragraphs 118(a)(2) and 118(c)(2) hereof, as a consequence of the transfers by CAT to Mr and Mrs Frigger of the Properties (**Transfers**); and/or

(b) the transfer to, or vesting in, the Frigger Super Fund of the Properties by the Declarations of Trust for the benefit of Mr and Mrs Frigger as members of the Frigger Super Fund as pleaded in paragraphs 34(b)(3), 34(c), 35(b)(3), 35(c), 118(b) and 118(d),

constituted unfair preferences for the purposes of section 588FA(1) of the *Corporations Act*.

122 In the premises pleaded:

(a) at paragraph 111 hereof, from and including 23 October 2009, CAT was insolvent; and

(b) at paragraph 119(a) hereof, or in the alternative, 119(b) hereof, acts were done for the purpose of giving effect to the Transfers and/or the Declarations of Trust on or after 23 October 2009 when CAT was insolvent,

and therefore the Transfers and/or the Declarations of Trust constitute insolvent transactions for the purposes of s588FC of the Corporations Act.

122A In the premises pleaded at paragraphs 2(c), 40(a) and 40(b) hereof, the relation back day for CAT under the *Corporations Act* was 8 January 2010 or, in the alternative, 3 December 2009 or, in the alternative, 12 December 2009 (**Relation Back Day**) and therefore:

(a) in the premises pleaded in paragraph 118(e), the Transfers and the Declarations of Trust occurred during the 6 months ending on the relation back day, for the purposes of section 588FE(2) of the *Corporations Act*; or further, or in the alternative

(b) in the premises pleaded in paragraphs 1(a)(4) and 1(b)(5), the Transfers and the Declarations of Trust occurred during the 4 years ending on the relation back day, for the purposes of section 588FE(4) of the *Corporations Act*.

123 Further, or in the alternative to paragraphs 44 to 47 hereof, 98 to 108 hereof and/or 118 to 122A hereof, if which is denied, the Properties are owned by CAT as trustee of the Frigger Super Fund, and not in its own right, then for the purpose of section 89 of the *Property Law Act*, the Declarations of Trust constituted an alienation of property by CAT as transferor, effected by Mr and Mrs Frigger as the directors of CAT and also as the beneficiaries of the Frigger Super Fund as the transferee, with the intention to defraud the creditors of CAT, in that:

(a) at the time of the execution of the Declarations of Trust, in the premises pleaded at paragraph 119(a) hereof, on 23 October 2009, the Reasons had been delivered and CAT was liable to PSA and Banning for the sum of $800,917.08;

(b) by reason of the Declarations of Trust, the Properties, being the only real property assets of CAT were no longer available to pay the creditors

of CAT;

(c) the effect of the Properties not being available to pay the creditors of CAT was that the creditors of CAT were hindered, delayed or defeated; and

(d) Mr and Mrs Frigger intended the effect pleaded at paragraph 123(c).

Particulars

The intention of Mr and Mrs Frigger, to hinder, delay or defeat the creditors of CAT, is to be inferred from the matters pleaded at paragraphs 103 to 105 hereof, paragraphs 111 and 112 hereof and paragraph 118 hereof. Further particulars will be provided after discovery and interrogatories.

124 In the alternative to paragraph 123 hereof, if , which is denied, the Properties are owned by CAT as trustee of the Frigger Super Fund and not in its own right and if, which is denied, the Declarations of Trust were executed prior to 23 October 2009, then for the purpose of Section 89 of the *Property Law Act*, the Declarations of Trust constitute an alienation of property by CAT as transferor, effected by Mr and Mrs Frigger as the directors of CAT and also as the beneficiaries of the Frigger Super Fund as the transferee, with the intention to defraud the creditors of CAT in that:

(a) at the time of the execution of the Declarations of Trust, on or after May 2009 (as pleaded in paragraphs 34 and 35 of the Statement of Claim), the Appeal had been commenced and Mr and Mrs Frigger, as the directors of CAT, knew that there was some risk that the Appeal would succeed, in which case, if the monies in satisfaction of the Judgment Debt had been received by CAT, CAT would have a significant liability, including for costs, to Banning and PSA and, but for the Declarations of Trust, the Properties could have been used by CAT to satisfy that liability;

(b) by reason of the Declarations of Trust, the Properties, being the only real property assets of CAT were no longer available to pay the creditors of CAT;

(c) the effect of the Properties not being available to pay the creditors of CAT was that the creditors of CAT were hindered, delayed or defeated; and

(d) Mr and Mrs Frigger intended the effect pleaded at paragraph 124(c).

Particulars

The intention of Mr and Mrs Frigger, to hinder, delay or defeat the creditors of CAT, is to be inferred from the matters pleaded at paragraphs 103 to 105 hereof, paragraphs 111 and 112 hereof and paragraph 118 hereof. Further particulars will be provided after discovery and interrogatories.

125 In the alternative to paragraph 112 hereof:

(a) as at 30 June 2009, when:

(1) the whole of the Judgment Sum; or alternatively,

(2) $900,000 out of the Judgment Sum,

was paid by CAT to Mr and Mrs Frigger, as pleaded at paragraph 84 hereof, Mr and Mrs Frigger were unsecured creditors of CAT on the Loan Account to an extent greater than the amount repaid to Mr and Mrs Frigger; and

Particulars

Particulars of the quantum, of and calculation of, the unsecured debt on the Loan Account owed by CAT to Mr and Mrs Frigger at this time and in this alternative will be provided after discovery and any interrogatories.

(b) therefore, with respect to that unsecured debt on the Loan Account, Mr and Mrs Frigger received payment of 100 cents in the dollar.

126 In the further alternative to paragraph 112 hereof:

(a) as at 1 January 2009, when CAT transferred the sum of $999,999, constituting the ING Fund, to Mr and Mrs Frigger as pleaded at

paragraphs 114 and 115 hereof, Mr and Mrs Frigger were unsecured creditors of CAT on the Loan Account to an extent greater than the amount repaid to Mr and Mrs Frigger; and

Particulars

Particulars of the quantum of, and calculation of, the unsecured debt on the Loan Account owed by CAT to Mr and Mrs Frigger at this time and in this alternative will be provided after discovery and any interrogatories.

(b) therefore, with respect to that unsecured debt on the Loan Account, Mr and Mrs Frigger received payment of 100 cents in the dollar.

127 In the premises pleaded at paragraph 118 hereof, Mr and Mrs Frigger received more in satisfaction of the debt owed to them under the Loan Account:

(a) with respect to the payment pleaded at paragraph 125 hereof; and/or

(b) with respect to the payment pleaded at paragraph 126 hereof,

than the other creditors of CAT will receive in the liquidation of CAT.

128 In these premises, the:

(a) payment of the Judgment Sum, or $900,000 out of the Judgment Sum to Mr and Mrs Frigger as pleaded at paragraph 84 hereof on or about 30 June 2009; and/or

(b) the payment of $999,999 being the ING Fund to Mr and Mrs Frigger on or about 1 January 2009,

(together **the Debt Transactions**) constituted unfair preferences for the purpose of section 588FA of the *Corporations Act*.

129 CAT became insolvent because of, or because of matters including, the Debt Transactions (or either of them) and therefore, the Debt Transactions (or either of them) constitute insolvent transactions for the purpose of section 588FC of the *Corporations Act*.

Particulars

Upon transferring:

(a) the Judgment Sum (or the sum of $900,000 out of the Judgment Sum as pleaded at paragraph 84 hereof); and

(b) the ING Funds,

to Mr and Mrs Frigger, CAT no longer had:

(c) if the Properties had been transferred to CAT as trustee of the Frigger Super Fund, pursuant to the Declarations of Trust, any assets at all; or

(d) in the alternative to paragraph (c), if the Properties were still owned by CAT in its own right, any cash resources available to it,

to satisfy any liability it had or may have to:

(A) PSA and Banning, if PSA and Banning succeeded in the Appeal; or

(B) meet any of its other liabilities pleaded at paragraph 106(b) to (c) hereof.

129A In the premises pleaded at paragraphs 1(a)(4) and 1(b)(5) hereof (as to related parties) and 2(c), 40(a) and 40(b) hereof (as to the relation back day), for the purposes of section 588FE(4) of the Corporations Act, the Debt Transactions occurred during the 4 years ending on the relation back day of 8 January 2010 or, in the alternative, 3 December 2009 or, in the alternative 12 December 2009.

Breach of Fiduciary Duty

130 At the time that Mr and Mrs Frigger, as the directors of CAT, caused CAT to pay or transfer to Mr and Mrs Frigger:

(a) the Judgment Sum, or alternatively $900,000 out of the Judgment Sum, as pleaded at paragraph 84 hereof; and/or

(b) the ING Fund, as pleaded at paragraph 115 hereof,

Mr and Mrs Frigger knew, or ought to have known, of the matters pleaded in paragraph 111 hereof or, in the alternative, paragraph 112 hereof or, in the alternative, paragraph 113 hereof.

Particulars of Knowledge

Mr and Mrs Frigger, as directors of CAT had access to all of the books and records of CAT.

131 If, at the time that Mr and Mrs Frigger, as the directors of CAT, caused CAT to make the payments or transfers pleaded at paragraph 130(a) and/or (b) hereof, CAT owed money to Mr and Mrs Frigger on the Loan Account, the decision by Mr and Mrs Frigger to cause CAT to pay or transfer to Mr and Mrs Frigger:

(a) the Judgment Sum, or alternatively $900,000 out of the Judgment Sum, as pleaded at paragraph 84 hereof; and/or

(b) the ING Fund, as pleaded at paragraph 115 hereof,

was:

(1) undertaken for the purpose of ensuring that the Loan Account, being a debt due to Mr and Mrs Frigger, was paid in priority to any other debts owed by CAT; and/or

(2) further, or in the alternative, undertaken for the purpose of improperly gaining an advantage for themselves, namely the payment of the Loan Account to the extent possible, where CAT may not have sufficient assets to pay all of its creditors if the Appeal was successful; and/or

Particulars

The Defendants repeat paragraph 111 hereof and 129 hereof.

(3) further, or in the alternative, undertaken in circumstances where Mr and Mrs Frigger, as the directors of CAT, stood to obtain a benefit if the debt under the Loan Account due to them was paid.

132 In the premises, the decision by Mr and Mrs Frigger, as the directors of CAT, to cause CAT to pay or transfer to Mr and Mrs Frigger:

(a) the Judgment Sum, or alternatively $900,000 out of the Judgment Sum, as pleaded at paragraph 84 hereof; and/or

(b) the ING Fund, as pleaded at paragraph 115 hereof,

was a breach by each of them of their duty to have regard to the interests of the creditors of CAT, as pleaded at paragraph 110(f) hereof, and a breach of:

(1) their duty to CAT to exercise their powers and discharge their duties in good faith in the best interests of CAT under section 181(1)(a) of the *Corporations Act* and their corresponding fiduciary duty as pleaded in paragraph 110(a) hereof, because of the matters referred to at paragraphs 131(1) and/or 131(2) hereof; and/or

(2) their duty to CAT to exercise their powers and discharge their duties for proper purposes under section 181(1)(b) of the *Corporations Act* and their corresponding fiduciary duty as pleaded in paragraph 110(b) hereof, because of the matters referred to at paragraphs 131(1) and/or 131(2) hereof; and/or

(3) their duty to CAT not to use their position improperly to gain an advantage for themselves, or cause a detriment to CAT, under section 182(1) of the *Corporations Act* and their corresponding fiduciary duty as pleaded in paragraph 110(c) hereof, because of the matters referred to in paragraphs 131(1) and/or 131(2); and/or

(4) their fiduciary duty under the general law not to have an interest that conflicts or might possibly conflict with their duty to CAT as pleaded in paragraph 110(d) hereof, because of the matters referred to in paragraph 131(3) hereof.

133 Further, or in the alternative to paragraphs 131 and 132 hereof, if at the time Mr and Mrs Frigger, as the directors of CAT, caused CAT to make the payments or transfers pleaded at paragraph 130(a) and (b) hereof, the status of the Loan

Account was such that no monies were owed to Mr and Mrs Frigger by CAT, the decision by Mr and Mrs Frigger to cause CAT to pay or transfer to Mr and Mrs Frigger:

(1) the Judgment Sum, or alternatively $900,000 out of the Judgment Sum, as pleaded at paragraph 84 hereof; and/or

(2) the ING Fund as pleaded at paragraph 115 hereof,

was:

(b) the making of a loan by CAT to Mr and Mrs Frigger, which loan was unsecured;

(c) undertaken for the purpose of ensuring that there were no assets owned by CAT, to satisfy debts due to creditors of CAT, including PSA and Banning as a consequence of the outcome of the Appeal, in the event that the Appeal was successful;

Particulars

The purpose is to be inferred from the matters pleaded at paragraphs 111 to 113 hereof and the particulars to paragraphs 123(d) and 129 hereof. Further particulars will be provided after discovery and interrogatories.

(d) further, or in the alternative, undertaken for the purpose of improperly gaining an advantage for themselves, namely the receipt of the funds in question which funds would need to be recovered by CAT before CAT could repay debts due to any of its other creditors;

(e) further, or in the alternative, undertaken in circumstances where the duties of Mr and Mrs Frigger as the directors of CAT conflicted with their interests as debtors of CAT under the Loan Account; and

(f) further or in the alternative, a misappropriation of CAT's property, being:

(1) the Judgment Sum, or alternatively, $900,000 of the Judgment Sum as pleaded at paragraph 84 hereof; and or

(2) the ING Fund.

134 In the premises pleaded at paragraph 133 hereof, the decision by Mr and Mrs Frigger, as the directors of CAT, to cause CAT to pay or transfer to Mr and Mrs Frigger:

(1) the Judgment Sum, or alternatively $900,000 out of the Judgment Sum, as pleaded at paragraph 84 hereof; and/or

(2) the ING Fund as pleaded in paragraph 115 hereof,

was a breach by each of them of their duty to have regard to the interests of the creditors of CAT, as pleaded at paragraph 110(f) hereof, and a breach of:

(a) their duty to CAT to exercise their powers and discharge their duties in good faith in the best interests of CAT under section 181(1)(a) of the *Corporations Act* and their corresponding fiduciary duty as pleaded in paragraph 110(a) hereof, because of the matters referred to at paragraphs 133(c) and/or 133(f) hereof; and/or

(b) their duty to CAT to exercise their powers and discharge their duties for proper purposes under section 181(1)(b) of the *Corporations Act* and their corresponding fiduciary duty as pleaded in paragraph 110(b) hereof, because of the matters pleaded at paragraphs 133(c) and/or 133(d) and/or 133(f) hereof; and/or

(c) their duty to CAT not to use their position improperly to gain an advantage for themselves or cause detriment to CAT under section 182(1) of the *Corporations Act* and the corresponding fiduciary duty pleaded in paragraph 110(c) hereof, because of the matters referred to in paragraphs 133(d) and/or 133(f) hereof; and/or

(d) their duty not to have an interest that conflicts or might possibly conflict with their duty to CAT at general law as pleaded in paragraphs 110(d) hereof, because of the matters referred to at paragraph 133(e) hereof; and/or

(e) their duty not to misappropriate CAT's property for their personal benefit under the general law as pleaded in paragraph 110(e) hereof, because of the matters referred to at paragraph 133(f) hereof.

135 If and to the extent that:

(a) the Judgment Sum, or $900,000 out of the Judgment Sum as pleaded at paragraph 84 hereof; and/or

(b) the ING Funds,

were transferred to CAT as trustee of the Frigger Super Fund, or otherwise to the Frigger Super Fund in the manner pleaded at paragraph 130 hereof, Mr and Mrs Frigger as:

(1) directors of CAT, as trustee of the Frigger Super Fund; or

(2) in the alternative, as trustees of the Frigger Super Fund,

knew of the matters pleaded at paragraphs 130 to 134 hereof.

Particulars of knowledge

Mr and Mrs Frigger were themselves the parties who effected the breaches.

136 By reason that:

(a) Mr and Mrs Frigger; or, alternatively

(b) CAT as trustee of the Frigger Super Fund, through its directors, Mr and Mrs Frigger; or, alternatively

(c) the trustees of the Frigger Super Fund from time to time, through Mr and Mrs Frigger as two of the trustees thereof,

(**Recipient**), knew of the matters referred to at paragraphs 130 to 134 hereof, when the Recipient received the Judgment Sum (or in the alternative, $900,000 out of the Judgment Sum as pleaded at paragraph 84 hereof) and/or the ING Funds, the Recipient was therefore knowingly concerned (within the meaning of section 79(c) of the *Corporations Act*) in:

(d) the contravention by Mr and Mrs Frigger of section 181(1)(a) of the *Corporations Act* as pleaded in:

(1) paragraph 132 hereof; and/or alternatively

(2) paragraph 134 hereof,

by reason of which the Recipient was involved in that contravention and therefore contravened section 181(2) of the *Corporations Act*;

(e) the contravention by Mr and Mrs Frigger of section 181(1)(b) of the *Corporations Act* as pleaded in:

(1) paragraph 132 hereof; and/or alternatively

(2) paragraph 134 hereof,

by reason of which the Recipient was involved in that contravention and therefore contravened section 181(2) of the *Corporations Act*; and

(f) the contravention by Mr and Mrs Frigger of section 182(1) of the *Corporations Act* as pleaded in:

(1) paragraph 132 hereof, and/or alternatively

(2) paragraph 134 hereof,

by reason of which the Recipient was involved in that contravention, and therefore contravened section 182(2) of the *Corporations Act*.

137 By reason of the matters pleaded at paragraph 136 hereof:

(a) the Recipient received the Judgment Sum, or alternatively $900,000 out of the Judgment Sum, as pleaded at paragraph 84 hereof and/or the ING Fund as pleaded at paragraph 115 hereof, knowing that those assets were received by the Recipient by reason of breaches of the fiduciary duties owed to CAT by Mr and Mrs Frigger pleaded at:

(1) paragraph 132 hereof, and/or alternatively

(2) paragraph 134 hereof; and

(b) the Recipient was knowingly involved in each of the breaches of the fiduciary duties owed to CAT by Mr and Mrs Frigger, pleaded at:

(1) paragraph 132 hereof; and/or alternatively

(2) paragraph 134 hereof.

Operation of Service Station Business

137A. At the time that:

(a) Mr and Mrs Frigger, as directors of CAT, caused CAT to cease conducting the Service Station Business; and

(b) Mr and Mrs Frigger commenced conducting the Service Station Business

As pleaded in paragraph 59 of the Statement of Claim and paragraph 54 hereof, Mr and Mrs Frigger knew, or ought to have known, of the matters pleaded in paragraph 111 hereof of, in the alternative, paragraph 112 hereof of, in the alternative, paragraph 113 hereof.

Particulars

Mr and Mrs Frigger, as directors of CAT had access to all of the books and records of CAT.

137B. Mr and Mrs Frigger have since 1 July 2009 retained, or alternatively excluded CAT from receiving, all income, revenue and profits derived from the use and operation of the Service Station Business and the Armadale Property including the plant, equipment, fixtures and fittings at the Armadale Property.

137C. Mr and Mrs Frigger have not paid to CAT in its own right any monetary consideration, at market value or at all, for the use and operation of the Service Station Business and the Armadale Property including the plant, equipment, fixtures and fittings at the Armadale Property since 1 July 2009 or at all.

137D. In the premises pleaded in paragraphs 54, 137A, 137B and 137C hereof, together with paragraph 111 hereof of, in the alternative paragraph 112 hereof of, in the alternative paragraph 113 hereof, the decision by Mr and Mrs Frigger to:

(a) cause CAT to cease operating the Service Station Business and utilising the Armadale Property, including the plant, equipment, fixtures and

fittings at the Armadale Property, to conduct the Service Station Business for the benefit of CAT on 1 July 2009; and

(b) conduct the Service Station Business and utilise the Armadale Property, including the plant, equipment, fixtures and fittings at the Armadale Property, on and from 1 July 2009 themselves in lieu of CAT,

as pleaded in paragraph 59 of the Statement of Claim without paying to CAT monetary consideration, at market value or at all, for the use and operation of the Service Station Business and the Armadale Property, including the plant, equipment, fixtures and fittings at the Armadale Property, was a breach by each of them of their duty:

(c) To CAT to exercise their powers and discharge their duties in good faith in the best interests of CAT under section 181(1)(a) of the *Corporations Act* and their corresponding fiduciary duty as pleaded in paragraph 110(a) hereof;

(d) To CAT to exercise their powers and discharge their duties for proper purposes under section 181(1)(b) of the *Corporations Act* and their corresponding fiduciary duty as pleaded in paragraph 110(b) hereof; and/or

(e) To CAT not to use their position improperly to gain an advantage for themselves, or cause a detriment to CAT, under section 182(1) of the *Corporations Act* and their corresponding fiduciary duty as pleaded in paragraph 110(c) hereof;

(f) their fiduciary duty under the general law not to have an interest that conflicts or might possibly conflict with their duty to CAT as pleaded in paragraph 110(d) hereof;

(g) Their fiduciary duty under the general law not to misappropriate CAT's property for their personal benefit, or for the benefit of a third party as pleaded in paragraph 110(e) hereof; and / or

(h) Their fiduciary duty under the general law, when CAT is insolvent, near insolvent, or of doubtful solvency, to the creditors of CAT, to consider and have regard to the interests of the creditors of CAT when dealing

with the assets of CAT as pleaded in paragraph 110(f) hereof.

137E. By reason of the breaches of duty by Mr and Mrs Frigger as pleaded in paragraph 137D hereof CAT has suffered loss and damage.

Particulars of Loss and Damage

(a) CAT has lost the amount of the monetary consideration it would otherwise have received, or been entitled to receive, for the use and the operation of the Service Station Business and the Armadale Property, including the plant, equipment, fixtures and fittings at the Armadale Property, since 1 July 2009;

(b) The purported lease of the Armadale Property created by Mr and Mrs Frigger dated 1 July 2009 said to be between CAT in its capacity as trustee of the Frigger Super Fund as lessor and Mr and Mrs Frigger in their personal capacities as lessees provides for an annual rental of $104,500.00 (inclusive of GST).

Full particulars will be provided prior to trial and following discovery and answers to interrogatories.

AND THE DEFENDANTS CLAIM

138 A declaration that:

(a) the Armadale Property was; and/or

(b) the Perth Property is,

(**the Properties**) ~~are~~ owned by CAT in its own right and the proceeds of any sale of the Properties are available for distribution to the creditors of CAT.

138A A declaration that CAT in its own right is entitled to the proceeds of sale of the Armadale Property and the Service Station Business including the sums standing to the credit of the BankWest Accounts as pleaded in paragraphs 108E and 108F herein;

138B An order that the First, Second and/or Third Defendants do execute all such documents as required to effect a transfer of the sums standing to the credit of the BankWest Accounts as pleaded in paragraph 108E herein to CAT in its own right and so as to enable the liquidator on behalf of CAT to receive all such sums.

139 A declaration that CAT is the only trustee of the Frigger Super Fund and Mr and Mrs Frigger are the only members thereof.

139A. If, which is denied:

(a) The Armadale Property; and /or

(b) The Perth Property,

(the Properties), or either of them, were held on trust, a declaration that:

(c) CAT is entitled to retain possession and control of the Properties;

(d) CAT is entitled to sell or otherwise realise the Properties;

(e) all proceeds of such sale or realisation are available for distribution to the creditors of CAT, and to meet the costs of the liquidation of CAT.

140 If, which is denied:

(a) the Properties were transferred by CAT in its own right to CAT as trustee of the Frigger Super Fund; and/or

(b) the Properties were transferred by CAT, either in its own right or as trustee of the Frigger Super Fund, to Mr Frigger on 1 December 2009, pursuant to the Second Perth Property Transfer Form and the Second Armadale Property Transfer Form,

(together, **the Transfers**), a declaration that the Transfers are not binding on CAT, as being in breach of section 471A of the *Corporations Act.*

141 A declaration that the Term Deposit is an asset of CAT in its own right and is available for distribution to the creditors of CAT.

142 An order that:

(a) the ING Fund of $999,999 paid or transferred, to Mr and Mrs Frigger, or in the alternative, to Mr and Mrs Frigger and Jessica Frigger and Michael Frigger on or about 31 January 2009; and/or

(b) the Judgment Sum of $1,165,661.54 or the sum of $900,000 out of the Judgment Sum as pleaded at paragraph 84 hereof, paid to or transferred to Mr and Mrs Frigger, or in the alternative, to Mr and Mrs Frigger and Jessica Frigger and Michael Frigger, on or about 30 June 2009; and/or

(c) if, which is denied, such a transfer occurred, there was a transfer of the Perth Property for $800,000; and/or

(d) if, which is denied, such a transfer occurred, there was a transfer of the Armadale Property for $523,000,

(together **the Loan Account Reductions**) constitute:

(e) unfair preferences within the meaning of section 588FA of the *Corporations Act*; and

(f) insolvent transactions within the meaning of section 588FC of the *Corporations Act*; and

(g) are voidable transactions within the meaning of section 588FE of the *Corporations Act*.

143 By reason of the matters specified at paragraph 142 hereof, pursuant to section 588FF of the *Corporations Act* an order that:

(a) Mr and Mrs Frigger pay to the Liquidator the sum of $2,165,660.54; and/or

(b) any transfers of the Properties effected pursuant to the First Perth Property Transfer Form, the Second Perth Property Transfer Form, the First Armadale Property Transfer Form, the Second Armadale Property Transfer Form and/or the Declarations of Trust are void.

144 A declaration that the Recipient (as that term is defined in paragraph 136 hereof) who holds:

(a) the Judgment Sum (or in the alternative, $900,000 out of the Judgment Sum); and/or

(b) the ING Funds,

does so on constructive trust for CAT in its own right, and further an order that such Recipient forthwith pay all such sums to CAT.

144A. A declaration that the Service Station Business, together with the plant, equipment, fixtures and fittings at the Armadale Property is an asset of CAT in its own right and further are assets the proceeds of which is available for distribution to the creditors of CAT.

144B. Further, or in the alternative, damages at common law and/or pursuant to section 1324(10) of the *Corporations Act*, and/or compensation pursuant to section 1317H of the *Corporations Act* as against Mr and Mrs Frigger for breaches of duty as pleaded in paragraphs 132, 133, 134, 137, 137D and 137E hereof:

(a) for the loss of the Judgment Sum, or alternatively $900,000.00 out of the Judgment Sum as pleaded in paragraph 84 hereof;

(b) for the loss of the ING Fund of $999,999.00 as pleaded in paragraph 115 hereof;

(c) for the loss of rent or other monetary consideration for the use and the operation of the Service Station Business and the Armadale Property including the plant, equipment, fixtures and fittings at the Armadale Property since 1 July 2009 as pleaded in paragraph 137E hereof.

145 An order that Mr and Mrs Frigger cause the withdrawal of:

(a) the Registrar's Caveat pleaded at paragraph 95 hereof forthwith; ~~and~~

~~(b) the Registrar's Caveat pleaded at paragraph 101 hereof,~~

~~forthwith, and in any event not later than upon settlement of any sale of the relevant Property by the Liquidator on behalf of CAT~~.

146 In the alternative to paragraph 142 hereof, an order that the transactions to give effect to the Loan Account Reductions (or any of them) are, or should be held to be, void on the basis that they were transactions to defraud creditors in breach of section 89 of the *Property Law Act*.

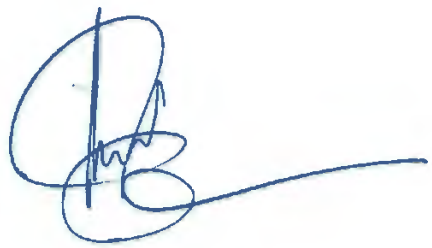
147 Further, or in the alternative, a declaration that Mr and Mrs Frigger owe to CAT the sum of $2,600,801, or alternatively $2,356,283, being the amount due on the Loan Account, together with an order for payment of such sum by Mr and Mrs Frigger to CAT.

148 Such further or other relief as this Honourable Court deems just.

149 Interest upon all such sums as found due and payable to CAT by any person, from the date of receipt of such sums by any person to the date of payment or judgment, at the rate of 6% per annum pursuant to section 32 of the *Supreme Court Act 1935 (WA)* to the extent that interest is not otherwise included or allowed within the other relief granted.

150 Costs.

Dated: 6 July 2017



B W Ashdown
Counsel

SCHEDULE 1 – Loan Account

Alternative 1

No Interest On Loan Account;

Both Perth Property and Armadale Property Owned By CAT In Its Own Right

Date	Loan to CAT	Loan from CAT	Interest @ nil%	Balance	Description
30/06/1998	4,685			4,685	Cash shortfall suffered by CAT, funded by Mr and Mrs Frigger
30/06/1999	13,493			18,178	Cash shortfall suffered by CAT, funded by Mr and Mrs Frigger
30/06/2000		3,864		14,314	Cash profit loaned to Mr and Mrs Frigger
30/06/2001		18,054		(3,740)	Cash profit loaned to Mr and Mrs Frigger
19/12/2001	452,500			448,760	Loan to CAT for purchase of Perth Property
30/06/2002		61,231		387,529	Cash profit loaned to Mr and Mrs Frigger
31/05/2003	701,850			1,089,379	Loan to CAT for purchase of Armadale Property
30/06/2003		57,322		1,032,057	Cash profit loaned to Mr and Mrs Frigger
30/06/2004		112,704		919,353	Cash profit loaned to Mr and Mrs Frigger

30/06/2005		57,629		861,724	Cash profit loaned to Mr and Mrs Frigger
30/06/2006		4,673		857,051	Cash profit loaned to Mr and Mrs Frigger
30/06/2006	100,000			957,051	Loan to CAT for purchase of Fincorp Notes
30/06/2006	100,010			1,057,061	Loan to CAT for Bridgcorp Term Deposit
30/06/2007		19,796		1,037,265	Cash profit loaned to Mr and Mrs Frigger
30/06/2008		152,939		884,326	Cash profit loaned to Mr and Mrs Frigger
30/06/2008		5,000		879,326	Expected realisation of Motor Vehicle owned by CAT and loaned to Mr and Mrs Frigger
30/06/2008		100,010		779,316	Disposal of Bridgcorp Term Deposit loaned to Mr and Mrs Frigger
30/06/2008	52,146			831,462	Loan to CAT for purchase of Becton Office Fund
02/09/2008	80,600			912,062	Loan to CAT for BP bank guarantee
31/01/2009		999,999		(87,937)	Transfer of ING Fund to Mr and Mrs Frigger
30/06/2009		1,165,662		(1,253,599)	Judgement Sum CIV 2265 of 2006 loaned to Mr and Mrs Frigger
30/06/2009		507,010		(1,760,609)	Cash profit loaned to Mr and Mrs Frigger

30/06/2009		53,000		(1,813,609)	Dividend of $0.53/$ from Ferrier Hodgson loaned to Mr and Mrs Frigger
21/01/2010	18,248			(1,795,361)	Loan to CAT by Mr and Mrs Frigger for payment to S Forbes
21/01/2010		29,342		(1,824,703)	Cash profit loaned to Mr and Mrs Frigger
30/06/2010		104,500		(1,929,203)	Annual rent for Armadale Property period 01.07.2009 to 30.06.2010 due to CAT at rate in purported lease by Mr and Mrs Frigger
30/06/2010	Unknown			(1,929,203)	Loan to CAT by Mr and Mrs Frigger for payment of legal fees in CIV 2265 of 2006
01/07/2010 to 30/06/2010		1,375		(1,930,578)	St George Term Deposit interest loaned to Mr and Mrs Frigger
30/06/2011		104,500		(2,035,078)	Annual rent for Armadale Property period 01.07.2010 to 30.06.2011 due to CAT at rate in purported lease by Mr and Mrs Frigger
01/09/2011		4,800		(2,039,878)	St George Term Deposit interest loaned to Mr and Mrs Frigger
01/02/2012		1,978		(2,041,856)	St George Term Deposit interest loaned to Mr and Mrs Frigger

30/06/2012		104,500		(2,146,356)	Annual rent for Armadale Property period 01.07.2011 to 30.06.2012 due to CAT at rate in purported lease by Mr and Mrs Frigger
01/10/2012		927		(2,147,283)	St George Term Deposit interest loaned to Mr and Mrs Frigger
30/06/2013		104,500		(2,251,783)	Annual rent for Armadale Property period 01.07.2012 to 30.06.2013 due to CAT at rate in purported lease by Mr and Mrs Frigger
30/06/2014		104,500		(2,356,283)	Annual rent for Armadale Property period 01.07.2013 to 30.06.2014 due to CAT at rate in purported lease by Mr and Mrs Frigger

Adjustments which may be required to be made to above Loan Account include:

1. Interest on the St George Term Deposit (of $80,000) from 02.09.2008 to 30.06.2010 and received by Mr and Mrs Frigger is yet to be brought to account as amounts loaned by CAT to Mr and Mrs Frigger;

2. Rent from tenants of the Perth Property due to CAT but received by Mr and Mrs Frigger is required to be brought to account;

3. Rent or monetary consideration for the use of the Armadale Property including plant, equipment, fixtures and fittings at the Armadale Property, and the conduct of the Service Station Business from 1 July 2009 due to CAT may be brought to account within the Loan Account if not awarded separately. The figure specified above (of $104,500 per annum inclusive of GST) is that stated in the purported lease between CAT (said to be in its capacity as trustee of the Frigger Super Fund) and Mr and Mrs Frigger

dated 1 July 2009 as pleaded in particular (c) subjoined to paragraph 137E hereof;

4. If (which is denied) it is found that CAT did not acquire the Perth Property and/or the Armadale Property in its own right then:

   (a) The sum of $452,000 attributed as a loan by Mr and Mrs Frigger to CAT on 19.12.2001; and/or

   (b) The sum of $701,850 attributed as a loan by Mr and Mrs Frigger to CAT on 31.05.2003,

   Are to be reversed thereby increasing the loan balance now due and owing to CAT by Mr and Mrs Frigger.

5. If (which is denied) the Perth Property has been transferred by CAT to the Frigger Super Fund, or has otherwise been disposed of, the market value of the Perth Property is an amount due and owing to CAT. Full particulars of the value of the Perth Property will be provided prior to trial.

6. If (which is denied) the Armadale Property has been transferred by CAT to the Frigger Super Fund, or has otherwise been disposed of, the market value of the Armadale Property is an amount due and owing to CAT. Full particulars of the value of the Armadale Property will be provided prior to trial.

7. To the extent that the Loan Account of Mr and Mrs Frigger had been repaid, or $750,000 of the Loan Account had been repaid, by 2007 as stated at paragraph 7 of the affidavit of Mrs Frigger sworn 23 September 2008 in CACV 76 of 2008 then the balance stated above as the amount due to Mr and Mrs Frigger on the Loan Account as at the end of 2007 is to be reduced to $nil, or alternatively reduced by $750,000, and the running balance of the Loan Account recalculated.

