

18 August 2020

**AKRON ROADS PTY LTD (IN LIQUIDATION)  
ACN 004 769 895 (“THE COMPANY”)**

**UPDATE TO CREDITORS**

I refer to my Report to Creditors dated 13 April 2018, a copy of which can be accessed via the following link, <http://www.fticonsulting-asia.com/creditors>. I provide herein a further update on the progress of the liquidation of the Company.

**1. Insolvent Trading Claim**

Creditors will recall that the Liquidators commenced a trading whilst insolvent action against the directors, with CGU Insurance (“CGU”) as the underwriter of a professional indemnity insurance policy held by one of the directors, Trevor Crewe, and his consulting company, Crewe Sharp Pty Ltd also being joined to the action.

Whilst a settlement was reached with all directors in their personal capacities, such a settlement could not be reached with CGU, who raised a number of defences including asserting that the policy did not respond at all to such a claim, and that Mr Crewe had failed to disclose certain information when obtaining the policy including his directorship of the Company meaning they could deny liability.

Thus there were a number of issues that required determination, which were considered by both the Supreme Court of Victoria and on appeal the Full Bench of the Supreme Court. Ultimately the Liquidators were effectively successful on all points except for the non disclosure issue. Thus whilst it was found that the policy did respond, due to the non disclosure CGU’s liability was reduced to zero.

The Liquidators were unsuccessful in obtaining leave to appeal in the High Court and accordingly the Court of Appeal’s ruling was final.

Accordingly, there will be no recovery available to creditors from the insurance policy with respect to the insolvent trading claim. Whilst the Liquidators have necessarily paid adverse costs to CGU of \$460,000, this was after the Liquidators effectively being awarded certain costs against CGU in the action. It is also noted that the Liquidators recovered \$725,000 from the directors in settlement of the claims against them.

**2. Third and final dividend to priority creditors**

A third and final dividend to employee creditors in respect of payment in lieu of notice and redundancy was declared and paid in October 2019. The majority of the dividend represented a reimbursement to the Federal Government for advances it had made to employees under the General Employee Entitlements Redundancy Scheme (as it was known then). A total amount of \$1.679m was distributed. All employee entitlements have now been paid in full.

### 3. Application to Court to resolve priority issue

At an early stage of the liquidation of the Company, realisations that were subject to the Australian and New Zealand Banking Group's ("Secured Creditor") circulating security interests (such as debtor recoveries) in the amount of \$1.455m were utilised to discharge part of the Company's outstanding employee entitlements.

The Liquidators subsequently successfully recovered voidable transactions that would have otherwise been applied first in discharging the employee priority claims. Previous cases where this situation has arisen indicate that it may be appropriate for the secured creditor to have a priority entitlement to the voidable transaction recoveries (by way of subrogation, or "stepping in", to the priority position of employees), to the extent that proceeds of realisation of assets subject to the circulating security interest were used to discharge employee entitlements – see, for example, *Cook v Italiano Family Fruit Company Pty Ltd (in liq)* [2010] FCA 1355, as affirmed in *Re Damilock Pty Ltd (in liq)* [2012] FCA 1445. The Liquidators believe that it would be reasonable for the Secured Creditor to have this priority in this case.

Accordingly, the Liquidators have made an application to the Supreme Court of Victoria ("Court") to seek directions that the Liquidators are justified in treating the Secured Creditor as subrogated to the rights of the employee priority creditors and entitled to receive the benefit of the voidable transaction recoveries up to the amount paid to employees out of circulating assets (i.e. \$1.455m).

A copy of the application to the Court is available to creditors upon request. Whilst case law supports that \$1.455m of current funds held representing voidable transaction recoveries should be directed to the Secured Creditor, creditors are entitled to be heard as a contradictor to that proposition.

Accordingly, if you wish to object to the Secured Creditor being granted priority to recoveries from the voidable transactions, you must, within 21 days of the date of this Report, serve on the Liquidators, a notice of objection stating the grounds of your objection. The Liquidators will then file a further affidavit outlining the grounds of any objection(s) received.

### 4. Estimated Return to unsecured creditors

Attached at **Annexure A** is an Estimated Outcome Statement ("EOS") and has been prepared with two possible scenarios:

1. The Secured Creditor is subrogated to the rights of employee priority creditors and is therefore able to receive the benefit of successful unfair preference recoveries up to the amount paid to employees; or
2. The Secured Creditor does not have priority to those funds.

The estimated returns to unsecured creditors range between 0.7 cents in the dollar in Scenario 1 and 2.9 cents in the dollar under Scenario 2.

### 5. Distribution to unsecured creditors

Following the outcome of the application to the Court, the Liquidators will be in a position to make a final distribution to creditors. The Liquidators are therefore required to adjudicate on the claims of creditors for dividend purposes.

