

11 October 2021

**ACN 004 817 323 PTY LTD (IN LIQUIDATION)
FORMERLY KNOWN AS LAURA ASHLEY (AUSTRALIA) PTY LTD
ACN 004 817 323 (“COMPANY”)**

REPORT TO CREDITORS

I refer to my update to creditors dated 12 October 2020. The purpose of this report is to update creditors on the progress of the liquidation since my last report and seek approval from creditors of the Liquidators' remuneration of \$608,854.45 and disbursements of \$26,499.75 for the period of 3 October 2020 to 30 September 2021.

Details of the Liquidators' remuneration and disbursements claimed are outlined in the Remuneration Approval Report dated 11 October 2021.

This report will be discussed at the Meeting of Creditors which has been convened for Thursday, 28 October 2021 at 11:00 AM AEST (the “**Meeting**”). Further details about the Meeting can be found in the notice of meeting.

1. Trading whilst insolvent claim (“TWI claim”)

Creditors will recall that the Liquidators commenced an insolvent trading action in the Supreme Court of Victoria (“**Court**”) against the director of the Company (“**Director**”) alleging that the Company incurred debts at a time when the Director knew or had reasonable grounds for suspecting that the Company was insolvent. The TWI claim is for approximately \$8.5 million, which is calculated based on the debts incurred by the Company while trading insolvent between 15 May 2015 and 7 January 2016 (“**Relevant Period**”).

Since our last update to creditors, the following material developments have occurred with respect to the TWI claim.

1.1. Funding of the TWI claim

At the meeting of creditors held on 29 October 2020, creditors provided approval for the purposes of section 477(2B) of the Corporations Act 2001 to the Liquidators entering into a funding agreement with the Commonwealth of Australia (“**Commonwealth**”) whereby the Commonwealth agreed to provide funding to the Liquidators to pursue the TWI claim (“**Funding Agreement**”).

1.2. Status of the TWI claim

The Liquidators have:

- completed a significant document discovery process which involved reviewing over 300,000 of the Company's physical and electronic records in order to identify, extract, collate and present documents relevant to the Company's financial position and evidencing the various debts incurred by the Company to its creditors during the Relevant Period;

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- filed affidavit material with the Court addressing the state of the Company's books and records, the Company's financial position, the Director's knowledge of the Company's financial position and the Liquidators' opinion regarding the Company's solvency;
- filed a further affidavit with the Court providing evidence of the debts incurred by the Company during the Relevant Period to its 47 largest creditors totalling approximately \$8.3m;
- filed a comprehensive expert report with the Court addressing the Company's insolvency during the Relevant Period;
- filed affidavits sworn by key former staff providing evidence as to the manner in which the Company was recording its financial transactions;
- filed affidavits obtained from three (3) major creditors evidencing the debts incurred to those creditors by the Company during the Relevant Period; and
- filed a Notice to Admit Facts and Documents ("**Notice to Admit**") in which the Liquidators requested that the Defendant admit each of the debts that were incurred by the Company to its 47 largest creditors in the aggregate sum of approximately \$8.3m, along with the authenticity of various source documents evidencing those debts. The Director has failed to respond to the Notice to Admit within the required timeframe and is therefore taken to have admitted that the debts were incurred for the purposes of the proceeding. This will avoid the time and costs of proving those facts at trial.

In order for the Liquidators to:

- a) comply with the Court ordered timetable for discovery;
- b) adduce sufficient evidence to establish that the Company was insolvent on and from 15 May 2015 (which is one of the necessary elements of the TWI claim), which required the Liquidators to file an expert report on solvency; and
- c) prove that the Company in fact incurred each of the debts which comprise the \$8.3m claim,

it was necessary for the Liquidators to undertake a granular review of the Company's voluminous books and records, along with a comprehensive analysis of the Company's financial position. These tasks took a significant amount of time but were ultimately necessary to prove the necessary elements of the TWI claim.

1.3. Joining the insurer to the proceeding

As set out in previous reports to creditors, the Company and the Director entered into a Management Liability Insurance policy with AIG Australia Limited ("**AIG**") which provided insurance coverage in respect of "management liability" for amounts up to \$5m. The Liquidators are of the view that the policy responds to the TWI claim. AIG does not dispute that the insuring clause in the policy covers insolvent trading but has not admitted indemnity under the policy.

AIG has committed to making a decision on indemnity within 28 days of the Defendant filing his evidence (or otherwise confirming that he does not intend to file evidence in the proceeding) and if indemnity is denied, AIG has consented to orders that it be joined as a co-defendant. The current Court timetable required the Director to file his lay and expert evidence by 15 September 2021, however he is yet to do so. The matter is listed for a directions hearing on 15 October 2021, at which point the Liquidators will take steps to require the Director to file his evidence, failing which they will seek to have AIG joined as a party to the proceeding.

On the basis AIG is joined to the proceeding, the Liquidators will seek to have the matter listed for a mediation with AIG and the Director, or otherwise promptly seek to have the matter listed for trial.