Alternative 2

Simple Interest at 6% per annum

Both Perth Property and Armadale Property Owned By CAT In Its Own Right

(Subject to adjustments as set out in Alternative 1)

Date	Loan to CAT	Loan from CAT	Interest @ 6%	Balance	Description
30/06/1998	4,685			4,685	Cash shortfall suffered by CAT, funded by Mr and Mrs Frigger
30/06/1999	13,493		281	18,459	Cash shortfall suffered by CAT, funded by Mr and Mrs Frigger
30/06/2000		3,864	1,094	15,689	Cash profit loaned to Mr and Mrs Frigger
30/06/2001		18,054	859	(1,506)	Cash profit loaned to Mr and Mrs Frigger
19/12/2001	452,500		(106)	450,888	Loan to CAT for purchase of Perth Property
30/06/2002		61,231	14,237	403,894	Cash profit loaned to Mr and Mrs Frigger
31/05/2003	701,850		21,340	1,127,084	Loan to CAT for purchase of Armadale Property
30/06/2003		57,322	5,372	1,075,134	Cash profit loaned to Mr and Mrs Frigger
30/06/2004		112,704	62,093	1,024,523	Cash profit loaned to Mr and Mrs Frigger
30/06/2005		57,629	55,161	1,022,055	Cash profit loaned to Mr and Mrs Frigger

30/06/2006		4,673	51,703	1,069,085	Cash profit loaned to Mr and Mrs Frigger
30/06/2006	100,000			1,169,085	Loan to CAT for purchase of Fincorp Notes
30/06/2006	100,010			1,269,095	Loan to CAT for Bridgcorp Term Deposit
30/06/2007		19,796	63,424	1,312,723	Cash profit loaned to Mr and Mrs Frigger
30/06/2008		152,939	62,406	1,222,196	Cash profit loaned to Mr and Mrs Frigger
30/06/2008		5,000		1,217,190	Expected realisation of Motor Vehicle owned by CAT and loaned to Mr and Mrs Frigger
30/06/2008		100,010		1,117,180	Disposal of Bridgcorp Term Deposit loaned to Mr and Mrs Frigger
30/06/2008	52,146			1,169,326	Loan to CAT for purchase of Becton Office Fund
02/09/2008	80,600		8,747	1,258,673	Loan to CAT for BP bank guarantee
31/01/2009		999,999	22,639	281,313	Transfer of ING Fund to Mr and Mrs Frigger
30/06/2009		1,165,662	(2,168)	(886,517)	Judgement Sum CIV 2265 of 2006 loaned to Mr and Mrs Frigger
30/06/2009		507,010		(1,393,527)	Cash profit loaned to Mr and Mrs Frigger

30/06/2009		53,000		(1,446,527)	Dividend of $0.53/$ from Ferrier Hodgson loaned to Mr and Mrs Frigger
21/01/2010	18,248		(61,116)	(1,489,395)	Loan to CAT by Mr and Mrs Frigger for payment to S Forbes
21/01/2010		29,342		(1,518,739)	Cash profit loaned to Mr and Mrs Frigger
30/06/2010		104,500	(47,992)	(1,671,229)	Annual rent for Armadale Property period 01.07.2009 to 30.06.2010 due to CAT at rate in purported lease by Mr and Mrs Frigger
30/06/2010	Unknown			(1,671,229)	Loan to CAT by Mr and Mrs Frigger for payment of legal fees in CIV 2265 of 2006
01/07/2010 to 30/06/2010		1,375		(1,672,604)	St George Term Deposit interest loaned to Mr and Mrs Frigger
30/06/2011		104,500	(115,835)	(1,892,939)	Annual rent for Armadale Property period 01.07.2010 to 30.06.2011 due to CAT at rate in purported lease by Mr and Mrs Frigger
01/09/2011		4,800	(21,076)	(1,918,815)	St George Term Deposit interest loaned to Mr and Mrs Frigger
01/02/2012		1,978	(51,304)	(1,972,097)	St George Term Deposit interest loaned to Mr and Mrs Frigger

30/06/2012		104,500	(50,347)	(2,126,944)	Annual rent for Armadale Property period 01.07.2011 to 30.06.2012 due to CAT at rate in purported lease by Mr and Mrs Frigger
01/10/2012		927	(32,813)	(2,160,684)	St George Term Deposit interest loaned to Mr and Mrs Frigger
30/06/2013		104,500	(96,010)	(2,361,194)	Annual rent for Armadale Property period 01.07.2012 to 30.06.2013 due to CAT at rate in purported lease by Mr and Mrs Frigger
30/06/2014		104,500	(135,107)	(2,600,801)	Annual rent for Armadale Property period 01.07.2013 to 30.06.2014 due to CAT at rate in purported lease by Mr and Mrs Frigger

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged**:**	Application: Federal Court (Bankruptcy) Rules 2016 form B2
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	19/09/2025 10:17:31 AM AWST
Date Accepted for Filing:	19/09/2025 10:46:19 AM AWST
File Number:	WAD155/2025
File Title:	HARTMUT HUBERT JOSEF FRIGGER & ANOR v KELLY-ANNE LAVINA TRENFIELD
Registry:	WESTERN AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form B2
Rules 2.01; 6.01; 14.03

Further Amended Application

No. WAD155 of 2025

Federal Court of Australia
District Registry: Western Australia
Division: General

In the matter of Hartmut Hubert Josef Frigger and Angela Cecilia Theresa Frigger

Hartmut Hubert Josef Frigger and Angela Cecilia Theresa Frigger
Applicants

Kelly-Anne Lavina Trenfield
Respondent

To the Respondent
of 345 Queen Street, Brisbane Qld 4000

Application and Court hearing

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time, date and place shown in the Notice of Filing and Hearing attached.[Note: The Court will insert the Notice of Filing and Hearing as a coversheet when this application is accepted for filing.] If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file and serve a notice of appearance (Form B4) in the Registry before attending Court or taking any other steps in the proceeding.

Details of claim

On the grounds stated in the ~~statement of claim~~, accompanying affidavit ~~or other document prescribed by the Rules~~, the Applicant claims:

1. Pursuant to s 82(5) and S 104(2) *Bankruptcy Act 1966 (Cth)*, the applicants appeal and/or seek review against the respondent's Notices dated 11 September 2025 issued to the following creditors:

Filed on behalf of (name & role of party) Hartmut & Angela Frigger, The Applicants
Prepared by (name of person/lawyer) Angela Frigger
Law firm (if applicable)
Tel 0422124343 Fax
Email frigger@tpg.com.au
Address for service (include state and postcode) 29 Gairloch Street, Applecross WA 6153

[Form approved 1 April 2021]

a) Clavey Legal Pty Ltd (Amount admitted or estimated $661,811.31 – amount that should be allowed $0)

b) Sandra May Banning and Banning Holdings Pty Ltd (CIV1727/09) (Amount admitted or estimated $68,168.32 – amount that should be allowed $0)

c) Sandra May Banning and Professional Services of Australia

(i) CACV118 (Amount admitted or estimated $21,889.33 – amount that should be allowed $0)

(ii) CIV2265 (Amount admitted or estimated $275,674.75 – amount that should be allowed $0)

(iii) CACV23 (Amount admitted or estimated $141,142.62 – amount that should be allowed $0)

(iv) CACV24 (Amount admitted or estimated $27,128.09 – amount that should be allowed $0)

(v) CACV76 (Amount admitted or estimated $29,797.66 – amount that should be allowed $0)

(vi) CIV2265 (Amount admitted or estimated $535.31 – amount that should be allowed $0)

(vii) WAD178 (Amount admitted or estimated $13,530.91 – amount that should be allowed $0)

(viii) WAD607 (Amount admitted or estimated $14,094.04 – amount that should be allowed $0)

d) Kim Holbrook (Amount to be admitted or estimated $144,052.65 – amount that should be allowed $0)

e) Madgwicks Lawyers (Amount admitted or estimated $451.25 – amount that should be allowed $0)

f) Mitsui Sumitomo (Amount admitted or estimated $296,778.11 – amount that should be allowed $0)

g) Mervyn Kitay (Amount admitted or estimated $521,981.35 – amount that should be allowed $0)

h) Murfett Legal Pty Ltd (Amount admitted or estimated $90,070.97 – amount that should be allowed $0)

i) Rowe Bristol (Amount admitted or estimated $17,439.15 – amount that should be allowed $0)

j) Evelyn Charlotte Reid (Amount admitted or estimated $4,011.21 – amount that should be allowed $0)

2. Pursuant to **s 30 Bankruptcy Act 1966**, the respondent is ordered to forthwith reject the following proofs of debt on the grounds the claims are not provable debts:

   a) Mervyn Kitay ($2,165,661)

   b) Computer Accounting & Tax Pty Ltd (ACN 009 470 491) ($5,426,422)

3. Such further or other orders as the Court deems fit.

Applicant's address

The Applicant's address for service is:

Place: 29 Gairloch Street, Applecross WA 6153

Email: frigger@tpg.com.au

The Applicant's address is 29 Gairloch Street, Applecross WA 6153.

Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 19 September 2025

A. Frigger H. Frigger

Signed by ANGELA & HARTMUT FRIGGER
APPLICANTS

	Note	Hartmut's Estate ($)	Angela's Estate ($)	Joint Estate	
				Optimistic ($)	Pessimistic ($)
ASSETS					
Cash at bank	1	Nil	Nil	1,319,256	1,319,256
Equity in real property	2	Nil	1,010,093	3,292,802	Nil
Equity in share portfolio	3	Nil	Nil	3,799,097	3,452,198
Voidable transactions	4	Unknown	Unknown	Unknown	Unknown
Total assets		**Nil**	**1,010,093**	**8,411,155**	**4,771,454**
LESS:					
Other costs	5	Nil	Unknown	(275,500)	(438,250)
Interest and realisation charges	6	Nil	Nil	(8,845)	(8,845)
Bankruptcy Trustee's current remuneration (up to 31 August 2025)	7	Nil	Nil	(1,975,239)	(1,975,239)
Bankruptcy Trustee's future remuneration	7	Nil	Nil	(275,000)	(550,000)
Bankruptcy Trustee's disbursements	7	Nil	Nil	(206,605)	(206,605)
Total		**Nil**	**Nil**	**(2,741,189)**	**(3,178,939)**
Estimated monies for distribution to unsecured creditors		**Nil**	**1,010,093**	**5,669,965**	**1,592,515**
UNSECURED CREDITORS					
Estimated unsecured creditors	8	Nil	(5,547)	(2,324,387)	(7,750,809)
Surplus/(deficit)		**Nil**	**1,004,546**	**3,345,579**	**(6,158,294)**

REPORT BY TRUSTEES

Report

12 OCTOBER 2018

The Bankrupt Estate of Angela Cecilia Theresa Frigger and Harmut Hubert Josef Frigger (Bankrupts)

Bankrupt Estate No. WA 1272 of 2018/6

Date of Birth

Angela Cecilia Theresa Frigger: 28 April 1953

Hartmut Hubert Josef Frigger: 18 May 1955

Pursuant to Section 19(1)(a) of the *Bankruptcy Act 1966* & Insolvency Practice Rules (Bankruptcy) 2016 s70-30

FTI Consulting

GPO Box 3127

BRISBANE QLD 4000

Telephone: (07) 3225 4900

Facsimile: (07) 3225 4999

www.fticonsulting-asia.com

Liability limited by a scheme approved under Professional Standards Legislation

Contents

1. Introduction 3
2. Estimated Return to Creditors 3
3. Investigations 8
4. Meeting of Creditors 9
5. Trustees' Remuneration 9
6. Trustees' Disbursements 10
7. Information from Creditors 11

1. Introduction

I refer to my previous Report to Creditors dated 12 September 2018 regarding the Bankrupt Estates of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigge

As you are aware, Paul Allen and I, Kelly-Anne Trenfield were appointed Joint and Several Trustees of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger by virtue of a transfer from the Official Trustee pursuant to Section 181A of the *Bankruptcy Act 1966* (the Act) on 31 August 2018.

As noted in my previous Report, the Bankrupts had initiated an application to annull their Bankruptcy. Given this application, I had postponed all investiga ons until this matter is resolved.

Creditors are advised this application was heard on 25 September 2018 in the Federal Circuit Court of Australia at Perth and the presiding judged dismissed the Bankrupts' applications.

Having now obtained some comfort that the Bankruptcy will not be annulled, I have re-commenced my investigations into the Bankrupts' affairs.

The purpose of this report is to provide an update on the progress of the Bankruptcy and request approval of my remunerati and internal disbursements.

2. Estimated Return to Creditors

2.1. Amount

Based on the information presently available, and the investigations undertaken to date, I am unable to provide a dividend estimate of any certainty at this stage. If I do declare a dividend, any creditor whose claim has not yet been admitted will be contacted and asked to submit a proof of debt.

2.2. Statement of Position

As noted in my _revious Report, pursuant to Section 110 of the Act, the joint assets of the joint estate of Hartmut and Angela Frigger must be applied to their joint debts. 'kewise, the separate assets of each of the separate estates, being the separate estate of Hartmut Hubert Josef Frigger and the separate estate of Angela Cecilia Theresa Frigger, must be applied to their separate debts.

Summaries of the Statement of Affairs (SOA) with respect to the Bankrupts' joint and respective estates are outlined below.

Statement of Position

Detail	Note	Hartmut Frigger $	Angela Frigger $	Joint Estate $
Assets				
Cash on Hand/at Bank	1	3,000	3,000	Nil
Equity in Motor Vehicles	2	3,000	5,000	N/A
Equity in Real Property	3	Nil	Nil	Nil
Superannuation	4	2,762,864	3,029,405	N/A
Debtors	5	Nil	Nil	5,926,869
Income Contributions	6	N A	N/A	N/A
Voidable Transactions	7	N/A	N/A	N/A
Total Assets as per SOA		2,768,864	3,037,405	5,926,869
Surplus from Joint Estate	8	2,140,290	2,140,290	N/A
Estimated Monies Available for Distribution				
Less				
Realisation Charges	9	N/A	N/A	414,881
Petitioning Creditor's Costs	10	N A	N/A	50,000
Bankruptcy Trustees' Remuneration and Internal Di bursements	11	N/A	N/A	27,560
Bankruptcy Trustees' Future Remuneration and Internal _'sbursements	11	N/A	N/A	131,000
otal		N/A	N/A	623,441
Estimated Monies for Distribution to Unsecured Creditors		4,909,154	5,177,695	5,303,428
Unsecured Creditors				
Unsecured Credit_rs	12	Nil	Nil	1,022,848
Surplus/(Deficit)		4,909,154	5,177,695	4,280,580
Estimated Return to Creditors (cents in the dollar)		N/A	N/A	100c/$

Notes

(1) Cash on Hand/ at Bank

Upon our appointment notifications were forwarded to all major banking institutions requesting searches be undertaken for accounts held in the Bankrupts' name and the name of their associated business(es). I was subsequently notified of the following accounts held in the Bankrupts' names:

Banking Institution	Account Name	Status	Account Balance
Bank of Queensland (BOQ)	Angela Frigger - Bonus Interest Savings	Frozen	$50.17
Bank of Queensland	Hartmut Frigger - Websavings	Frozen	$2,832,529.10
BankWest	Hartmut and Angela Frigger - Retirement Advantage	Unfrozen	$3,282.80
BankWest	Angela Frigger - Hero saver	Unfrozen	$0.00
Commonwealth Bank	Hartmut and Angela Frigger - Commonwealth Direct Investment	Unfrozen	$0.00
HSBC Bank Australia Limited	Hartmut Frigger - Savings account	Unfrozen	$0.00

In their SOA, the Bankrupts disclosed a bank balance of $3,000 each but did not advise in either of their SOA's which institution the account is held with.

The Bankrupts have also claimed the funds held in the BOQ account are in fact an asset of their self-managed super fund (SMSF). Further discussions with regards to the Bankrupts' claims are detailed in Note (4) below.

In the interim, creditors are advised the freeze on this account initiated by the Official Trustee remains in place until my investigations in this regard are finalised.

(2) Equity in Motor Vehicles

Pursuant to Section 116(2)(ca) of the *Bankruptcy Act 1966*, a Bankrupt is entitled to own a primary means of transport to the value of $7,900. It must be noted this can be applied to one vehicle only.

The Bankrupts listed the following motor vehicles in each of their Statement of Affairs:

	Make	Model	Year
Hartmut Frigger	Toyota	Camry	2001
Angela Frigger	Toyota	Hybrid	2010

The Bankrupts have indicated both vehicles are subject to finance but have not provided further information in this regard.

In any case, based on my preliminary review it appears the equity in value of these vehicles are below the threshold, however I will confirm this position and advise creditors should this not be the case.

(3) Equity in Real Property

The Bankrupts confirmed in their respective SOA's they have an interest in one (1) real property. The estimated resale value of the property listed in the Statement of Affairs is $1,700,000.

Subsequent to my appointment, I conducted independent searches which reveals the Bankrupts in facts own interests in the following three (3) properties:

- 29 Gairloch Street, Applecross WA 6153
- 2A Union Street, Bayswater WA 6053
- 3/61 Cale Street, Como, WA 6152

I am aware of caveats lodged by H. & A. Frigger Pty Ltd against the title of all three (3) of the Bankrupts real property pursuant to their mortgage. I understand the mortgage was lodged to secure a loan obtained overseas for approximately $4,800,000.

The Bankrupts indicated in their SOA the balance of the mortgage as at 25 July 2018 was $2,450,050.

Due to the aforementioned annulment application, I have not yet had the opportunity to conduct a detailed review into the value of these properties. As the annulment application has now been set aside I have recommenced my investigations in this regard.

(4) Superannuation

Pursuant to Section 116(2)(d)(iii)(A) of the Act, the interest of a Bankrupt in regulated superannuation fund (within the meaning of the Superannuation Industry (Supervision) Act 1993) is not considered property divisible amongst the Bankrupts' creditors.

In their respective SOA's, Hartmut and Angela Frigger disclosed superannuation amounts $2,762 864 and $3,029,405 respectively.

As discussed in Note (1) the Bankrupts have indicated the funds contained in a BOQ account held by Hartmut Frigger are in fact owned by the Bankrupts' SMSF, "Frigger Super Fund (ABN: 99 602 844 956)". In both circumstances it is possible the Bankrupts are referring to the Frigger Super Fund, and consequently the amounts have been classified as individual assets.

Prior to my appointment, the Official Trustee had begun investigations into the source of these funds and to determine the veracity of the Bankrupts claims.

To date I have only had a brief opportunity to review the investigations they conducted. As the annulment application has now been dismissed, it is now my intention to now re-commence my review of this matter and carry on the Official Trustee's investigations in this regard. As such I have recently requested and received further information from the Bankrupts to enable this review to commence.

(5) Debtors

The Bankrupts stated in their SOA there was $5,926,869 in outstanding debtors, this amount is attributed to various legal proceedings the Bankrupts have initiated.

Based on the information provided to me by the Official Trustee, it is likely this amount is overstated. Further investigations are required to determine which (if any) of these debtors are ultimately realisable.

(6) Income Contributions

Pursuant to Section 139P of the *Bankruptcy Act 1966*, Bankrupts are required to contribute a portion of their income to their Estate if their net income (after tax) exceeds the base income threshold amount (BITA).

The Bankrupts advised in their SOA's they have no dependents.

The current BITA amount for a Bankrupt with no dependents is $57,239.00. If the Bankrupts' individual income were to exceed this threshold amount, they would be liable to contribute 50 cents for every dollar earned above the threshold amount.

Based on the information included in the Bankrupts' SOA's and my preliminary investigations, it is estimated the Bankrupt would not be required to make contributions in their first year of bankruptcy.

A review of the Bankrupts' income will be undertaken at the end of each year of their bankruptcy.

(7) Voidable Transactions

As Trustee, I have a responsibility to investigate all possible activities the Bankrupt engaged in, in the lead up to their Bankruptcy. These investigations include looking into and scrutinising suspicious events or transactions. Further information with regards to the types of investigations typically conducted in the course of a Bankruptcy Administration are provided for in Section 3 of this Report.

As previously mentioned, given the annulment application I have not sufficient opportunity to determine whether any transactions entered into by the Bankrupts may be voidable.

(8) Surplus from Joint Estate

As noted in the table above, the surplus available from the Joint Estate and as such available to be evenly distributed between the individual estate has been calculated as $2,349,230.50. These amounts are subsequently distributed into each of the Bankrupts estate.

(9) Realisation Charges

In accordance with the Act, 7% of all realisations in a Bankrupt Estate prior to must be paid to the Australian Financial Security Authority (AFSA). Although I have not made any recoveries to date, in the event all outstanding debtors are recovered in full, I estimate a realisation charge of $414,881.

(10) Petitioning Creditor's Costs

Pursuant to Section 109(1) of the Act, a petitioning creditor receives a priority for payment of their taxed costs.

The petitioning creditor's legal representative has advised the costs of sequestrating the bankrupt have not yet been taxed but are expected to be between $40,000 and $50,000.

(11) Bankruptcy Trustees' Remuneration and Internal Disbursements

Pursuant to Section 109(1) of the Act, the Trustees' remuneration and internal disbursements are paid in priority to employees and unsecured creditor claims.

For the period 31 August 2018 to 7 October 2018 my remuneration totals $27,379.55 (inclusive of GST) and my internal disbursements total $180.60 (inclusive of GST). For the period remaining up until the finalisation of this Bankruptcy, my remuneration is anticipated to range from $50,000 to $120,000 (inclusive of GST) and internal disbursements of between $3,300 to $11,000 (inclusive of GST).

Further details in regard to work performed by the Trustees to date are provided in Section 5 and Section 6 of this Report and in the *attached Remuneration Approval Report prepared in accordance with the ARITA Code of Professional Practice.

(12) Unsecured Creditors

The Bankrupt disclosed four (4) unsecured creditors in their SOA's. My investigations have not yet revealed any further unsecured creditors. No Proof of Debts have been received to date, however any received in the future will be subject to adjudication by this office.

Taking the above information into account, the unsecured creditor total is estimated to be approximately $272,598. The shortfall in relation to the Bankrupts' real property will also be an unsecured claim against the Joint Estate of approximately $750,250.

If you have not lodged a Proof of Debt to date and wish to do so, please complete the *attached Proof of Debt form.

3. Investigations

3.1. Overview

As Trustee, I have a responsibility to ascertain the assets and liabilities of the Bankrupt, and have powers to investigate the Bankrupts' conduct, affairs, and books and records.

Such investigations look at any unusual events, offences or transactions which may give rise to potential claims or asset recoveries.

The investigations consider potential recoveries resulting from the existence of:

- Disposition during the relation back period, i.e. before the date of bankruptcy, being 20 July 2018, but after the date of c_mmencement
- Preferential repayments to credit_rs
- Undervalued transactions and transfers to defeat creditors.

As Trustee, I may also elect to have the Bankrupts publicly examined on oath as to their conduct, trade dealings, property and affairs. Su_h a_ examination may well be used to seek evidence in relation to a potential recovery or litigation. A Trustee (or a creditor) may examine the Bankrupts and the transcript of the examinatio_ may be used in evidence in proceedings against the Bankrupts. Persons other than the Bankrupts may also be examined if they might be indebted to or have property of the Bankrupt, or otherwise be capable of giving informa_on about the Bankrupts' affairs.

Subject t_ particular property exemptions, protective provisions and to the rights of special creditors, the property (or its value) which a Trustee may have available for distribution or may recover is:

- Property owned by the Bankrupts at the date of bankruptcy, which is available by reason of Section 116 of the Bankruptcy Act 1966
- Property owned by the Bankrupts at the commencement of the bankruptcy, but disposed of before the date of bankruptcy, which is available (Section 116) under the doctrine of relation back; similarly, property acquired by the Bankrupt after commencement but disposed of before the date of bankruptcy
- Property devolving on the Bankrupts after the date of bankruptcy but before discharge (Section 116), i.e. after-acquired property (not to be confused with after-acquired income (Section 139L)
- Property transferred by the debtor prior to the date of bankruptcy and up to five years before the deemed commencement of bankruptcy at less than market value – known as "undervalued transactions" (Section 120)
- Property transferred by the Bankrupts with the main purpose of defeating or delaying the division of the property amon_ creditors – kn_wn as "transfers to defeat creditors" (Section 121)
- Property (_r value) transferred to a creditor within or after a period commen_ng six months before the presentation of the relevant debtor's or creditor's petition with the effect of giving the creditor a preference over other creditors – known as "voidable preferences" (Section 122).

At this stage, whilst I am not in a position to provide any comments about potential avenues _f recovery, I list below the investigati_ns I have undertaken and the further inquiries I intend to undertake during the course of the Bankruptcy administration.

3.2. Investigations Undertaken

To date I have undertaken the following investigations into the Bankrupts' affairs:

- Review background information provided by the Australian Financial Security Authority (AFSA), including reviewing internal file notes, affidavits, and correspondence;
- Reviewed the Bankrupts' SOA's; and
- Perused the Official Trustees' investigations into the Frigger Superannuation Fund;

3.3 Further Inquiries to be Undertaken

I plan to undertake the following further investigations:

- Progress and finalise the investigations into the superannuation funds;
- Investigate the existence of any voidable transactions entered into by the Bankrupt(s);
- Review the circumstances surrounding the granting of mortgage over the Bankrupts' properties;
- Determine the equity position (if any) of the Bankrupts' properties; and
- Investigate the veracity of the debts disclosed as owing to the Bankrupt Estates in their respective SOA's.

4. Meeting of Creditors

Unless creditors should see fit, I do not intend to call a meeting of creditors at this stage due to the lack of funds to pay the costs, estimated at $3,500, including advertising, postage printing and staff time. However, in accordance with the *Insolvency Practice Schedule (Bankruptcy)* (the IPS) Section 75-15, a Trustee must call a meeting of creditors whenever:

a) The creditors direct so by a special resolution;

b) Requested in writing by at least one quarter in value of all creditors; or

c) Requested in writing by less than one quarter in value of creditors, being creditors(s) who have lodged with the Trustee sufficient security for the cost of holding the meeting.

The IPS Section 75-10 states a Trustee may convene a meeting of creditors of the Bankrupts at any time.

5. Trustees' Remuneration

I am seeking approval to draw my remuneration from any assets become available in the Estate. The two resolutions being sought are:

Resolution 1: From 31 August 2018 to 7 October 2018 (inclusive)

> "The remuneration of the Trustees of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 31 August 2018 to 7 October 2018 to be calculated on a time basis at the hourly rates set out in the FTI Consulting Schedule of Hourly Rates effective 1 March 2017, and is determined and approved for payment in the amount of $27,379.55 (inclusive of GST) and the Trustees can draw the remuneration."

Resolution 2: From 8 October 2018 to the conclusion of the Bankruptcy (inclusive)

> "The remuneration of the Trustees of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 8 October 2018 to the conclusion of the Bankruptcy (inclusive) be calculated on a time basis at the hourly rates set out in the FTI Consulting Schedule of Hourly Rates effective 1 March 2017, up to an initial capped amount of $120,000 (inclusive of GST) and the Trustees can draw the remuneration as required."

For further information please refer to the *attached Remuneration Approval Report.

Under Section 75-40 of the IPS, the Trustees are able to obtain resolutions of creditors without holding a meeting of creditors.

*Attached to this report is a notice inviting creditors to vote either yes or no to the proposal or object to the proposal being resolved without a meeting of creditors. You are required to return this form to this office by 2 November 2018.

If no creditor objects and at least one creditor votes in favour of the proposal in writing, then the proposal is decided in accordance with the majorities required for a special (majority in number and 75% in value of those who vote) or ordinary (majority in value) resolution.

The Trustees request creditors complete the *attached form and return it to this office by the required due date.

Creditors are advised all source documentation evidencing the Trustees' remuneration including details of work undertaken by the Trustees and their staff, as well as disbursements incurred by the Trustees, are available for inspection at my Brisbane office during normal office hours.

Should creditors wish to review the documentation, please contact Lachlan Bowness on (07) 3225 4958 or [redacted] to make appropriate arrangements. A copy of this documentation can be provided to creditors upon request.

6. Trustees' Disbursements

I am required by law to obtain approval from creditors for internal disbursements incurred by my firm to assist with the undertaking of this administration. These disbursements are charged on a reasonable commercial basis, the details of which are outlined in the *attached Remuneration Approval Report.

The proposal if passed will allow the reimbursements of reasonably commercial expenses, properly incurred during the administration to my firm and its staff. The resolution being sought is:

Resolution 3: From 31 August 2018 to 7 October 2018:

> "The cost of the internal disbursements of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 31 August 2018 to 7 October 2018 (inclusive) be calculated at the rates set out in the Schedule of FTI Consulting Internal Disbursement Rates and is determined and approved for payment in the amount of $180.60 (Inclusive of GST) and Trustees can draw the cost of those internal disbursements as required."

Resolution 4: From 8 October 2018 to conclusion of the Bankruptcy:

> "The cost of the internal disbursements of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 8 October 2018 to the conclusion of the Bankruptcy (Inclusive) be calculated at the rates set out in the Schedule of FTI Consulting Internal Disbursement Rates and is determined and approved for payment in the amount of $11,000 (Inclusive of GST) and Trustees can draw the cost of those internal disbursements as required."

Under Section 75-40 of the IPS, the Trustees are able to obtain resolutions without holding a meeting of creditors.

*Attached to this report is a notice invites creditors to vote either yes or no to the proposal or object to the proposal being resolved without a meeting of creditors. You are required to retur this form to this office by 2 November 2018.

I note creditor approval is not required for external disbursements.

7. Information from Creditors

If you have any information which may assist me in the administration of this Estate or you are aware of any material omission in the Bankrupts' Statement of Affairs, please furnish details or contact Lachlan Bowness of this office on (3225 4958 or [redacted].

Please remember to keep me informed at all times of your current postal address.

Should you have any queries regarding the above, please contact Lachlan Bowness on (07) 3225 4958 or [redacted].

Dated this 12th day of October 2018.

Kelly Anne Trenfield
Trustee

*Attach

Ref: LAB_464538.0001-9-2-Second Report to Creditors.doc

Lachlan Bowness
(07) 3225 4 58
Lachlan.Bowness@fticonsulting.com

Paris Parasadi
(07) 3225 4927
Paris.Parasadi@fticonsulting.com

About FTI Consulting

FTI Consulting, LLP. is a global business advisory firm dedicated to helping organisations protect and enhance enterprise value in an increasingly complex legal, regulatory and economic environment. FTI Consulting professionals, who are located in all major business centers throughout the world, work closely with clients to anticipate, illuminate and overcome complex business challenges in areas such as investigations, litigation, mergers and acquisitions, regulatory issues, reputation management and restructuring.

©2013 FTI Consulting, LLP. All rights reserved

12 OCTOBER 2018

REMUNERATION APPROVAL REPORT

THE BANKRUPT ESTATE OF ANGELA CECILIA THERESA FRIGGER
AND HARMUT HUBERT JOSEF FRIGGER
(BANKRUPTS)
BANKRUPT ESTATE NO. WA 1272 OF 2018/6

EXPERTS WITH IMPACT™

Introduction

Information included in report

This remuneration approval report provides you with the information the *Bankruptcy Act 1966* (Act) and the Code of Professional Practice published by the Australian Restructuring Insolvency and Turnaround Association (ARITA) requires creditors to receive to make an informe_ decision regarding the approval of my remuneration and the cost of my internal disbursements for undertaking the Bankruptcy of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts).

This report has the foll_wing information included:

Introduction.. 1

Part 1: Declaration 2

Part 2: Executive Summary 2

Part 3: Remuneration 3

Part 4: _`sbursements 6

Part 5: Summary of Receipts and Payments 7

Part 6: Queries 7

Schedule 1: Major tasks for Resolution 1 Remunerati n Approval 8

Schedule 2: Table for Resolution 2 – Remuneration Approval 10

Schedule 3: FTI Consulting Schedule of Rates 11

Part 1: Declaration

I, Kelly-Anne Trenfield of FTI Consulting have undertaken a proper assessment of the claims for remuneration and payment of our internal disbursements for the appointment as Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) in accordance with the law and applicable professional standards. I am satisfied the remuneration claimed is in respect of necessary work, properly performed, or to be properly performed, in the conduct of this appointment and further, the disbursements claimed are necessary and proper.

Part 2: Executive Summary

Remuneration

I advise creditors the value of work performed from 31 August 2018 to 7 October 2018 totals $27,379.55 (inclusive of GST). For the purpose of fee approval, I estimate the total remuneration for this appointment for the period 8 October 2018 to the conclusion of the Bankruptcy to be $120,000 (inclusive of GST). This is consistent with my previous estimated total remuneration.

Remuneration claimed is summarised below in Table 1 below:

Table 1: Current claim for remuneration

Period	Report Reference	Amount (inc GST) $
Bankruptcy		
Resolution 1: 31 August 2018 to 7 October 2018	Schedule 1	27,379.55
Resolution 2: 8 October 2018 to the conclusion of the Bankruptcy (inclusive)*	Schedule 2	120,000.00
Total		**$147,379.55**

* Approval for the future remuneration sought is based on an estimate of the work necessary to complete the Bankrupt Estate. Should additional work beyond what is contemplated be necessary, further approval may be sought from creditors. If a lesser amount is incurred, I will limit my remuneration to the lesser amount.

Internal disbursements currently claimed are summarised below in Table 2.

Table 2: Current claim for internal disbursements

Period	Report Reference	Amount (inc GST) $
Bankruptcy		
Resolution 1: 31 August 2018 to 7 October 2018	Table 4	180.60
Resolution 2: 8 October 2018 to the conclusion of the Bankruptcy (inclusive)*	Table 5	11,000.00
Total		**$11,180.60**

* Approval for the future internal disbursements sought is based on an estimate of the internal disbursements necessary to complete the Bankrupt Estate. Should additional internal disbursements beyond what is contemplated be necessary, further approval may be sought from creditors.

Please refer to report section references detailed in Table 1 and Table 2 for full details of the calculation and composition of the remuneration and internal disbursement approval sought.

Part 3: Remuneration

Remuneration claim resolutions

I will be seeking approval of the following resolution to approve my remuneration. Details to support the resolution are shown immediately below the resolutions and in the schedules to this report.

Resolution 1: Remuneration from 31 August 2018 to 7 October 2018 (inclusive)

The remuneration of the Trustees of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 31 August 2018 to 7 October 2018 to be calculated on a time basis at the hourly rates set out in the FTI Consulting Sched le of Hourly Rates effective 1 March 2017, and is determined and approved for payment in the amount of $27,379.55 (inclusive of GST) and the Trustees can draw the remuneration.

Resolution 2: Remuneration from 8 October 2018 to the conclusion of the Bankruptcy (inclusive)

The remuneration of the Trustees of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 8 October 2018 to the conclusi n of the Bankruptcy (inclusive) be calculated on a time basis at the hourly rates set out in the I Consulting Schedule of Hourly Rates effective 1 March 2017, up t an initial capped amount of $120,000 (inclusive of GST) and the Trustees can draw the remuneration as required.

Remuneration i cal ulated in accordance with the hourly rates applicable to the grades or classifications set out in the FTI Consulting Schedule of Standard Rates which appear at Schedule 3 of this report.

At this stage, based on the information presently available t me, I consider it will not be necessary to seek further approval from creditors. However, the position may change depending on the progress of the Bankrupt Estate and the issues that may arise.

