

12 October 2020

**A.C.N. 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 17 December 2019. The purpose of this report is to provide an update to creditors on the progress of the liquidation since my last report and seek approvals from creditors of the following:

- entering into a funding agreement with the Commonwealth of Australia (“**Commonwealth**”) for the purposes of pursuing an insolvent trading claim against the Company’s director (the “**Director**”);
- remuneration of \$331,938.50 for the period 2 August 2018 to 2 October 2020 as outlined in my Remuneration Approval Report; and
- future interim remuneration up to a capped amount of \$350,000 as also outlined in my Remuneration Approval Report.

This report will be discussed at the Meeting of Creditors which has been convened for Thursday 29 October 2020 at 11:00 AM AEDT (the “**Meeting**”). Further details about the Meeting can be found in the notice of meeting.

1. Recent actions and current status in the Liquidation

Creditors will recall that, following the sale and transfer of the business assets, the focus of the liquidation was on pursuing and prosecuting voidable transaction claims uniquely available to a liquidator. Formal steps and an emphasis was initially placed on prosecuting unfair preference claims, whilst at the same time further investigating and formulating the more complex trading whilst insolvent claim (“**TWI Claim**”).

The liquidators were successful in recovering \$2,812,111 from fourteen (14) unfair preference claims. No further claims other than the TWI Claim remain to be prosecuted.

As detailed below, working with our lawyers, significant time was invested particularly over the past twelve months in developing and refining the TWI Claim, positioning it for formal prosecution whilst at the same time securing a source of funding for the litigation, effectively isolating net recoveries to date and de-risking the litigation for the benefit of creditors.

2. Trading whilst insolvent claim

On 17 June 2020, John Park and myself in our capacity as joint and several liquidators of the Company (“**Liquidators**”) commenced the TWI Claim proceeding in the Supreme Court of Victoria (“**Court**”) against the director of the Company (“**Director**”) for insolvent trading. The quantum of the damages under the claim have been preliminarily assessed at \$7,973,501.

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At a directions hearing on 11 September 2020, the Court made orders prescribing the times by which the parties to the proceeding must have filed particular documents and completed various steps. The Director was self-represented at this hearing. The orders made by the Court require the parties to have completed a judicial mediation of the matter by 5 February 2021. If the matter is unable to resolve at the judicial mediation it will be listed for a further directions hearing on 19 February 2021.

Creditors will recall that prior to the Liquidators' appointment, the Company took out a Management Liability Insurance Policy, which may respond to and thus cover a claim for insolvent trading. Either by consent or the Liquidators making an application to the Court, the insurer may be joined at some point to the proceeding. Creditors will be provided with further updates as the matter progresses.

3. Funding of the TWI Claim

The Liquidators have had considerable engagement with representatives of the Commonwealth Government's Fair Entitlements Guarantee ("FEG") scheme regarding possibly entering into an arrangement with the Commonwealth for the purposes of funding the insolvent trading claim against the Director and potentially the insurer.

After considering the legal and commercial terms of a funding arrangement, and thus benefits for creditors, the Liquidators have now finalised and entered into a formal funding agreement with the Commonwealth.

Although the Liquidators hold funds considered sufficient to finance the proceedings, by entering into the funding deed the Liquidators have mitigated the risk that an adverse outcome would erode the funds recovered by the Liquidators to date, as the Commonwealth will not only fund the costs of the proceeding (including not only the Liquidators and their lawyers fees), but also bear the risk of and will cover any adverse cost order made against the Liquidators.

Under the funding agreement, all funds advanced to the Liquidators by the Commonwealth are only repayable (with interest) following a successful recovery against the Director and/or the insurer. Other than the interest that the Commonwealth would receive on the funds it advances, the Commonwealth's right to prove in the liquidation will not be affected. Accordingly, unlike funding deeds with private litigation funders, unless a Court application is made by the Commonwealth to the contrary, it will not receive a disproportionate or additional return (such as a percentage of a recovery) if the proceeding is successful. It should be noted that the Liquidators do not believe it is the intention of the Commonwealth to make such an application.

The terms of the funding arrangements are commercially sensitive, however the Liquidator considers that the financial support under the agreement should be sufficient to prosecute the case and more than reasonable when compared to commercial litigation funding, where the funder often receives a material time based percentage share of a successful outcome.

Whilst the funding arrangement will not affect the Commonwealth's right to prove in the liquidation as a section 556(1)(e) priority creditor for the funds advanced under the FEG scheme for the purpose of meeting employee entitlements, the unpaid claims of employees and associated priorities are similarly not affected. In particular, the unpaid superannuation maintains its priority under section 556(1)(e), with the prospects for its recovery being enhanced by the litigation. Indeed, the priority for

the outstanding superannuation out ranks the significant advances previously made by FEG in meeting leave and redundancy entitlements of employees.

