

11 March 2021



Western Australian  
Construction Pty Ltd (In  
Liquidation) (“the  
Company” or “WAC”)  
ACN 612 320 402

Statutory Report to Creditors

## Company details

Company name	Western Australian Construction Pty Ltd (In Liquidation)
ACN	612 320 402
Date of Incorporation	10 May 2016
Date of Liquidation	11 December 2020
Director/s Name/s	Sinyeen Michelle Kua
Shareholder Name/s	Western Australian Nominees Pty Ltd
Registered Office	Level 3, 1 Preston Street, Como, 6152, WA
Principal Place of Business	Unit 1, 1 Prescott Drive, Kardinya, 6163, WA
Nature of Business	Residential Construction Company

## Liquidators' details

Name/s	Daniel Hillston Woodhouse and Ian Charles Francis
FTI Contact	Andrew Vacca
FTI Contact phone number	(08) 9321 8533
FTI Contact email	andrew.vacca@fticonsulting.com

## 1. Key findings

Description	Findings	Section
What happened to the Business?	<p>The Director advised that the Company ceased trading in July 2020 because an ongoing investigation by Building and Energy meant the Company could not contract new building engagements.</p> <p>Our initial review of the limited financial information received to date suggests that the Company had insufficient working capital and work volumes to cover its costs and that this was the case prior to Building and Energy's investigation commencing.</p>	2.1 and 2.2
Estimated Amount of Assets and Liabilities	I have identified limited assets, of which I cannot yet estimate a value (due to lack of records). I have identified liabilities of \$661,608. This is based on incomplete records and I anticipate that the estimated value of liabilities will change as further information is obtained.	2.3
Investigations Undertaken to Date	<p>To date, we have:</p> <ul style="list-style-type: none"> <li>■ investigated the Company's asset position;</li> <li>■ sought to recover the Company's assets and books and records, which has been impacted by the Director;</li> </ul>	3.1 and 3.2

Description	Findings	Section
	<ul style="list-style-type: none"> <li>■ attended to material matters before the State Administrative Tribunal (“SAT”), including liaising with solicitors engaged by the Company’s pre appointment general insurer (i.e. not building insurance);</li> <li>■ commenced our investigations into the Company’s affairs; and</li> <li>■ attended to significant creditor queries.</li> </ul>	
Investigations to be Undertaken	<p>Going forward, we will:</p> <ul style="list-style-type: none"> <li>■ finalise our investigations into the Company’s assets and affairs;</li> <li>■ pursue available commercial claims, if any; and</li> <li>■ report on any offences identified to the Australian Securities and Investments Commission (“ASIC”) in accordance with section 533 of the Corporations Act 2001 (“the Act”).</li> </ul>	3.3
Likelihood of Dividend	At this stage, it appears unlikely that a dividend will be paid to unsecured creditors of the Company.	4

I refer to Ian Charles Francis and my appointment as Joint and Several Liquidators of the Company on 11 December 2020.

Since the commencement of the winding up, I have conducted initial investigations into the Company’s affairs, its financial position and the reasons for its failure. While my work has been severely limited by a lack of both assistance provided by the Director and books and records, I have set out my findings to date in this report to creditors in line with section 70-40 of the Insolvency Practice Rules which requires I report to creditors within three months after the date of my appointment (i.e. by 11 March 2021).

The purpose of this report is to:

- provide you with an update on the progress of the liquidation; and
- advise you of the likelihood of a dividend being paid in the liquidation.

## 2. Update on the progress of the liquidation

I provide an update on the progress of the liquidation as follows:

### 2.1. Background

#### 2.1.1. Statutory Information

The Company was incorporated as Western Australian Contracting Pty Ltd on 10 May 2016 in the state of Western Australia. On 29 August 2019, the Company changed its name to Western Australian Construction Pty Ltd.