In accordance with Section 70-47 of *the Insolvency Practice Rules (Bankruptcy) 2016*, I inform you of your right to elect to receive a Remuneration Claim Notice in relation to the remuneration claimed by the Trustees from funds available in the Bankrupt Estate.

Details to support resolutions

The basis of cal ulating the remuneration claims are summarised below and the details of the major tasks performed and the costs associated with each of those major tasks are contained in Schedule 1 and Schedule 2.

Resolution 1: Remuneration from 31 August 2018 to 7 October 2018 (inclusive)

The below table set out time charged to each major task area by staff members working on the Bankruptcy for the period 31 August 2018 to 7 October 2018 (inclusive) which is the basis of the Resolution 1 claim. More detailed descriptions of the tasks performed within each task area, matching the amounts bel w, are contained in Schedule 1.

Table 3: Time charged to each major task area for the period 31 August 2018 to 7 October 2018 (inclusive)

Employee	Position	Rate/hour excl GST $	Total actual hours	Total (excl GST) $	Task Area			
					Assets $	Creditors $	Investigation $	Administration $
Kelly-Anne Trenfield	Senior Managing Director	625	9.2	5,750.00	187.50	312.50	1,000.00	4,250.00
Paul Allen	Managing Director	580	0.2	116.00	0.00	0.00	116.00	0.00
Paris Parasadi	Senior Consultant 2	440	28.9	12,716.00	352.00	1,408.00	5,324.00	5,632.00
Lachlan Bowness	Associate 1	260	22.2	5,772.00	0.00	390.00	2,106.00	3,276.00
Various Administration	Administration 2	185	2.9	536.50	0.00	0.00	0.00	536.50
Total			**63.40**	**24,890.50**	**539.50**	**2,110.50**	**8,546.00**	**13,694.50**
GST				2,489.05				
Total (including GST)				**27,379.55**				
Average hourly rate (excluding GST)				**393**	**490**	**406**	**388**	**390**

EXPERTS WITH IMPACT™

Resolution 2: Remuneration from 8 October 2018 to the conclusion of the Bankruptcy (inclusive)

This resolution is with respect to work which had not been carried out when this report was prepared. As such it is not possible to provide a calculation of the remuneration. A breakdown of time which will likely be spent by each staff in undertaking future work is contained in Schedule 2.

Total remuneration reconciliation

At this point in time, I estimate that the total remuneration for this Bankruptcy will be $147,379.55 (inclusive of GST). This includes the current approval amount being sought.

This is consistent with my previous estimated total remuneration provided in the Initial Remuneration Notice dated 12 September 2018, which estimated a cost of the administration of $150,000 (Inclusive of GST).

Likely impact on dividends

The Act sets the order for payment of claims against the Bankrupt and it provides for remuneration of the Trustee to be paid in priority to other claims. This ensures that when there are sufficient funds, the Trustee receives payment for the work done to recover assets, investigate the Bankrupt's affairs, report to creditors and Australian Financial Security Authority (AFSA) and distribute any available funds. Even if creditors approve remuneration, this does not guarantee I will be paid, as I am only paid if sufficient assets are recovered.

Any dividend to creditors will also be impacted by the amount of assets I am able to recover and the amount of creditor claims admitted to participate in any dividend, including any claims by priority creditors such as employees.

There are not expected to be sufficient funds to pay a dividend to unsecured creditors.

Part 4: Disbursements

Explanatory note on disbursements

Disbursements are divided into three types:

- Externally provided professional services - these are recovered at cost. An example of an externally provided professional service disbursement is legal fees.
- Externally provided non-professional costs - these are recovered at cost. Examples of externally provided non-professional costs are travel, accommodation and search fees.
- Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the Bankrupt Estate, would generally be charged at cost, though some expenses such as telephone calls, photocopying and printing may be charged at a rate which recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis. Details of the basis of recovery of each of these costs is discussed below.

Internal disbursements not charged at cost must be approved by creditors before I can draw the cost of those disbursements from this external Bankrupt Estate. Creditor approval is not required in relation to externally provided professional and non-professional costs or disbursements charged at cost. Where payments to third parties have been made from the bank account of the external Bankrupt Estate, those payments are disclosed in the summary of receipts and payments. Creditors have the right to question the incurring of the disbursements and can challenge disbursements in Court.

Internal disbursement claim resolutions

I will be seeking approval of the following resolutions with respect to our internal disbursements. Details to support these resolutions are shown immediately below the resolutions and in the schedules to this report.

Resolution 3: Internal disbursements from 31 August 2018 to 7 October 2018 (inclusive)

The cost of the internal disbursements of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 31 August 2018 to 7 October 2018 (inclusive) be calculated at the rates set out in the Schedule of FTI Consulting Internal Disbursement Rates and is determined and approved for payment in the amount of $180.60 (inclusive of GST) and Trustees can draw the cost of those internal disbursements as required.

Resolution 4: Internal disbursements from 8 October 2018 to the conclusion of the Bankruptcy (inclusive)

The cost of the internal disbursements of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 8 October 2018 to the conclusion of the Bankruptcy (inclusive) be calculated at the rates set out in the Schedule of FTI Consulting Internal Disbursement Rates and is determined and approved for payment in the amount of $11,000 (inclusive of GST) and Trustees can draw the cost of those internal disbursements as required.

Details to support resolutions

Resolution 3: Internal disbursements from 31 August 2018 to 7 October 2018 (inclusive)

The cost of the internal disbursements which are the subject of Resolution 3 have be calculated in the manner shown in Table 4 below

Table 4. Cost of internal disbursements claimed

Disbursements claimed	Basis of charge excl GST $	Amount excl GST $
Advertising & Search Fees	At cost	147.98
Postage	At cost	16.20
Total		**164.18**
GST		**16.42**
Total (including GST)		**180.60**

Future basis of internal disbursements

Future internal disbursements will be charged to the Bankrupt Estate on the basis shown in the Schedule of FTI Consulting Internal Disbursement Rates as shown in Table 5 below.

Table 5: Schedule of Brisbane FTI Consulting Internal Disbursement Rates

Nature of Disbursement	Rate (exclusive of GST)
Advertising and search fees	At cost
Courier	At cost
Postage	At cost
Printing and photocopying	$0.09 per unit of time charged
Telephone calls and facsimile	$0.10 per unit of time charged
Storage and storage recall	At cost
Staff travel – mileage	Cents per km method
Other staff travel/out of pockets	At cost

Part 5: Summary of Receipts and Payments

To date, I have not received any funds in the Bankrupt Estate.

Part 6: Queries

If you have any queries or require any further information concerning my claim for remuneration please contact Lachlan Bowness on (07) 3225 4958 or Lachlan.Bowness@fticonsulting.com.

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

- ARITA at www.arita.com.au/creditors
- AFSA at www.afsa.gov.au

Dated this 12th day of October 2018.

Yours faithfully
FTI Consulting



Kelly-Anne Trenfield
Trustee

Schedule 1: Major tasks for Resolution 1 Remuneration Approval

The below schedule provides a description of the work to be undertaken in each major task area for the period 31 August 2018 to the 7 October 2018 (inclusive).

Work undertaken for the period 31 August 2018 to the 7 October 2018 (inclusive)

Task Area	General Description	Includes
Assets 1.1 hours $539.50	Real Property	• Liaise with Official Trustee regarding lodgment of caveats • Conduct property searches
Creditors 5.2 hours $2,110.50	Creditor Reports	• Detailed report to creditors • Providing DIRRI and Initial Remuneration Notice to creditors
	Processing Proof of Debts (PODs) not Relating to a Dividend	• Issuing, receiving and filing PODs
Investigation 22 hours $8,546.00	Conducting Investigations into Affairs of the Bankrupt	• Reviewing books and records • Review of specific transactions and liaising with the Bankrupt regarding certain transactions such as the disposal of assets • Review material provided by AFSA with regards to various litigation on foot • Liaise with solicitors of various respondents and responding to their queries • Commencing investigations into avenues of recoveries identified by the Official Trustee • Investigating and understanding Bankrupt's affairs • Obtaining and reviewing statutory searches • Investigations into the property owned by the Bankrupt
Administration 35.1 hours $13,694.50	General Correspondence and Word Processing	• Word processing including correspondence, file notes, agendas and minutes • Care and maintenance of the file
	File Review/Checklist/Document Maintenance	• Administration Review • Document filing and maintenance • File Reviews • Updating Checklists
	Bank Accounts	• Procuring and reviewing bank account statements • Communications concerning bank account transactions

AFSA Reporting		• Liaising with AFSA with regards to transfer of file; • Mee ˙ng with the staff of the Official Trustee; • Dealings with the Official Trustee's staff regarding logistics of the delivery of records
Planning Administration	Review/General	• Meetings to discuss the status of the administration • Liaise with solicitors regarding annulment application •
Remuneration		• Recording of time, including details • Preparation of remuneration schedules • Invoice preparation

Schedule 2: Table for Resolution 2 – Remuneration Approval

The below schedule provides a description of the work to be undertaken in each major task area for the period 8 October 2018 to the conclusion of the Bankruptcy (inclusive).

Work undertaken for the period 8 October 2018 to the conclusion of the Bankruptcy (inclusive)

Table 7: Calculation of Remuneration from 8 October 2018 to the Conclusion of the Bankruptcy

Staff	Position	Hours	Rate $	Est. Fees $
Kelly-Anne Trenfield	Senior Managing Director	60	625	37,500
Paris Parasadi	Senior Consultant 2	90	440	39,600
Lachlan Bowness	Associate 1	100	260	26,000
Various Administration	Administration 2	20	185	3,700
Various Administration	Administration 1	14.77	155	2,290
		Net Total		**109,091**
		GST		**10,909**
		Total		**120,000**

Schedule 3: FTI Consulting Schedule of Rates

FTI Consulting Standard Rates effective 1 March 2017 (excluding GST)		
Typical classification	All Offices $/hour	General guide to classifications
Se ior Managing Director	625	Registered/Official Liquidator and/or Trustee, with specialist skills and extensive experience in all forms of insolvency administra ons. Alternatively, has proven leadership experience in business or industry, bringing specialist expertise and knowledge to th administration.
Managing Director	580	Specialist skills brought to the admini tration. Extensive experience in managing large, complex engagements at a very senior level over many years. Can deputise for the appointee. May also be a Registered/Official Liquidator and/or Trustee. Alternatively, has extensive leadership/senior management experience in business or industry.
Senior Director	570	Extensive experience in managing large, complex engagements at a very senior level over many years. Can deputise for the appointee, where required. May also be a Registered/Official Liquidator and/or Trustee or have experience sufficient to support an applicati n to become registered. Alternatively, has significant senior management experience in business or industry, with specialist skills and/or qualifications.
Director	510	Significant experience across all types of administrations. Strong technical and commercial skills. Has primary con uct of small to large administrations, controlling a team of professionals. Answerable to the appointee, but otherwise responsible for all aspects of the administrati n. Alternatively, has significant seni r management experience in business or industry, with specialist skills and/or qualifications.
Senior Consultant 2	440	Typically an ARITA professional member. Well developed technical and commercial skills. Has experience in complex matters and has conduct of small to medium administrations, supervising a small team of professionals. Assists planni and control of medium to larger administrations.
Senior Consultant 1	380	Assists with the planning and control of small to medium administrations. May have the conduct of minor administrati ns. Can supervise staff. Has experience performing more difficult tasks on larger administrations.
Consultant 2	360	Typically ICAA qualified (or similar). Required to control the tasks on small administrati ns and is responsible for assisting with tasks on medium to large administrations.
Consultant 1	315	Qualified accountant with several years experience. Required to assist with day-to-day tasks under the supervision of senior staff.
Associate 2	280	Typically a qual ied accountant. Required to assist with day-to-day tasks under the supervision of senior staff.
Associate 1	260	ypically a university undergraduate or graduate. Required to assist with day-to-day tasks under the supervision of senior staff.
Junior Associate	185	Undergraduate in the latter stage of their university degree.
Admini tration 2	185	Well developed administrative skills with significant experience supporting professional staff, including superior knowledge of software packages, personal assistance work and/ r office management. May also have appropriate bookkeeping or similar skills.
Junior Accountant	155	Undergraduate in the early stage of their university degree.
Admini tration 1	155	Has appropriate skil and experience to support professional staff in an administrative capacity.

Lachlan Bowness
(07) 3225 4958
Lachlan. owness@fticonsulting.com

Paris Parasadi
(07) 3225 4927
Paris.Parasadi@fticonsulting.com

Liabi ity imited by a scheme approved under Professional Standards Legislation

EXPERTS WITH IMPACT™

About FTI Consulting

FTI Consulting, Inc. is a global business advisory firm dedicated to helping organisations protect and enhance enterprise value in an increasingly complex legal, regulatory and economic environment. FTI Consulting professionals, who are located in all major business centers throughout the world, work closely with clients to anticipate, illuminate and overcome complex business challenges in areas such as investigations, litigation, mergers and acquisitions, regulatory issues, reputation management and restructuring. More information can be found at www.fticonsulting.com.

© 2016 FTI Consulting, Inc. All rights reserved.

PROOF OF DEBT

Bankruptcy Act 1966 Section 84(2), 85(2)

Privacy

The information you are required to provide on this form is collected under, and for the purposes of, the *Bankruptcy Act 1966* or related legislation. The Australian Financial Security Authority has a privacy policy at www.afsa.gov.au/privacy that provides information regarding the collection, storage, use and disclosure of personal information, including how you may: (i) access your personal information; (ii) seek to have that information corrected; and (iii) complain if you feel your privacy has been breached, along with information on how your complaint will be dealt with.

Completing a Proof of Debt (POD)

1. **When to lodge a Proof of Debt**
   A trustee of a Personal Insolvency Agreement (PIA) or bankruptcy will request you to lodge a POD where there are funds in the estate to distribute. A dividend will only be paid to those creditors whose POD has been admitted by the trustee. Correct completion of PODs will prevent delays in distribution of funds to the creditors. Return the completed POD to the trustee within the prescribed time as a dividend may be paid without further notice to you.
   Note: The trustee may require you to verify the matters contained in your POD by way of a Statutory Declaration. If such a request is made and you fail to provide the Statutory Declaration, then the trustee may disregard your POD.
2. **Which debts are provable?**
   Not all debts are provable, for example
   - debts incurred after the date of bankruptcy
   - interest that has accrued after the date of bankruptcy
   - debts owed by the bankrupt/ debtor's company if they are not supported by a personal guarantee.

   Please do not include these in your claim. Your claim may be rejected for these amounts and result in delaying the payment of the dividend.
   Further information on provable debts is available by calling AFSA on 1300 364 785, visiting www.afsa.gov.au or the trustee.
3. **Instructions on completion of the POD**
   It is your responsibility to prove to the trustee that you are owed the debt.
   - Answer all questions on the form
   - Calculate interest to the date of bankruptcy; or the date the PIA was executed by the Debtor (s) s 187(2)
   - Total the amounts and check that your calculations are correct
   - Sign and date the POD
   - Attach documentary evidence of your claim. Evidence may include copies of:
     - invoices
     - statements
     - delivery dockets
     - relevant contracts
     - personal guarantees given by bankrupt/ debtors
     - loan contracts
     - judgments.
4. **Separate, joint, and joint and several creditors**
   If two or more persons have become bankrupt or entered into a PIA together, creditors may have a claim against
   (a) only one of them
   (b) all of them jointly only, or
   (c) all of them jointly as well as in their individual capacities.

   It is important that you indicate which situation applies to you (see Bankrupt/Debtor/s liability on page 2) so that the trustee is able to admit your claim in the correct estate. This information is generally available from your loan or credit contract document.

Information for specific creditors

5. **Secured creditors**
   Secured creditors must complete Do you hold any Security on page 3. A secured creditor can prove for all or part of their secured debt. Where a secured creditor surrenders their security to the trustee, a claim may be made for the whole of the debt. Where a secured creditor sells their security, a claim may be made for the shortfall or conversely the surplus must be given to the trustee.
   Where a claim is made for the shortfall from the sale of an asset, an accounting for the sale must be attached to the POD. Where the property has not been sold, but a shortfall is anticipated in an eventual sale, the secured creditor can claim for the estimated shortfall amount.
6. **Judgment creditors**
   The trustee may look behind a judgment to obtain further evidence of a debt. If you have obtained a judgment please provide details on page 3. Costs awarded in a judgment obtained prior to bankruptcy may be included.
7. **Business/trade creditors**
   Disclose your ABN on page 3 if you are a business creditor. The trustee may be required to withhold tax on any dividend where the business creditor does not disclose its ABN. If the goods or services you supplied was for the bankrupt/debtor's business then you are also required to show the GST amount (if any) that is included in your debt on page 4.
8. **Other**
   An executor of a deceased creditor's estate may prove in the bankruptcy in place of the deceased creditor.

Debtor Details

Bankrupt/Debtor name/s (if there is more than two)

Title	Given name/s	Surname
Mr	Hartmut Hubert Josef	Frigger
Mrs	Angela Cecilia Theresa	Frigger

Trading name

Administration number: WA 1272 of 2018/6

Date of administration (DD/MM/YYYY): 20 July 2018

Bankrupt/Debtor/s liability ◯ Separate ◯ Joint ◯ Joint & several

Trustee Details

Title	Given name/s	Surname
Mr	Paul	Allen

Business address: GPO Box 3127
BRISBANE QLD

Postcode: 4001

Contact number: (07) 3225 4900

Mobile number:

Email address: Lachlan.Bowness@fticonsulting.com

548

Second Trustee Details:

Title	Given name/s	Surname
Mrs	Kelly-Anne	Trenfield

Business address: GPO Box 3127
BRISBANE QLD

Postcode: 4001

Contact number: (07) 3225 4900

Mobile number:

Email address: Lachlan.Bowness@fticonsulting.com

Creditor Details

Creditor name:

Postal address:

Postcode:

Creditor reference:

Creditor ABN:

Contact information

Title	Given name/s	Surname

Contact number:

Fax number:

Email address:

Do you hold any security? ◯ No ◯ Yes

Estimated value of security:

Description of security property:

Have you obtained a judgment? ◯ No ◯ Yes

Judgment amount & costs:

Was this a default judgment? ◯ No ◯ Yes

Judgment number & court:

Details of Debt/s

Date debt/s incurred	Details of debt/description (see note 2)	GST (see note 7)	Amount ($)
	Less: Payments received in reduction of debts		
	Less: Estimated value of security		
	Amount claimed		

Creditor Declaration

I declare that the bankrupt/debtor/s owe/s the amount claimed by the creditor named above.

Title	Given name/s	Surname

Signature

Date (DD/MM/YYYY)

Note: Lodging a false proof of debt is an offence which is punishable by imprisonment for 5 years: s263(1)(d).

Admin Use Only		Trustee Use Only			
Creditor ID		Amount admitted in estate ◯ 1 ◯ 2 ◯ 3		Preferential ($)	
Liability ID		Amount rejected ($)		Ordinary ($)	
POD No.		Reason rejected		Deferred ($)	
SoA Amt.				Total Admitted ($)	
Reg'd. in estate					
Date of Reg'n.					

Signature of trustee

Date (DD/MM/YYYY)

PROOF OF DEBT

Bankruptcy Act 1966 Section 84(2), 85(2)

Privacy

The information you are required to provide on this form is collected under, and for the purposes of, the *Bankruptcy Act 1966* or related legislation. The Australian Financial Security Authority has a privacy policy at www.afsa.gov.au/privacy that provides information regarding the collection, storage, use and disclosure of personal information, including how you may: (i) access your personal information; (ii) seek to have that information corrected; and (iii) complain if you feel your privacy has been breached, along with information on how your complaint will be dealt with.

Completing a Proof of Debt (POD)

1. **When to lodge a Proof of Debt**
   A trustee of a Personal Insolvency Agreement (PIA) or bankruptcy will request you to lodge a POD where there are funds in the estate to distribute. A dividend will only be paid to those creditors whose POD has been admitted by the trustee. Correct completion of PODs will prevent delays in distribution of funds to the creditors. Return the completed POD to the trustee within the prescribed time as a dividend may be paid without further notice to you.
   Note: The trustee may require you to verify the matters contained in your POD by way of a Statutory Declaration. If such a request is made and you fail to provide the Statutory Declaration, then the trustee may disregard your POD.
2. **Which debts are provable?**
   Not all debts are provable, for example
   - debts incurred after the date of bankruptcy
   - interest that has accrued after the date of bankruptcy
   - debts owed by the bankrupt/ debtor's company if they are not supported by a personal guarantee.

   Please do not include these in your claim. Your claim may be rejected for these amounts and result in delaying the payment of the dividend.
   Further information on provable debts is available by calling AFSA on 1300 364 785, visiting www.afsa.gov.au or the trustee.
3. **Instructions on completion of the POD**
   It is your responsibility to prove to the trustee that you are owed the debt.
   - Answer all questions on the form
   - Calculate interest to the date of bankruptcy; or the date the PIA was executed by the Debtor (s) s 187(2)
   - Total the amounts and check that your calculations are correct
   - Sign and date the POD
   - Attach documentary evidence of your claim. Evidence may include copies of:
     - invoices
     - statements
     - delivery dockets
     - relevant contracts
     - personal guarantees given by bankrupt/ debtors
     - loan contracts
     - judgments.
4. **Separate, joint, and joint and several creditors**
   If two or more persons have become bankrupt or entered into a PIA together, creditors may have a claim against
   (a) only one of them
   (b) all of them jointly only, or
   (c) all of them jointly as well as in their individual capacities.

   It is important that you indicate which situation applies to you (see Bankrupt/Debtor/s liability on page 2) so that the trustee is able to admit your claim in the correct estate. This information is generally available from your loan or credit contract document.

Information for specific creditors

5. **Secured creditors**
   Secured creditors must complete Do you hold any Security on page 3. A secured creditor can prove for all or part of their secured debt. Where a secured creditor surrenders their security to the trustee, a claim may be made for the whole of the debt. Where a secured creditor sells their security, a claim may be made for the shortfall or conversely the surplus must be given to the trustee.
   Where a claim is made for the shortfall from the sale of an asset, an accounting for the sale must be attached to the POD. Where the property has not been sold, but a shortfall is anticipated in an eventual sale, the secured creditor can claim for the estimated shortfall amount.
6. **Judgment creditors**
   The trustee may look behind a judgment to obtain further evidence of a debt. If you have obtained a judgment please provide details on page 3. Costs awarded in a judgment obtained prior to bankruptcy may be included.
7. **Business/trade creditors**
   Disclose your ABN on page 3 if you are a business creditor. The trustee may be required to withhold tax on any dividend where the business creditor does not disclose its ABN. If the goods or services you supplied was for the bankrupt/debtor's business then you are also required to show the GST amount (if any) that is included in your debt on page 4.
8. **Other**
   An executor of a deceased creditor's estate may prove in the bankruptcy in place of the deceased creditor.

Debtor Details

Bankrupt/Debtor name/s (if there is more than two)

Title	Given name/s	Surname
Mr	Hartmut Hubert Josef	Frigger

Trading name

Administration number: WA 1272 of 2018/6

Date of administration (DD/MM/YYYY): 20 July 2018

Bankrupt/Debtor/s liability: ○ Separate ○ Joint ○ Joint & several

Trustee Details

Title	Given name/s	Surname
Mr	Paul	Allen

Business address: GPO Box 3127
BRISBANE QLD

Postcode: 4001

Contact number: (07) 3225 4900

Mobile number:

Email address: Lachlan.Bowness@fticonsulting.com

552

Second Trustee Details:

Title	Given name/s	Surname
Mrs	Kelly-Anne	Trenfield

Business address

GPO Box 3127
BRISBANE QLD

Postcode: 4001

Contact number: (07) 3225 4900

Mobile number:

Email address: Lachlan.Bowness@ftcon_ulting.com

Creditor Details

Creditor name:

Postal address:

Postcode:

Creditor reference:

Creditor ABN:

Contact information

Title	Given name/s	Surname

Contact number:

Fax number:

Email address:

Do you hold any security? ○ No ○ Yes

Estimated value of security:

Description of security property:

Have you obtained a judgment? ○ No ○ Yes

Judgment amount & costs:

Was this a default judgment? ○ No ○ Yes

Judgment number & court:

Details of Debt/s

Date debt/s incurred	Details of debt/description (see note 2)	GST (see note 7)	Amount ($)
	Less: Payments received in reduction of debts		
	Less: Estimated value of security		
	Amount claimed		

Creditor Declaration

I declare that the bankrupt/debtor/s owe/s the amount claimed by the creditor named above.

Title | Given name/s | Surname

Signature | Date (DD/MM/YYYY)

Note: Lodging a false proof of debt is an offence which is punishable by imprisonment for 5 years: s263(1)(d).

Admin Use Only		Trustee Use Only		
Creditor ID		Amount admitted in estate ◯ 1 ◯ 2 ◯ 3	Preferential ($)	
Liability ID		Amount rejected ($)	Ordinary ($)	
POD No.		Reason re'ected	Deferred ($)	
SoA Amt.			Total Admitted ($)	
Reg'd. in estate				
Date of Reg'n.				

Signature of trustee | Date (DD/MM/YYYY)

PROOF OF DEBT

Bankruptcy Act 1966 Section 84(2), 85(2)

Privacy

The information you are required to provide on this form is collected under, and for the purposes of, the *Bankruptcy Act 1966* or related legislation. The Australian Financial Security Authority has a privacy policy at www.afsa.gov.au/privacy that provides information regarding the collection, storage, use and disclosure of personal information, including how you may: (i) access your personal information; (ii) seek to have that information corrected; and (iii) complain if you feel your privacy has been breached, along with information on how your complaint will be dealt with.

Completing a Proof of Debt (POD)

1. **When to lodge a Proof of Debt**
   A trustee of a Personal Insolvency Agreement (PIA) or bankruptcy will request you to lodge a POD where there are funds in the estate to distribute. A dividend will only be paid to those creditors whose POD has been admitted by the trustee. Correct completion of PODs will prevent delays in distribution of funds to the creditors. Return the completed POD to the trustee within the prescribed time as a dividend may be paid without further notice to you.
   Note: The trustee may require you to verify the matters contained in your POD by way of a Statutory Declaration. If such a request is made and you fail to provide the Statutory Declaration, then the trustee may disregard your POD.
2. **Which debts are provable?**
   Not all debts are provable, for example
   - debts incurred after the date of bankruptcy
   - interest that has accrued after the date of bankruptcy
   - debts owed by the bankrupt/ debtor's company if they are not supported by a personal guarantee.

   Please do not include these in your claim. Your claim may be rejected for these amounts and result in delaying the payment of the dividend.
   Further information on provable debts is available by calling AFSA on 1300 364 785, visiting www.afsa.gov.au or the trustee.
3. **Instructions on completion of the POD**
   It is your responsibility to prove to the trustee that you are owed the debt.
   - Answer all questions on the form
   - Calculate interest to the date of bankruptcy; or the date the PIA was executed by the Debtor (s) s 187(2)
   - Total the amounts and check that your calculations are correct
   - Sign and date the POD
   - Attach documentary evidence of your claim. Evidence may include copies of:
     - invoices
     - statements
     - delivery dockets
     - relevant contracts
     - personal guarantees given by bankrupt/ debtors
     - loan contracts
     - judgments.
4. **Separate, joint, and joint and several creditors**
   If two or more persons have become bankrupt or entered into a PIA together, creditors may have a claim against
   (a) only one of them
   (b) all of them jointly only, or
   (c) all of them jointly as well as in their individual capacities.

   It is important that you indicate which situation applies to you (see Bankrupt/Debtor/s liability on page 2) so that the trustee is able to admit your claim in the correct estate. This information is generally available from your loan or credit contract document.

665

Information for specific creditors

5. **Secured creditors**
   Secured creditors must complete Do you hold any Security on page 3. A secured creditor can prove for all or part of their secured debt. Where a secured creditor surrenders their security to the trustee, a claim may be made for the whole of the debt. Where a secured creditor sells their security, a claim may be made for the shortfall or conversely the surplus must be given to the trustee.
   Where a claim is made for the shortfall from the sale of an asset, an accounting for the sale must be attached to the POD. Where the property has not been sold, but a shortfall is anticipated in an eventual sale, the secured creditor can claim for the estimated shortfall amount.
6. **Judgment creditors**
   The trustee may look behind a judgment to obtain further evidence of a debt. If you have obtained a judgment please provide details on page 3. Costs awarded in a judgment obtained prior to bankruptcy may be included.
7. **Business/trade creditors**
   Disclose your ABN on page 3 if you are a business creditor. The trustee may be required to withhold tax on any dividend where the business creditor does not disclose its ABN. If the goods or services you supplied was for the bankrupt/debtor's business then you are also required to show the GST amount (if any) that is included in your debt on page 4.
8. **Other**
   An executor of a deceased creditor's estate may prove in the bankruptcy in place of the deceased creditor.

Debtor Details

Bankrupt/Debtor name/s (if there is more than two)

Title	Given name/s	Surname
Mrs	Angela Cecilia Theresa	Frigger

Trading name

Administration number: WA 1272 of 2018/6

Date of administration (DD/MM/YYYY): 20 July 2018

Bankrupt/Debtor/s liability ○ Separate ○ Joint ○ Joint & several

Trustee Details

Title	Given name/s	Surname
Mr	Paul	Allen

Business address: GPO Box 3127
BRISBANE QLD

Postcode: 4001

Contact number: (07) 3225 4900

Mobile number:

Email address: Lachlan.Bowness@fticonsulting.com

Second Trustee Details:

Title	Given name/s	Surname
Mrs	Kelly-Anne	Trenfield

Business address

GPO Box 3127
BRISBANE QLD

Postcode: 4001

Contact number: (07) 3225 4900

Mobile number:

Email address: Lachlan.Bowness@ftcon_ulting.com

Creditor Details

Creditor name:

Postal address:

Postcode:

Creditor reference:

Creditor ABN:

Contact information

Title	Given name/s	Surname

Contact number:

Fax number:

Email address:

Do you hold any security? ◯ No ◯ Yes

Estimated value of security:

Description of security property:

Have you obtained a judgment? ◯ No ◯ Yes

Judgment amount & costs:

Was this a default judgment? ◯ No ◯ Yes

Judgment number & court:

Details of Debt/s

Date debt/s incurred	Details of debt/description (see note 2)	GST (see note 7)	Amount ($)
	Less: Payments received in reduction of debts		
	Less: Estimated value of security		
	Amount claimed		

Creditor Declaration

I declare that the bankrupt/debtor/s owe/s the amount claimed by the creditor named above.

Title | Given name/s | Surname

Signature | Date (DD/MM/YYYY)

Note: Lodging a false proof of debt is an offence which is punishable by imprisonment for 5 years: s263(1)(d).

Admin Use Only		Trustee Use Only		
Creditor ID		Amount admitted in estate ◯ 1 ◯ 2 ◯ 3	Preferential ($)	
Liability ID		Amount rejected ($)	Ordinary ($)	
POD No.		Reason re'ected	Deferred ($)	
SoA Amt.			Total Admitted ($)	
Reg'd. in estate				
Date of Reg'n.				

Signature of trustee | Date (DD/MM/YYYY)

Australian Government
Australian Financial Security Authority

Trustee use only
Document received (DD/MM/YYYY)

NOTICE OF PROPOSAL TO CREDITORS

Bankr ptcy Act 1966 Section 75-40 of the Insolvency Practice Schedule (Bankruptcy); Sections 75-130 and 75-137 of the Insolvency Practice Rules (Bankruptcy) 2016.

Information for creditors

Trustees may seek creditor approval of certain proposals, without convening a meeting of creditors. This notice sets out a proposal for your consideration and indicates the date by which you must respond in order for your views to be taken into account. If the requisite majority of creditors responding to the notice approve the proposal, and not more than 25 per cent in value of creditors responding to the notice object to the propos l being resolved v thout a meeting of credit rs, the propo al is taken to have been passed as a resolution or special resolution (depending on the nature of the proposal) at a meeting of creditors.

Details of regulated debtor(s)

Administration number	Date of administration (DD/MM/YYYY)
WA 1272 of 2018/6	20 July 2018

Title	Given name/s	Surname
Mr	Hartmut Hubert Josef	Frigger
Mrs	Angela Cecilia Theresa	Frigger

Creditor details

Name of creditor

ABN if applicable

Address

Are you or your related entities related to the debtor? No ◯ Yes ◯

If yes, provide details of the relationship below:

Details of any security held:

Do you hold security over any of the debtor's property? No ◯ Yes ◯

If yes, estimated value of security $

Description of secured property & estimated value of property $

Claim details

Amount claimed

Provide brief particulars of transactions/circumstances giving rise to your claim	Amount $
Total amount claimed after deducting value of security (if any)	

Assignment of debt

If the debt has been assigned to you (e.g. you purchased the debt), you need to disclose the amount you paid for this assigned debt. The amount you paid for the assigned debt determines the value of your vote. If you do not disclose the amount you paid for the assignment, you are not entitled to vote. Should a dividend be paid the full value of the debt will be used to calculate the dividend. To participate in a dividend a proof of debt form must be lodged with the trustee.

Details of assignment of debt

Was this debt assigned to you? No ◯ Yes ◯

If yes, what consideration did you pay for the assignment? $

Proposed resolution

The remuneration of the Trustees of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 31 August 2018 to 7 October 2018 to be calculated on a time basis at the hourly rates set out in the FTI Consulting Schedule of Hourly Rates effective 1 March 2017, and is determined and approved for payment in the amount of $27,379.55 (inclusive of GST) and the Trustees can draw the remuneration.

Statement of reasons for the proposal and the likely impact it will have on creditors if it is passed

The Trustees are seeking approval of their disbursements utilising the mechanism outlined in Section 75-40 of the Insolvency Practice Schedule (Bankruptcy) 2016 (resolution without need for a meeting) to avoid incurring any unnecessary costs. The Trustees' disbursements has a priority and (as long as it is reasonably incurred) is protected by law and is capable of being approved by a Court. Resolving the Trustees' disbursemen s under s75-40 does not require the input of the Court meaning reduced costs to the Estate.

Voting on proposal

In accordance with paragraph 75-40(2)(d) of the Schedule, creditors are given the option of approving, not approving or objecting to the proposed resolution being resolved without a meeting of creditors.

Please select the appropriate response:

Yes ◯ I approve the proposed resolution

No ◯ I do not approve the proposed resolution

Object ◯ I ob e_t to the proposal being resolved without a meeting of creditors

Please return this document no later than 2 November 2018 for your vote to be taken into account.

***Note**: his date must be at least 15 business days after the day the notice is given.*

Signature

Name of creditor/ authorised officer of creditor

Signature

Date (DD/MM/YYYY)

Please return a signed and dated copy of this document to:

Name and contact details

Lachlan Bowness@fticonsulting.com or GPO Box 3127, Brisbane, QLD, 4001

Australian Government
Australian Financial Security Authority

Trustee use only
Document received (DD/MM/YYYY)

NOTICE OF PROPOSAL TO CREDITORS

Bankr ptcy Act 1966 Section 75-40 of the Insolvency Practice Schedule (Bankruptcy); Sections 75-130 and 75-137 of the Insolvency Practice Rules (Bankruptcy) 2016.