Creditors may be aware that in the period since the commencement of the liquidation, they have been invited to submit PODs or otherwise notify the Liquidators of their claims on multiple occasions. In

accordance with the provisions of Regulation 5.6.47 of the Corporations Regulations, the Liquidators are permitted to admit creditor claims based on the available information without the requirement for creditors to submit a formal POD.

As part of the insolvent trading claim, the Liquidators and their staff undertook a substantial review process in respect of creditors' claims. In order to lessen the burden on creditors, and to the extent possible, the Liquidators intend to admit claims in the liquidation as previously advised in creditors' PODs or otherwise as recorded in the books and records of the Company and assessed by the Liquidators.

Accordingly, the Liquidators intend on writing to creditors shortly, advising of the amount that they have been admitted to proof for. If a creditor disagrees with the amount that the Liquidators intend to admit their claim for, creditors will be invited to provide further supporting documentation to substantiate a revised claim.

For any creditor claims that are not capable of readily being admitted, those creditors will be invited to submit further and better particulars to substantiate their claims.

Unsecured creditors are welcome to submit a POD and supporting evidence at any time as part of this process. Similarly, any creditor who has previously submitted a POD is welcome to submit a revised POD if they consider it necessary. Please note it is not possible to charge interest on any outstanding debts.

Following the adjudication of all unsecured creditor claims, the Liquidators will proceed to declare a first and final dividend and distribute funds by way of cheque to the last known address that the Liquidators have on file for you.

If you wish to submit a revised POD and require the pro forma form, or have moved address, please contact Mr James Mazzone of the Liquidators office via email [james.mazzone@fticonsulting.com](mailto:james.mazzone@fticonsulting.com).

## **6. Resignation of Liquidator**

On 27 September 2019, Mr Quentin Olde resigned as one of the joint and several Liquidators of the Company. Mr Olde's resignation will have no impact on the conduct of the Liquidation, with Messrs Ross Blakeley and Michael Ryan continuing to administer the liquidation in their capacity as joint and several Liquidators.

An updated Declaration of Independence, Relevant Relationships and Indemnities with respect to Mr Olde's resignation is enclosed at **Annexure B**.

## **7. Outstanding matters to finalisation**

The Liquidators consider that the following matters still need to be attended to prior to finalisation:

- Monitor the application to the Court;
- Review and adjudicate upon creditor claims and liaise with creditors regarding the same;
- Make a final distribution to the Secured Creditor (if applicable) and unsecured creditors;
- Respond to all ongoing creditor queries and prepare further update reports; and
- Attend to all ongoing statutory matters.

Should you have any queries please do not hesitate to contact Mr James Mazzone of this office.

Yours faithfully  
**Akron Roads Pty Ltd**  
**(In Liquidation)**

A handwritten signature in blue ink, appearing to read "Ross Blakeley".

**Ross Blakeley**  
**Liquidator**

Encl.

## Annexure A – Estimated Outcome Statement

Estimated Outcome Statement	\$'000s
<b>Cash on Hand</b>	<b>3,126</b>
<b>Expected Future Receipts</b>	
Interest Income	15
<b>Total Expected Future Receipts</b>	<b>15</b>
<b>Estimated Future Costs</b>	
Liquidators' Professional Fees and Disbursements	(150)
Legal Fees	(200)
<b>Total Estimated Future Costs</b>	<b>(350)</b>
<b>Net Surplus Available</b>	<b>2,791</b>
<i>Less: Proposed Distribution to ANZ Under Circulating Security Interest</i>	<i>(843)</i>
<b>Surplus After Distribution</b>	<b>1,948</b>
<b>Scenario 1 - ANZ Has Priority</b>	
Estimated Remaining Amount Owed to Secured Creditor after Above Distribution	7,654
Amount Advanced to Employees	1,455
Distribution to ANZ	1,455
<b>Estimated Shortfall to Secured Creditor Representing Unsecured Claim</b>	<b>(6,199)</b>
Estimated Surplus Available to Unsecured Creditors	493
Total Estimated Unsecured Claims	(66,365)
<b>Estimated Dividend to Unsecured Creditors (cents in \$)</b>	<b>0.7</b>
<b>Scenario 2 - ANZ Does Not Have Priority</b>	
Surplus After Distribution	1,948
Total Estimated Unsecured Claims	(67,820)
<b>Estimated Dividend to Unsecured Creditors (cents in \$)</b>	<b>2.9</b>

**Annexure B - Declaration of Independence, Relevant Relationships and Indemnities**

**Akron Roads Pty Ltd (In Liquidation)**  
**ACN 004 769 895 ("the Company")**

**REPLACEMENT DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS, AND INDEMNITIES**  
**("DIRRI")**

We have previously provided creditors with a DIRRI in relation to our appointment. Pursuant to Section 506A of the Corporations Act 2001, we have updated our DIRRI to reflect a change in circumstances. This DIRRI will be tabled at the next meeting of creditors (if one takes place). This, or any subsequently updated DIRRI, will also be included in future correspondence with creditors.