At the time of incorporation, Mr Darian Bolton was the Company’s sole Director and Company Secretary. On 21 June 2017, Mr Bolton resigned and Ms Sinyeen Kua (“the Director”) replaced Mr Bolton as both sole Director and Company Secretary. We understand that Mr Bolton remained involved with the business following his resignation and that the change in officeholders coincided with the Company’s application for a building licence.

The Company has issued and paid up capital of \$100 in ordinary shares as follows:

Shareholder	Class	Shares Held	Share
Western Australian Nominees Pty Ltd	ORD	100	100%

On the date of my appointment, the Company's registered office was Level 3, 1 Preston Street, Como WA and its principal place of business was Unit 1, 1 Prescott Drive, Kardinya WA.

### 2.1.2. Business operations

The Company operated a small residential construction business, trading as Western Australian Residential. The Director has advised that the Company purchased the construction business from Mr Bolton on 1 March 2017 for \$75,000, but she has provided no evidence in support of this.

During 2020, the Building and Energy division of the Department of Mines, Industry Regulation and Safety ("DMIRS") commenced an investigation into the Company around allegations that it was entering into home building contracts without current and valid home indemnity insurance policies and, in some cases, that fraudulent certificates had been provided to home owners.

The Company was unable to enter into new building contracts while the investigation was undertaken and, subsequently, ceased trading around July 2020. In December 2020, the Director and shareholder made the decision to place the Company into liquidation and Ian Francis and I were appointed Liquidators.

### 2.1.3. Legal matters

DMIRS' investigation is continuing through the liquidation. As the Company is a subject of the investigations, while they are ongoing, I am unable to comment on our investigations in this regard.

At the time of my appointment, the Company was also party to two matters before the SAT. Following our appointment, we were advised that as the Company had been placed into liquidation, both matters required the liquidators' consent to continue.

While I do not object to the proceedings being bought, I have not provided my consent because we cannot identify benefits for any party in pursuing the matters through the liquidation and there are insufficient funds available in the liquidation to attend to the proceedings or meet any judgement against the Company. One matter has since been dismissed. We understand that a hearing on the second matter has been adjourned to mid-March 2021.

## 2.2. Conduct of liquidation

The following matters have been attended to since the commencement of the liquidation:

- Attended to all necessary statutory lodgements and reporting, accounting and administrative matters.
- Reviewed the Company's asset position to identify any property that could be realised for the benefit of creditors.
- Conducted searches and undertook initial investigations into the affairs of the Company.
- Liaised with creditors with registrations on the Personal Properties and Securities Register ("PPSR") about their registrations.
- Attended to queries around the DMIRS investigations and material issues relating to the matters before the SAT.
- Pursued the recovery of the Company's books and records from the Director and third parties.

- Attended to significant creditor and external enquiries concerning the status of the liquidation.
- Prepared my initial circular and a report to creditors.

### 2.3. Assets and liabilities

I received a Report on Company Activities and Property (Form 507) (“ROCAP”) from the Director on 15 February 2021, which has been lodged with ASIC.

Part A of the ROCAP (“ROCAP Part A”), in which the Director is required to set out the financial position of the Company, was incomplete as no details of assets or liabilities were provided. While I have requested this information from the Director, she has not responded to my request. I have sought ASIC’s assistance in obtaining a full and complete ROCAP from the Director.

I am also yet to receive the Company’s books and records from the Director. I have again sought ASIC’s assistance in obtaining the records.

I received access to the Company’s cloud based accounting files directly from the software provider, Xero, on 5 March 2021. While we have undertaken an initial review of these files, we have had very limited time to review the accounts in detail before finalising this report.

Typically, in this report, I would provide creditors with an overview of the estimated realisable value (“ERV”) of a Company’s assets and liabilities as estimated by the Director and the liquidator. Given the above, our ability to do this has been severely hampered.

Therefore, while we have prepared the table below, values are subject to change as we obtain further information and are able to investigate the Company’s records in further detail.

Further, where we are still pursuing the recovery of assets, we have withheld the estimated value as this information is commercially sensitive.