Information for creditors

Trustees may seek creditor approval of certain proposals, without convening a meeting of creditors. This notice sets out a proposal for your consideration and indicates the date by which you must respond in order for your views to be taken into account. If the requisite majority of creditors responding to the notice approve the proposal, and not more than 25 per cent in value of creditors responding to the notice object to the propos l being resolved v thout a meeting of credit rs, the propo al is taken to have been passed as a resolution or special resolution (depending on the nature of the proposal) at a meeting of creditors.

Details of regulated debtor(s)

Administration number	Date of administration (DD/MM/YYYY)
WA 1272 of 2018/6	20 July 2018

Title	Given name/s	Surname
Mr	Hartmut Hubert Josef	Frigger
Mrs	Angela Cecilia Theresa	Frigger

Creditor details

Name of creditor

ABN if applicable

Address

Are you or your related entities related to the debtor? No ◯ Yes ◯

If yes, provide details of the relationship below:

Details of any security held:

Do you hold security over any of the debtor's property? No ◯ Yes ◯

If yes, estimated value of security $

Description of secured property & estimated value of property $

Claim details

Amount claimed

Provide brief particulars of transactions/circumstances giving rise to your claim	Amount $
Total amount claimed after deducting value of security (if any)	

Assignment of debt

If the debt has been assigned to you (e.g. you purchased the debt), you need to disclose the amount you paid for this assigned debt. The amount you paid for the assigned debt determines the value of your vote. If you do not disclose the amount you paid for the assignment, you are not entitled to vote. Should a dividend be paid the full value of the debt will be used to calculate the dividend. To participate in a dividend a proof of debt form must be lodged with the trustee.

Details of assignment of debt

Was this debt assigned to you? No ◯ Yes ◯

If yes, what consideration did you pay for the assignment? $

Proposed resolution

The remuneration of the Trustees of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 8 October 2018 to the conclusion of the Bankruptcy (inclusive) be calculated on a time basis at the hourly rates set out in the FTI Consulting Schedule of Hourly R tes effective 1 March 2017, up to an initial capped amount of $120,000 (inclusive of GST) and the Trustees can draw the remuneration as required.

Statement of reasons for the proposal and the likely impact it will have on creditors if it is passed

The Trustees are seeking approval of their disbursements utilising the mechanism outlined in Section 75-40 of the Insolvency Practice Schedule (Bankruptcy) 2016 (resolution without need for a meeting) to avoid incurring any unnecessary costs. The Trustees' disbursements has a priority and (as long as it is reasonably incurred) is protected by law and is capable of being approved by a Court. Resolving the Trustees' disbursemen s under s75-40 does not require the input of the Court meaning reduced costs to the Estate.

Voting on proposal

In accordance with paragraph 75-40(2)(d) of the Schedule, creditors are given the option of approving, not approving or objecting to the proposed resolution being resolved without a meeting of creditors.

Please select the appropriate response:

Yes ◯ I approve the proposed resolution

No ◯ I do not approve the proposed resolution

Object ◯ I object to the proposal being resolved without a meeting of creditors

Please return this document no later than 2 November 2018 for your vote to be taken into account.

***Note**: This date must be at least 15 business days after the day the notice is given.*

Signature

Name of creditor/ authorised officer of creditor

Signature

Date (DD/MM/YYYY)

Please return a signed and dated copy of this document to:

Name and contact details

Lachlan Bowness@fticonsulting.com or GPO Box 3127, Brisbane, QLD, 4001

Australian Government
Australian Financial Security Authority

Trustee use only
Document received (DD/MM/YYYY)

NOTICE OF PROPOSAL TO CREDITORS

Bankr ptcy Act 1966 Section 75-40 of the Insolvency Practice Schedule (Bankruptcy); Sections 75-130 and 75-137 of the Insolvency Practice Rules (Bankruptcy) 2016.

Information for creditors

Trustees may seek creditor approval of certain proposals, without convening a meeting of creditors. This notice sets out a proposal for your consideration and indicates the date by which you must respond in order for your views to be taken into account. If the requisite majority of creditors responding to the notice approve the proposal, and not more than 25 per cent in value of creditors responding to the notice object to the propos l being resolved v thout a meeting of credit rs, the propo al is taken to have been passed as a resolution or special resolution (depending on the nature of the proposal) at a meeting of creditors.

Details of regulated debtor(s)

Administration number	Date of administration (DD/MM/YYYY)
WA 1272 of 2018/6	20 July 2018

Title	Given name/s	Surname
Mr	Hartmut Hubert Josef	Frigger
Mrs	Angela Cecilia Theresa	Frigger

Creditor details

Name of creditor

ABN if applicable

Address

Are you or your related entities related to the debtor? No ◯ Yes ◯

If yes, provide details of the relationship below:

Details of any security held:

Do you hold security over any of the debtor's property? No ◯ Yes ◯

If yes, estimated value of security $

Description of secured property & estimated value of property $

Claim details

Amount claimed

Provide brief particulars of transactions/circumstances giving rise to your claim	Amount $
Total amount claimed after deducting value of security (if any)	

Assignment of debt

If the debt has been assigned to you (e.g. you purchased the debt), you need to disclose the amount you paid for this assigned debt. The amount you paid for the assigned debt determines the value of your vote. If you do not disclose the amount you paid for the assignment, you are not entitled to vote. Should a dividend be paid the full value of the debt will be used to calculate the dividend. To participate in a dividend a proof of debt form must be lodged with the trustee.

Details of assignment of debt

Was this debt assigned to you? No ◯ Yes ◯

If yes, what consideration did you pay for the assignment? $

Proposed resolution

The cost of the internal disbursements of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 31 August 2018 to 7 October 2018 (inclusive) be calculated at the rates set out in the Schedule of FTI Consulting Internal Disbursement Rates and is determined and approved for payment in the amount of $180.60 (Inclusive of GST) and Trustees can draw the cost of those internal disbursements as required

Statement of reasons for the proposal and the likely impact it will have on creditors if it is passed

The Trustees are seeking approval of their disbursements utilising the mechanism outlined in Section 75-40 of the Insolvency Practice Schedule (Bankruptcy) 2016 (resolution without need for a meeting) to avoid incurring any unnecessary costs. The Trustees' disbursements has a priority and (as long as it is reasonably incurred) is protected by law and is capable of being approved by a Court. Resolving the Trustees' disbursemen s under s75-40 does not require the input of the Court meaning reduced costs to the Estate.

Voting on proposal

In accordance with paragraph 75-40(2)(d) of the Schedule, creditors are given the option of approving, not approving or objecting to the proposed resolution being resolved without a meeting of creditors.

Please select the appropriate response:

Yes ◯ I approve the proposed resolution

No ◯ I do not approve the proposed resolution

Object ◯ I ob e_t to the proposal being resolved without a meeting of creditors

Please return this document no later than 2 November 2018 for your vote to be taken into account.

***Note**: his date must be at least 15 business days after the day the notice is given.*

Signature

Name of creditor/ authorised officer of creditor

Signature

Date (DD/MM/YYYY)

Please return a signed and dated copy of this document to:

Name and contact details

Lachlan Bowness@fticonsulting.com or GPO Box 3127, Brisbane, QLD, 4001

Australian Government
Australian Financial Security Authority

Trustee use only
Document received (DD/MM/YYYY)

NOTICE OF PROPOSAL TO CREDITORS

Bankr ptcy Act 1966 Section 75-40 of the Insolvency Practice Schedule (Bankruptcy); Sections 75-130 and 75-137 of the Insolvency Practice Rules (Bankruptcy) 2016.

Information for creditors

Trustees may seek creditor approval of certain proposals, without convening a meeting of creditors. This notice sets out a proposal for your consideration and indicates the date by which you must respond in order for your views to be taken into account. If the requisite majority of creditors responding to the notice approve the proposal, and not more than 25 per cent in value of creditors responding to the notice object to the propos l being resolved v thout a meeting of credit rs, the propo al is taken to have been passed as a resolution or special resolution (depending on the nature of the proposal) at a meeting of creditors.

Details of regulated debtor(s)

Administration number	Date of administration (DD/MM/YYYY)
WA 1272 of 2018/6	20 July 2018

Title	Given name/s	Surname
Mr	Hartmut Hubert Josef	Frigger
Mrs	Angela Cecilia Theresa	Frigger

Creditor details

Name of creditor

ABN if applicable

Address

Are you or your related entities related to the debtor? No ◯ Yes ◯

If yes, provide details of the relationship below:

Details of any security held:

Do you hold security over any of the debtor's property? No ◯ Yes ◯

If yes, estimated value of security $

Description of secured property & estimated value of property $

Claim details

Amount claimed

Provide brief particulars of transactions/circumstances giving rise to your claim	Amount $
Total amount claimed after deducting value of security (if any)	

Assignment of debt

If the debt has been assigned to you (e.g. you purchased the debt), you need to disclose the amount you paid for this assigned debt. The amount you paid for the assigned debt determines the value of your vote. If you do not disclose the amount you paid for the assignment, you are not entitled to vote. Should a dividend be paid the full value of the debt will be used to calculate the dividend. To participate in a dividend a proof of debt form must be lodged with the trustee.

Details of assignment of debt

Was this debt assigned to you? No ◯ Yes ◯

If yes, what consideration did you pay for the assignment? $

Proposed resolution

The cost of the internal disbursements of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 8 October 2018 to the conclusion of the Bankruptcy (Inclusive) be calculated at the rates set out in the Schedule of FTI Consulting Internal Disbursement Rates and is determined and approved for payment in the amount of $11,000 (Inclusive of GST) and Trustees can draw the cost of those internal disbursements as required.

Statement of reasons for the proposal and the likely impact it will have on creditors if it is passed

The Trustees are seeking approval of their disbursements utilising the mechanism outlined in Section 75-40 of the Insolvency Practice Schedule (Bankruptcy) 2016 (resolution without need for a meeting) to avoid incurring any unnecessary costs. The Trustees' disbursements has a priority and (as long as it is reasonably incurred) is protected by law and is capable of being approved by a Court. Resolving the Trustees' disbursemen s under s75-40 does not require the input of the Court meaning reduced costs to the Estate.

Voting on proposal

In accordance with paragraph 75-40(2)(d) of the Schedule, creditors are given the option of approving, not approving or objecting to the proposed resolution being resolved without a meeting of creditors.

Please select the appropriate response:

Yes ◯ I approve the proposed resolution

No ◯ I do not approve the proposed resolution

Object ◯ I ob e_t to the proposal being resolved without a meeting of creditors

Please return this document no later than 2 November 2018 for your vote to be taken into account.

***Note**: his date must be at least 15 business days after the day the notice is given.*

Signature

Name of creditor/ authorised officer of creditor

Signature

Date (DD/MM/YYYY)

Please return a signed and dated copy of this document to:

Name and contact details

Lachlan Bowness@fticonsulting.com or GPO Box 3127, Brisbane, QLD, 4001

CERTIFICATE OF RESOLUTIONS PASSED

Section 75-40 of the
Insolvency Practice Schedule (Bankruptcy) 2016

ANGELA CECILIA THERESA FRIGGER AND HARTMUT HURBERT JOSEF FRIGGER
BANKRUPT ESTATE NO. WA 1272 OF 2018/6

We, Kelly-Anne Trenfield and Paul Allen, of FTI Consulting, Level 20, 345 Queen Street, Brisbane in the state of Queensland being the Joint and Several Trustees of the abovenamed Estate, certify that the following resolution was obtained from creditors without holding a meeting of creditors pursuant to Section 75-40 of the *Insolvency Practice Schedule (Bankruptcy) 2016*-

"That the remuneration of the Trustees of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 31 August 2018 to 7 October 2018 to be calculated on a time basis at the hourly rates set out in the FTI Consulting Schedule of Hourly Rates effective 1 March 2017, and is determined and approved for payment in the amount of $27,379.55 (inclusive of GST) and the Trustees can draw the remuneration."

Dated this 8th day of November 2018.

....

Australian Government
Australian Financial Security Authority

Trustee use only

Document received (DD/MM/YYYY)

NOTICE OF PROPOSAL TO CREDITORS

Bankruptcy Act 1966: Section 75-40 of the Insolvency Practice Schedule (Bankruptcy); Sections 75-130 and 75-137 of the Insolvency Practice Rules (Bankruptcy) 2016.

Information for creditors

Trustees may seek creditor approval of certain proposals, without convening a meeting of creditors. This notice sets out a proposal for your consideration and indicates the date by which you must respond in order for your views to be taken into account. If the requisite majority of creditors responding to the notice approve the proposal, and not more than 25 per cent in value of creditors responding to the notice object to the proposal being resolved without a meeting of creditors, the proposal is taken to have been passed as a resolution or special resolution (depending on the nature of the proposal) at a meeting of creditors.

Details of regulated debtor(s)

Administration number: WA 1272 of 2018/6

Date of administration (DD/MM/YYYY): 20 July 2018

Title	Given name/s	Surname
Mr	Hartmut Hubert Josef	Frigger
Mrs	Angela Cecilia Theresa	Frigger

Details of creditor

Name of creditor: Clavey Legal Pty Ltd

ABN if applicable:

Address: c/o MDS Legal, Level 2, 16 Irwin St, Perth WA 6000

Are you or your related entities related to the debtor? No ○ Yes ○

If yes, provide details of the relationship below:

Amount claimed

Provide brief particulars of transactions/circumstances giving rise to your claim	Amount $
Party & party costs payable in District Court CIV 1221 of 2011	$122,533.96
Indemnity costs payable in District Court CIV 1221 of 2011	$447,539.91 estimated
Costs payable in costs appeal in District Court CIV 1221 of 2011	TBA , unspecified
Costs payable in Court of Appeal CACV 56 of 2015	at least $45,000
Costs payable in Court of Appeal CACV 162 of 2015	at least $17,500
Total amount claimed after deducting value of security (if any)	Approximately $570,073.87

Proposed resolution

If the debt has been assigned to you (e.g. you purchased the debt), you need to disclose the amount you paid for this assigned debt. The amount you paid for the assigned debt determines the value of your vote. If you do not disclose the amount you paid for the assignment, you are not entitled to vote. Should a dividend be paid the full value of the debt will be used to calculate the dividend. To participate in a dividend a proof of debt form must be lodged with the trustee.

Details of assignment of debt

Was this debt assigned to you? No Yes ◯

If yes, what consideration did you pay for the assignment? $

The Trustees are seekin a roval of their disbursements utilisin the mechanism outlined in Section 75-40 of the Insolvency Practice Schedule (Bankruptcy) 2016 (resolution without need for a meeting) to avoid incurring any unnecessary costs. The Trustees' disbursements has a priority and (as long as it is reasonably incurred) is protected by law and is capable of being approved by a Court. Resolving the Trustees' disbursements under s75-40 does not require the input of the Court meaning reduced costs to the Estate.

In accordance with paragraph 75-40(2)(d) of the Schedule, creditors are given the option of approving, not approving or objecting to the proposed resolution being resolved without a meeting of creditors.

Please select the appropriate response:

Yes I approve the proposed resolution

No ◯ I do not approve the proposed resolution

Object ◯ I object to the proposal being resolved without a meeting of creditors

Please return this document no later than 2 November 2018 for your vote to be taken into account.

***Note**: this date must be at least 15 business days after the day the notice is given.*

Australian Government

Australian Financial Security Authority

Trustee use only
Document received (DD/MM/YYYY)

NOTICE OF PROPOSAL TO CREDITORS

Bankruptcy Act 1966: Section 75-40 of the Insolvency Practice Schedule (Bankruptcy); Sections 75-130 and 75-137 of the Insolvency Practice Rules (Bankruptcy) 2016.

Trustees may seek creditor approval of certain proposals, without convening a meeting of creditors. This notice sets out a proposal for your consideration and indicates the date by which you must respond in order for your views to be taken into account. If the requisite majority of creditors responding to the notice approve the proposal, and not more than 25 per cent in value of creditors responding to the notice object to the proposal being resolved without a meeting of creditors, the proposal is taken to have been passed as a resolution or special resolution (depending on the nature of the proposal) at a meeting of creditors.

Details of regulated debtor(s)

Administration number: WA 1272 of 2018/6

Date of administration (DD/MM/YYYY): 20 July 2018

Title	Given name/s	Surname
Mr	Hartmut Hubert Josef	Frigger
Mrs	Angela Cecilia Theresa	Frigger

Name of creditor

Name of creditor: Mervyn Kitay (Liquidator for CAT)

ABN if applicable:

Address: Level 4, 15 Ogilvie Road, Mount Pleasant, WA 6153

Are you or your related entities related to the debtor? No (X) Yes ( )

If yes, provide details of the relationship below:

Amount claimed

Provide brief particulars of transactions/circumstances giving rise to your claim	Amount $
Details as per Proof of Debt dated 28/08/18	2,656,844
Total amount claimed after deducting value of security (if any)	2,656,844

Assignment of debt

If the debt has been assigned to you (e.g. you purchased the debt), you need to disclose the amount you paid for this assigned debt. The amount you paid for the assigned debt determines the value of your vote. If you do not disclose the amount you paid for the assignment, you are not entitled to vote. Should a dividend be paid the full value of the debt will be used to calculate the dividend. To participate in a dividend a proof of debt form must be lodged with the trustee.

Details of assignment of debt

Was this debt assigned to you? No (x) Yes ( )

If yes, what consideration did you pay for the assignment? $

ss d

The Trustees are seeking approval of their disbursements utilising the mechanism outlined in Section 75-40 of the Insolvency Practice Schedule (Bankruptcy) 2016 (resolution without need for a meeting) to avoid incurring any unnecessary costs. The Trustees' disbursements has a priority and (as long as it is reasonably incurred) is protected by law and is capable of being approved by a Court. Resolving the Trustees' disbursements under s75-40 does not require the input of the Court meaning reduced costs to the Estate.

Voting on proposal

Signature

In accordance with paragraph 75-40(2)(d) of the Schedule, creditors are given the option of approving, not approving or objecting to the proposed resolution being resolved without a meeting of creditors.

Please select the appropriate response:

Yes (X) I approve the proposed resolution

No ( ) I do not approve the proposed resolution

Object ( ) I object to the proposal being resolved without a meeting of creditors

Please return this document no later than 2 November 2018 for your vote to be taken into account.

***Note**: this date must be at least 15 business days after the day the notice is given.*

Australian Government
Australian Financial Security Authority

Trustee use only

Document received (DD/MM/YYYY)

NOTICE OF PROPOSAL TO CREDITORS

Information for creditors

Bankruptcy Act 1966: Section 75-40 of the Insolvency Practice Schedule (Bankruptcy); Sections 75-130 and 75-137 of the Insolvency Practice Rules (Bankruptcy) 2016.

Trustees may seek creditor approval of certain proposals, without convening a meeting of creditors. This notice sets out a proposal for your consideration and indicates the date by which you must respond in order for your views to be taken into account. If the requisite majority of creditors responding to the notice approve the proposal, and not more than 25 per cent in value of creditors responding to the notice object to the proposal being resolved without a meeting of creditors, the proposal is taken to have been passed as a resolution or special resolution (depending on the nature of the proposal) at a meeting of creditors.

Details of regulated debtor(s)

Administration number: WA 1272 of 2018/6

Date of administration (DD/MM/YYYY): 20 July 2018

Title	Given name/s	Surname
Mr	Hartmut Hubert Josef	Frigger
Mrs	Angela Cecilia Theresa	Frigger

Creditor details

Details of any security held:

Name of creditor — No ☒ Yes ☐

Murfett Legal Pty Ltd

ABN if applicable: 74 120 362 825

Address: Level 2, 111 Wellington St East Perth WA 6004

Are you or your related entities relat to the debtor? No ☒ Yes ☐

If yes, provide details of the relationship below:

Amount claimed

Provide brief particulars of transactions/circumstances giving rise to your claim Amount $

See annexure A

Assignment of debt

Total amount claimed after deducting value of security (if any)

Proposed resolution

If the debt has been assigned to you (e.g. you purchased the debt), you need to disclose the amount you paid for this assigned debt. The amount you paid for the assigned debt determines the value of your vote. If you do not disclose the amount you paid for the assignment, you are not entitled to vote. Should a dividend be paid the full value of the debt will be used to calculate the dividend. To participate in a dividend a proof of debt form must be lodged with the trustee.

Details of assignment of debt

Was this debt assigned to you? No (X) Yes ( )

If yes, what consideration did you pay for the assignment? $

it will have

The Trustees are seeking approval of their disbursements utilising the mechanism outlined in Section 75-40 of the Insolvency Practice Schedule (Bankruptcy) 2016 (resolution without need for a meeting) to avoid incurring any unnecessary costs. The Trustees' disbursements has a priority and (as long as it is reasonably incurred) is protected by law and is capable of being approved by a Court. Resolving the Trustees' disbursements under s75-40 does not require the input of the Court meaning reduced costs to the Estate.

Voting on proposal

In accordance with paragraph 75-40(2)(d) of the Schedule, creditors are given the option of approving, not approving or objecting to the proposed resolution being resolved without a meeting of creditors.

Signature

Please select the appropriate response:

POR

Yes (X) I approve the proposed resolution

No ( ) I do not approve the proposed resolution

Object ( ) I object to the proposal being resolved without a meeting of creditors

Please return this document no later than 2 November 2018 for your vote to be taken into account.

***Note**: this date must be at least 15 business days after the day the notice is given.*

CERTIFICATE OF RESOLUTIONS PASSED

Section 75-40 of the
Insolvency Practice Schedule (Bankruptcy) 2016

ANGELA CECILIA THERESA FRIGGER AND HARTMUT HURBERT JOSEF FRIGGER
BANKRUPT ESTATE NO. WA 1272 OF 2018/6

We, Kelly-Anne Trenfield and Paul Allen, of FTI Consulting, Level 20, 345 Queen Street, Brisbane in the state of Queensland being the Joint and Several Trustees of the abovenamed Estate, certify that the following resolution was obtained from creditors without holding a meeting of creditors pursuant to Section 75-40 of the *Insolvency Practice Schedule (Bankruptcy) 2016*-

"That the remuneration of the Trustees of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 8 October 2018 to the conclusion of the Bankruptcy (inclusive) be calculated on a time basis at the hourly rates set out in the FTI Consulting Schedule of Hourly Rates effective 1 March 2017, up to an initial capped amount of $120,000 (inclusive of GST) and the Trustees can draw the remuneration as required."

Dated this 8th day of November 2018.

.....
Kelly-Anne Trenfield
Trustee

Our Ref: LAB_464538.0001n2

Australian Government
Australian Financial Security Authority

Trustee use only
Document received (DD/MM/YYYY)

NOTICE OF PROPOSAL TO CREDITORS

Bankruptcy Act 1966: Section 75-40 of the Insolvency Practice Schedule (Bankruptcy); Sections 75-130 and 75-137 of the Insolvency Practice Rules (Bankruptcy) 2016.

Information for creditors

Trustees may seek creditor approval of certain proposals, without convening a meeting of creditors. This notice sets out a proposal for your consideration and indicates the date by which you must respond in order for your views to be taken into account. If the requisite majority of creditors responding to the notice approve the proposal, and not more than 25 per cent in value of creditors responding to the notice object to the proposal being resolved without a meeting of creditors, the proposal is taken to have been passed as a resolution or special resolution (depending on the nature of the proposal) at a meeting of creditors.

Details of regulated debtor(s)

Administration number: WA 1272 of 2018/6

Date of administration (DD/MM/YYYY): 20 July 2018

Title	Given name/s	Surname
Mr	Hartmut Hubert Josef	Frigger
Mrs	Angela Cecilia Theresa	Frigger

Creditor details

Name of creditor: Clavey Legal Pty Ltd

ABN if applicable:

Address: c/o MDS Legal, Level 2, 16 Irwin St, Perth WA 6000

Are you or your related entities related to the debtor? No ◉ Yes ○

If yes, provide details of the relationship below:

Details of any security held:

Do you hold security over any of the debtor's property? No ○ Yes ◉

If yes, estimated value of security $ 62,500

Description of secured property & estimated value of property $ 62,500

Funds paid into Court as security for costs in CACV 56 of 2015 pursuant to the order of the Western Australian Court of Appeal made 11 December 2015 and funds paid into Court as security for costs in CACV 162 of 2015 pursuant to the orders of the Western Australian Court of Appeal made 7 April 2016.

Claim details

Amount claimed

Provide brief particulars of transactions/circumstances giving rise to your claim	Amount $
Party & party costs payable in District Court CIV 1221 of 2011	$122,533.96
Indemnity costs payable in District Court CIV 1221 of 2011	$447,539.91 estimated
Costs payable in costs appeal in District Court CIV 1221 of 2011	TBA , unspecified
Costs payable in Court of Appeal CACV 56 of 2015	at least $45,000
Costs payable in Court of Appeal CACV 162 of 2015	at least $17,500
Total amount claimed after deducting value of security (if any)	Approximately $570,073.87

Assignment of debt

If the debt has been assigned to you (e.g. you purchased the debt), you need to disclose the amount you paid for this assigned debt. The amount you paid for the assigned debt determines the value of your vote. If you do not disclose the amount you paid for the assignment, you are not entitled to vote. Should a dividend be paid the full value of the debt will be used to calculate the dividend. To participate in a dividend a proof of debt form must be lodged with the trustee.

Details of assignment of debt

Was this debt assigned to you? No ◉ Yes ◯

If yes, what consideration did you pay for the assignment? $

Proposed resolution

The remuneration of the Trustees of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 8 October 2018 to the conclusion of the Bankruptcy (inclusive) be calculated on a time basis at the hourly rates set out in the FTI Consulting Schedule of Hourly Rates effective 1 March 2017, up to an initial capped amount of $120,000 (inclusive of GST) and the Trustees can draw the remuneration as required.

Statement of reasons for the proposal and the likely impact it will have on creditors if it is passed

The Trustees are seeking approval of their disbursements utilising the mechanism outlined in Section 75-40 of the Insolvency Practice Schedule (Bankruptcy) 2016 (resolution without need for a meeting) to avoid incurring any unnecessary costs. The Trustees' disbursements has a priority and (as long as it is reasonably incurred) is protected by law and is capable of being approved by a Court. Resolving the Trustees' disbursements under s75-40 does not require the input of the Court meaning reduced costs to the Estate.

Voting on proposal

In accordance with paragraph 75-40(2)(d) of the Schedule, creditors are given the option of approving, not approving or objecting to the proposed resolution being resolved without a meeting of creditors.

Please select the appropriate response:

Yes (●) I approve the proposed resolution

No ( ) I do not approve the proposed resolution

Object ( ) I object to the proposal being resolved without a meeting of creditors

Please return this document no later than 2 November 2018 for your vote to be taken into account.

***Note**: this date must be at least 15 business days after the day the notice is given.*

Signature

Name of creditor/ authorised officer of creditor

Clavey Legal Pty Ltd

Signature

Date (DD/MM/YYYY)

01/11/2018

Please return a signed and dated copy of this document to:

Name and contact details

Lachlan Bowness@fticonsulting.com or GPO Box 3127, Brisbane, QLD, 4001

Australian Government
Australian Financial Security Authority

Trustee use only
Document received (DD/MM/YYYY)

NOTICE OF PROPOSAL TO CREDITORS

Bankruptcy Act 1966: Section 75-40 of the Insolvency Practice Schedule (Bankruptcy); Sections 75-130 and 75-137 of the Insolvency Practice Rules (Bankruptcy) 2016.

Information to creditors

Trustees may seek creditor approval of certain proposals, without convening a meeting of creditors. This notice sets out a proposal for your consideration and indicates the date by which you must respond in order for your views to be taken into account. If the requisite majority of creditors responding to the notice approve the proposal, and not more than 25 per cent in value of creditors responding to the notice object to the proposal being resolved without a meeting of creditors, the proposal is taken to have been passed as a resolution or special resolution (depending on the nature of the proposal) at a meeting of creditors.

Details of regulated debtor(s)

Administration number: WA 1272 of 2018/6

Date of administration (DD/MM/YYYY): 20 July 2018

Title	Given name/s	Surname
Mr	Hartmut Hubert Josef	Frigger
Mrs	Angela Cecilia Theresa	Frigger

Creditor details

Name of creditor: Mervyn Kitay (Liquidator for CAT)

ABN if applicable:

Address: Level 4, 15 Ogilvie Road, Mount Pleasant, WA 6153

Are you or your related entities related to the debtor? No (X) Yes ( )

If yes, provide details of the relationship below:

Details of any security held:

Do you hold security over any of the debtor's property? No ( ) Yes (X)

If yes, estimated value of security $ 25,000

Description of secured property & estimated value of property $

The sum of $25,000 paid into Court for security for costs of appeal CACV 45 of 2016

Claim details

Amount claimed

Provide brief particulars of transactions/circumstances giving rise to your claim	Amount $
Details as per Proof of Debt dated 28/08/18	2,656,844
Total amount claimed after deducting value of security (if any)	2,656,844

Assignment of debt

If the debt has been assigned to you (e.g. you purchased the debt), you need to disclose the amount you paid for this assigned debt. The amount you paid for the assigned debt determines the value of your vote. If you do not disclose the amount you paid for the assignment, you are not entitled to vote. Should a dividend be paid the full value of the debt will be used to calculate the dividend. To participate in a dividend a proof of debt form must be lodged with the trustee.

Details of assignment of debt

Was this debt assigned to you? No (x) Yes ( )

If yes, what consideration did you pay for the assignment? $

Proposed resolution

The remuneration of the Trustees of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 8 October 2018 to the conclusion of the Bankruptcy (inclusive) be calculated on a time basis at the hourly rates set out in the FTI Consulting Schedule of Hourly Rates effective 1 March 2017, up to an initial capped amount of $120,000 (inclusive of GST) and the Trustees can draw the remuneration as required.

Statement of reasons for the proposal and the likely impact it will have on creditors if it is passed

The Trustees are seeking approval of their disbursements utilising the mechanism outlined in Section 75-40 of the Insolvency Practice Schedule (Bankruptcy) 2016 (resolution without need for a meeting) to avoid incurring any unnecessary costs. The Trustees' disbursements has a priority and (as long as it is reasonably incurred) is protected by law and is capable of being approved by a Court. Resolving the Trustees' disbursements under s75-40 does not require the input of the Court meaning reduced costs to the Estate.

Voting on proposal

In accordance with paragraph 75-40(2)(d) of the Schedule, creditors are given the option of approving, not approving or objecting to the proposed resolution being resolved without a meeting of creditors.

Please select the appropriate response:

Yes (X) I approve the proposed resolution

No ( ) I do not approve the proposed resolution

Object ( ) I object to the proposal being resolved without a meeting of creditors

Please return this document no later than 2 November 2018 for your vote to be taken into account.

***Note**: this date must be at least 15 business days after the day the notice is given.*

Signature

Name of creditor/ authorised officer of creditor

Mervyn Kitay As Liquidator of Computer Accounting Tax

Signature



Date (DD/MM/YYYY)

01/11/18

Please return a signed and dated copy of this document to:

Name and contact details

Lachlan Bowness@fticonsulting.com or GPO Box 3127, Brisbane, QLD, 4001

Australian Government
Australian Financial Security Authority

Trustee use only
Document received (DD/MM/YYYY)

NOTICE OF PROPOSAL TO CREDITORS

Bankruptcy Act 1966: Section 75-40 of the Insolvency Practice Schedule (Bankruptcy); Sections 75-130 and 75-137 of the Insolvency Practice Rules (Bankruptcy) 2016.

Information for creditors

Trustees may seek creditor approval of certain proposals, without convening a meeting of creditors. This notice sets out a proposal for your consideration and indicates the date by which you must respond in order for your views to be taken into account. If the requisite majority of creditors responding to the notice approve the proposal, and not more than 25 per cent in value of creditors responding to the notice object to the proposal being resolved without a meeting of creditors, the proposal is taken to have been passed as a resolution or special resolution (depending on the nature of the proposal) at a meeting of creditors.

Details of regulated debtor(s)

Administration number: WA 1272 of 2018/6

Date of administration (DD/MM/YYYY): 20 July 2018

Title	Given name/s	Surname
Mr	Hartmut Hubert Josef	Frigger
Mrs	Angela Cecilia Theresa	Frigger

Creditor details

Name of creditor: Murfett Legal Pty Ltd

ABN if applicable: 74 120 362 825

Address: Level 2, 111 Wellington St East Perth WA 6004.

Are you or your related entities related to the debtor? No ◯ Yes ⊗

If yes, provide details of the relationship below:

Details of any security held:

Do you hold security over any of the debtor's property? No ◯ Yes ⊗

If yes, estimated value of security $

Description of secured property & estimated value of property $

Claim details

Amount claimed

Provide brief particulars of transactions/circumstances giving rise to your claim	Amount $
See Annexure A.	
Total amount claimed after deducting value of security (if any)	

Assignment of debt

If the debt has been assigned to you (e.g. you purchased the debt), you need to disclose the amount you paid for this assigned debt. The amount you paid for the assigned debt determines the value of your vote. If you do not disclose the amount you paid for the assignment, you are not entitled to vote. Should a dividend be paid the full value of the debt will be used to calculate the dividend. To participate in a dividend a proof of debt form must be lodged with the trustee.

Details of assignment of debt

Was this debt assigned to you? No ☒ Yes ○

If yes, what consideration did you pay for the assignment? $

Proposed resolution

The remuneration of the Trustees of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 8 October 2018 to the conclusion of the Bankruptcy (inclusive) be calculated on a time basis at the hourly rates set out in the FTI Consulting Schedule of Hourly Rates effective 1 March 2017, up to an initial capped amount of $120,000 (inclusive of GST) and the Trustees can draw the remuneration as required.

Statement of reasons for the proposal and the likely impact it will have on creditors if it is passed

The Trustees are seeking approval of their disbursements utilising the mechanism outlined in Section 75-40 of the Insolvency Practice Schedule (Bankruptcy) 2016 (resolution without need for a meeting) to avoid incurring any unnecessary costs. The Trustees' disbursements has a priority and (as long as it is reasonably incurred) is protected by law and is capable of being approved by a Court. Resolving the Trustees' disbursements under s75-40 does not require the input of the Court meaning reduced costs to the Estate.

Voting on proposal

In accordance with paragraph 75-40(2)(d) of the Schedule, creditors are given the option of approving, not approving or objecting to the proposed resolution being resolved without a meeting of creditors.

Please select the appropriate response:

Yes (X) I approve the proposed resolution

No ( ) I do not approve the proposed resolution

Object ( ) I object to the proposal being resolved without a meeting of creditors

Please return this document no later than 2 November 2018 for your vote to be taken into account.