In effect, creditors (and as a priority, employees) get the benefit of participating in any net recovery from the trading whilst insolvent action, without bearing the costs and risks normally associated with any legal action.

Irrespective of the funding for the proceedings, an insolvent trading claim remains inherently complex with a number of legal, procedural and commercial factors. It is therefore not possible at this stage to provide a firm estimate on how long the proceeding might take or the prospects of success. However, as reflected in proposed remuneration resolutions, the Liquidators have made an initial time allowance of circa 18 months for its prosecution. It is also noted that the Liquidators would not have instigated the action if, after weighing up commercial and legal considerations, they did not consider that an action was of sufficient merit.

As the time period under which the funding agreement is anticipated to be in force is expected to exceed three months, entering into the agreement by the Liquidators requires creditor approval under section 477(2B) of the Corporations Act 2001. I will propose a resolution ratifying the entering into of the funding agreement by the Liquidators at the Meeting.

4. Current Financial Position and Estimated return to Creditors

The Liquidators expect a partial dividend to section 556(1)(e) priority creditors (i.e. employee claims) will be available, however the precise timing of any dividend will be determined in due course. This will in the first instance be applied against outstanding superannuation.

Any return to unsecured creditors is dependent on the amounts (if any) recovered as a result of the insolvent trading proceeding, and in particular there being sufficient funds to first meet all priority employee entitlements in full. Further information will be provided to creditors in due course, noting that outstanding employee entitlements are currently estimated at \$4.8 million.

The current financial position in the liquidation is estimated as follows:-

Current Financial Position as at 9 October 2020	
	Amount (\$)
Available cash	1,727,418
<i>Less: current outstanding professional fees and expenses</i>	
Liquidators' fees	(331,939)
Liquidators' disbursements	(23,342)
Total Professional fees and expenses	(355,281)
Surplus funds (subject to future costs)	1,372,137

After allowing for current outstanding expenses in the Liquidation, surplus funds of \$1,372,137 are estimated to currently exist.

Whilst there will be some further future costs including Liquidators' remuneration that will necessarily be paid from those funds, noting that the bulk of the matters in the liquidation have now been dealt with, save for the TWI Claim litigation which will in the first instance be separately independently funded, much of the current surplus funds should be preserved for the benefit of in the first instance outstanding employee entitlements (wages and superannuation).

An account of all receipts and payments in the liquidation can be found at page 9 of the Remuneration Approval Report.

5. Liquidators' remuneration

The Liquidators are seeking approval for historical fees of \$331,938.50 covering the 26 month period from 2 August 2018 to 2 October 2020. Work conducted during this period relates to the matters outlined above and in my previous update dated 17 December 2019, however it has primarily consisted of:

- Work in connection with the recovery of voidable transactions totalling \$2.8 million; and
- preparing for and filing the TWI Claim against the Director.

The Liquidators are also seeking fee approval to an interim capped amount of \$350,000 for future work for the period from 3 October 2020 to 30 June 2022. Any further work and thus remuneration above that amount would require further approval by creditors. It is anticipated that time subject to this approval will be primarily spent in progressing the TWI Claim, and may include the following:

- Instructing lawyers and counsel;
- Preparing for and attending mediations;
- Reviewing and commenting on pleadings as required;
- Preparing information for discovery and reviewing discovery materials provided by the defendants;
- 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.

While creditors are required to approve this remuneration, time incurred (together with legal and other direct costs) in connection with the TWI Claim will be met, in the first instance, in accordance with the terms of the funding agreement and thus by the Commonwealth, thus substantially preserving the surplus referred above for the benefit of priority employee creditors.

Further details in respect of the Liquidators' remuneration is contained in the Remuneration Approval Report.

6. Meeting of Creditors

Creditors are advised that a meeting of the creditors of the Company will be held on **Thursday, 29 October 2020 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 do so can only attend 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 Liquidators "Circular to Creditors" dated 12 October 2020.

7. Outstanding matters to finalisation

The Liquidators intend on focusing on the following in the immediate term:

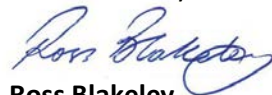
- Convene and hold the meeting of creditors;
- Pursuing the TWI Claim; and
- Assess the ability and if possible effect a first interim distribution to priority employee creditors.

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 any final distribution to priority employee creditors (if applicable);
- 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