	Notes	Director’s ROCAP ERV (\$)	Liquidators’ ERV (\$)
<b>Assets</b>			
Cash at bank	2.3.1	Not provided	Nil
Debtors	2.3.2	Not provided	Withheld
Motor vehicles	2.3.3	Not provided	Withheld
<b>Total Assets</b>		<b>Not provided</b>	<b>Withheld</b>
<b>Liabilities</b>			
Secured creditors	2.3.4	Not provided	Nil
Employee entitlements	2.3.5	Nil	10,388
Unsecured creditors	2.3.6	Not provided	651,220
<b>Total Liabilities</b>		<b>Not provided</b>	<b>661,608</b>
<b>Net surplus/(deficiency) subject to costs of liquidation</b>			<b>(661,608)</b>

\* ERV = Estimated Realisable Value

The notes set out below should be read in conjunction with the above table.

### 2.3.1. Cash at bank

At the time of my appointment, the Company held three bank accounts with the Commonwealth Bank of Australia. All three accounts were overdrawn. As such, no funds are available to the liquidation from these accounts.

### 2.3.2. Debtors

The Company's books and records disclosed outstanding debtors of \$153,237 at the date of my appointment. The majority of these debtors appear to be invoices for progress payments on building projects. These are unlikely to be recoverable as we understand the Company did not complete the projects and there are likely material counterclaims for this reason.

Separately to reported debtors, we have identified amounts that may be owing to the Company by related parties. We are continuing to investigate these amounts.

### 2.3.3. Motor vehicles

A Department of Transport ("DoT") search disclosed that the Company is the registered owner of the following vehicles:

Make	Body Type	Year	Financier	Status
Ford Ranger	Table Top	2008	N/A	Unregistered. Director to advise location
Kia Carnival	Station Sedan	2019	Scottish Pacific	Transferred prior to appointment

#### *Ford Ranger*

I have not yet been provided possession of the Ford Ranger. I have requested that the Director confirm the location of the vehicle and keys, so that I may arrange collection. To date, the Director has not responded to my request.

I will be submitting a further request to the Director to deliver the vehicle to the liquidators.

While I have undertaken some research as to the potential value of the vehicle, without information as to the condition of the vehicle (mileage and general condition), it is difficult to provide an estimate of its value.

#### *Kia Carnival*

The Company purchased the Kia Carnival in 2019 with finance provided by Scottish Pacific Business Finance Pty Ltd ("Scottish Pacific"), who registered a Purchase Money Security Interest ("PMSI") in the Kia Carnival on the PPSR.

Following our appointment, Scottish Pacific advised that the vehicle and associated financing commitments had been transferred to a new owner prior to the liquidation commencing. Subsequently, Scottish Pacific removed its registration against the Company on the PPSR.

It appears, however, that a transfer of ownership form has not been submitted to the DoT, resulting in the vehicle appearing in the Company's name in the DoT's records.

A refreshed search of the vehicle on the PPSR indicates that the vehicle and associated finance was transferred to CCC (WA) Pty Ltd, of which Mr Bolton, the former director of the Company, is a director and shareholder.

Our initial review of the transaction indicates that there would be limited grounds, if any, and little to no benefit to creditors to pursue the recovery of this vehicle as:

- the transfer was completed with the knowledge and approval of the secured creditor;
- the debt was transferred to the new owner;
- our enquiries indicate that the debt remaining on the vehicle was higher than the value of the vehicle;
- given the above, had the vehicle been retained and sold through the liquidation process, it is extremely unlikely any funds would be available to the liquidation after the payment of costs of realisation and Scottish Pacific's debt.

#### 2.3.4. Secured creditors

A PPSR search disclosed the following registrations at the date of our appointment:

Secured Party	PMSI	Start Date	Collateral Class
Prospa Advance Pty Ltd	All PAAP	29 Nov 2018	All PAAP
Scottish Pacific Business Finance Pty Ltd	PMSI	25 Oct 2019	Motor Vehicle
Complete Hire & Sales Pty Ltd	PMSI	30 May 2017	Other Goods
The Trustee for Franz Family Trust	PMSI	23 Aug 2017	Other Goods
Fletcher Insulation Pty Ltd	PMSI	23 Mar 2018	Other Goods

We sent a notice of the liquidation to the Secured Parties shortly after our appointment. Subsequently, two parties, Scottish Pacific and Prospa Advance Pty Ltd, removed their registrations.