***Note**: this date must be at least 15 business days after the day the notice is given.*

Signature

Name of creditor/ authorised officer of creditor

Kelly Parker, Director, Murfett Legal Pty Ltd

Signature

Date (DD/MM/YYYY)

2/11/18

Please return a signed and dated copy of this document to:

Name and contact details

Lachlan Bowness@fticonsulting.com or GPO Box 3127, Brisbane, QLD, 4001

CERTIFICATE OF RESOLUTIONS PASSED

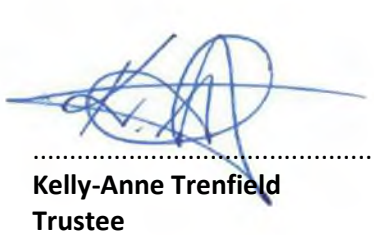
Section 75-40 of the
Insolvency Practice Schedule (Bankruptcy) 2016

ANGELA CECILIA THERESA FRIGGER AND HARTMUT HURBERT JOSEF FRIGGER
BANKRUPT ESTATE NO. WA 1272 OF 2018/6

We, Kelly-Anne Trenfield and Paul Allen, of FTI Consulting, Level 20, 345 Queen Street, Brisbane in the state of Queensland being the Joint and Several Trustees of the abovenamed Estate, certify that the following resolution was obtained from creditors without holding a meeting of creditors pursuant to Section 75-40 of the *Insolvency Practice Schedule (Bankruptcy) 2016*-

"That the cost of the internal disbursements of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 31 August 2018 to 7 October 2018 (inclusive) be calculated at the rates set out in the Schedule of FTI Consulting Internal Disbursement Rates and is determined and approved for payment in the amount of $180.60 (Inclusive of GST) and Trustees can draw the cost of those internal disbursements as required."

Dated this 8th day of November 2018.



.....
Kelly-Anne Trenfield
Trustee

Our Ref: LAB_464538.0001n3

Australian Government
Australian Financial Security Authority

Trustee use only
Document received (DD/MM/YYYY)

NOTICE OF PROPOSAL TO CREDITORS

Bankruptcy Act 1966: Section 75-40 of the Insolvency Practice Schedule (Bankruptcy); Sections 75-130 and 75-137 of the Insolvency Practice Rules (Bankruptcy) 2016.

Information for creditors

Trustees may seek creditor approval of certain proposals, without convening a meeting of creditors. This notice sets out a proposal for your consideration and indicates the date by which you must respond in order for your views to be taken into account. If the requisite majority of creditors responding to the notice approve the proposal, and not more than 25 per cent in value of creditors responding to the notice object to the proposal being resolved without a meeting of creditors, the proposal is taken to have been passed as a resolution or special resolution (depending on the nature of the proposal) at a meeting of creditors.

Details of regulated debtor(s)

Administration number: WA 1272 of 2018/6

Date of administration (DD/MM/YYYY): 20 July 2018

Title	Given name/s	Surname
Mr	Hartmut Hubert Josef	Frigger
Mrs	Angela Cecilia Theresa	Frigger

Creditor details

Name of creditor: Clavey Legal Pty Ltd

ABN if applicable:

Address: c/o MDS Legal, Level 2, 16 Irwin St, Perth WA 6000

Are you or your related entities related to the debtor? No ● Yes ○

If yes, provide details of the relationship below:

Details of any security held:

Do you hold security over any of the debtor's property? No ○ Yes ●

If yes, estimated value of security $ 62,500

Description of secured property & estimated value of property $ 62,500

Funds paid into Court as security for costs in CACV 56 of 2015 pursuant to the order of the Western Australian Court of Appeal made 11 December 2015 and funds paid into Court as security for costs in CACV 162 of 2015 pursuant to the orders of the Western Australian Court of Appeal made 7 April 2016.

Claim details

Amount claimed

Provide brief particulars of transactions/circumstances giving rise to your claim	Amount $
Party & party costs payable in District Court CIV 1221 of 2011	$122,533.96
Indemnity costs payable in District Court CIV 1221 of 2011	$447,539.91 estimated
Costs payable in costs appeal in District Court CIV 1221 of 2011	TBA , unspecified
Costs payable in Court of Appeal CACV 56 of 2015	at least $45,000
Costs payable in Court of Appeal CACV 162 of 2015	at least $17,500
Total amount claimed after deducting value of security (if any)	Approximately $570,073.87

Assignment of debt

If the debt has been assigned to you (e.g. you purchased the debt), you need to disclose the amount you paid for this assigned debt. The amount you paid for the assigned debt determines the value of your vote. If you do not disclose the amount you paid for the assignment, you are not entitled to vote. Should a dividend be paid the full value of the debt will be used to calculate the dividend. To participate in a dividend a proof of debt form must be lodged with the trustee.

Details of assignment of debt

Was this debt assigned to you? No ◉ Yes ○

If yes, what consideration did you pay for the assignment? $

Proposed resolution

The cost of the internal disbursements of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 31 August 2018 to 7 October 2018 (inclusive) be calculated at the rates set out in the Schedule of FTI Consulting Internal Disbursement Rates and is determined and approved for payment in the amount of $180.60 (Inclusive of GST) and Trustees can draw the cost of those internal disbursements as required.

Statement of reasons for the proposal and the likely impact it will have on creditors if it is passed

The Trustees are seeking approval of their disbursements utilising the mechanism outlined in Section 75-40 of the Insolvency Practice Schedule (Bankruptcy) 2016 (resolution without need for a meeting) to avoid incurring any unnecessary costs. The Trustees' disbursements has a priority and (as long as it is reasonably incurred) is protected by law and is capable of being approved by a Court. Resolving the Trustees' disbursements under s75-40 does not require the input of the Court meaning reduced costs to the Estate.

Voting on proposal

In accordance with paragraph 75-40(2)(d) of the Schedule, creditors are given the option of approving, not approving or objecting to the proposed resolution being resolved without a meeting of creditors.

Please select the appropriate response:

Yes ● I approve the proposed resolution

No ○ I do not approve the proposed resolution

Object ○ I object to the proposal being resolved without a meeting of creditors

Please return this document no later than 2 November 2018 for your vote to be taken into account.

***Note**: this date must be at least 15 business days after the day the notice is given.*

Signature

Name of creditor/ authorised officer of creditor

Clavey Legal Pty Ltd

Signature

Date (DD/MM/YYYY)

4/11/2018.

Please return a signed and dated copy of this document to:

Name and contact details

Lachlan Bowness@fticonsulting.com or GPO Box 3127, Brisbane, QLD, 4001

Australian Government
Australian Financial Security Authority

Trustee use only
Document received (DD/MM/YYYY)

NOTICE OF PROPOSAL TO CREDITORS

Bankruptcy Act 1966: Section 75-40 of the Insolvency Practice Schedule (Bankruptcy); Sections 75-130 and 75-137 of the Insolvency Practice Rules (Bankruptcy) 2016.

Information for creditors

Trustees may seek creditor approval of certain proposals, without convening a meeting of creditors. This notice sets out a proposal for your consideration and indicates the date by which you must respond in order for your views to be taken into account. If the requisite majority of creditors responding to the notice approve the proposal, and not more than 25 per cent in value of creditors responding to the notice object to the proposal being resolved without a meeting of creditors, the proposal is taken to have been passed as a resolution or special resolution (depending on the nature of the proposal) at a meeting of creditors.

Details of regulated debtor(s)

Administration number: WA 1272 of 2018/6

Date of administration (DD/MM/YYYY): 20 July 2018

Title	Given name/s	Surname
Mr	Hartmut Hubert Josef	Frigger
Mrs	Angela Cecilia Theresa	Frigger

Creditor details

Name of creditor: Mervyn Kitay (Liquidator for CAT)

ABN if applicable:

Address: Level 4, 15 Ogilvie Road, Mount Pleasant, WA 6153

Are you or your related entities related to the debtor? No (X) Yes ( )

If yes, provide details of the relationship below:

Details of any security held:

Do you hold security over any of the debtor's property? No ( ) Yes (X)

If yes, estimated value of security $ 25,000

Description of secured property & estimated value of property $

The sum of $25,000 paid into Court for security for costs of appeal CACV 45 of 2016

Claim details

Amount claimed

Provide brief particulars of transactions/circumstances giving rise to your claim	Amount $
Details as per Proof of Debt dated 28/08/18	2,656,844
Total amount claimed after deducting value of security (if any)	2,656,844

Assignment of debt

If the debt has been assigned to you (e.g. you purchased the debt), you need to disclose the amount you paid for this assigned debt. The amount you paid for the assigned debt determines the value of your vote. If you do not disclose the amount you paid for the assignment, you are not entitled to vote. Should a dividend be paid the full value of the debt will be used to calculate the dividend. To participate in a dividend a proof of debt form must be lodged with the trustee.

Details of assignment of debt

Was this debt assigned to you? No (x) Yes ( )

If yes, what consideration did you pay for the assignment? $

Proposed resolution

The cost of the internal disbursements of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 31 August 2018 to 7 October 2018 (inclusive) be calculated at the rates set out in the Schedule of FTI Consulting Internal Disbursement Rates and is determined and approved for payment in the amount of $180.60 (Inclusive of GST) and Trustees can draw the cost of those internal disbursements as required.

Statement of reasons for the proposal and the likely impact it will have on creditors if it is passed

The Trustees are seeking approval of their disbursements utilising the mechanism outlined in Section 75-40 of the Insolvency Practice Schedule (Bankruptcy) 2016 (resolution without need for a meeting) to avoid incurring any unnecessary costs. The Trustees' disbursements has a priority and (as long as it is reasonably incurred) is protected by law and is capable of being approved by a Court. Resolving the Trustees' disbursements under s75-40 does not require the input of the Court meaning reduced costs to the Estate.

Voting on proposal

In accordance with paragraph 75-40(2)(d) of the Schedule, creditors are given the option of approving, not approving or objecting to the proposed resolution being resolved without a meeting of creditors.

Please select the appropriate response:

Yes (X) I approve the proposed resolution

No ( ) I do not approve the proposed resolution

Object ( ) I object to the proposal being resolved without a meeting of creditors

Please return this document no later than 2 November 2018 for your vote to be taken into account.

***Note**: this date must be at least 15 business days after the day the notice is given.*

Signature

Name of creditor/ authorised officer of creditor

Mervyn Kitay As Liquidator of Computer Accounting Tax

Signature



Date (DD/MM/YYYY)

01/11/18

Please return a signed and dated copy of this document to:

Name and contact details

Lachlan Bowness@fticonsulting.com or GPO Box 3127, Brisbane, QLD, 4001

Australian Government
Australian Financial Security Authority

Trustee use only
Document received (DD/MM/YYYY)

NOTICE OF PROPOSAL TO CREDITORS

Bankruptcy Act 1966: Section 75-40 of the Insolvency Practice Schedule (Bankruptcy); Sections 75-130 and 75-137 of the Insolvency Practice Rules (Bankruptcy) 2016.

Information for creditors

Trustees may seek creditor approval of certain proposals, without convening a meeting of creditors. This notice sets out a proposal for your consideration and indicates the date by which you must respond in order for your views to be taken into account. If the requisite majority of creditors responding to the notice approve the proposal, and not more than 25 per cent in value of creditors responding to the notice object to the proposal being resolved without a meeting of creditors, the proposal is taken to have been passed as a resolution or special resolution (depending on the nature of the proposal) at a meeting of creditors.

Details of regulated debtor(s)

Administration number: WA 1272 of 2018/6

Date of administration (DD/MM/YYYY): 20 July 2018

Title	Given name/s	Surname
Mr	Hartmut Hubert Josef	Frigger
Mrs	Angela Cecilia Theresa	Frigger

Creditor details

Name of creditor: Murfett Legal Pty Ltd

ABN if applicable: 74 120 362 825

Address: Level 2, 111 Wellington St East Perth WA 6004

Are you or your related entities related to the debtor? No ☒ Yes ○

If yes, provide details of the relationship below:

Details of any security held:

Do you hold security over any of the debtor's property? No ☒ Yes ○

If yes, estimated value of security $

Description of secured property & estimated value of property $

Claim details

Amount claimed

Provide brief particulars of transactions/circumstances giving rise to your claim	Amount $
See annexure A.	
Total amount claimed after deducting value of security (if any)	

Assignment of debt

If the debt has been assigned to you (e.g. you purchased the debt), you need to disclose the amount you paid for this assigned debt. The amount you paid for the assigned debt determines the value of your vote. If you do not disclose the amount you paid for the assignment, you are not entitled to vote. Should a dividend be paid the full value of the debt will be used to calculate the dividend. To participate in a dividend a proof of debt form must be lodged with the trustee.

Details of assignment of debt

Was this debt assigned to you? No ☒ Yes ○

If yes, what consideration did you pay for the assignment? $

Proposed resolution

The cost of the internal disbursements of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 31 August 2018 to 7 October 2018 (inclusive) be calculated at the rates set out in the Schedule of FTI Consulting Internal Disbursement Rates and is determined and approved for payment in the amount of $180.60 (Inclusive of GST) and Trustees can draw the cost of those internal disbursements as required.

Statement of reasons for the proposal and the likely impact it will have on creditors if it is passed

The Trustees are seeking approval of their disbursements utilising the mechanism outlined in Section 75-40 of the Insolvency Practice Schedule (Bankruptcy) 2016 (resolution without need for a meeting) to avoid incurring any unnecessary costs. The Trustees' disbursements has a priority and (as long as it is reasonably incurred) is protected by law and is capable of being approved by a Court. Resolving the Trustees' disbursements under s75-40 does not require the input of the Court meaning reduced costs to the Estate.

Voting on proposal

In accordance with paragraph 75-40(2)(d) of the Schedule, creditors are given the option of approving, not approving or objecting to the proposed resolution being resolved without a meeting of creditors.

Please select the appropriate response:

Yes ☒ I approve the proposed resolution

No ○ I do not approve the proposed resolution

Object ○ I object to the proposal being resolved without a meeting of creditors

Please return this document no later than 2 November 2018 for your vote to be taken into account.

***Note**: this date must be at least 15 business days after the day the notice is given.*

Signature

Name of creditor/ authorised officer of creditor

Murfett Legal Pty Ltd, Kelly Parker, Director

Signature

Date (DD/MM/YYYY)

2/11/18

Please return a signed and dated copy of this document to:

Name and contact details

Lachlan Bowness@fticonsulting.com or GPO Box 3127, Brisbane, QLD, 4001

CERTIFICATE OF RESOLUTIONS PASSED

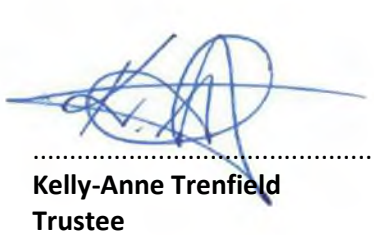
Section 75-40 of the
Insolvency Practice Schedule (Bankruptcy) 2016

ANGELA CECILIA THERESA FRIGGER AND HARTMUT HURBERT JOSEF FRIGGER
BANKRUPT ESTATE NO. WA 1272 OF 2018/6

We, Kelly-Anne Trenfield and Paul Allen, of FTI Consulting, Level 20, 345 Queen Street, Brisbane in the state of Queensland being the Joint and Several Trustees of the abovenamed Estate, certify that the following resolution was obtained from creditors without holding a meeting of creditors pursuant to Section 75-40 of the *Insolvency Practice Schedule (Bankruptcy) 2016*-

"That the cost of the internal disbursements of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 8 October 2018 to the conclusion of the Bankruptcy (Inclusive) be calculated at the rates set out in the Schedule of FTI Consulting Internal Disbursement Rates and is determined and approved for payment in the amount of $11,000 (Inclusive of GST) and Trustees can draw the cost of those internal disbursements as required."

Dated this 8th day of November 2018.



.....
Kelly-Anne Trenfield
Trustee

Our Ref: LAB_464538.0001n4

Australian Government
Australian Financial Security Authority

Trustee use only
Document received (DD/MM/YYYY)

NOTICE OF PROPOSAL TO CREDITORS

Bankruptcy Act 1966: Section 75-40 of the Insolvency Practice Schedule (Bankruptcy); Sections 75-130 and 75-137 of the Insolvency Practice Rules (Bankruptcy) 2016.

Information for creditors

Trustees may seek creditor approval of certain proposals, without convening a meeting of creditors. This notice sets out a proposal for your consideration and indicates the date by which you must respond in order for your views to be taken into account. If the requisite majority of creditors responding to the notice approve the proposal, and not more than 25 per cent in value of creditors responding to the notice object to the proposal being resolved without a meeting of creditors, the proposal is taken to have been passed as a resolution or special resolution (depending on the nature of the proposal) at a meeting of creditors.

Details of regulated debtor(s)

Administration number: WA 1272 of 2018/6

Date of administration (DD/MM/YYYY): 20 July 2018

Title	Given name/s	Surname
Mr	Hartmut Hubert Josef	Frigger
Mrs	Angela Cecilia Theresa	Frigger

Creditor details

Name of creditor: Clavey Legal Pty Ltd

ABN if applicable:

Address: c/o MDS Legal, Level 2, 16 Irwin St, Perth WA 6000

Are you or your related entities related to the debtor? No ◉ Yes ○

If yes, provide details of the relationship below:

Details of any security held:

Do you hold security over any of the debtor's property? No ○ Yes ◉

If yes, estimated value of security $ 62,500

Description of secured property & estimated value of property $ 62,500

Funds paid into Court as security for costs in CACV 56 of 2015 pursuant to the order of the Western Australian Court of Appeal made 11 December 2015 and funds paid into Court as security for costs in CACV 162 of 2015 pursuant to the orders of the Western Australian Court of Appeal made 7 April 2016.

Claim details

Amount claimed

Provide brief particulars of transactions/circumstances giving rise to your claim	Amount $
Party & party costs payable in District Court CIV 1221 of 2011	$122,533.96
Indemnity costs payable in District Court CIV 1221 of 2011	$447,539.91 estimated
Costs payable in costs appeal in District Court CIV 1221 of 2011	TBA , unspecified
Costs payable in Court of Appeal CACV 56 of 2015	at least $45,000
Costs payable in Court of Appeal CACV 162 of 2015	at least $17,500
Total amount claimed after deducting value of security (if any)	Approximately $570,073.87

Assignment of debt

If the debt has been assigned to you (e.g. you purchased the debt), you need to disclose the amount you paid for this assigned debt. The amount you paid for the assigned debt determines the value of your vote. If you do not disclose the amount you paid for the assignment, you are not entitled to vote. Should a dividend be paid the full value of the debt will be used to calculate the dividend. To participate in a dividend a proof of debt form must be lodged with the trustee.

Details of assignment of debt

Was this debt assigned to you? No ◉ Yes ○

If yes, what consideration did you pay for the assignment? $

Proposed resolutions

The cost of the internal disbursements of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 8 October 2018 to the conclusion of the Bankruptcy (Inclusive) be calculated at the rates set out in the Schedule of FTI Consulting Internal Disbursement Rates and is determined and approved for payment in the amount of $11,000 (Inclusive of GST) and Trustees can draw the cost of those internal disbursements as required.

Statement of reasons for the proposal and the likely impact it will have on creditors if it is passed

The Trustees are seeking approval of their disbursements utilising the mechanism outlined in Section 75-40 of the Insolvency Practice Schedule (Bankruptcy) 2016 (resolution without need for a meeting) to avoid incurring any unnecessary costs. The Trustees' disbursements has a priority and (as long as it is reasonably incurred) is protected by law and is capable of being approved by a Court. Resolving the Trustees' disbursements under s75-40 does not require the input of the Court meaning reduced costs to the Estate.

Voting on proposal

In accordance with paragraph 75-40(2)(d) of the Schedule, creditors are given the option of approving, not approving or objecting to the proposed resolution being resolved without a meeting of creditors.

Please select the appropriate response:

Yes ◉ I approve the proposed resolution

No ○ I do not approve the proposed resolution

Object ○ I object to the proposal being resolved without a meeting of creditors

Please return this document no later than 2 November 2018 for your vote to be taken into account.

***Note**: this date must be at least 15 business days after the day the notice is given.*

Signature

Name of creditor/ authorised officer of creditor

Clavey Legal Pty Ltd

Signature

Date (DD/MM/YYYY)

01/11/2018.

Please return a signed and dated copy of this document to:

Name and contact details

Lachlan Bowness@fticonsulting.com or GPO Box 3127, Brisbane, QLD, 4001

Australian Government
Australian Financial Security Authority

Trustee use only
Document received (DD/MM/YYYY)

NOTICE OF PROPOSAL TO CREDITORS

Bankruptcy Act 1966: Section 75-40 of the Insolvency Practice Schedule (Bankruptcy); Sections 75-130 and 75-137 of the Insolvency Practice Rules (Bankruptcy) 2016.

Information for creditors

Trustees may seek creditor approval of certain proposals, without convening a meeting of creditors. This notice sets out a proposal for your consideration and indicates the date by which you must respond in order for your views to be taken into account. If the requisite majority of creditors responding to the notice approve the proposal, and not more than 25 per cent in value of creditors responding to the notice object to the proposal being resolved without a meeting of creditors, the proposal is taken to have been passed as a resolution or special resolution (depending on the nature of the proposal) at a meeting of creditors.

Details of regulated debtor(s)

Administration number: WA 1272 of 2018/6

Date of administration (DD/MM/YYYY): 20 July 2018

Title	Given name/s	Surname
Mr	Hartmut Hubert Josef	Frigger
Mrs	Angela Cecilia Theresa	Frigger

Creditor details

Name of creditor: Mervyn Kitay (Liquidator for CAT)

ABN if applicable:

Address: Level 4, 15 Ogilvie Road, Mount Pleasant, WA 6153

Are you or your related entities related to the debtor? No (X) Yes ( )

If yes, provide details of the relationship below:

Details of any security held:

Do you hold security over any of the debtor's property? No ( ) Yes (X)

If yes, estimated value of security: $ 25,000

Description of secured property & estimated value of property $

The sum of $25,000 paid into Court for security for costs of appeal CACV 45 of 2016

Claim details

Amount claimed

Provide brief particulars of transactions/circumstances giving rise to your claim	Amount $
Details as per Proof of Debt dated 28/08/18	2,656,844
Total amount claimed after deducting value of security (if any)	2,656,844

Assignment of debt

If the debt has been assigned to you (e.g. you purchased the debt), you need to disclose the amount you paid for this assigned debt. The amount you paid for the assigned debt determines the value of your vote. If you do not disclose the amount you paid for the assignment, you are not entitled to vote. Should a dividend be paid the full value of the debt will be used to calculate the dividend. To participate in a dividend a proof of debt form must be lodged with the trustee.

Details of assignment of debt

Was this debt assigned to you? No (X) Yes ( )

If yes, what consideration did you pay for the assignment? $

Proposed resolution

The cost of the internal disbursements of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 8 October 2018 to the conclusion of the Bankruptcy (Inclusive) be calculated at the rates set out in the Schedule of FTI Consulting Internal Disbursement Rates and is determined and approved for payment in the amount of $11,000 (Inclusive of GST) and Trustees can draw the cost of those internal disbursements as required.

~~Statement of reasons~~ for the proposal and the likely impact it will have on creditors if it is passed

The Trustees are seeking approval of their disbursements utilising the mechanism outlined in Section 75-40 of the Insolvency Practice Schedule (Bankruptcy) 2016 (resolution without need for a meeting) to avoid incurring any unnecessary costs. The Trustees' disbursements has a priority and (as long as it is reasonably incurred) is protected by law and is capable of being approved by a Court. Resolving the Trustees' disbursements under s75-40 does not require the input of the Court meaning reduced costs to the Estate.

Voting on proposal

In accordance with paragraph 75-40(2)(d) of the Schedule, creditors are given the option of approving, not approving or objecting to the proposed resolution being resolved without a meeting of creditors.

Please select the appropriate response:

Yes (X) I approve the proposed resolution

No ( ) I do not approve the proposed resolution

Object ( ) I object to the proposal being resolved without a meeting of creditors

Please return this document no later than 2 November 2018 for your vote to be taken into account.

***Note**: this date must be at least 15 business days after the day the notice is given.*

Signature

Name of creditor/ authorised officer of creditor

Mervyn Kitay As Liquidator of Computer Accounting Tax

Signature



Date (DD/MM/YYYY)

01/11/18

Please return a signed and dated copy of this document to:

Name and contact details

Lachlan Bowness@fticonsulting.com or GPO Box 3127, Brisbane, QLD, 4001

Australian Government
Australian Financial Security Authority

Trustee use only
Document received (DD/MM/YYYY)

NOTICE OF PROPOSAL TO CREDITORS

Bankruptcy Act 1966: Section 75-40 of the Insolvency Practice Schedule (Bankruptcy); Sections 75-130 and 75-137 of the Insolvency Practice Rules (Bankruptcy) 2016.

Information for creditors

Trustees may seek creditor approval of certain proposals, without convening a meeting of creditors. This notice sets out a proposal for your consideration and indicates the date by which you must respond in order for your views to be taken into account. If the requisite majority of creditors responding to the notice approve the proposal, and not more than 25 per cent in value of creditors responding to the notice object to the proposal being resolved without a meeting of creditors, the proposal is taken to have been passed as a resolution or special resolution (depending on the nature of the proposal) at a meeting of creditors.

Details of regulated debtor(s)

Administration number: WA 1272 of 2018/6

Date of administration (DD/MM/YYYY): 20 July 2018

Title	Given name/s	Surname
Mr	Hartmut Hubert Josef	Frigger
Mrs	Angela Cecilia Theresa	Frigger

Creditor details

Name of creditor: Murfett Legal Pty Ltd

ABN if applicable: 74 120 362 825

Address: Level 2, 111 Wellington St East Perth WA 6004

Are you or your related entities related to the debtor? No ☒ Yes ○

If yes, provide details of the relationship below:

Details of any security held:

Do you hold security over any of the debtor's property? No ☒ Yes ○

If yes, estimated value of security $

Description of secured property & estimated value of property $

Claim details

Amount claimed

Provide brief particulars of transactions/circumstances giving rise to your claim	Amount $
See Annexure A -	
Total amount claimed after deducting value of security (if any)	

Assignment of debt

If the debt has been assigned to you (e.g. you purchased the debt), you need to disclose the amount you paid for this assigned debt. The amount you paid for the assigned debt determines the value of your vote. If you do not disclose the amount you paid for the assignment, you are not entitled to vote. Should a dividend be paid the full value of the debt will be used to calculate the dividend. To participate in a dividend a proof of debt form must be lodged with the trustee.

Details of assignment of debt

Was this debt assigned to you? No (X) Yes ( )

If yes, what consideration did you pay for the assignment? $

Proposed resolution

The cost of the internal disbursements of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 8 October 2018 to the conclusion of the Bankruptcy (Inclusive) be calculated at the rates set out in the Schedule of FTI Consulting Internal Disbursement Rates and is determined and approved for payment in the amount of $11,000 (Inclusive of GST) and Trustees can draw the cost of those internal disbursements as required.

Statement of reasons for the proposal and the likely impact it will have on creditors if it is passed

The Trustees are seeking approval of their disbursements utilising the mechanism outlined in Section 75-40 of the Insolvency Practice Schedule (Bankruptcy) 2016 (resolution without need for a meeting) to avoid incurring any unnecessary costs. The Trustees' disbursements has a priority and (as long as it is reasonably incurred) is protected by law and is capable of being approved by a Court. Resolving the Trustees' disbursements under s75-40 does not require the input of the Court meaning reduced costs to the Estate.

Voting on proposal

In accordance with paragraph 75-40(2)(d) of the Schedule, creditors are given the option of approving, not approving or objecting to the proposed resolution being resolved without a meeting of creditors.

Please select the appropriate response:

Yes ☒ I approve the proposed resolution

No ○ I do not approve the proposed resolution

Object ○ I object to the proposal being resolved without a meeting of creditors

Please return this document no later than 2 November 2018 for your vote to be taken into account.

***Note**: this date must be at least 15 business days after the day the notice is given.*

Signature

Name of creditor/ authorised officer of creditor

Kelly Parker, Director, Murfett Legal Pty Ltd.

Signature

Date (DD/MM/YYYY) 2/11/18

Please return a signed and dated copy of this document to:

Name and contact details

Lachlan Bowness@fticonsulting.com or GPO Box 3127, Brisbane, QLD, 4001

Attachment A

Proof of Debt – Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger – 29/08/18

No	Particulars of Claim	Amount $
1	Magistrates Court Costs Order - GCLM 803 of 2013	46,850.29
1(a)	Interest 6% pa – 11/07/17 to 29/08/18 (414 days)	3,187.80
2	District Court Appeal – Costs Order - APP 4 of 2016	33,244.53
2(a)	Interest 6% pa – 27/04/17 to 29/08/18 (489 days)	2,669.94
3	Further or other amounts to quantified	
	Total (1 and 2)	**$80,094.82**
	Total Interest (1(a) and 2(a)	**$5,857.74**

7 September 2023

Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Former Bankrupts)

Bankrupt Estate No. WA 1272 of 2018/6
Date of Birth
Angela Cecilia Theresa Frigger: 28 April 1953
Hartmut Hubert Josef Frigger: 18 May 1955

EXPERTS WITH IMPACT™

FTI CONSULTING

Table of Contents

1. Administration Details 3
2. Prior Involvement/Independence 4
3. Update to Creditors 4
   3.1. Special Leave Application to the High Court of Australia 4
   3.2. WAD 128 of 2023 - Frigger v Trenfield 4
   3.3. Next Steps 5
   3.4. Estimated Statement of Position 6
4. Proofs of Debt 9
5. Trustee's Remuneration 9
6. Your Rights as a Creditor 11
7. Information from Creditors 12
8. Annexure A - Proof Of Debt 13
9. Annexure B - Remuneration Approval Report 26
10. Annexure C - Notice of Proposal to Creditors 58
11. Annexure D - Proposals Without a Meeting 65
12. Annexure E - Creditor Rights in a Regulated Debtor Estate 68

1. Administration Details

As you are aware, I, Kelly-Anne Trenfield, along with Paul Allen were previously appointed Joint and Several Trustees of Angela Cecilia Theresa Frigger and Hartmut Josef Frigger by virtue of a transfer from the Official Trustee pursuant to *Section 181A of the Bankruptcy Act 1966* (**the Act**) on 31 August 2018.

The purpose of this report is to provide a brief update to creditors since my previous report was issued on 13 April 2023, and to seek the approval of my remuneration.

The table below provides details on the former Bankrupts and Trustee contact details.

Bankrupt Estate Details

Former Bankrupts' Names	Angela Cecilia Theresa Frigger and Hartmut Josef Frigger
Former Bankrupts' Address	29 Gairloch Street, Applecross WA 6153
Occupation	Retired
Dates of Birth	Angela Frigger: 28 April 1953
	Hartmut Frigger: 18 May 1955
Associated Entities	Computer Accounting and Tax Pty Ltd (In Liquidation)
	Frigger Superannuation Fund
	H. & A. Frigger Pty Ltd
	International Massage Centre Pty Ltd

Trustee's Details

Name	Kelly-Anne Trenfield	
Address	Level 20, Central Plaza One 345 Queen Street Brisbane QLD 4000	GPO Box 3127 Brisbane QLD 4001
Contact	Sam Rayner	
Contact phone number	(07) 3225 4991	
Contact email	sam.rayner@fticonsulting.com	

2. Prior Involvement/Independence

There has been no update to my Declaration of Independence and Relevant Relationships and Indemnities provided in my first report to creditors dated 12 September 2018.

3. Update to Creditors

3.1. Special Leave Application to the High Court of Australia

As indicated in my last update to creditors the former Bankrupts had sought to file a special leave application to the High Court of Australia in order to further appeal the rulings made in WAD 141 of 2019 (**Main Proceedings**) and the WAD 278 of 2021 (**Appeal Proceedings**).

Shortly after issuing my last update, the former Bankrupts filed an application to the High Court of Australia on 20 April 2023 in P10 of 2023 (**Special Leave Application**).

I advise, this application was dismissed on 3 August 2023 on the basis the High Court found no reason to question the findings of the Full Federal Court, and the matter was not of public interest. Accordingly, the rulings made in Main Proceedings and the Appeal Proceedings stand.

3.2. WAD 128 of 2023 – Frigger v Trenfield

Separately, on 7 June 2023 the former Bankrupts filed proceedings against me, in my personal capacity as Trustee, in WAD 128 of 2023. This application seeks orders that I cease to be the trustee of the Bankrupt Estates and as a consequence are disentitled to remuneration and the reimbursement of costs associated with the administration of the Estates.

The claim centres on the applicants' view, as an employee of FTI Consulting (Australia) Pty Ltd (**FTI**), I have allegedly surrendered my independence to FTI and consequently, would not be qualified to act as a Trustee in Bankruptcy. As a consequence of this view, the former Bankrupts are seeking further orders regarding the personal liability of myself and FTI Consulting regarding various legal costs of the Estates and as such disentitled to reimbursement from the Bankrupt Estates, and for FTI Consulting and I to be held liable for losses suffered by the former Bankrupts.

I am vigorously defending these proceedings.

3.3. Next Steps

Given the dismissal of the former Bankrupts' special leave application to the High Court, it is my intention to proceed to take further steps to administer the Bankrupt Estates as much as possible given the unanswered annulment application.

Broadly, I intend to secure further assets as necessary, quantify creditor claims and settle costs incurred to date. I also will be continuing to respond to various ongoing and future litigation as they arise.

Since my last update to creditors, I have begun the process of reviewing the claims of many creditors who submitted their Proofs of Debts. Creditors who have not yet quantified the extent of their claims and lodged a Proof of Debt form in the administration are encouraged to do so as soon as possible. Further details concerning the lodgment of this form can be found in **Section 4** of this report.

Furthermore, and as creditors may be aware, since my appointment in 2018 and despite receiving creditor approval to do so, I have not yet drawn any remuneration, nor reimbursed my out-of-pocket expenses from the assets of the Bankrupt Estates due to the Main Proceedings, Appeal Proceedings, and the Special Leave Application.

Since attaining those approvals from creditors, the time and costs I, and the staff of FTI have accrued in the administration of the former Bankrupt Estates have increased significantly over the course of approximately 5 (five) years.

On this basis, I am seeking additional remuneration approval from creditors as I will detail in **Section 5** of this report.

3.4. Estimated Statement of Position

An accurate representation of the statement of position of the Bankrupt Estates is difficult to estimate as there are many unresolved factors inherent in the administration. Nevertheless, please find below, the current estimated statement of position:

Estimated Statement of Position				
Detail	**Note**	**Hartmut Frigger**	**Angela Frigger**	**Joint Estate**
		$	**$**	**$**
Assets				
Cash at Bank	1	Nil	Nil	2,843,721
Equity in Real Property	2	Nil	Unknown	Unknown
Share Portfolio	3	Nil	Nil	4,088,077
Voidable Transactions	4	Unknown	Unknown	Unknown
Total Assets		**Unknown**	**Unknown**	**Unknown**
Surplus from Joint Estate		**Unknown**	**Unknown**	**Unknown**
Estimated Monies Available for Distribution				
Less				
Professional Fees	5	Nil	Unknown	Unknown
Interest and Realisation Charges	6	Unknown	Unknown	Unknown
Capital Gains Tax	7	Nil	Unknown	Unknown
Bankruptcy Trustee's Approved Remuneration	8	Nil	Nil	147,380
Bankruptcy Trustee's Current Remuneration	8	Nil	Nil	954,436
Bankruptcy Trustee's Future Remuneration	8	Nil	Nil	412,500
Bankruptcy Trustee's Disbursements	8	Nil	Nil	933,175
Total		**Unknown**	**Unknown**	**Unknown**
Estimated Monies for Distribution to Unsecured Creditors		**Unknown**	**Unknown**	**Unknown**
Unsecured Creditors				
Estimated Unsecured Creditors	9	Nil	Nil	5,207,513
Surplus/(Deficit)		**Unknown**	**Unknown**	**Unknown**
Estimated Return to Creditors (cents in the dollar)		**Unknown**	**Unknown**	**Unknown**

Notes:

1. Cash at Bank

As advised in my previous update to creditors, upon receiving judgement in the Main Proceedings, I transferred funds, previously held in an account with Bank of Queensland into the bank account of the Bankrupt Estate.