1.4. Quantification of loss and damage

Prior to undertaking the document discovery process, the Liquidators estimated that the quantum of the loss and damage claim (i.e. the total of the debts incurred by the Company during the Relevant Period) was \$7.97m, being the amount claimed in the statement of claim. During the Liquidators' extensive review of the Company's books and records, further debts were identified. The loss and damage claim is now approximately \$8.5m.

2. Current financial position and estimated return to creditors

The Liquidators expect to pay a partial dividend to section 556(1)(e) priority creditors (i.e. employee claims) and will determine the precise timing of this dividend in due course. In accordance with the priority provisions in section 556 of the Act, available funds will, in the first instance and after allowing for the costs of the liquidation, be applied towards outstanding employee superannuation.

The prospects of ordinary unsecured creditors receiving a dividend are dependent on all employee entitlements, together with the costs of the liquidation (including amounts repayable to the Commonwealth under the Funding Agreement, legal costs and the Liquidators' remuneration) being paid in full. Accordingly, the prospects of a return to unsecured creditors is largely dependent on the success of the TWI claim.

The Liquidators estimate that claims in respect of employee entitlements will be approximately \$4.8 million. Any proceeds from the TWI claim, along with the cash currently available in the liquidation, will be applied first to employee creditors (after allowing for the liquidation costs). Any surplus will then be distributed to ordinary unsecured creditors.

The Liquidators will continue to update the creditors in this regard.

3. Liquidators' remuneration

3.1. Past remuneration to 2 October 2020

The Liquidators have incurred fees of \$633,415.00 plus GST between 3 October 2020 to 30 September 2021, however are only seeking approval for their fees of \$608,854.45 plus GST. The Liquidators are not claiming fees of \$24,560.55 plus GST due to certain inefficiencies during the document discovery process.

The work performed by the Liquidators during this period relates primarily to the matters outlined above (including the TWI claim) and the work described in our update to creditors dated 12 October 2020.

Pursuant to the Funding Agreement, the Commonwealth have agreed to fund the Liquidators' remuneration in connection with the TWI claim. Of the \$608,854.45 of remuneration in respect of

which creditor approval is sought, \$519,823.45 relates to the TWI claim and is predominantly captured by the Funding Agreement. The remaining \$89,031.00 relates to time incurred in connection with:

- preparing for and convening the meeting of creditors on 29 October 2020;
- preparing reports to creditors;
- reporting to the Commonwealth on the status of the TWI claim;
- dealing with creditor enquiries; and
- various administrative tasks.

Accordingly, the Liquidators note that whilst creditor approval is being sought in respect of all remuneration, the majority of those costs will be funded by the Commonwealth pursuant to the Funding Agreement.

3.2. Future remuneration

Whilst the Liquidators will incur further general fees and fees specifically referable to the TWI action, the Liquidators are not currently seeking advance creditor approval for anticipated future remuneration for the period after 1 October 2021. The Liquidators will convene a further meeting to seek creditor approval for remuneration when required. The Liquidators anticipate that any future fees will largely relate to tasks associated with the TWI claim, including:

- liaising with lawyers and counsel;
- preparing for and attending any mediation(s);
- reviewing and commenting on pleadings and amended pleadings as required;
- preparing for and attending trials;
- assessing and responding to any settlement offers;
- other work ancillary to, or in connection with, the administration of the liquidation generally; and
- potentially, if a quick and successful resolution of the TWI Claim is achieved, effecting a distribution to employees.

Having regard to the matters outlined above, the Liquidators consider that the bulk of their work in preparing for the TWI claim, and thus their professional costs, have now been incurred. The matter will now proceed to mediation and/or trial, meaning that the vast majority of the prospective professional costs for the TWI claim will be in respect of legal costs.

Further details regarding the Liquidators' remuneration, associated tasks and time incurred to date are available in the Remuneration Approval Report.

4. Meeting of Creditors

Creditors are advised that a meeting of the creditors of the Company will be held on **Thursday, 28 October 2021 at 11:00 AM AEDT via videoconference.**

Due to the COVID-19 restrictions, and consistent with government policy on gatherings, a virtual meeting will be held. Creditors intending to attend the meeting can only do so virtually by electronic

means. No physical place of meeting will be made available. Creditors must therefore pre-register to attend, and submit certain documents in advance of the meeting.

Further details regarding the meeting of creditors are provided in the "Circular to Creditors" dated 11 October 2021.

5. Outstanding matters to finalisation

The Liquidators intend to focus on the following matters in the immediate term:

- convening and holding the upcoming meeting of creditors; and
- pursuing the TWI claim.

Thereafter, and prior to finalisation of the liquidation, the Liquidators expect to:

- prepare further creditor updates as necessary;
- convene further meeting(s) of creditors as necessary;
- make a distribution to priority employee creditors;
- make a distribution to unsecured creditors (if applicable);
- continue to comply with all statutory requirements; and
- continue to respond to all creditor enquiries.

Should you have any queries in relation to this update, please do not hesitate to contact our office by email at LauraAshleyCreditors@fticonsulting.com or by telephone on (03) 9604 0600.

Yours faithfully



Ross Blakeley
Liquidator