We have not received a response from the remaining three parties. While these parties have registered a security interest, it is likely that any claim against the Company would be unsecured as we are not aware of any goods subject to the registered securities in possession of the Company at the time of our appointment.

#### 2.3.5. Employee entitlements

The Director advised that the Company did not have any employees. However, the Company records disclose superannuation payable of \$10,388. As previously advised, we only received these records from the Company's external service provider on 5 March 2021. Accordingly, further investigation is required to determine whether this amount is outstanding.

#### 2.3.6. Unsecured creditors

The Company's books and records disclosed outstanding unsecured creditors of \$359,828 at the date of my appointment. The records do not appear to have been updated since August 2020 and do not include damages claims bought against the Company. As such, the amount outstanding to creditors in the records is likely inaccurate and understated.

We have received claims from creditors of \$379,843. Based on the Company's records and the additional claims received, we estimate that creditor claims may be as high as \$743,514 (subject to receipt of further claims and adjudication). Of this, \$260,405 relates to related party claims.

As the Director provided only an estimate of creditors for my initial correspondence to creditors and this list was incomplete, I have **attached** an updated listing at Appendix A.

## 2.4. Receipts and payments to date

Through the course of the liquidation, I have had only one receipt. I have not yet made any payments.

Description	Amount (\$)
<b>Receipts</b>	
Indemnity	\$20,000
<b>Total Receipts</b>	<b>\$20,000</b>
<b>Cash at Bank held by Liquidators</b>	<b>\$20,000</b>

The funds received from the indemnity will be used to pay my outstanding remuneration, as approved by creditors (see section 5).

## 3. Investigations and recovery actions

As Liquidators, we are required to investigate and specify whether there may be any voidable transactions where money, property or other benefits may be recoverable by us in our capacity as liquidators of the Company. I set out below details of our investigations and findings to date.

### 3.1. Investigations undertaken

To date, we have undertaken the following investigations into the Company's affairs:

- Liaised with the Director about the Company's affairs and reasons for the Company's failure.
- Liaised with the Company's external accountant to obtain the Company's financial statements.
- Completed a high-level review of the Company's financial records maintained in its cloud based accounting software.
- Reviewed the Company's bank statements for any preferences or unusual and/or material transactions.
- Conducted independent searches including, but not limited to, property, Department of Transport, company, director and google searches.
- Investigated the transfer of a specific asset subject to finance from the Company, including liaising with the secured creditor about the transfer.
- Liaised with DMIRS about their ongoing investigation.
- Requested the assistance of ASIC to obtain the Company's books and records and a complete ROCAP Part A.

### 3.2. Findings and possible recoveries

My investigations have been severely hampered by a lack of books and records. Having only received the Company's accounting records on 5 March 2021, we have been unable to undertake detailed investigations or form a view as to whether there may be any actions to pursue for the recovery of funds for creditors before finalising this report prior to the statutory deadline, being 11 March 2021.

Our initial, high level comments, based on our limited review, are provided below.