A sum of $2,843,720.75 is currently held in the account of the Bankrupt Estate.

2. Equity in Real Property

As set out in my previous report, I identified the following property in which the former Bankrupts jointly hold an interest:

- 29 Gairloch Street, Applecross WA 6153.

The following properties are held by Mrs Angela Frigger only:

- 2A Union Street, Baywater WA 6053; and
- 3/61 Cale Street, Como WA 6053.

There are caveats lodged by H. & A. Frigger Pty Ltd against the title of all three (3) properties pursuant to its mortgage.

The former Bankrupts indicated in their SOA the balance of the mortgage as at 25 July 2018 was $2,450,050. As creditors are aware, I have sought independent valuations and lodged caveats on the properties. Given the pending annulment application, I have not taken steps to realise these properties. However, I have on a number of occasions requested H. & A. Frigger Pty Ltd provide details of the outstanding mortgage. To date they have declined to do so.

Accordingly, I have not been in a position to verify the validity of this mortgage.

3. Share Portfolio

As mentioned in my last update to creditors, I have instructed CommSec and various share registries to freeze numerous shareholdings in the former Bankrupts' names. As at 21 August 2023, the value of these shares total $4,088,077.07.

Based on my current estimates, and subject to the adjudication of creditor claims, I anticipate the need to realise some or all of the shares held within the portfolio to enable a dividend to creditors. However, I have not yet determined the quantum necessary, nor formulated a strategy around the liquidation of the portfolio to the extent required. It is my intention to do so once, I have a fuller understanding of the extent of costs and creditor claims in the Bankrupt Estate.

4. Voidable Transactions

As Trustee, I have a responsibility to investigate the activities of the former Bankrupts in the lead-up to their Bankruptcy. These investigations include looking into and scrutinising suspicious events or transactions.

Given the annulment application, the need to deal with legal proceedings initiated by the former Bankrupts and the value of the assets I have secured to date, I have not yet been in a position to determine whether any transactions entered into by the Bankrupts may be voidable nor whether pursuit of these claims may be necessary to enable a payment in full to creditors.

5. Professional Fees

I am unable to provide an estimate for these costs, they will depend on which assets would need to be realised, and to what extent.

I have to date paid legal fees in a sum in excess of $931,131 (inclusive of GST) by way of disbursement funded by FTI Consulting. Future lawyers' fees will depend on the progress of the various ongoing proceedings, and whether the former Bankrupts commence any further proceedings.

Furthermore, I anticipate I will require the services of other professionals to assist with the following aspects;

- Professional advice regarding calculating CGT on assets realised with the Estates and preparation and lodgement of income tax returns; and
- Agent/brokers fees incurred realising the assets (Properties and Share Portfolio).

6. Interest and Realisation Charges

The Australian Commonwealth charge a levy on all realisations made in respect of administrations under the Act. This levy is called the realisations charge. The legislation covering this charge and the related interest charge is set out in *the Bankruptcy (Estate Charges) Act 1997*.

All further assets realised with incur 7% realisations charge payable to the Commonwealth and all interests accrued on funds held are similarly payable to the Commonwealth.

The expected amount of interest and realisations ultimately payable from the assets of the Bankrupt Estate cannot be estimated at this stage as it will depend on the value of assets realised and the interest accrued over the course of the administration.

7. Capital Gains Tax

Any assets realised in the future will likely incur significant Capital Gains Tax (**CGT**). At this stage however, I am not yet able to provide any estimates on the expected CGT liabilities which will be incurred.

8. Bankruptcy Trustee's Remuneration and Disbursements

Pursuant to Section 109(1) of the Act, the Trustee's remuneration and internal disbursements are paid in priority to employees and unsecured creditor claims.

Creditors have previously approved my remuneration and disbursements as follows:

Period	Remuneration (excl GST)	Disbursements (excl GST)
31 August 2018 to 7 October 2018	24,890.50	164.18
8 October 2018 to conclusion	109,090.91	10,000.00
Total	**133,981.41**	**10,164.18**

Since attaining these approvals from creditors, the time and costs I, and the staff of FTI have accrued in the administration of the former Bankrupt Estates have increased significantly over the course of approximately 5 (five) years.

Accordingly, I am asking creditors to approve the following remuneration.

Period	Remuneration (excl GST)
27 August 2019 to 13 August 2023	867,669.09
14 August 2023 to conclusion	375,000.00
Total	**$1,242,669.09**

Further details in regard to work performed by the Trustee to date are provided in Section 5 of this Report and in the ***attached** Remuneration Approval Report prepared in accordance with the ARITA Code of Professional Practice.

9. Estimated Unsecured Creditors

Based on information I have received to date, I estimate unsecured creditor claims in the Bankrupt Estate to be approximately $5,207,513. Although I have commenced quantification of these claims, I am yet to formally adjudicate on the amounts and will only do so when the ongoing annulment application is resolved.

4. Proofs of Debt

Take notice creditors of the former Bankrupts, whose debts or claims have not already been admitted, are requested to prove their debts or claims and to establish any title they may have to priority.

This will enable me to verify and evaluate all claims made against the estate and to provide further updates to creditors on future expected returns.

If you have not lodged a Proof of Debt (POD) to date, please complete the POD form **attached** as **Annexure A.**

Should they wish, creditors who have previously submitted a POD are also welcomed to update or revise their claim, provided they have valid grounds to do so and supply the necessary supporting documentation.

5. Trustee's Remuneration

Under s75-40 of the *Insolvency Practice Statement (Bankruptcy) 2016* **("IPS")**, trustees can obtain resolutions without holding a meeting of creditors.

The **attached** Remuneration Approval Report (**Annexure B**) provides information to creditors on the method chosen by the Trustee to calculate the remuneration, why this method is appropriate to this administration, **details of the FTI Consulting Hourly Rates and the actual and estimated amount of the Trustee**'s remuneration.

Accordingly, I am seeking approval via proposal to draw my remuneration from the assets available in the Bankrupt Estate. **Attached** at **Annexure C** are Notice of Proposal to Creditors forms for each proposal. This form specifically outlines each proposal in detail, the reasons for the proposal and the likely impact it will have on creditors if passed.

To participate in the proposals, please follow the instructions and complete and return the forms. If you have not already provided me with a Proof of Debt which details the amount that you are owed, you must also complete this form included at **Annexure A**. If you have already provided a Proof of Debt, you do not need to provide it again.

For your vote to count, these documents need to be received by my office by no later than close of business, **Friday, 29 September 2023.**

When completed, the forms can be scanned and emailed to Sam.Rayner@fticonsulting.com, or returned via post to FTI**'s address, attention** Sam Rayner. If you choose to return the document via post, please ensure that you allow enough time for me to receive them by the due date.

An information sheet on "proposals without a meeting" is included at Annexure D.

The resolutions being sought are:

Resolution 1: From 27 August 2019 to 13 August 2023 (inclusive):

> *"The remuneration of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 27 August 2019 to 13 August 2023 to be calculated on a time basis at the hourly rates set out in the FTI Consulting Schedule of Hourly Rates effective 1 May 2019, 1 April 2020, 1 July 2021, and 1 July 2022, and is determined and approved for payment in the amount of $867,669.09 (exclusive of GST) and the Trustee can draw the remuneration as required."*

Resolution 2: From 14 August 2023 to the conclusion of the Bankrupt Estate (inclusive):

> *"The future remuneration of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 14 August 2023 to the conclusion of the Bankruptcy (inclusive) be calculated on a time basis at the hourly rates set out in the FTI Consulting Schedule of Hourly Rates effective 1 July 2022 onwards, up to a further capped amount of $375,000 (exclusive of GST) and the Trustee can draw the remuneration as required."*

If no creditor objects and at least one (1) creditor votes in favour of the each of the proposals in writing, then the proposals are decided in accordance with the majorities required for a special (majority in number and 75% in value of those who vote) or ordinary (majority in value) resolution.

I request creditors complete the proposal forms included at **Annexure C** and return them to this office by **Friday, 29 September 2023.**

6. Your Rights as a Creditor

Pursuant to Sections 70-40 and 70-45 of the *Insolvency Practice Schedule (Bankruptcy) 2016* (the IPS), creditors may request information from the Trustee regarding the Bankrupt Estate. Please note the *Insolvency Practice Rules (Bankruptcy) 2016* may prescribe circumstances in which it is, or it is not, reasonable for a Trustee to comply with a request made under the above sections.

Creditors are also entitled, by resolution, to give directions to the Trustee in relation to the administration of the Bankrupt Estate pursuant to Section 85-5 of the IPS. Creditors should note the Trustee is not required to comply with such a direction however the Trustee may have regard to any direction received pursuant to the above.

In addition to the above, the information regarding your rights as a creditor is provided in the information sheet attached as **Annexure E**. This includes your rights to:

- Make reasonable requests for a meeting;
- Apply to Inspector-General for review of remuneration; and
- To replace me as Trustee.

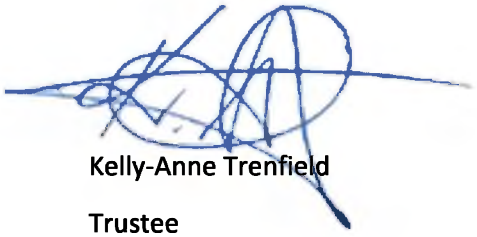
7. Information from Creditors

If you have any information which may assist me in the administration of this Estate, please furnish details or contact Sam Rayner of this office on (07) 3225 4991 or Sam.Rayner@fticonsulting.com.

Please remember to keep us informed at all times of your current postal or addresses.

Should you have any queries regarding the above, please contact Sam Rayner on (07) 3225 4991 or Sam.Rayner@fticonsulting.com.

Dated this 7th day of September 2023.



Kelly-Anne Trenfield

Trustee

Our Ref: SER_464538.0001-9-4-r4

SAM RAYNER
Consultant
(07) 3225 4991
sam.rayner@fticonsulting.com

PARIS PARASADI
Senior Director
(07) 3225 4927
paris.parasadi@fticonsulting.com

FTI Consulting is an independent global business advisory firm dedicated to helping organisations manage change, mitigate risk and resolve disputes: financial, legal, operational, political & regulatory, reputational and transactional. FTI Consulting professionals, located in all major business centres throughout the world, work closely with clients to anticipate, illuminate and overcome complex business challenges and opportunities. ©2023 FTI Consulting, Inc. All rights reserved. Connect with us on Twitter (@FTIConsulting), Facebook and LinkedIn. **www.fticonsulting.com**

EXPERTS WITH IMPACT™

FTI CONSULTING

Annexure A

PROOF OF DEBT

Bankruptcy Act 1966 Section 84(2), 85(2)

Privacy

The information you are required to provide on this form is collected under, and for the purposes of, the *Bankruptcy Act 1966* or related legislation. The Australian Financial Security Authority has a privacy policy at www.afsa.gov.au/privacy that provides information regarding the collection, storage, use and disclosure of personal information, including how you may: (i) access your personal information; (ii) seek to have that information corrected; and (iii) complain if you feel your privacy has been breached, along with information on how your complaint will be dealt with.

Completing a Proof of Debt (POD)

1. **When to lodge a Proof of Debt**
   A trustee of a Personal Insolvency Agreement (PIA) or bankruptcy will request you to lodge a POD where there are funds in the estate to distribute. A dividend will only be paid to those creditors whose POD has been admitted by the trustee. Correct completion of PODs will prevent delays in distribution of funds to the creditors. Return the completed POD to the trustee within the prescribed time as a dividend may be paid without further notice to you.
   Note: The trustee may require you to verify the matters contained in your POD by way of a Statutory Declaration. If such a request is made and you fail to provide the Statutory Declaration, then the trustee may disregard your POD.
2. **Which debts are provable?**
   Not all debts are provable, for example
   - debts incurred after the date of bankruptcy
   - interest that has accrued after the date of bankruptcy
   - debts owed by the bankrupt/ debtor's company if they are not supported by a personal guarantee.

   Please do not include these in your claim. Your claim may be rejected for these amounts and result in delaying the payment of the dividend.
   Further information on provable debts is available by calling AFSA on 1300 364 785, visiting www.afsa.gov.au or the trustee.
3. **Instructions on completion of the POD**
   It is your responsibility to prove to the trustee that you are owed the debt.
   - Answer all questions on the form
   - Calculate interest to the date of bankruptcy; or the date the PIA was executed by the Debtor (s) s 187(2)
   - Total the amounts and check that your calculations are correct
   - Sign and date the POD
   - Attach documentary evidence of your claim. Evidence may include copies of:
     - invoices
     - statements
     - delivery dockets
     - relevant contracts
     - personal guarantees given by bankrupt/ debtors
     - loan contracts
     - judgments.
4. **Separate, joint, and joint and several creditors**
   If two or more persons have become bankrupt or entered into a PIA together, creditors may have a claim against
   (a) only one of them
   (b) all of them jointly only, or
   (c) all of them jointly as well as in their individual capacities.

   It is important that you indicate which situation applies to you (see Bankrupt/Debtor/s liability on page 2) so that the trustee is able to admit your claim in the correct estate. This information is generally available from your loan or credit contract document.

Information for specific creditors

5. **Secured creditors**
   Secured creditors must complete Do you hold any Security on page 3. A secured creditor can prove for all or part of their secured debt. Where a secured creditor surrenders their security to the trustee, a claim may be made for the whole of the debt. Where a secured creditor sells their security, a claim may be made for the shortfall or conversely the surplus must be given to the trustee.
   Where a claim is made for the shortfall from the sale of an asset, an accounting for the sale must be attached to the POD. Where the property has not been sold, but a shortfall is anticipated in an eventual sale, the secured creditor can claim for the estimated shortfall amount.
6. **Judgment creditors**
   The trustee may look behind a judgment to obtain further evidence of a debt. If you have obtained a judgment please provide details on page 3. Costs awarded in a judgment obtained prior to bankruptcy may be included.
7. **Business/trade creditors**
   Disclose your ABN on page 3 if you are a business creditor. The trustee may be required to withhold tax on any dividend where the business creditor does not disclose its ABN. If the goods or services you supplied was for the bankrupt/debtor's business then you are also required to show the GST amount (if any) that is included in your debt on page 4.
8. **Other**
   An executor of a deceased creditor's estate may prove in the bankruptcy in place of the deceased creditor.

Debtor Details

Bankrupt/Debtor name/s (if there is more than two)

Title	Given name/s	Surname
Mrs	Angela Cecilia Theresa	Frigger

Trading name

Administration number: WA 1272 of 2018/6

Date of administration (DD/MM/YYYY): 20 July 2018

Bankrupt/Debtor/s liability ◯ Separate ◯ Joint ◯ Joint & several

Trustee Details

Title	Given name/s	Surname
Mrs	Kelly-Anne	Trenfield

Business address: GPO Box 3127
BRISBANE QLD

Postcode: 4001

Contact number: (07) 3225 4900

Mobile number:

Email address: sam.rayner@fticonsulting.com

Second Trustee Details:

Title | Given name/s | Surname

Business address | Postcode

Contact number | Mobile number

Email address

Creditor Details

Creditor name

Postal address | Postcode

Creditor reference | Creditor ABN

Contact information

Title | Given name/s | Surname

Contact number | Fax number

Email address

Do you hold any security? ◯ No ◯ Yes Estimated value of security

Description of security property

Have you obtained a judgment? ◯ No ◯ Yes Judgment amount & costs

Was this a default judgment? ◯ No ◯ Yes Judgment number & court

Details of Debt/s

Date debt/s incurred	Details of debt/description (see note 2)	GST (see note 7)	Amount ($)
	Less: Payments received in reduction of debts		
	Less: Estimated value of security		
	Amount claimed		

Creditor Declaration

I declare that the bankrupt/debtor/s owe/s the amount claimed by the creditor named above.

Title | Given name/s | Surname

Signature | Date (DD/MM/YYYY)

Note: Lodging a false proof of debt is an offence which is punishable by imprisonment for 5 years: s263(1)(d).

Admin Use Only		Trustee Use Only			
Creditor ID		Amount admitted in estate ◯ 1 ◯ 2 ◯ 3		Preferential ($)	
Liability ID		Amount rejected ($)		Ordinary ($)	
POD No.		Reason rejected		Deferred ($)	
SoA Amt.				Total Admitted ($)	
Reg'd. in estate					
Date of Reg'n.					

Signature of trustee | Date (DD/MM/YYYY)

PROOF OF DEBT

Bankruptcy Act 1966 Section 84(2), 85(2)

Privacy

The information you are required to provide on this form is collected under, and for the purposes of, the *Bankruptcy Act 1966* or related legislation. The Australian Financial Security Authority has a privacy policy at www.afsa.gov.au/privacy that provides information regarding the collection, storage, use and disclosure of personal information, including how you may: (i) access your personal information; (ii) seek to have that information corrected; and (iii) complain if you feel your privacy has been breached, along with information on how your complaint will be dealt with.

Completing a Proof of Debt (POD)

1. **When to lodge a Proof of Debt**
   A trustee of a Personal Insolvency Agreement (PIA) or bankruptcy will request you to lodge a POD where there are funds in the estate to distribute. A dividend will only be paid to those creditors whose POD has been admitted by the trustee. Correct completion of PODs will prevent delays in distribution of funds to the creditors. Return the completed POD to the trustee within the prescribed time as a dividend may be paid without further notice to you.
   Note: The trustee may require you to verify the matters contained in your POD by way of a Statutory Declaration. If such a request is made and you fail to provide the Statutory Declaration, then the trustee may disregard your POD.
2. **Which debts are provable?**
   Not all debts are provable, for example
   - debts incurred after the date of bankruptcy
   - interest that has accrued after the date of bankruptcy
   - debts owed by the bankrupt/ debtor's company if they are not supported by a personal guarantee.

   Please do not include these in your claim. Your claim may be rejected for these amounts and result in delaying the payment of the dividend.
   Further information on provable debts is available by calling AFSA on 1300 364 785, visiting www.afsa.gov.au or the trustee.
3. **Instructions on completion of the POD**
   It is your responsibility to prove to the trustee that you are owed the debt.
   - Answer all questions on the form
   - Calculate interest to the date of bankruptcy; or the date the PIA was executed by the Debtor (s) s 187(2)
   - Total the amounts and check that your calculations are correct
   - Sign and date the POD
   - Attach documentary evidence of your claim. Evidence may include copies of:
     - invoices
     - statements
     - delivery dockets
     - relevant contracts
     - personal guarantees given by bankrupt/ debtors
     - loan contracts
     - judgments.
4. **Separate, joint, and joint and several creditors**
   If two or more persons have become bankrupt or entered into a PIA together, creditors may have a claim against
   (a) only one of them
   (b) all of them jointly only, or
   (c) all of them jointly as well as in their individual capacities.

   It is important that you indicate which situation applies to you (see Bankrupt/Debtor/s liability on page 2) so that the trustee is able to admit your claim in the correct estate. This information is generally available from your loan or credit contract document.

Information for specific creditors

5. **Secured creditors**
   Secured creditors must complete Do you hold any Security on page 3. A secured creditor can prove for all or part of their secured debt. Where a secured creditor surrenders their security to the trustee, a claim may be made for the whole of the debt. Where a secured creditor sells their security, a claim may be made for the shortfall or conversely the surplus must be given to the trustee.
   Where a claim is made for the shortfall from the sale of an asset, an accounting for the sale must be attached to the POD. Where the property has not been sold, but a shortfall is anticipated in an eventual sale, the secured creditor can claim for the estimated shortfall amount.
6. **Judgment creditors**
   The trustee may look behind a judgment to obtain further evidence of a debt. If you have obtained a judgment please provide details on page 3. Costs awarded in a judgment obtained prior to bankruptcy may be included.
7. **Business/trade creditors**
   Disclose your ABN on page 3 if you are a business creditor. The trustee may be required to withhold tax on any dividend where the business creditor does not disclose its ABN. If the goods or services you supplied was for the bankrupt/debtor's business then you are also required to show the GST amount (if any) that is included in your debt on page 4.
8. **Other**
   An executor of a deceased creditor's estate may prove in the bankruptcy in place of the deceased creditor.

Debtor Details

Bankrupt/Debtor name/s (if there is more than two)

Title	Given name/s	Surname
Mrs	Angela Cecilia Theresa	Frigger

Trading name

Administration number: WA 1272 of 2018/6

Date of administration (DD/MM/YYYY): 20 July 2018

Bankrupt/Debtor/s liability ◯ Separate ◯ Joint ◯ Joint & several

Trustee Details

Title	Given name/s	Surname
Mrs	Kelly-Anne	Trenfield

Business address: GPO Box 3127
BRISBANE QLD

Postcode: 4001

Contact number: (07) 3225 4900

Mobile number:

Email address: sam.rayner@fticonsulting.com

Second Trustee Details:

Title | Given name/s | Surname

Business address | Postcode

Contact number | Mobile number

Email address

Creditor Details

Creditor name

Postal address | Postcode

Creditor reference | Creditor ABN

Contact information

Title | Given name/s | Surname

Contact number | Fax number

Email address

Do you hold any security? ◯ No ◯ Yes Estimated value of security

Description of security property

Have you obtained a judgment? ◯ No ◯ Yes Judgment amount & costs

Was this a default judgment? ◯ No ◯ Yes Judgment number & court

601

Details of Debt/s

Date debt/s incurred	Details of debt/description (see note 2)	GST (see note 7)	Amount ($)
	Less: Payments received in reduction of debts		
	Less: Estimated value of security		
	Amount claimed		

Creditor Declaration

I declare that the bankrupt/debtor/s owe/s the amount claimed by the creditor named above.

Title | Given name/s | Surname

Signature | Date (DD/MM/YYYY)

Note: Lodging a false proof of debt is an offence which is punishable by imprisonment for 5 years: s263(1)(d).

Admin Use Only		Trustee Use Only			
Creditor ID		Amount admitted in estate ◯ 1 ◯ 2 ◯ 3		Preferential ($)	
Liability ID		Amount rejected ($)		Ordinary ($)	
POD No.		Reason rejected		Deferred ($)	
SoA Amt.				Total Admitted ($)	
Reg'd. in estate					
Date of Reg'n.					

Signature of trustee | Date (DD/MM/YYYY)

682

PROOF OF DEBT

Bankruptcy Act 1966 Section 84(2), 85(2)

Privacy

The information you are required to provide on this form is collected under, and for the purposes of, the *Bankruptcy Act 1966* or related legislation. The Australian Financial Security Authority has a privacy policy at www.afsa.gov.au/privacy that provides information regarding the collection, storage, use and disclosure of personal information, including how you may: (i) access your personal information; (ii) seek to have that information corrected; and (iii) complain if you feel your privacy has been breached, along with information on how your complaint will be dealt with.

Completing a Proof of Debt (POD)

1. **When to lodge a Proof of Debt**
   A trustee of a Personal Insolvency Agreement (PIA) or bankruptcy will request you to lodge a POD where there are funds in the estate to distribute. A dividend will only be paid to those creditors whose POD has been admitted by the trustee. Correct completion of PODs will prevent delays in distribution of funds to the creditors. Return the completed POD to the trustee within the prescribed time as a dividend may be paid without further notice to you.
   Note: The trustee may require you to verify the matters contained in your POD by way of a Statutory Declaration. If such a request is made and you fail to provide the Statutory Declaration, then the trustee may disregard your POD.
2. **Which debts are provable?**
   Not all debts are provable, for example
   - debts incurred after the date of bankruptcy
   - interest that has accrued after the date of bankruptcy
   - debts owed by the bankrupt/ debtor's company if they are not supported by a personal guarantee.

   Please do not include these in your claim. Your claim may be rejected for these amounts and result in delaying the payment of the dividend.
   Further information on provable debts is available by calling AFSA on 1300 364 785, visiting www.afsa.gov.au or the trustee.
3. **Instructions on completion of the POD**
   It is your responsibility to prove to the trustee that you are owed the debt.
   - Answer all questions on the form
   - Calculate interest to the date of bankruptcy; or the date the PIA was executed by the Debtor (s) s 187(2)
   - Total the amounts and check that your calculations are correct
   - Sign and date the POD
   - Attach documentary evidence of your claim. Evidence may include copies of:
     - invoices
     - statements
     - delivery dockets
     - relevant contracts
     - personal guarantees given by bankrupt/ debtors
     - loan contracts
     - judgments.
4. **Separate, joint, and joint and several creditors**
   If two or more persons have become bankrupt or entered into a PIA together, creditors may have a claim against
   (a) only one of them
   (b) all of them jointly only, or
   (c) all of them jointly as well as in their individual capacities.

   It is important that you indicate which situation applies to you (see Bankrupt/Debtor/s liability on page 2) so that the trustee is able to admit your claim in the correct estate. This information is generally available from your loan or credit contract document.

633

Information for specific creditors

5. **Secured creditors**
   Secured creditors must complete Do you hold any Security on page 3. A secured creditor can prove for all or part of their secured debt. Where a secured creditor surrenders their security to the trustee, a claim may be made for the whole of the debt. Where a secured creditor sells their security, a claim may be made for the shortfall or conversely the surplus must be given to the trustee.
   Where a claim is made for the shortfall from the sale of an asset, an accounting for the sale must be attached to the POD. Where the property has not been sold, but a shortfall is anticipated in an eventual sale, the secured creditor can claim for the estimated shortfall amount.
6. **Judgment creditors**
   The trustee may look behind a judgment to obtain further evidence of a debt. If you have obtained a judgment please provide details on page 3. Costs awarded in a judgment obtained prior to bankruptcy may be included.
7. **Business/trade creditors**
   Disclose your ABN on page 3 if you are a business creditor. The trustee may be required to withhold tax on any dividend where the business creditor does not disclose its ABN. If the goods or services you supplied was for the bankrupt/debtor's business then you are also required to show the GST amount (if any) that is included in your debt on page 4.
8. **Other**
   An executor of a deceased creditor's estate may prove in the bankruptcy in place of the deceased creditor.

Debtor Details

Bankrupt/Debtor name/s (if there is more than two)

Title	Given name/s	Surname
Mrs	Angela Cecilia Theresa	Frigger

Trading name

Administration number: WA 1272 of 2018/6

Date of administration (DD/MM/YYYY): 20 July 2018

Bankrupt/Debtor/s liability ◯ Separate ◯ Joint ◯ Joint & several

Trustee Details

Title	Given name/s	Surname
Mrs	Kelly-Anne	Trenfield

Business address: GPO Box 3127
BRISBANE QLD

Postcode: 4001

Contact number: (07) 3225 4900

Mobile number:

Email address: sam.rayner@fticonsulting.com

604

Second Trustee Details:

Title | Given name/s | Surname

Business address | Postcode

Contact number | Mobile number

Email address

Creditor Details

Creditor name

Postal address | Postcode

Creditor reference | Creditor ABN

Contact information

Title | Given name/s | Surname

Contact number | Fax number

Email address

Do you hold any security? ◯ No ◯ Yes Estimated value of security

Description of security property

Have you obtained a judgment? ◯ No ◯ Yes Judgment amount & costs

Was this a default judgment? ◯ No ◯ Yes Judgment number & court

Details of Debt/s

Date debt/s incurred	Details of debt/description (see note 2)	GST (see note 7)	Amount ($)
	Less: Payments received in reduction of debts		
	Less: Estimated value of security		
	Amount claimed		

Creditor Declaration

I declare that the bankrupt/debtor/s owe/s the amount claimed by the creditor named above.

Title | Given name/s | Surname

Signature | Date (DD/MM/YYYY)

Note: Lodging a false proof of debt is an offence which is punishable by imprisonment for 5 years: s263(1)(d).

Admin Use Only		Trustee Use Only			
Creditor ID		Amount admitted in estate ◯ 1 ◯ 2 ◯ 3		Preferential ($)	
Liability ID		Amount rejected ($)		Ordinary ($)	
POD No.		Reason rejected		Deferred ($)	
SoA Amt.				Total Admitted ($)	
Reg'd. in estate					
Date of Reg'n.					

Signature of trustee | Date (DD/MM/YYYY)

Annexure B

7 September 2023

Remuneration Approval Report

Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger
(Former Bankrupts)
Bankrupt Estate No. WA 1272 of 2018/6

FTI CONSULTING

Table of Contents

Summary 2
Declaration 5
Disbursements 6
Previous Remuneration Approvals 7
Likely Impact on Dividends 7
Summary of Receipts and Payments 7
Queries 8
Schedule A – Details of Work 9
Schedule B – Time Spent by Staff on Each Major Task (Work Already Done) 15
Schedule C – Resolutions 19
Schedule D - Explanation Where Remuneration Previously Approved 20
Schedule E – Summary of Receipts and Payments 22
Schedule G – FTI Consulting schedule of rates 23

Summary

This remuneration approval report provides you with the information that the Bankruptcy Act 1966 (**the Act**) and the Code of Professional Practice published by the Australian Restructuring Insolvency and Turnaround Association (**ARITA**) requires creditors to receive to make an informed decision regarding the approval of my remuneration as Trustee of the Estates of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (**former Bankrupts**).

I am asking creditors to approve the following remuneration.

Period	Remuneration (excl GST)
27 August 2019 to 13 August 2023	867,669.09
14 August 2023 to conclusion	375,000.00
Total	**$1,242,669.09**

Creditors have previously approved my remuneration and disbursements as follows:

Period	Remuneration (excl GST)	Disbursements (excl GST)
31 August 2018 to 7 October 2018	24,890.50	164.18
8 October 2018 to conclusion	109,090.91	10,000.00
Total	**133,981.41**	**10,164.18**

I estimate the total remuneration of this Bankruptcy will be $1,376,650.50. My remuneration has increased from my previous estimate due to unforeseen actions since my previous remuneration report.

- When I provided by initial estimate shortly after my appointment in October 2018, administrating the Estates seemed relatively uncomplicated. I believed the administration would predominately involve a dispute over cash at bank, the potential discovery and realisation of other assets, as well as dealing with a pending annulment application.
- At this time, I could not have anticipated the numerous legal actions which would later be initiated by the former Bankrupts.
- In early 2019 the former Bankrupts filed the Main Proceedings to assert the assets identified in my previous report were held on behalf of the Frigger Super Fund (FSF). While this was the primary proceedings I had to defend, in the intervening years the Former Bankrupts have filed multiple interlocutory applications and tangential proceedings which further exacerbated the administrative burdens placed upon the bankruptcy administration.

- In defending these proceedings and to fulfill my duties as Bankruptcy Trustee, substantial works were required to investigate, not only the ownership of assets which vest within the Estates, but also explore the myriad of niche issues and arguments raised by the Former Bankrupts. These works were varied in nature and often at times, novel in my experience. It is difficult to adequately express the volume and variety of tasks we were required to perform to defend these proceedings and to administer the Bankrupt Estates, but in broad terms, they include (but are not limited to) the following:
  - Corresponding with relevant parties to obtain historical records of the assets;
  - Tracing exercises to identify the origin of funds to obtain the assets;
  - Conducting independent investigations based on publicly available information and Freedom of Information requests in the absence of any assistance from the Former Bankrupts;
  - File noting and summarising findings from investigations undertaken;
  - Investigating, reviewing and verifying potentially suspect or fabricated documents produced by the Former Bankrupts;
  - Issuing ad-hoc reports to creditors and dealing with creditor queries and requests over the years;
  - Compiling and preparing numerous affidavits and submissions within the Main Proceedings;
  - Reviewing and dealing with numerous interlocutory applications initiated by the Former Bankrupts;
  - Numerous discussions, briefings and meetings with lawyers and advisors with regards to various legal issues raised;
  - Reviewing affidavits and supporting documents prepared with the assistance of my lawyers;
  - Preparation and attending trial in the Main Proceedings;
  - Reviewing and discussing judgment obtained in the Main Proceedings;
  - Dealing with the Appeal Proceedings in the Federal Court; and
  - Discussions regarding the special leave application to the High Court in order to further appeal the rulings made in the Appeal Proceedings.
- As outlined in my previous report on 13 April 2023, there were also a number of additional proceedings involving the Bankrupt Estates were commenced by the former Bankrupts. My involvement in these has been comparatively limited, however, in certain instances I was required to act. These proceedings include:

Court Number	Brief Description
WAD 66 of 2021	Annulment of Bankruptcy
WAD 159 of 2021	Application for an urgent order the Main Proceedings be temporarily stayed
WAD 169 of 2021	Appeal against the decision of Colvin J in WAD 66 of 2021 (Annulment of Bankruptcy application) to order security for costs.
WAD 225 of 2021	Application against BOQ and Trustee in breach of undertaking of transferring funds held with BOQ.
WAD 227 of 2021	Application against Commonwealth Bank of Australia under the grounds of consumer protection.
WAD 228 of 2021	Application against Commonwealth Securities Limited ("CommSec") for actions of transferring and/or transmitting and/or selling shareholdings in share trading account 270185.

- As specified in this report, the former Bankrupts recently initiated further proceedings against me in WAD 128 of 2023. Thus far significant time has been incurred to defend these proceedings.
  - Discussions and meetings with lawyers, advisors and FTI internal risk department to discuss appropriate steps to defend this proceeding;
  - Obtaining documents required to comply with subpoena issued by the Former Bankrupts
  - Preparation and obtaining relevant materials to compile affidavits and submissions within the proceeding; and
  - Review of affidavits and supporting documents prepared with the assistance of my lawyers.
- Furthermore, I have undertaken the following tasks in conjunction with the above-mentioned actions:
  - Attended to numerous letters/correspondence received from the former Bankrupts and obtained legal advice on responses as needed;
  - Attended to my statutory duties as Bankruptcy Trustee;
  - Preparing and issuing reports to creditors; and
  - Review and initial adjudication of claims received within the Estates.
- In an attempt to express the sheer volume of time and effort my office has had expend to deal with these proceedings, I provide creditors with the following high-level summary table of the breakdown of task categories performed to date:

Task Category	Hours	Charge	%
Administration - Banking	87.9	34,966.50	3%
Administration - File Review	55.5	26,648.50	3%
Administration - General	100.8	41,281.00	4%
Administration - Remuneration	49.3	23,730.00	2%
Assets - Income Assessment	37.5	15,348.50	2%
Assets - Strategy	19.4	9,006.00	1%
Creditor - Correspondence	78.1	36,604.50	4%
Creditor - Other	8.6	3,278.00	0%
Creditor - POD	24.2	9,565.50	1%
Creditor - Report	62.4	25,617.00	3%
Investigation - Bank accounts	159.6	64,598.00	6%
Investigations - Gathering records	77.9	32,609.50	3%
Investigations - Property	47.6	19,302.50	2%
Investigations - Shareholdings	180.4	73,765.50	7%
Investigations - SMSF	68.1	29,231.00	3%
Investigations - Statutory	102.0	45,182.00	5%
Legals	968.0	510,916.50	51%
Total	**2,127.3**	**1,001,650.50**	**100%**

- Further details of my work conducted to date will be provided within **Schedule A** of this report.