The relevant amendments to the DIRRI are contained below under the heading "UPDATED INFORMATION" and relate to the resignation of Mr Quentin Olde as one of the joint and several liquidators of the Company.

**Updated Information**

Mr Quentin James Olde resigned as one of the joint and several Liquidators of the Company on 27 September 2019. Mr Olde's resignation will have no impact on the ongoing conduct of the Liquidation, with Mr Andrew Ross Blakeley and Mr Joseph Patrick Ryan continuing to administer the liquidation in their capacity as the sole remaining joint and several Liquidators.

**Independence**

Ross Andrew Blakeley, Quentin James Olde and Michael Joseph Patrick Ryan of Taylor Woodings (now FTI Consulting (Australia) Pty Ltd) undertook a proper assessment of risks to their independence prior to accepting the appointment as Joint and Several Administrators of the Company. This assessment identified no real or potential risks to our independence. They were not aware of any reasons that would prevent them from accepting this appointment.

**Relevant Relationships**

Neither Mr Blakeley, Mr Olde or Mr Ryan, nor any other partner of Taylor Woodings or Taylor Woodings Corporate Services Pty Ltd ("TWCS") or associate of TWCS have had within the preceding 24 months to the appointment, any relationships with the Company, an associate of the Company, a former insolvency practitioner appointed to the Company, or any person or entity that is entitled to enforce a charge on the whole, or substantially the whole of the Company's property other than the following.

Name	Nature of relationship	Reasons why not an Impediment or Conflict
Australia and New Zealand Banking Group Limited ACN 005 357 522, the Secured Creditor of the Company by way of a registered fixed and floating charges over the whole of the Company's property.	The Secured Creditor has, from time to time, engaged Taylor Woodings and its partners to act as Receiver and Manager and as Investigative Accountant with respect to companies unrelated to the Company. The partners currently act on a number of matters in these capacities.	Those engagements are unrelated to this matter and will not impact on the ability of the Administrators to act impartially during the course of the Administration.
The Company	As detailed below	

#### Prior Engagements or Past Work

Taylor Woodings have undertaken the following engagement for the Company within two years prior to the acceptance of this appointment.

Name	Nature of Engagement	Reasons why not an Impediment or Conflict
The Company	On 11 January 2010, the Company engaged TWCS, a related party to the Administrators, to prepare financial forecasts for the year ended 30 December 2010, including an analysis of the financial position of the Company's projects, to enable consideration of the ability of the Company to complete its existing projects, and to meet existing and ongoing obligations. The Company made advance payments to TWCS on account of the engagement. A total amount of \$95,547 was paid to TWCS for that work.	The engagement was with the Company and had the characteristics of pre-appointment analysis that would ordinarily be conducted by a potential Administrator regarding that Company's financial position and available options. This role has enabled Taylor Woodings to be prepared to act in this role.



Aside from that engagement at no stage have Taylor Woodings or TWCS or any associate of TWCS undertaken any prior engagements, or carried out work within 2 years prior to the acceptance of this appointment.

#### Indemnities

Taylor Woodings were provided with the following indemnities for the conduct of this Administration:

Name	Nature of Indemnity
Mr Robert Sill	An indemnity on account of any shortfall in the Administrators' approved remuneration and expenses (liabilities) incurred as a result of their appointment as Joint and Several Administrators of the Company and which are not recoverable from the assets of the Company available to the Administrators to their remuneration and expenses up to a maximum amount of \$123,000. An amount equivalent to the maximum amount of the indemnity has been deposited into the trust account of Taylor Woodings as security for the indemnity. Any sums paid pursuant to the Indemnity shall be priority expenses of the Administrators pursuant to section 556(1)(dd) of the <i>Corporations Act</i> save that it shall have lower priority than any financial support provided by Australia and New Zealand Banking Group Limited as summarised below.
Australia and New Zealand Banking Group Limited ACN 005 357 522	An indemnity on account of any liabilities <u>including those arising from the engagement of PDS and the Administrators' legal fees, reasonably incurred</u> (but not remuneration) incurred by the Administrators as a result of their appointment as Joint and Several Administrators of the Company <u>and the Associated Company</u> in the period to <u>12 February 2010</u> and which are not recoverable from the assets of the Company <u>or the Associated Company</u> and which are available to the Administrators to satisfy <u>those liabilities</u> up to a maximum amount of \$250,000. Any sums paid pursuant to the Indemnity shall be expenses of the Administrators pursuant to section 556(1)(a) of the <i>Corporations Act</i> .

  
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Ross Andrew Blakeley

  
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Michael Joseph Patrick Ryan

Date: 5 December 2019

**NOTE:** If circumstances change, or new information is identified, it is a requirement under the IPA Code of Professional Practice to update this Declaration and provide a copy to creditors with our next communication as well as table a copy of any replacement declaration at the next meeting of the Company's creditors.