- The Company operated a small business, reporting annual revenue of between \$296k and \$1.2m from FY17 to FY20.
- While it was able to generate small profits of \$63k and \$99k in FY18 and FY19 respectively, the Company incurred a loss of \$234k in FY20.
- The Director has identified the DMIRS' investigation as the cause of the deterioration in financial results in FY20 and, ultimately, the failure of the Company.
- However, the Company appears to have been in financial difficulty before the DMIRS' investigation commenced. Our initial review of the Company's bank statements indicate cash reserves were consistently under pressure and that there was insufficient working capital available to fund projects before clients could be invoiced for progress payments. That is, the business appears to have been severely undercapitalised.
- Our review has been complicated by errors in the management accounts maintained by the Company: such as the double counting of income and cash received. While the Company's external accountant has processed corrections for many of these errors, the corrections have been processed at year end and for FY19 only. At the date of my appointment, the Company had not engaged the external accountant to finalise the FY20 accounts. For the avoidance of doubt, the external accountant in FY20 was a different external accountant than FY19 and the Company's third accountant in as many years. This means we will need to make our own manual adjustments to complete our solvency review as we need visibility of the Company's financial position and performance on a monthly basis (at least).
- There are also several transactions where Company funds appear to have been used to pay for personal expenses. These costs have been expensed through the Company's profit and loss, rather than being recorded as an amount owing to the Company. We will investigate these further to determine whether any adjustments to the financial records are required and, potentially, to pursue amounts owing to the Company. We note that, in most cases, these expenses do not appear to be material.

### 3.3. Further inquiries to be undertaken

As noted above, I have not yet been able to complete detailed investigations because of a lack of records. Now that I have access to the Company's cloud based accounting records, I will be able to commence more detailed investigations of the Company's affairs. This will include addressing the requirements of section 533 of the Act and determining whether there are any actions available to pursue for the recovery of funds for creditors.

Section 533 of the Act also requires a liquidator to investigate any offences that may have been committed by the directors or persons who took part in the formation, promotion, administration management or winding up of a company and to lodge a report on his/her findings to ASIC.

As I am still working to recover the remainder of the Company's books and records, I anticipate being able to provide my report to ASIC around June 2021. I will write to creditors following submission of this report to provide an overview of my findings. I anticipate that this will be provided around July 2021.

Further work to be undertaken includes:

- Complete our investigations of potential claims, including insolvent trading and director related transactions, and commercial viability of pursuing any potential claims.
- Assist with and review the DMRIS investigation as required.
- Review the allegations forming part of the DMIRS investigation.
- Investigate potential shadow or de-facto directors.
- Prepare and lodge a report with ASIC about the Company's affairs and any offences identified (required by section 533 of the Act).

While we may identify actions available to pursue for the recovery of funds for creditors, proceeding with any action will be subject to funding requirements as there are limited funds in the liquidation.

Some creditors may be aware of the Assetless Administration Fund (“AAF”) administered by ASIC. The AAF is a targeted funding pool for liquidators directed to a number of initiatives. We will assess whether an application for funding from the AAF may be appropriate on completion of our investigations.

It is important to note that the targeted nature of the AAF means specific criteria applies to all funding applications. Funding provided must be directed towards the specific purpose agreed with ASIC and is not for general application to any other matter (including other investigations, administration of the liquidation and reporting to creditors).

To apply for funding, liquidators must also first complete their preliminary investigations and lodge a report under section 533 of the Act.

#### 4. Likelihood of a dividend

The likelihood of a dividend being paid to creditors will be affected by a number of factors including:

- the size and complexity of the administration;
- the amount of assets realisable and the costs of realising those assets;
- the statutory priority of certain claims and costs;
- the value of various classes of claims including secured, priority and unsecured claims; and
- the volume of enquiries by creditors and other stakeholders.

Based on the information presently available, the extent of the assets realised, and the investigations undertaken to date, there will not be sufficient funds to pay a dividend to any class of priority or unsecured creditors. However, if this changes, and 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.

#### 5. Liquidator’s remuneration

FTI Consulting charges professional fees based on time spent by the Liquidators and their staff at rates reflecting their level of experience.

Creditors have previously approved \$20,000 of the Liquidators’ remuneration by way of proposal without meeting dated 22 January 2021.

My fees have exceeded this amount because of the lack of information and assistance being provided by the Director, significant information requests from creditors and attending to the material matters before the SAT, including liaising with solicitors engaged by the Company’s pre appointment general insurer (i.e. not building insurance).

Significant time has been spent seeking access to books and records from the Director and third parties and in investigating the Company’s asset position. Due to the lack of funds in the liquidation, we are not seeking further remuneration approval at this time. However, should funds be recovered, I may seek additional approval from creditors.