Unfortunately, I do not believe this will be my final remuneration approval request. I have sought to estimate my future remuneration in this remuneration approval report, but creditors should be advised, I see this amount a minimum of what will likely be necessary to see this administration to its completion.

Declaration

I, Kelly-Anne Trenfield, of FTI Consulting, have undertaken a proper assessment of the claims for remuneration for the appointment as Trustee of the Bankrupt Estates in accordance with the law and applicable professional standards. I am satisfied the remuneration claimed is in respect of necessary work, properly performed, or to be properly performed, in the conduct of this appointment and further, the disbursements that have been incurred in the conduct of the external administration are necessary and proper.

The remuneration I am asking creditors to approve is summarised as follows:

For	Period	Amount $ (excl GST)	Applicable rates	Timing of payment
Work already completed	27 August 2019 to 13 August 2023	867,669.09	*As per the enclosed hourly rates*	*Upon conclusion of Proceeding WAD 128 of 2023*
Future work	14 August 2023 to conclusion	375,000.00	*As per the enclosed hourly rates*	*When incurred and upon conclusion of Proceeding WAD 128 of 2023*
Total		**$1,242,669.09**		

Details of the work already done and future work I intend to do are **enclosed** at **Schedule A**.

Schedule B includes a breakdown of time spent by staff members on each major task for work I have already done.

Actual resolutions to be put forward are included at **Schedule C** for your information. These resolutions also appear in the proposal form provided to you.

Disbursements

I am not required to seek creditor approval for costs paid to third parties or where I am recovering a cost incurred on behalf of the administration, but I must provide details to creditors.

I am required to obtain creditors' consent for the payment of a disbursement where I, or a related entity, may directly or indirectly obtain a profit.

For more information about disbursements, please refer to the Initial Remuneration Notice sent to you on 12 September 2018.

I am not currently seeking approval for disbursements.

Previous Remuneration Approvals

The following remuneration approvals have previously been provided by creditors.

Period	For	Approving body	Approved amount $	Amount paid $
31 August 2018 to 7 October 2018	Work already completed	Creditors	$24,890.50	$0.00
8 October 2018 to Conclusion	Future work	Creditors	$109,090.91	$0.00
Total remuneration previously approved			**$133,981.41**	**$0.00**

I am now seeking approval of a further $1,242,669.09 in remuneration which will bring total remuneration claimed in this Bankruptcy to $1,376,650.50.

Likely Impact on Dividends

The Act sets the order for payment of claims against the Bankrupt Estate, and it provides for remuneration of the Trustee to be paid in priority to other claims. This ensures that when there are sufficient funds, the Trustee receives payment for the work done to recover assets, investigate the affairs, report to creditors and AFSA and distribute any available funds.

Due to the reasons outlined within my report, I am unable to provide an estimate return to creditors. However, if you have not lodged a Proof of Debt (POD) to date, please complete the POD provided to you.

Summary of Receipts and Payments

A summary of the receipts and payments for the Bankruptcy as at 31 August 2023 is **enclosed** at **Schedule E** to this report.

Queries

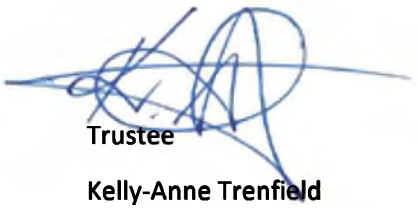
Further supporting documentation for our remuneration claim can be provided to creditors on request.

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

- ARITA at www.arita.com.au/creditors
- AFSA at www.afsa.gov.au (search for remuneration information sheet).

If you have any queries in relation to the information in this report, please contact Sam Rayner of this office on (07) 3225 4991 or by email at sam.rayner@fticonsulting.com.

Yours faithfully



Trustee

Kelly-Anne Trenfield

Attachments:

Schedule A – Details of work

Schedule B – Time spent by staff on each major task (work already done)

Schedule C – Resolutions

Schedule D – Explanation where remuneration previously approved

Schedule E – Summary of receipts and payments

Schedule F – FTI Consulting schedule of rates (1 May 2019 to date)

Schedule A – Details of Work

Task area/General description	Work already done	Future work
Period	27 August 2019 to 13 August 2023	14 August 2023 to conclusion
Amount $ (excl GST)	**$867,669.09**	**$375,000.00**
Assets	**103 hours** **$40,817.00**	**$100,000.00**
Income assessment	■ Assessing the former Bankrupts in accordance with the Bankruptcy Act and serving assessment ■ Monitoring the income of the former Bankrupt during the course of the bankruptcy, including as to any change in circumstances	
Real property	■ Liaising with agents, to obtain valuations on properties ■ Preparing property appraisal file note and providing conclusions of findings to solicitors ■ Attempting to determine related party security over properties and current equity ■ Lodgement of caveat to protect interest during sales process	■ Liaising with valuers, agents, and strata agent to realise properties which vest within the Estate ■ Determine security over properties and current equity position ■ Engaging solicitors to assist with the realisation of the properties ■ All tasks associated with the tenants of the properties including corresponding, reviewing potential offers and other tasks which may arise.
Shareholdings	■ Drafting and issuing letters, emails and follow ups to preserve shareholdings held by the former Bankrupts ■ Receipting and recording dividends received for shareholdings	■ Tasks associated with realising the share portfolio including the engagement of a broker and determining strategy for realisation. ■ Dealing with associated CGT payable from realising the shares and other assets. ■ Receipting and recording dividends received for shareholdings

Creditors	**88.39 hours** **$40,423.09**	**$50,000.00**
Creditor Enquiries, Requests & Directions	■ Receive and respond to creditor enquiries ■ Maintaining creditor request log ■ Considering reasonableness of creditor requests ■ Compiling information requested by creditors	■ Receive and respond to creditor enquiries ■ Maintaining creditor request log ■ Considering reasonableness of creditor requests ■ Compiling information requested by creditors
Creditor reports	■ Drafting various reports to creditors, including administrations details, estimated return to creditors, investigations and remuneration	■ Finalising report to creditors, including administrations details, estimated return to creditors, investigations and remuneration
Dealing with proofs of debt	■ Receipting and filing PODs ■ Review and commence review of PODs when not related to a dividend ■ Discussions with creditors surrounding claimed amounts and requesting further information as needed	■ Receipting and filing POD when not related to a dividend
Proposals to Creditors		■ Preparing proposal notices and voting forms ■ Forward notice of proposal to all known creditors ■ Reviewing votes and determining outcome of proposal

Investigations	**1,408.2 hours** **$702,067.50**	**$75,000.00**
Conducting investigation	■ Reviewing books and records provided by AFSA ■ Contacting third parties for books and records ■ Reviewing bankrupts' books and records ■ Review and summarising numerous ongoing litigations associated with the former Bankrupts ■ Preparation of and issuing of demand notices under the Act to various entities associated with the former Bankrupts ■ Conducting extensive tracing exercise of funds accumulated by the former Bankrupts to draw conclusions of ownership of assets held within the former Bankrupts SMSF ■ Extensive reviewing of the FSF compliance.	

Litigation / Recoveries	■ Reviewing regulation standard of the SMSF's ■ Creating a comprehensive summary of beneficial ownership of assets ■ Further investigating and understanding the former Bankrupts' affairs ■ Drafting various follow up emails to Commsec, Bankwest and Citibank regarding associated accounts ■ Reviewing transfer of personal properties to Frigger Super Fund and mortgages registered over the properties ■ Internal meetings to discuss status of litigations ■ Preparing various brief to solicitors and counsel ■ Preparing for an attendance at Federal Court for cross-examination ■ Responding, as necessary and other dealing with proceedings in WAD 141 of 2019, Angela Frigger & Anor v Kelly-Anne Lavina Trenfield & Anor ■ Responding, as necessary and other dealing with proceedings in WAD 278 of 2021, Angela Cecilia Theresa Frigger & Anor v Kelly-Anne Lavina Trenfield (Appeal of Jackson J) ■ Responding, as necessary and other dealing with proceedings in WAD 128 of 2023, Angela Cecilia Theresa Frigger & Anor v Kelly-Anne Trenfield (removal as Trustee) ■ Responding, as necessary and other dealing with proceedings in P10 of 2023, Frigger & Anor v. Trenfield (Special Leave Application) ■ Responding, as necessary and other dealing with proceedings in WAD 66 of 2021, Angela Cecilia Theresa Frigger & Anor v Kelly Trenfield & Anor (Annulment application) ■ Responding, as necessary and other dealing with proceedings in WAD 225 of 2021, Hartmut Hubert Josef Frigger as Trustee of the Frigger Super Fund ABN 99604 & Anor v Bank of Queensland Limited ACN 009 656 740 & Anor ■ Responding, as necessary and other dealing with proceedings in WAD 227 of 2021, Hartmut Hubert Josef Frigger & Anor v Commonwealth Bank of Australia ACN 123 123 124 ■ Responding, as necessary and other dealing with proceedings in WAD 228 of 2021, Hartmut Hubert Josef Frigger as Trustee of the Frigger Super Fund ABN 99602844956 & Anor v Commonwealth Securities Limited (ACN 067 254 339)	■ Internal meetings to discuss status of litigations ■ Preparing various brief to solicitors and counsel ■ Liaising with solicitors regarding recovery actions ■ Responding, as necessary and other dealing with proceeding WAD 128 of 2023, Angela Cecilia Theresa Frigger & Anor v Kelly-Anne Trenfield (removal as Trustee) ■ Maintaining schedule of proceedings on foot

Conduct issues	■ Reviewing submissions and preparing response to accusations ■ Liaising with solicitors regarding recovery actions ■ Attending Federal Court proceedings via video link ■ Maintaining schedule of proceedings on foot ■ Assess conduct of former Bankrupts as to extension of bankruptcy ■ Assessing and file noting possible offences ■ Reporting the former Bankrupts to the ATO for potential taxation fraud	
Dividend	**0.00 hours** **$0.00**	**$100,000.00**
Processing proofs of debt (POD)		■ Preparation of correspondence to potential creditors inviting lodgement of POD ■ Receipt of POD ■ Maintain POD register ■ Adjudicating POD ■ Request further information from claimants regarding POD ■ Preparation of correspondence to claimant advising outcome of adjudication
Dividend procedures		■ Preparation of correspondence to creditors advising of intention to declare dividend ■ Advertisement of intention to declare dividend ■ Preparation of dividend calculation ■ Preparation of correspondence to creditors announcing declaration of dividend ■ Advertise announcement of dividend ■ Preparation of distribution and dividend file ■ Preparation of payment vouchers to pay dividend ■ Preparation of correspondence to creditors enclosing payment of dividend

Administration	202 hours $84,361.50	$50,000.00
Correspondence	■ General correspondence with various parties	■ General correspondence with various parties
Document maintenance/file review/checklist	■ Administration reviews ■ Filing of documents ■ Maintain registry of current proceedings on foot ■ File reviews ■ Updating checklists	■ Administration reviews ■ Filing of documents ■ Maintain registry of current proceedings on foot ■ File reviews ■ Updating checklists
Funds handling	■ Preparing correspondence opening and closing accounts ■ Entering receipts and payments into accounting system ■ Requesting bank statements ■ Bank account reconciliations ■ Correspondence with bank regarding specific transfers	■ Preparing correspondence opening and closing accounts ■ Entering receipts and payments into accounting system ■ Requesting bank statements ■ Bank account reconciliations ■ Correspondence with bank regarding specific transfers
Legal	■ Preparing and finalising legal documents in proceedings brought forward by the former Bankrupts' ■ Meetings with solicitor/counsel to plan course of action in defending proceedings within Estate	■ Preparing and finalising legal documents in proceedings brought forward by the former Bankrupts' ■ Meetings with solicitor/counsel to plan course of action in defending proceedings within Estate
AFSA reporting	■ Preparing of lodgement of Annual Estate Returns with AFSA ■ Reconciliation and calculation of Realisations and Interest Charge ■ Lodgement of Realisation and Interest Charge Return	■ Preparing of lodgement of Annual Estate Returns with AFSA ■ Reconciliation and calculation of Realisations and Interest Charge ■ Lodgement of Realisation and Interest Charge Return
Finalisation		■ Notifying ATO of finalisation ■ Completing checklists ■ Finalising WIP
Planning / Review	■ Discussions regarding status of administration	■ Discussions regarding status of administration
Books and records / storage	■ Dealing with records in storage ■ Sending job files to storage	■ Dealing with records in storage ■ Sending job files to storage
Remuneration	■ Recording of time, including details	■ Recording of time, including details

- Preparation of remuneration schedules
- Invoice preparation

- Preparation of remuneration schedules
- Invoice preparation

Schedule B – Time Spent by Staff on Each Major Task (Work Already Done)

For the period 27 August 2019 to 31 March 2020

	Position	$/hour (excl GST)	Total actual hours	Total $ (excl GST)	Task Area							
					Assets		Creditors		Investigation		Administration	
					Hrs	$	Hrs	$	Hrs	$	Hrs	$
Kelly-Anne Trenfield	Senior Managing Director	695	25.2	17,514.00	0.6	417.00	0.3	208.50	19.7	13,691.50	4.6	3,197.00
Paris Parasadi	Director	515	114.3	58,864.50	7.9	4,068.50	0.3	154.50	100.9	51,963.50	5.2	2,678.00
Lachlan Bowness	Associate 2	320	79.5	25,436.59	11.8	3,776.00	2.4	764.59	48.2	15,424.00	17.1	5,472.00
Henry Newton	Associate 1	300	16.2	4,860.00	-	-	-	-	16.2	4,860.00	-	-
Various Staff	Administration 2	205	6.8	1,394.00	-	-	-	-	0.2	41.00	6.6	1,353.00
Various Staff	Administration 1	165	1.9	313.50	-	-	-	-	-	-	1.9	313.50
Total (ex GST)				**108,382.59**		**8,261.50**		**1,127.59**		**85,980.00**		**13,013.50**
GST				**10,838.26**								
Total (Incl GST)				**119,220.85**								
Total hours			**243.9**		**20.3**		**3.0**		**185.2**		**35.4**	
Avg hourly rate (ex GST)				**444.39**		**406.97**		**377.20**		**464.25**		**367.61**

For the period 1 April 2020 to 30 June 2021

Employee	Position	$/hour (excl GST)	Total actual hours	Total $ (excl GST)	Task Area							
					Assets		Creditors		Investigation		Administration	
					Hrs	$	Hrs	$	Hrs	$	Hrs	$
Kelly-Anne Trenfield	Senior Managing Director	720	241.6	173,952.00	0.4	288.00	3.4	2,448.00	235.2	169,344.00	2.6	1,872.00
Paris Parasadi	Director	520	312.2	162,344.00	3.1	1,612.00	4.3	2,236.00	300.7	156,364.00	4.1	2,132.00
Lachlan Bowness	Consultant 2	390	22.2	8,658.00	-	-	5.0	1,950.00	16.5	6,435.00	0.7	273.00
Lachlan Bowness	Consultant 1	360	163.2	58,752.00	4.6	1,656.00	1.6	576.00	148.8	53,568.00	8.2	2,952.00
Henry Newton	Associate 1	335	0.4	134.00	-	-	-	-	0.4	134.00	-	-
Henry Newton	Associate 1	300	250.9	75,270.00	7.9	2,370.00	0.8	240.00	239.3	71,790.00	2.9	870.00
Samuel Dennis	Associate I	300	0.2	60.00	-	-	-	-	0.2	60.00	-	-
Various Staff	Administration 2	220	39.3	8,646.00	1.5	330.00	-	-	24.9	5,478.00	12.9	2,838.00
Various Staff	Administration 1	185	3.8	703.00	-	-	-	-	3.0	555.00	0.8	148.00
Total (ex GST)				**488,519.00**		**6,256.00**		**7,450.00**		**463,728.00**		**11,085.00**
GST				**48,851.90**								
Total (Incl GST)				**537,370.90**								
Total hours			**1033.8**		**17.5**		**15.1**		**969.0**		**32.2**	
Avg hourly rate (ex GST)				**472.55**		**357.49**		**493.38**		**478.56**		**344.25**

For the period 1 July 2021 to 30 June 2022

Employee	Position	$/hour (excl GST)	Total actual hours	Total $ (excl GST)	Task Area							
					Assets		Creditors		Investigation		Administration	
					Hrs	$	Hrs	$	Hrs	$	Hrs	$
Kelly-Anne Trenfield	Senior Managing Director	720	43.2	31,104.00	0.6	432.00	1.3	936.00	37.5	27,000.00	3.8	2,736.00
Paris Parasadi	Senior Director	580	22.8	13,224.00	0.3	174.00	0.4	232.00	19.8	11,484.00	2.3	1,334.00
Paris Parasadi	Director	530	44.9	23,797.00	6.4	3,392.00	1.8	954.00	30.8	16,324.00	5.9	3,127.00
Lachlan Bowness	Consultant 2	390	15.8	6,162.00	8.2	3,198.00	1.7	663.00	5.5	2,145.00	0.4	156.00
Henry Newton	Associate 2	335	6.1	2,043.50	3.4	1,139.00	-	-	1.7	569.50	1.0	335.00
Sam Rayner	Associate 2	335	13.9	4,656.50	1.4	469.00	0.2	67.00	0.5	167.50	11.8	3,953.00
Various Staff	Treasury	290	6.3	1,827.00	-	-	-	-	-	-	6.3	1,827.00
Various Staff	Administration 2	220	12.1	2,662.00	2.5	550.00	-	-	2.2	484.00	7.4	1,628.00
Sam Hull	Junior Associate	220	13.2	2,904.00	5.9	1,298.00	6.6	1,452.00	0.7	154.00	-	-
Total (ex GST)				**88,380.00**		**10,652.00**		**4,304.00**		**58,328.00**		**15,096.00**
GST				**8,838.00**								
Total (Incl GST)				**97,218.00**								
Total hours			**178.3**		**28.7**		**12.0**		**98.7**		**38.9**	
Avg hourly rate (ex GST)				**495.68**		**371.15**		**358.67**		**590.96**		**388.07**

For the period 1 July 2022 to 13 August 2023:

Employee	Position	$/hour (excl GST)	Total actual hours	Total $ (excl GST)	Task Area							
					Assets		Creditors		Investigation		Administration	
					Hrs	$	Hrs	$	Hrs	$	Hrs	$
Kelly-Anne Trenfield	Senior Managing Director	740	84.3	62,382.00	4.8	3,552.00	7.6	5,624.00	56.0	41,440.00	15.9	11,766.00
John Park	Senior Managing Director	740	1.3	962.00	-	-	-	-	1.3	962.00	-	-
Paris Parasadi	Senior Director	620	102.5	63,550.00	3.4	2,108.00	12.5	7,750.00	62.9	38,998.00	23.7	14,694.00
Sam Rayner	Consultant 1	375	99.0	37,125.00	15.7	5,887.50	35.5	13,312.50	19.6	7,350.00	28.2	10,575.00
Sam Rayner	Associate 2	350	28.2	9,870.00	9.4	3,290.00	1.8	630.00	12.6	4,410.00	4.4	1,540.00
Anisa Jaffar	Associate 1	315	3.7	1,165.50	-	-	-	-	2.1	661.50	1.6	504.00
Various Staff	Treasury	300	15.1	4,530.00	0.2	60.00	-	-	0.2	60.00	14.7	4,410.00
Various Staff	Administration 2	250	9.7	2,425.00	3.0	750.00	0.9	225.00	0.6	150.00	5.2	1,300.00
Various Staff	Administration 1	210	0.2	42.00	-	-	-	-	-	-	0.2	42.00
Angus Gentner	Junior Accountant	210	0.3	63.00	-	-	-	-	-	-	0.3	63.00
Samuel Parry	Junior Accountant	210	1.3	273.00	-	-	-	-	-	-	1.3	273.00
Total (ex GST)				**182,387.50**		**15,647.50**		**27,541.50**		**94,031.50**		**45,167.00**
GST				**18,238.75**								
Total (Incl GST)				**200,626.25**								
Total hours			**345.6**		**36.5**		**58.3**		**155.3**		**95.5**	
Avg hourly rate (ex GST)				**527.74**		**428.70**		**472.41**		**605.48**		**472.95**

Schedule C – Resolutions

Resolution 1- Remuneration from 27 August 2019 to 13 August 2023

"The remuneration of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 27 August 2019 to 13 August 2023 to be calculated on a time basis at the hourly rates set out in the FTI Consulting Schedule of Hourly Rates effective 1 May 2019, 1 April 2020, 1 July 2021, and 1 July 2022, and is determined and approved for payment in the amount of $867,669.09 (exclusive of GST) and the Trustee can draw the remuneration as required."

Resolution 2 – Remuneration from 14 August 2023 to conclusion

"The future remuneration of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 14 August 2023 to the conclusion of the Bankruptcy (inclusive) be calculated on a time basis at the hourly rates set out in the FTI Consulting Schedule of Hourly Rates effective 1 July 2022 onwards, up to a further capped amount of $375,000 (exclusive of GST) and the Trustee can draw the remuneration as required."

Schedule D – Explanation Where Remuneration Previously Approved

By proposal dated 3 November 2018, creditors approved my remuneration of $133,981.41. To date, I have not drawn any remuneration. My remuneration has exceeded this cap and, in this report, I am now seeking approval of a further capped amount of $1,242,669.09 to enable me to complete the administration of the Bankrupt Estate.

Task	Fees already approved as at 3 November 2018 $	Approval sought for work already done $	Approval sought for future work $	Total fees sought per task $
Assets	5,53 .00	40,817.00	100,000.00	146,356.00
Creditors	13,856.00	40,423.09	50,000.00	104,279.09
Investigations	69,902.50	702,067.50	75,000.00	846, 70.00
Dividend	-	-	100,000.00	100,000.00
Admin	44,683.91	84,361.50	50,000.00	179, 5.41
Total (ex GST)	133,981.41	867,669.09	375,000.00	1,376,650.50
Total Remuneration previously approved				133,981.41
Difference (see below table for further breakdown)				1,242,669.09
Payment reconciliation				
Total remuneration claimed				1,376,650.50
Amount paid to date				-
Amount Outstanding				1,376,650.50

In the below table I compare, on a task basis, the difference between my previous remuneration report and this report, together with explanations for the difference.

Task	Fees already approved as at 3 November 2018 $	Total per task (from previous table) $	Difference	Reasons for difference
Assets	5,539.00	146,356.00	140,817.00	My initial estim te did foresee the complexities associ ted with realising the assets held within the estate. In particular the numerous a set allegedly held within the FSF.
Creditors	13,856.00	104,279.09	90,423.09	Further reporting to creditors was required. In addition, attending to creditor queries since my appointment a Trustee.
Investig tion	69,902.50	846,970.00	7 7,067.50	As mentioned through out my report, significant time has been incurred to assert ownership of the assets within the estate. Significant time was required in investigating the rightful owner and the ori in of funds. In addition, my previous estimate did not anticipate the number of proceedings and actions brought forward by the former Bankrupts. The majority of time spent in investigations i ssociated with my obligation to defend the e proceedings. For further details surrounding investigation work, I refer creditors to Schedule A of this report.
Dividend	-	100,000.00	100,000.00	At the timing of my previous remuneration report, I did not e timate a potential return to creditors. As mentioned, I now anticipate a dividend to unsecured creditors. Due to the complexity associated with creditor claims, I anticipate significant work will be required in adjudicating POD's received.
Administration	44,683.91	179,045.41	134,361.50	Higher than origin lly forecasted work was required in administrating the estate and dealing with numerous proceedin s brought forward by the former Bankrupts.
Total (ex GST)	**133,981.41**	**1,376,650.50**	**1,242,669.09**	

Schedule E – Summary of Receipts and Payments

As at 31 August 2023

Receipts	**$**
Cash at Bank	2,890,410.23
Dividend Income	124,147.74
Interest Income	61,720.99
Shares	34,780.00
Total Receipts	**3,111,058.96**
Payments	
Asset Realisation Charge	212,346.55
Bank Charges	25,846.07
Interest Withheld	29,145.59
Total Payments	**267,338.21**
Net Receipts	**2,843,720.75**

Schedule G – FTI Consulting schedule of rates

FTI Consulting CF&R Standard Rates effective 1 May 2019 (excluding GST)		
Typical classification	**Standard Rates $/hour**	**General guide to classifications**
Senior Managing Director	695	Registered Liquidator and/or Trustee, with specialist skills and extensive experience in all forms of insolvency administrations. Alternatively, has proven leadership experience in business or industry, bringing specialist expertise and knowledge to the administration.
Managing Director	625	Specialist skills brought to the administration. Extensive experience in managing large, complex engagements at a very senior level over many years. Can deputise for the appointee. May also be a Registered Liquidator and/or Trustee. Alternatively, has extensive leadership/senior management experience in business or industry.
Senior Director	575	Extensive experience in managing large, complex engagements at a very senior level over many years. Can deputise for the appointee, where required. May also be a Registered Liquidator and/or Trustee or have experience sufficient to support an application to become registered. Alternatively, has significant senior management experience in business or industry, with specialist skills and/or qualifications.
Director	515	Significant experience across all types of administrations. Strong technical and commercial skills. Has primary conduct of small to large administrations, controlling a team of professionals. Answerable to the appointee, but otherwise responsible for all aspects of the administration. Alternatively, has significant senior management experience in business or industry, with specialist skills and/or qualifications.
Senior Consultant 2	465	Typically an Australian Restructuring Insolvency & Turnaround Association professional member. Well developed technical and commercial skills. Has experience in complex matters and has conduct of small to medium administrations, supervising a small team of professionals. Assists planning and control of medium to larger administrations.
Senior Consultant 1	400	Assists with the planning and control of small to medium-sized administrations. May have the conduct of simpler administrations. Can supervise staff. Has experience performing more difficult tasks on larger administrations.
Consultant 2	375	Typically Institute of Chartered Accountants in Australia qualified chartered accountant (or similar). Required to control the tasks on small administrations and is responsible for assisting with tasks on medium to large-sized administrations.
Consultant 1	335	Qualified accountant with several years' experience. Required to assist with day-to-day tasks under the supervision of senior staff.
Associate 2	320	Typically a qualified accountant. Required to assist with day-to-day tasks under the supervision of senior staff.
Associate 1	300	Typically a university graduate. Required to assist with day-to-day tasks under the supervision of senior staff.
Junior Associate	195	Undergraduate in the latter stage of their university degree.

FTI Consulting CF&R Standard Rates effective 1 May 2019 (excluding GST)		
Typical classification	**Standard Rates $/hour**	**General guide to classifications**
Administration 2	205	Well developed administrative skills with significant experience supporting professional staff, including superior knowledge of software packages, personal assistance work and/or office management. May also have appropriate bookkeeping, accounting support services or similar skills.
Junior Accountant	155	Undergraduate in the early stage of their university degree.
Administration 1	165	Has appropriate skills and experience to support professional staff in an administrative capacity. May also have appropriate bookkeeping, accounting support services or similar skills.

The FTI Consulting Standard Rates above apply to the Corporate Finance & Restructuring practice and are subject to periodical review.

FTI Consulting CF&R Standard Rates effective 1 April 2020 (excluding GST)		
Typical classification	**Standard Rates $/hour**	**General guide to classifications**
Senior Managing Director/Appointee	720	Registered Liquidator and/or Trustee, with specialist skills and extensive experience in all forms of insolvency administrations. Alternatively, has proven leadership experience in business or industry, bringing specialist expertise and knowledge to the administration.
Managing Director	660	Specialist skills brought to the administration. Extensive experience in managing large, complex engagements at a very senior level over many years. Can deputise for the appointee. May also be a Registered Liquidator and/or Trustee. Alternatively, has extensive leadership/senior management experience in business or industry.
Senior Director	580	Extensive experience in managing large, complex engagements at a very senior level over many years. Can deputise for the appointee, where required. May also be a Registered Liquidator and/or Trustee or have experience sufficient to support an application to become registered. Alternatively, has significant senior management experience in business or industry, with specialist skills and/or qualifications.
Director	520	Significant experience across all types of administrations. Strong technical and commercial skills. Has primary conduct of small to large administrations, controlling a team of professionals. Answerable to the appointee, but otherwise responsible for all aspects of the administration. Alternatively, has significant senior management experience in business or industry, with specialist skills and/or qualifications.
Senior Consultant 2	470	Typically an Australian Restructuring Insolvency & Turnaround Association professional member. Well developed technical and commercial skills. Has experience in complex matters and has conduct of small to medium administrations, supervising a small team of professionals. Assists planning and control of medium to larger administrations.
Senior Consultant 1	430	Assists with the planning and control of small to medium-sized administrations. May have the conduct of simpler administrations. Can supervise staff. Has experience performing more difficult tasks on larger administrations.
Consultant 2	390	Typically Institute of Chartered Accountants in Australia qualified chartered accountant (or similar). Required to control the tasks on small administrations and is responsible for assisting with tasks on medium to large-sized administrations.
Consultant 1	360	Qualified accountant with several years' experience. Required to assist with day-to-day tasks under the supervision of senior staff.
Associate 2	335	Typically a qualified accountant. Required to assist with day-to-day tasks under the supervision of senior staff.
Associate 1	300	Typically a university graduate. Required to assist with day-to-day tasks under the supervision of senior staff.
Junior Associate	220	Undergraduate in the latter stage of their university degree.
Administration 2	220	Well developed administrative skills with significant experience supporting professional staff, including superior knowledge of software packages, personal assistance work and/or office management. May also have appropriate bookkeeping, accounting support services or similar skills.

FTI Consulting CF&R Standard Rates effective 1 April 2020 (excluding GST)		
Typical classification	**Standard Rates $/hour**	**General guide to classifications**
Junior Accountant	170	Undergraduate in the early stage of their university degree.
Administration 1	185	Has appropriate skills and experience to support professional staff in an administrative capacity. May also have appropriate bookkeeping, accounting support services or similar skills.

The FTI Consulting Standard Rates above apply to the Corporate Finance & Restructuring practice and are subject to periodical review.

FTI Consulting schedule of rates effective 1 July 2021

Typical classification	Standard Rates $/hour	General guide to classifications
Senior Managing Director/Appointee	720	Registered Liquidator and/or Trustee, with specialist skills and extensive experience in all forms of insolvency administrations. Alternatively, has proven leadership experience in business or industry, bringing specialist expertise and knowledge to the administration.
Managing Director	660	Specialist skills brought to the administration. Extensive experience in managing large, complex engagements at a very senior level over many years. Can deputise for the appointee. May also be a Registered Liquidator and/or Trustee. Alternatively, has extensive leadership/senior management experience in business or industry.
Senior Director	580	Extensive experience in managing large, complex engagements at a very senior level over many years. Can deputise for the appointee, where required. May also be a Registered Liquidator and/or Trustee or have experience sufficient to support an application to become registered. Alternatively, has significant senior management experience in business or industry, with specialist skills and/or qualifications.
Director	530	Significant experience across all types of administrations. Strong technical and commercial skills. Has primary conduct of small to large administrations, controlling a team of professionals. Answerable to the appointee, but otherwise responsible for all aspects of the administration. Alternatively, has significant senior management experience in business or industry, with specialist skills and/or qualifications.
Senior Consultant 2	480	Typically an Australian Restructuring Insolvency & Turnaround Association professional member. Well developed technical and commercial skills. Has experience in complex matters and has conduct of small to medium administrations, supervising a small team of professionals. Assists planning and control of medium to larger administrations.
Senior Consultant 1	435	Assists with the planning and control of small to medium-sized administrations. May have the conduct of simpler administrations. Can supervise staff. Has experience performing more difficult tasks on larger administrations.
Consultant 2	390	Typically Institute of Chartered Accountants in Australia qualified chartered accountant (or similar). Required to control the tasks on small administrations and is responsible for assisting with tasks on medium to large-sized administrations.
Consultant 1	360	Qualified accountant with several years' experience. Required to assist with day-to-day tasks under the supervision of senior staff.
Associate 2	335	Typically a qualified accountant. Required to assist with day-to-day tasks under the supervision of senior staff.
Associate 1	300	Typically a university graduate. Required to assist with day-to-day tasks under the supervision of senior staff.
Treasury	290	Typically, qualified accountant and/or bookkeeper working in a treasury function. Undertakes treasury activities and is skilled in all aspects of bookkeeping, funds handling, banking, payroll, tax compliance, accounts receivable and accounts payable.
Junior Associate	220	Undergraduate in the latter stage of their university degree.
Administration 2	220	Well developed administrative skills with significant experience supporting professional staff, including superior knowledge of software packages, personal assistance work and/or office management. May also have appropriate bookkeeping, accounting support services or similar skills.

Typical classification	Standard Rates $/hour	General guide to classifications
Administration 1	185	Has appropriate skills and experience to support professional staff in an administrative capacity. May also have appropriate bookkeeping, accounting support services or similar skills.
Junior Accountant	180	Undergraduate in the early stage of their university degree.

The FTI Consulting Standard Rates above apply to the Corporate Finance & Restructuring practice and are subject to periodical review.

FTI Consulting schedule of rates effective 1 July 2022

Typical classification	Standard Rates $/hour	General guide to classifications
Senior Managing Director/Appointee	740	Registered Liquidator and/or Trustee, with specialist skills and extensive experience in all forms of insolvency administrations. Alternatively, has proven leadership experience in business or industry, bringing specialist expertise and knowledge to the administration.
Managing Director	680	Specialist skills brought to the administration. Extensive experience in managing large, complex engagements at a very senior level over many years. Can deputise for the appointee. May also be a Registered Liquidator and/or Trustee. Alternatively, has extensive leadership/senior management experience in business or industry.
Senior Director	620	Extensive experience in managing large, complex engagements at a very senior level over many years. Can deputise for the appointee, where required. May also be a Registered Liquidator and/or Trustee or have experience sufficient to support an application to become registered. Alternatively, has significant senior management experience in business or industry, with specialist skills and/or qualifications.
Director	550	Significant experience across all types of administrations. Strong technical and commercial skills. Has primary conduct of small to large administrations, controlling a team of professionals. Answerable to the appointee, but otherwise responsible for all aspects of the administration. Alternatively, has significant senior management experience in business or industry, with specialist skills and/or qualifications.
Senior Consultant 2	500	Typically an Australian Restructuring Insolvency & Turnaround Association professional member. Well developed technical and commercial skills. Has experience in complex matters and has conduct of small to medium administrations, supervising a small team of professionals. Assists planning and control of medium to larger administrations.
Senior Consultant 1	450	Assists with the planning and control of small to medium-sized administrations. May have the conduct of simpler administrations. Can supervise staff. Has experience performing more difficult tasks on larger administrations.
Consultant 2	405	Typically Institute of Chartered Accountants in Australia qualified chartered accountant (or similar). Required to control the tasks on small administrations and is responsible for assisting with tasks on medium to large-sized administrations.
Consultant 1	375	Qualified accountant with several years' experience. Required to assist with day-to-day tasks under the supervision of senior staff.
Associate 2	350	Typically a qualified accountant. Required to assist with day-to-day tasks under the supervision of senior staff.
Associate 1	315	Typically a university graduate. Required to assist with day-to-day tasks under the supervision of senior staff.
Treasury	300	Typically, qualified accountant and/or bookkeeper with at least 4 years' experience working in a treasury function in a professional services setting. Undertakes treasury activities and is skilled in bookkeeping, funds handling, banking, payroll, tax compliance, accounts receivable and accounts payable. May be responsible for the management of discreet, medium-complexity accounts services relating to business trade on activities.
Junior Associate	250	Undergraduate in the latter stage of their university degree.
Administration 2	250	Well developed administrative skills with significant experience supporting professional staff, including superior knowledge of software packages, personal assistance work and/or office management. May also have appropriate bookkeeping, accounting support services or similar skills.

Typical classification	Standard Rates $/hour	General guide to classifications
Administration 1	210	Has appropriate skills and experience to support professional staff in an administrative capacity. May also have appropriate bookkeeping, accounting support services or similar skills.
Junior Accountant	210	Undergraduate in the early stage of their university degree.

The FTI Consulting Standard Rates above apply to the Corporate Finance & Restructuring practice and are subject to periodical review.

Annexure C

Australian Government
Australian Financial Security Authority

Trustee use only
Document received (DD/MM/YYYY)

NOTICE OF PROPOSAL TO CREDITORS

Bankruptcy Act 1966: Section 75-40 of the Insolvency Practice Schedule (Bankruptcy); Sections 75-130 and 75-137 of the Insolvency Practice Rules (Bankruptcy) 2016.

Information for creditors

Trustees may seek creditor approval of certain proposals, without convening a meeting of creditors. This notice sets out a proposal for your consideration and indicates the date by which you must respond in order for your views to be taken into account. If the requisite majority of creditors responding to the notice approve the proposal, and not more than 25 per cent in value of creditors responding to the notice object to the proposal being resolved without a meeting of creditors, the proposal is taken to have been passed as a resolution or special resolution (depending on the nature of the proposal) at a meeting of creditors.

Details of regulated debtor(s)

Administration number: WA 1272 of 2018/6

Date of administration (DD/MM/YYYY): 20 July 2018

Title	Given name/s	Surname
Mrs	Hartmut Hubert Josef	Frigger
	Angela Cecilia Theresa	

Creditor details

Name of creditor

ABN if applicable

Address

Are you or your related entities related to the debtor? No ◯ Yes ◯

If yes, provide details of the relationship below:

Details of any security held:

Do you hold security over any of the debtor's property? No ◯ Yes ◯

If yes, estimated value of security $

Description of secured property & estimated value of property $

Claim details

Amount claimed

Provide brief particulars of transactions/circumstances giving rise to your claim	Amount $
Total amount claimed after deducting value of security (if any)	

Assignment of debt

If the debt has been assigned to you (e.g. you purchased the debt), you need to disclose the amount you paid for this assigned debt. The amount you paid for the assigned debt determines the value of your vote. If you do not disclose the amount you paid for the assignment, you are not entitled to vote. Should a dividend be paid the full value of the debt will be used to calculate the dividend. To participate in a dividend a proof of debt form must be lodged with the trustee.

Details of assignment of debt

Was this debt assigned to you? No ◯ Yes ◯

If yes, what consideration did you pay for the assignment? $

Proposed resolution

"The remuneration of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 27 August 2019 to 13 August 2023 to be calculated on a time basis at the hourly rates set out in the FTI Consulting Schedule of Hourly Rates effective 1 May 2019, 1 April 2020, 1 July 2021, and 1 July 2022, and is determined and approved for payment in the amount of $867,669.09 (exclusive of GST) and the Trustees can draw the remuneration as required."

Statement of reasons for the proposal and the likely impact it will have on creditors if it is passed

The Trustees are seeking approval of their remuneration utilising the mechanism outlined in section 75-40 of the Insolvency Practice Schedule (resolution without need for a meeting) to avoid incurring any unnecessary costs. The Trustees' remuneration has a priority and (as long as it is reasonably incurred) is protected by law and is capable of being approved by a Court. Resolving the Trustees' remuneration under s75-40 does not require the input of the Court meaning reduced costs to the Estate.

Voting on proposal

In accordance with paragraph 75-40(2)(d) of the Schedule, creditors are given the option of approving, not approving or objecting to the proposed resolution being resolved without a meeting of creditors.

Please select the appropriate response:

Yes ◯ I approve the proposed resolution

No ◯ I do not approve the proposed resolution

Object ◯ I object to the proposal being resolved without a meeting of creditors

Please return this document no later than 29 September 2023 for your vote to be taken into account.

***Note**: this date must be at least 15 business days after the day the notice is given.*

Signature

Name of creditor/ authorised officer of creditor

Signature

Date (DD/MM/YYYY)

Please return a signed and dated copy of this document to:

Name and contact details

Sam.Rayner@fticonsulting.com or GPO Box 3127 Brisbane QLD 4001

Australian Government
Australian Financial Security Authority

Trustee use only
Document received (DD/MM/YYYY)

NOTICE OF PROPOSAL TO CREDITORS

Bankruptcy Act 1966: Section 75-40 of the Insolvency Practice Schedule (Bankruptcy); Sections 75-130 and 75-137 of the Insolvency Practice Rules (Bankruptcy) 2016.

Information for creditors

Trustees may seek creditor approval of certain proposals, without convening a meeting of creditors. This notice sets out a proposal for your consideration and indicates the date by which you must respond in order for your views to be taken into account. If the requisite majority of creditors responding to the notice approve the proposal, and not more than 25 per cent in value of creditors responding to the notice object to the proposal being resolved without a meeting of creditors, the proposal is taken to have been passed as a resolution or special resolution (depending on the nature of the proposal) at a meeting of creditors.

Details of regulated debtor(s)

Administration number: WA 1272 of 2018/6

Date of administration (DD/MM/YYYY): 20 July 2018

Title	Given name/s	Surname
Mr	Hartmut Hubert Josef	Frigger
Mrs	Angela Cecilia Theresa	Frigger

Creditor details

Name of creditor

ABN if applicable

Address

Are you or your related entities related to the debtor? No ◯ Yes ◯

If yes, provide details of the relationship below:

Details of any security held:

Do you hold security over any of the debtor's property? No ◯ Yes ◯

If yes, estimated value of security $

Description of secured property & estimated value of property $

Claim details

Amount claimed

Provide brief particulars of transactions/circumstances giving rise to your claim	Amount $
Total amount claimed after deducting value of security (if any)	

Assignment of debt

If the debt has been assigned to you (e.g. you purchased the debt), you need to disclose the amount you paid for this assigned debt. The amount you paid for the assigned debt determines the value of your vote. If you do not disclose the amount you paid for the assignment, you are not entitled to vote. Should a dividend be paid the full value of the debt will be used to calculate the dividend. To participate in a dividend a proof of debt form must be lodged with the trustee.

Details of assignment of debt

Was this debt assigned to you? No ◯ Yes ◯

If yes, what consideration did you pay for the assignment? $

Proposed resolution

"The future remuneration of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 14 August 2023 to the conclusion of the Bankruptcy (inclusive) be calculated on a time basis at the hourly rates set out in the FTI Consulting Schedule of Hourly Rates effective 1 July 2022 onwards, up to an further capped amount of $375,000 (exclusive of GST) and the Trustees can draw the remuneration as required."

Statement of reasons for the proposal and the likely impact it will have on creditors if it is passed

The Trustee are seeking approval of their remuneration utilising the mechanism outlined in section 75-40 of the Insolvency Practice Schedule (resolution without need for a meeting) to avoid incurring any unnecessary costs. The Trustees' remuneration has a priority and (as long as it is reasonably incurred) is protected by law and is capable of being approved by a Court. Resolving the Trustees' remuneration under s75-40 does not require the input of the Court meaning reduced costs to the Estate.

Voting on proposal

In accordance with paragraph 75-40(2)(d) of the Schedule, creditors are given the option of approving, not approving or objecting to the proposed resolution being resolved without a meeting of creditors.

Please select the appropriate response:

Yes ◯ I approve the proposed resolution

No ◯ I do not approve the proposed resolution

Object ◯ I object to the proposal being resolved without a meeting of creditors

Please return this document no later than 29 September 2023 for your vote to be taken into account.

***Note**: this date must be at least 15 business days after the day the notice is given.*

Signature

Name of creditor/ authorised officer of creditor

Signature

Date (DD/MM/YYYY)

Please return a signed and dated copy of this document to:

Name and contact details

Sam.Rayner@fticonsulting.com or GPO Box 3127 Brisbane QLD 4001

Annexure D

Information sheet: Proposals without meetings

You are a creditor in a bankruptcy or personal insolvency agreement (collectively referred to as a **regulated debtor's estate).** You have been asked by the trustee to consider passing a proposal without a meeting.

This information sheet is to assist you with understanding what a proposal without a meeting is and what your rights as a creditor are.

What is a proposal without a meeting?

A proposal without a meeting is a cost effective alternative to a meeting. The trustee can use a proposal without a meeting to obtain the consent of creditors to a particular course of action.

What types of proposals can be put to creditors?

The trustee is able to put any proposal to creditors by giving notice in writing to the creditors.

There is a restriction under the law that each notice can only contain a single proposal. However, the trustee can send more than one notice at a single time.

What information must the notice contain?

The notice must:

- include a statement of the reasons for the proposal and the likely impact it will have on creditors if it is passed
- invite the creditor to either:
    - vote yes or no to the proposal, or
    - object to the proposal being resolved without a meeting, and
- specify a reasonable time for replies to be received by the trustee.

If you wish to vote or object, you will also need to lodge a Proof of Debt (POD) to substantiate **your claim in the regulated debtor's estate. The trustee will provide you with a POD to c**omplete. You should ensure that you also provide documentation to support your claim.

If you have already lodged a POD in this external administration, you do not need to lodge another one.

The trustee must also provide you with enough information for you to be able to make an informed decision on how to cast your vote on the proposal. With some types of proposals, the **law or ARITA's Code of Professional Practice sets requirements for the information that you must** be provided. For example, if the trustee is asking you to approve remuneration, you will be provided with a Remuneration Approval Report, which will provide you with detailed information **about how the trustee's remuneration has been calculated.**

What are your options if you are asked to vote on a proposal without a meeting?

You can choose to vote yes, no or object to the proposal being resolved without a meeting.

How is a resolution passed?

A resolution will be passed if more than 50% in number and 50% in value (of those creditors who did vote) voted in favour of the proposal, but only so long as not more than 25% in value objected to the proposal being resolved without a meeting.

What happens if the proposal doesn't pass?

If the proposal doesn't pass and an objection is not received, the trustee can choose to amend the proposal and ask creditors to consider it again, or the trustee can choose to hold a meeting of creditors to consider the proposal.

The trustee may also be able to go to Court to seek approval.

What happens if I object to the proposal being resolved without a meeting?

If more than 25% in value of creditors responding to the proposal object to the proposal being resolved without a meeting, the proposal will not pass even if the required majority of creditors vote yes.

The trustee will also be unable to put the proposal to creditors again without a meeting.

You should be aware that if you choose to object, there will be substantial additional costs associated with convening a meeting of creditors or the trustee seeking the approval of the Court. This cost will normally be paid from the available assets in the regulated debtor's estate.

This is an important power and you should ensure that it is used appropriately.

Where can I get more information?

The Australian Restructuring Insolvency and Turnaround Association (ARITA) provides detailed information to assist creditors with understanding regulated debtor's estates and insolvency.

This information is available from ARITA's website at artia.com.au/creditors.

AFSA provides information on a range of personal insolvency topics. This information can be accessed on AFSA's website at www.afsa.gov.au.

Annexure E

Creditor Rights in a Regulated Debtor Estate

As a creditor, you have rights in a regulated debtor estate, including bankrupt estates, to request meetings and information or take certain actions:



Right to request a meeting

Meetings of creditors are not automatically held. Creditors with claims of a certain dollar value have a right to make a written request for the trustee to hold a meeting of creditors.

Meetings can be requested at any time by:

- > 10% but < 25% of the known value of creditors. Those creditors must provide security for the cost of holding the meeting
- ≥ 25% of the known value of creditors
- creditors by resolution, or
- a Committee of Inspection (this is a smaller group of creditors elected by, and to represent, all the creditors).

If a request for a meeting meets these requirements and is '**reasonable**', the trustee must hold a meeting of creditors as soon as reasonably practicable.

Right to request information

Trustees will communicate important information with creditors as required in a regulated debtor estate. In addition to the initial notice, you should receive, at a minimum, a report within the first three months on the likelihood of a dividend being paid.

Additionally, creditors have the right to request information at any time. A trustee must provide a creditor with the requested information if their request is '**reasonable**', the information is relevant to the administration of the estate, and the provision of the information would not cause the trustee to breach their duties.

A trustee must provide this information to a creditor within 5 business days of receiving the request, unless a longer period is agreed. If, due to the nature of the information requested, the trustee requires more time to comply with the request, they can extend the period by notifying the creditor in writing.

Requests must be reasonable.

They are not reasonable if:

Both meetings and information:

(a) complying with the request would prejudice the interests of one or more creditors or a third party
(b) there is not sufficient available property to comply with the request
(c) the request is vexatious

Meeting requests only:

(d) a meeting of creditors dealing with the same matters was held, or will be held within 15 business days of the request

Information requests only:

(e) the information requested would be privileged from production in legal proceedings
(f) disclosure would found an action for breach of confidence
(g) the information has already been provided
(h) the information is required to be provided under law within 20 business days of the request

If a request is not reasonable due to (b), (d), (g) or (h) above, the trustee may still comply if the creditor meets the cost of complying with the request.

Otherwise, a trustee must inform a creditor if their meeting or information request is not reasonable and the reason why.

Right to give directions to trustee

Creditors, by resolution, may give a trustee directions in relation to the administration of an estate. A trustee must have regard to these directions, but they are not required to comply with the directions.

If a trustee chooses not to comply with a direction given by a resolution of the creditors, they must document their reasons for not complying.

An individual creditor cannot provide a direction to a trustee.

Right to apply to Inspector-General for a review of remuneration

Creditors may apply to the Inspector-General to conduct a review of a **trustee's remuneration. The** Inspector-General may refuse to conduct a review on various grounds.

Right to replace trustee

Creditors, by resolution, have the right to remove a trustee and appoint another registered trustee.

For this to happen, there are certain requirements that must be complied with:

Meeting request	Notice and consent	Resolution at meeting
A meeting must be reasonably requested by the required number of creditors. Creditors must inform the existing trustee of the purpose for the meeting.	A creditor must obtain a consent to act from an alternative registered trustee and a Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) prior to the meeting. Consent can be obtained by different creditors from different registered trustees. The Official Trustee (the Government trustee) can also act as trustee. The existing trustee will send a notice of the meeting to all creditors with this information.	If creditors pass a resolution to remove a trustee, they will cease to be trustee. If creditors vote to appoint another registered trustee, that person will become trustee of the estate. If creditors do not appoint another trustee, the Official Trustee will become the trustee of the estate.

For more information, go to www.arita.com.au/creditors

CERTIFICATE OF RESOLUTIONS PASSED

Section 75-40 of the
Insolvency Practice Schedule (Bankruptcy) 2016

ANGELA CECILIA THERESA FRIGGER AND HARTMUT HURBERT JOSEF FRIGGER
BANKRUPT ESTATE NO. WA 1272 OF 2018/6

I, Kelly-Anne Trenfield, of FTI Consulting, Level 20, 345 Queen Street, Brisbane in the state of Queensland being the Trustee of the abovenamed Estate, certify that the following resolution was obtained from creditors without holding a meeting of creditors pursuant to Section 75-40 of the *Insolvency Practice Schedule (Bankruptcy) 2016.*

"The remuneration of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 27 August 2019 to 13 August 2023 to be calculated on a time basis at the hourly rates set out in the FTI Consulting Schedule of Hourly Rates effective 1 May 2019, 1 April 2020, 1 July 2021, and 1 July 2022, and is determined and approved for payment in the amount of $867,669.09 (exclusive of GST) and the Trustees can draw the remuneration as required."

Dated this 3rd day of October 2023

.....
Kelly-Anne Trenfield
Trustee

Our Ref: SER_464538.0001-4

CERTIFICATE OF RESOLUTIONS PASSED

Section 75-40 of the
Insolvency Practice Schedule (Bankruptcy) 2016

ANGELA CECILIA THERESA FRIGGER AND HARTMUT HURBERT JOSEF FRIGGER
BANKRUPT ESTATE NO. WA 1272 OF 2018/6

I, Kelly-Anne Trenfield, of FTI Consulting, Level 20, 345 Queen Street, Brisbane in the state of Queensland being the Trustee of the abovenamed Estate, certify that the following resolution was obtained from creditors without holding a meeting of creditors pursuant to Section 75-40 of the *Insolvency Practice Schedule (Bankruptcy) 2016.*

"The future remuneration of the Trustee of Angela Cecilia Theresa Frigger and Hartmut Hubert Josef Frigger (Bankrupts) for the period 14 August 2023 to the conclusion of the Bankruptcy (inclusive) be calculated on a time basis at the hourly rates set out in the FTI Consulting Schedule of Hourly Rates effective 1 July 2022 onwards, up to a further capped amount of $375,000 (exclusive of GST) and the Trustees can draw the remuneration as required."

Dated this 3rd day of October 2023.

.....

Kelly-Anne Trenfield
Trustee

Our Ref: SER_464538.0001-4

Period	**14 September 2024 to 31 August 2025**
Amount $ (excl GST) **Assets**	**$420,712.00** **0.9 hours** **$556.00**
Shareholdings	■ Further facilitations of share transfers to JBWere ■ Management of share portfolio, including responding to notices as needed ■ Receipting and recording dividends received for shareholdings
Creditors	**110.3 hours** **$70,299.50**
Creditor Enquiries, Requests & Directions	■ Receive and respond to creditor enquiries ■ Considering reasonableness of creditor requests ■ Compiling information requested by creditors
Creditor reports	■ Drafting updates and reports to creditors, including status of administration, estimated return to creditors, and investigations
Dealing with proofs of debt	■ Receipting and filing PODs ■ Review and commence review of PODs when not related to a dividend ■ Further issuance of notices for further and better particulars to creditors ■ Liaising with independent costs assessor with regards to recommendations for adjudications and estimates ■ Further work with solicitors to issue follow-ups for information requests to various creditors for the adjudication purposes ■ Phone calls and discussions with numerous creditors in relation to their claims ■ Further dealings with former Bankrupts in relation to adjudication process, responding to their queries and requests for documents ■ Review periodic recommendation reports from costs assessor ■ Progressive updates to creditor schedule as claims estimated assessments are finalised ■ Responding to creditor queries in relation to their PODs and adjudication process
Investigations	**327.2 hours** **$241,676**
Conducting investigation	■ Conducting further and periodic searches on related entities, properties and assets ■ Investigations into Hartmut Frigger's income ■ Responding to requests and queries from the Liquidator of Computer and Tax Accounting Pty Ltd (In Liquidation) with their investigations ■ Periodic review and summarise numerous ongoing litigations associated with the former Bankrupts, including new proceedings and interlocutory applications initiated over the period.

Period	14 September 2024 to 31 August 2025
Litigation / Recoveries	■ Internal meetings to discuss status of litigations ■ Preparing various brief to solicitors and counsel ■ Responding, as necessary and other dealing with proceedings in WAD 66 of 2021, Angela Cecilia Theresa Frigger & Anor v Kelly Trenfield & Anor (Annulment application) including (but not limited to): — General dealings and liaison with solicitors regarding status of the proceedings — Collating supporting evidence to include as annexures to affidavits — Conducting ad hoc review and investigations to support solicitors in preparing affidavits — Drafting, reviewing, amending, and swearing various affidavits with assistance of solicitors — Reviewing submissions and preparing response to accusations — Working with solicitors to prepare trial bundle — Preparing for cross-examination — Attending trial in Perth for cross-examination ■ Responding, as necessary and other dealing with proceeding WAD 128 of 2023, Angela Cecilia Theresa Frigger & Anor v Kelly-Anne Trenfield (Disqualification Application)including (but not limited to): — General dealings and liaison with solicitors regarding status of the proceedings and strategy — Collating supporting evidence to include as annexures to affidavits — Conducting ad hoc review and investigations to support solicitors in preparing affidavits — Drafting, reviewing, amending, and swearing various affidavits with assistance of solicitors — Reviewing submissions and preparing response to accusations — Working with solicitors to prepare trial bundle — Preparing for cross-examination — Dealing with the former Bankrupts' application to adjourn the trial — Dealing with the former Bankrupts' application to seek leave to discontinue the Disqualification Application ■ Responding, as necessary and other dealing with proceedings in WAD 225 of 2021, Hartmut Hubert Josef Frigger as Trustee of the Frigger Super Fund ABN 99604 & Anor v Bank of Queensland Limited ACN 009 656 740 & Anor ■ Responding, as necessary and other dealing with proceedings in WAD 390 of 2024, Angela Cecilia Theresa Frigger & Anor v Kelly-Anne Trenfield & Anor (Annulment Appeal) ■ Responding, as necessary and other dealing with proceedings in WAD 155 of 2025, Hartmut Hubert Josef Frigger & Anor v Kelly-Anne Trenfield (Adjudication Appeal) — General dealings and liaison with solicitors regarding status of the proceedings and strategy — Collating supporting evidence to include as annexures to affidavits — Conducting ad hoc review of file and facts to support solicitors in preparing affidavits — Drafting, reviewing, amending, and swearing various affidavits with assistance of solicitors

Period	**14 September 2024 to 31 August 2025**
	■ Responding, as necessary and other dealing with proceedings in WAD 44 of 2025, Angela Cecilia Theresa Frigger & Anor v Kelly-Anne Trenfield (Interlocutory Application Appeal) ■ Commence preparations for Remuneration and Costs approval application ■ Discussions with solicitors regarding a potential vexation litigant declaration application
Conduct issues	■ Making enquiries with the ATO in relation to their investigations into the Frigger Super Fund ■ Commence preparation for a further complaint to the ATO concerning potential taxation fraud
Administration	**174 hours** **$108,180.50**
Correspondence	■ General correspondence with various parties ■ Responding to and dealing with requests from the former Bankrupts ■ Correspondence with the former Bankrupts, as needed
Document maintenance/file review/checklist	■ Administration reviews ■ Filing of documents ■ Maintain registry of current proceedings on foot ■ File reviews ■ Updating checklists
Funds handling	■ Entering receipts and payments into accounting system ■ Requesting bank statements ■ Bank account reconciliations ■ Further dealings with BOQ in relation to interest withholding in high-interest saver account
Legal	■ Preparing and finalising legal documents in proceedings brought by the former Bankrupts ■ Meetings with solicitor/counsel to plan course of action in defending proceedings within Estate
Statutory	■ Reconciliation and calculation of Realisations and Interest Charge ■ Conducting estimated tax liability calculations for different asset realisation scenarios and estimate of potential incomes tax liabilities
Planning / Review	■ Discussions regarding status of administration ■ Periodic review of the status of outstanding matters in the administration ■ Conduct periodic quality assurance reviews into the administration

Period	14 September 2024 to 31 August 2025
	■ Providing periodic updates to internal Risk and Operations team in relation to the Bankrupt Estates, the various proceedings commenced by the former Bankrupts and professional indemnity insurance
Books and records / storage	■ Dealing with records in storage ■ Sending job files to storage
Remuneration	■ Recording of time, including details ■ Preparation of remuneration schedules

Bankrupt Estate of Angela & Hartmut Frigger
Trustee's Remuneration - 14 September 2024 to 31 August 2025

Employee	Position	Rate/hour excl GST $	Total actual hours	Total (excl GST) $	Administration $	Assets $	Creditors $	Investigations $
Alexander Phillis	Treasury	340	0.40	136.00	136.00			
Alyse Kent	Treasury	340	1.00	556.00	556.00			
	Treasury	360	0.60					
Barbara Pirie	Administration 2	295	2.70	796.50	767.00		29.50	
Dhruv Sriram	Junior Associate	275	2.70	1,102.50	827.50			275.00
	Junior Associate	300	1.20					
Gonzalo Reyes Mora	Treasury	340	4.50	1,890.00	1,890.00			
	Treasury	360	1.00					
Jack Gillard	Junior Associate	300	2.90	870.00	870.00			
Janine Wigham	Treasury	340	2.60	1,172.00	1,172.00			
	Treasury	360	0.80					
Jennifer Doran	Treasury	340	3.60	1,476.00	1,476.00			
	Treasury	360	0.70					
Jenny Luong	Junior Associate	275	1.00	275.00	275			
John Park	Senior Managing Director 2	950	5.10	5,041.00	380.00		196.00	4,465.00
	Senior Managing Director 2	980	0.20					
Kelly Trenfield	Senior Managing Director 1	850	226.80	214,110.00	53,405.00	85.00	13,520.00	147,100.00
	Senior Managing Director 1	900	23.70					
Michelle Oxnam	Treasury	340	2.60	1,460.00	1,460.00			
	Treasury	360	1.60					
Nicholas Hawthorne	Senior Consultant	540	134.70	81,914.00	7,000.00	270.00	29,882.00	44,762.00
	Senior Consultant	620	14.80					
Paris Parasadi	Senior Director	670	108.10	96,747.00	26,633.00	201.00	25,214.00	44,699.00
	Senior Director	760	32.00					
Rajdeep Singh	Associate	375	6.60	7,127.00	5,564.00		1,188.00	375.00
	Consultant	440	5.80					
	Consultant	500	4.20					
Robyn Hardeman	Treasury	340	1.20	408.00	408.00			
Tanya Kratz	Administration 2	295	14.10	4,519.50	4,249.50		270.00	
	Administration 2	300	1.20					
Tiffany Hatton	Treasury	340	0.10	34.00	34.00			
Urjaa Ved	Junior Associate	275	2.70	802.50	802.50			
	Junior Associate	300	0.20					
Zach Pfaender	Junior Associate	275	1.00	275.00	275.00			
Subtotal			612.40	**420,712.00**	**108,180.50**	**556.00**	**70,299.50**	**241,676.00**
GST				**42,071.20**				
Total (including GST)				**462,783.20**				
Hours				**612.40**	**174.00**	**0.90**	**110.30**	**327.20**

Bankrupt Estate of Angela & Hartmut Frigger
Trustee's Remuneration - 14 September 2024 to 31 August 2025

Task	Hours	Charge	%	Task Description
Administration	34.20	23,092.50	5.5%	Filing, review of tasks lists, team planning and discussions; SOP
Annulment	135.40	99,538.00	23.7%	Annulment applications
Banking	61.10	26,451.50	6.3%	Recording of Estate transactions including receipt of funds and payment of liabilities and reconcilation of bank accounts; general bank account maintenance
BOQ Proceedings	0.50	430.00	0.1%	Proceeding commenced by Bankrupts against Boq/Commsec/CBA
Correspondence	0.40	167.00	0.0%	General correspondence
Creditors	5.10	3,736.00	0.9%	Liaising and correspodence with creditors; maintaining creditors lists
Disq	144.80	107,981.50	25.7%	Disqualificatoin application; 128 OF 2013
Friggers	17.10	11,104.00	2.6%	Liaising and correspodence with Bankrupts including travel requests, production of documents
Income	0.20	170.00	0.0%	Requests for income income and completiion of questionaires and associated assessments
Investigations	0.80	536.00	0.1%	Searches, reviews of books and records including review of files from AFSA, review of statement of affairs and verification of information by way of third parties
Legal	15.20	10,666.00	2.5%	Dealings with lawyers, court applications - where time entires are not speific or deal with more than one proceeings
Main Proceedings	0.80	432.00	0.1%	WAD 141/2019 & subsequent appeals
PODS	83.00	54,183.00	12.9%	Review and adjudication of creditor claims
Remuneration	58.60	46,865.50	11.1%	Dealings and inqueries/report with the ATO; tax implications/registration and potential lodgements
Reports	31.20	20,270.00	4.8%	Drafting and issuing reports to creditors
Risk	0.90	765.00	0.2%	Quality assurance, insurance and compliance
Shares	5.40	3,516.00	0.8%	Investigations re Commsec Portfolio including tracing in support to Main Proceedigns, management and transgfer of portfolio;review and calculations of damages claim
Statutory	6.70	4,450.00	1.1%	Dealings and reporting/lodgements with AFSA, PACE Alerts including AER and travel requestsl offence referral; objection to discharge
Tax	11.00	6,358.00	1.5%	All matter associated with taxation compliance including dealings with the Australian Taxation Office
Subtotal	**612.4**	**420,712.00**	**100.0%**	
GST		**42,071.20**		
Total (including GST)		**462,783.20**		

Bankrupt Estate of Angela & Hartmut Frigger
WIP by Title and Category

Position	Total (excl GST) $	Administration - Banking	Administration - Bankrupts' requests	Administration - Correspondence	Administration - General	Initial appointment tasks
Senior Managing Director	654,570.00	5,887.00	5,580.00	3,691.00	38,280.50	1,062.50
Managing Director	1,450.00	-	-	-	-	-
Senior Director	334,621.00	24,710.00	9,133.00	1,042.00	22,499.00	-
Director	268,533.00	4,226.50	6,747.50	1,917.50	3,795.50	-
Senior Consultant 2	42,372.00	88.00	4,752.00	660.00	1,452.00	3,168.00
Senior Consultant 1	36,247.50	931.50	-	-	445.50	-
Senior Consultant	82,114.00	3,442.00	432.00	108.00	6,696.00	-
Consultant 2	14,820.00	39.00	117.00	-	234.00	-
Consultant 1	115,305.00	2,505.00	1,140.00	37.50	4,168.50	-
Consultant	4,982.00	2,386.00	1,188.00	-	-	-
Associate 2	51,029.00	671.00	1,737.00	99.00	646.00	-
Associate 1	102,981.00	1,200.00	2,712.00	52.00	354.00	2,444.00
Associate	12,244.00	6,012.00	280.00	-	189.00	-
Junior Associate	23,853.50	2,225.00	-	-	2,249.50	-
Junior Accountant	63.00	63.00	-	-	-	-
Intern	275.00	275.00	-	-	-	-
Treasury	23,809.00	23,809.00	-	-	-	-
Administration	26,402.50	6,248.50	165.00	2,370.00	291.00	388.50
Subtotal	**1,795,671.50**	**84,718.50**	**33,983.50**	**9,977.00**	**81,300.50**	**7,063.00**
GST	**179,567.15**	**8,471.85**	**3,398.35**	**997.70**	**8,130.05**	**706.30**
Total (including GST)	**1,975,238.65**	**93,190.35**	**37,381.85**	**10,974.70**	**89,430.55**	**7,769.30**

Administration - Remuneration	Administration - Risk and Compliance	Administration - Statutory	Administration - Tax	Assets - General	Assets - Income Assessment	Creditors - POD	Creditors - Correspondence
42,880.00	3,403.00	4,396.50	2,969.00	-	942.50	22,942.00	20,275.00
-	-	-	-	-	-	-	174.00
18,428.00	-	3,218.00	6,573.00	-	-	42,121.00	14,831.00
-	-	9,874.50	6,352.50	104.00	5,232.50	258.50	15,206.50
220.00	-	1,188.00	-	132.00	616.00	88.00	6,908.00
-	-	526.50	-	-	-	3,564.00	324.00
-	-	858.00	4,428.00	-	-	25,858.00	902.00
-	-	4,602.00	-	156.00	858.00	117.00	2,730.00
10,612.50	-	1,599.00	6,805.50	1,044.00	936.00	7,987.50	6,336.00
300.00	-	800.00	-	-	-	-	-
490.00	-	1,591.00	3,816.00	-	3,870.50	245.00	1,493.50
-	-	850.00	1,740.00	488.00	442.00	258.00	3,796.00
-	-	-	-	-	-	2,135.00	420.00
-	-	-	44.00	-	-	9,175.00	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
765.00	-	193.50	656.00	66.00	509.50	300.00	300.00
73,695.50	**3,403.00**	**29,697.00**	**33,384.00**	**1,990.00**	**13,407.00**	**115,049.00**	**73,696.00**
7,369.55	**340.30**	**2,969.70**	**3,338.40**	**199.00**	**1,340.70**	**11,504.90**	**7,369.60**
81,065.05	**3,743.30**	**32,666.70**	**36,722.40**	**2,189.00**	**14,747.70**	**126,553.90**	**81,065.60**

Creditors - Report	Investigations - Bank Accounts	Investigations - Deceased Estate	Investigations - Gathering records	Investigations - Property	Investigations - Shareholdings	Investigations - SMSF	Legal costs - Annulment
10,296.00	2,572.00	3,134.00	10,917.00	4,175.50	9,259.50	1,790.50	109,277.00
-	116.00	-	-	1,044.00	-	-	-
23,777.00	728.00	-	4,670.00	558.00	17,805.00	546.00	68,003.00
-	20,083.00	2,491.00	11,967.00	520.00	24,754.50	6,777.00	1,881.00
4,532.00	2,948.00	-	3,388.00	5,500.00	220.00	748.00	1,980.00
-	-	-	-	-	162.00	-	30,294.00
5,694.00	-	-	-	-	108.00	-	21,330.00
-	-	2,184.00	-	-	1,365.00	-	234.00
10,575.00	3,780.00	-	1,617.00	675.00	8,407.50	864.00	900.00
-	-	-	-	-	308.00	-	-
1,015.00	6,060.00	572.50	4,893.50	-	4,204.50	1,196.00	347.00
5,008.50	16,556.00	-	8,326.00	2,916.00	9,300.00	6,060.00	-
280.00	-	-	693.00	35.00	1,755.00	-	375.00
-	-	-	-	-	5,406.00	-	4,325.00
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
2,333.50	268.00	-	916.00	150.00	781.00	-	-
63,511.00	**53,111.00**	**8,381.50**	**47,387.50**	**15,573.50**	**83,836.00**	**17,981.50**	**238,946.00**
6,351.10	**5,311.10**	**838.15**	**4,738.75**	**1,557.35**	**8,383.60**	**1,798.15**	**23,894.60**
69,862.10	**58,422.10**	**9,219.65**	**52,126.25**	**17,130.85**	**92,219.60**	**19,779.65**	**262,840.60**

Legal costs - BOQ Proceedings	Legal costs - Disqualification Application	Legal costs - General	Legal costs - Main Proceedings
4,318.00	134,419.00	16,121.50	195,981.00
-	-	116.00	-
-	52,268.00	12,285.00	11,426.00
1,113.00	-	14,497.50	130,733.50
-	-	3,784.00	-
-	-	-	-
-	7,938.00	3,888.00	432.00
-	-	1,053.00	1,131.00
-	4,537.50	918.00	39,859.50
-	-	-	-
-	-	3,168.50	14,913.00
-	346.50	566.00	39,566.00
-	-	70.00	-
-	275.00	154.00	-
-	-	-	-
-	-	-	-
-	-	-	-
-	2,893.50	843.50	5,964.00
5,431.00	**202,677.50**	**57,465.00**	**440,006.00**
543.10	**20,267.75**	**5,746.50**	**44,000.60**
5,974.10	**222,945.25**	**63,211.50**	**484,006.60**