## 6. Way forward

Actions required to proceed with the liquidation, include:

- finalise investigations of the Company's assets and realise any assets we are able to locate;
- recover any further available property;
- complete my investigations into the Company's affairs; and
- complete my reporting to ASIC.

Please note that if I receive a request for a meeting that complies with the guidelines set out in the initial information provided to you, I will hold a meeting of creditors. I may write to you again with further information on the progress of the liquidation. I expect to have completed this liquidation within 12 months.

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

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

Should you have any queries or require any further information, please contact Andrew Vacca on +61 8 9321 8533 or via email on [andrew.vacca@fticonsulting.com](mailto:andrew.vacca@fticonsulting.com).

Dated this 11th day of March 2021.



Daniel Woodhouse

Joint & Several Liquidator

## Annexure A: Creditor Listing

### Western Australian Construction Pty Ltd (In Liquidation)

#### Estimated creditor claims (subject to adjudication)

Creditor's Name	Estimated amount owing per Director (\$)	Amount owing per Xero (\$)	Amount advised by creditor (\$)	Potential Claim Amount (\$)
Ms. Sin Yeen Kua	350,000	260,405	-	260,405
Dowell Windows	20,000	32,505	-	32,505
Total Concrete (WA)	20,000	-	51,557	51,557
Prospa Advance Pty Ltd	40,000	-	-	40,000
Telstra	7,000	-	7,603	7,603
Red Venom Scaffolds	2,000	2,640	-	2,640
Franz Building Supplies	10,000	-	-	10,000
West Coast Waste / Cross Resource Management	2,600	-	-	2,600
Premier Ceilings	4,400	-	-	4,400
ATO	n/a	53,158	111,114	111,114
Fletcher Insulation Pty Limited	n/a	-	-	-
Complete Hire & Sales Pty Ltd	n/a	273	-	273
Mischka Yellin-Menzies & Elliane Christou	n/a	-	105,899	105,899
Sharon Tiainen and Chris Cubitt	n/a	-	80,134	80,134
Walker Wayland	n/a	-	2,055	2,055
Fogarty Partners	n/a	-	21,482	21,482
ARCO Double Glazing	Unknown	8,133	-	8,133
B. Waddell Consulting Engineers Pty Ltd	n/a	1,210	-	1,210
Cottage & Engineering Surveys	n/a	658	-	658
John Chisholm Design	n/a	669	-	669
SouthSide Enterprises Pty Ltd	n/a	177	-	177
Scottish Pacific Business Finance Pty Ltd	n/a	-	-	-
<b>Total</b>	<b>456,000</b>	<b>359,828</b>	<b>379,843</b>	<b>743,514</b>

#### Notes:

1) Amount owing per Xero has not been verified

2) Amount owing as advised by creditor represents either claims submitted by lodgement of a Formal Proof of Debt or Claim form or informal claims or copies of invoices received. Unless otherwise notified, amounts are subject to adjudication.

3) Potential claim amount is the amount advised by creditors (if available) and, where not available, the higher of either the estimated debt owed by the director or the amount owing per Xero.

**FORM 535 – FORMAL PROOF OF DEBT OR CLAIM**  
**WESTERN AUSTRALIAN CONSTRUCTION PTY LTD (IN LIQUIDATION)**  
**ACN 612 320 402 (“THE COMPANY”)**

To the Liquidator of Western Australian Construction Pty Ltd (In Liquidation) ACN 612 320 402 (“the Company”)

1. This is to state that the Company was on 11 December 2020, and still is, justly and truly indebted to: .....

.....

.....

*(full name, ABN and address of the creditor and, if applicable, the creditor's partners)*

for \$ .....*(dollars and cents)*

Particulars of the debt are:

Date	Consideration	Amount (\$/c)	Remarks
	<i>(state how the debt arose)</i>		<i>(include details of voucher substantiating payment)</i>

2. To my knowledge or belief the creditor has not, nor has any person by the creditor's order, had or received any satisfaction or security for the sum or any part of it except for the following: .....

.....

*(insert particulars of all securities held. If the securities are on the property of the company, assess the value of those securities. If any bills or other negotiable securities are held, show them in a schedule in the following form).*

Date	Drawer	Acceptor	Amount (\$/c)	Due Date

3. Signed by *(select correct option)*:

- I am the creditor personally
- I am employed by the creditor and authorised in writing by the creditor to make this statement. I know that the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied
- I am the creditor's agent authorised in writing to make this statement in writing. I know the debt was incurred for the consideration stated and that the debt, to the best of my knowledge and belief, remains unpaid and unsatisfied.

Signature: ..... Dated: .....

Name: ..... Occupation: .....

Address: .....

*\* If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor*

RECEIVE REPORTS BY EMAIL	YES	NO
Do you wish to receive all future reports and correspondence from our office via email?	<input type="checkbox"/>	<input type="checkbox"/>
Email: .....		

If being used for the purpose of voting at a meeting:

- a) Is the debt you are claiming assigned to you?  Yes  No
- b) If yes, attach written evidence of the debt, the assignment and consideration given.  Attached
- c) If yes, what value of consideration did you give for the assignment (eg, what amount did you pay for the debt?) \$ .....

d) If yes, are you a related party creditor of the Company?  
(If you are unsure contact the Liquidator)

Yes

No

# Creditor Rights in Liquidations

As a creditor, you have rights to request meetings and information or take certain actions:



## Right to request a meeting

In liquidations, no meetings of creditors are held automatically. However, creditors with claims of a certain value can request in writing that the liquidator hold a meeting of creditors.

A meeting may be requested in the first 20 business days in a creditors' voluntary liquidation by  $\geq 5\%$  of the value of the debts held by known creditors who are not a related entity of the company.

Otherwise, meetings can be requested at any other time or in a court liquidation by:

- $> 10\%$  but  $< 25\%$  of the known value of creditors on the condition that those creditors provide security for the cost of holding the meeting
- $\geq 25\%$  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 complies with these requirements and is 'reasonable', the liquidator must hold a meeting of creditors as soon as reasonably practicable.

## Right to request information

Liquidators will communicate important information with creditors as required in a liquidation. 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 liquidator must provide a creditor with the requested information if their request is 'reasonable', the information is relevant to the liquidation, and the provision of the information would not cause the liquidator to breach their duties.

A liquidator 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 liquidator 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 has been held, or will be held within 15 business days

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 liquidator must comply with the request if the creditor meets the cost of complying with the request.

Otherwise, a liquidator must inform a creditor if their meeting or information request is not reasonable and the reason why.

Specific queries about the liquidation should be directed to the liquidator's office.

## Right to give directions to liquidator

Creditors, by resolution, may give a liquidator directions in relation to a liquidation. A liquidator must have regard to these directions, but is not required to comply with the directions.

If a liquidator chooses not to comply with a direction given by a resolution of the creditors, they must document their reasons.

An individual creditor cannot provide a direction to a liquidator.

## Right to appoint a reviewing liquidator

Creditors, by resolution, may appoint a reviewing liquidator to review a liquidator's remuneration or a cost or expense incurred in a liquidation. The review is limited to:

- remuneration approved within the six months prior to the appointment of the reviewing liquidator, and
- expenses incurred in the 12 months prior to the appointment of the reviewing liquidator.

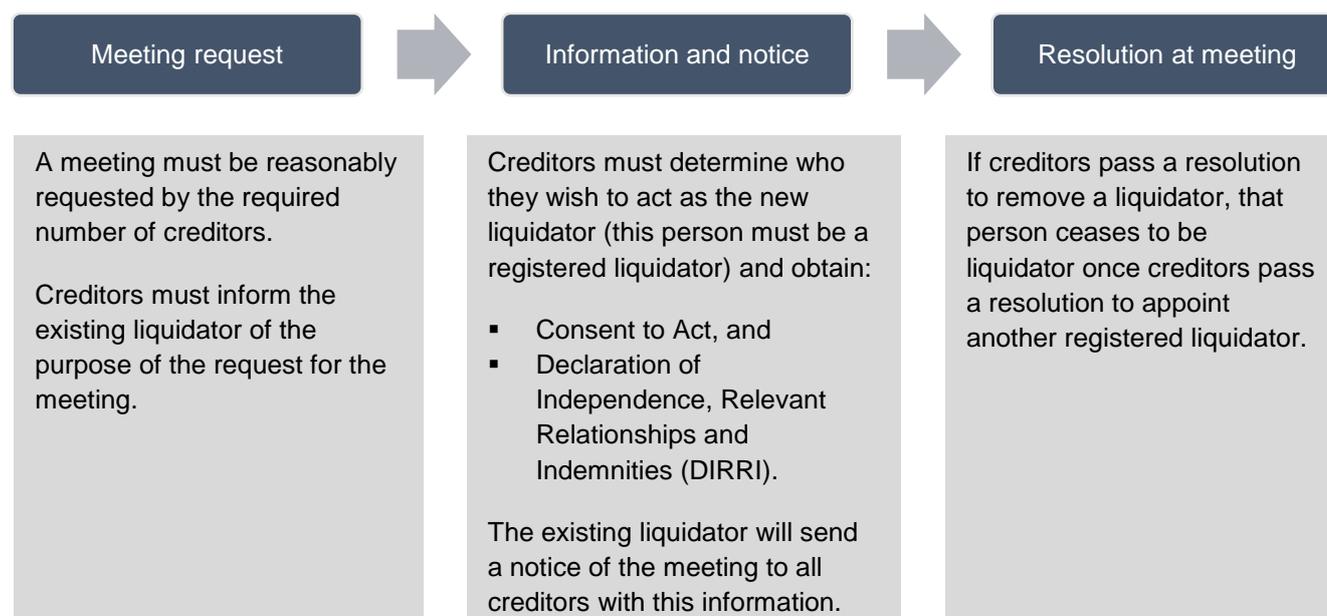
The cost of the reviewing liquidator is paid from the assets of the liquidation, in priority to creditor claims.

An individual creditor can appoint a reviewing liquidator with the liquidator's consent, however the cost of this reviewing liquidator must be met personally by the creditor making the appointment.

## Right to replace liquidator

Creditors, by resolution, have the right to remove a liquidator and appoint another registered liquidator.

For this to happen, there are certain requirements that must be complied with:



**For more information, go to [www.arita.com.au/creditors](http://www.arita.com.au/creditors).  
Specific queries about the liquidation should be directed to the liquidator's office.**



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# Insolvency information for directors, employees, creditors and shareholders

This information sheet (INFO 39) lists ASIC's information sheets for directors, employees, creditors and shareholders affected by a company's insolvency.

We have produced these with endorsement from the Australian Restructuring Insolvency & Turnaround Association (ARITA).

The information sheets give a basic understanding of the three most common company insolvency procedures – liquidation, voluntary administration and receivership – as well as the independence requirements for external administrators and approving external administrator remuneration. There is also a glossary of commonly used insolvency terms.

## List of information sheets

- [INFO 41](#) Insolvency: A glossary of terms
- [INFO 42](#) Insolvency: A guide for directors
- [INFO 43](#) Insolvency: A guide for shareholders
- [INFO 45](#) Liquidation: A guide for creditors
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- [INFO 54](#) Receivership: A guide for creditors
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- [INFO 74](#) Voluntary administration: A guide for creditors
- [INFO 75](#) Voluntary administration: A guide for employees
- [INFO 84](#) Independence of external administrators: A guide for creditors
- [INFO 85](#) Approving fees: A guide for creditors

## Where can I get more information?

Further information is available from the [ARITA website](#). The ARITA website also contains the [ARITA Code of Professional Practice for Insolvency Practitioners](#).

This is **Information Sheet 39 (INFO 39)** updated on 1 September 2017. Information sheets provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

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