

## ACN 126 959 206 PTY LTD

(In Liquidation) ACN 126 959 206 Formerly Civic Legal Pty Ltd

# **Report to Creditors**

Section 70-40 Insolvency Practice Rules (Corporations) 2016

17 April 2019

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## **Annexures**

- A Declaration of Independence, Relevant Relationships and Indemnities
- B Initial Remuneration Notice
- C Remuneration Approval Report

## **Enclosures**

- (i) Proof of Debt or Claim form
- (ii) Notice of Proposal to Creditors

#### 1. Introduction

1.1 The purpose of this report is to advise creditors of my appointment as Liquidator of ACN 126 959 607 Pty Ltd ("the company"), to provide creditors with information on the progress of the liquidation in accordance with Section 70-40 of the Insolvency Practice Rules (Corporations) 2016, and to advise creditors of the likelihood of a dividend being paid in the liquidation.

## 2. Notification of appointment

- 2.1 I was appointed Liquidator of the company pursuant to an order of Acting Master Whitby on 26 February 2019.
- 2.2 I note that Mr David Spencer was appointed Liquidator of the company on 18 March 2015 and ceased to hold this office on 28 August 2017 when the company was deregistered.
- 2.3 My appointment as Liquidator of the company relates to the company's reinstatement pursuant to an application made by a contingent creditor of the company who intends to commence legal proceedings against the company.
- 2.4 A copy of my Declaration of Independence, Relevant Relationships and Indemnities ("DIRRI") is attached at Annexure A. The DIRRI assists you to understand any relevant relationships that I have, and any indemnities or upfront payments that have been provided to me. I have considered each relationship and it is my opinion that none of the relationships disclosed in the DIRRI results in a conflict of interest or duty, or affects my independence.

#### 3. Receipts and payments

- 3.1 To date, the only receipt has been \$5,000 of the \$7,500 indemnity from a contingent creditor of the company, Ms Michelle John.
- 3.2 To date, the only payment in the liquidation has been \$7 for bank fees.

#### 4. Assets

- 4.1 Please refer to Mr David Spencer's previous reports to creditors for further information concerning the company's assets.
- 4.2 I do not expect that any further asset realisations will be made from the date of my appointment.

#### 5. Secured creditors

- 5.1 Please refer to Mr David Spencer's previous reports to creditors for further information concerning the company's secured creditors.
- 5.2 I understand that the company did not have any secured creditors at the date of liquidation.

#### 6. Priority creditors

- 6.1 Please refer to Mr David Spencer's previous reports to creditors for further information concerning the company's priority creditors.
- 6.2 I understand that the company did not have any priority creditors at the date of liquidation.

#### 7. Unsecured creditors

- 7.1 Please refer to Mr David Spencer's previous reports to creditors for further information concerning the company's unsecured creditors.
- 7.2 On the basis of current information, I estimate that the total amount owed to unsecured creditors is \$21,225.
- 7.3 However, I am aware of contingent claims that may exist against the company.
- 7.4 Please find enclosed a Proof of Debt or Claim form to enable any unsecured creditors who have not already done so to lodge their claim against the company.

#### 8. Dividend

- 8.1 The likelihood that a dividend will be paid to creditors will be affected by a number of factors including:
  - (i) The size and complexity of the administration.
  - (ii) The amount of assets realisable and the costs of realising those assets.
  - (iii) The statutory priority of certain claims and costs. The value of various classes of claims including secured, priority and unsecured creditor claims.
  - (iv) The volume of enquiries by creditors and other stakeholders.
- 8.2 I do not consider that a dividend will be paid to any class of the company's creditors.
- 8.3 If a dividend is payable, creditors will be contacted prior to payment of the dividend and will be asked to lodge a Proof of Debt. This will formalise creditors' claims against the company.

## 9. Reasons for the company's failure

9.1 Please refer to Mr David Spencer's previous reports to creditors for further information concerning the reasons for the company's failure.

#### 10. Inquiries undertaken to date

- 10.1 The following inquiries have been made to date:
  - (i) General inquiries of the company's previous liquidator regarding assets and liabilities.
  - (ii) Notifying ASIC and the company's director of my appointment.
  - (iii) Meeting and corresponding with the solicitors for Ms Michelle John, a contingent creditor of the company regarding her alleged claim against the company.

## 11. Further inquiries that may need to be undertaken

- 11.1 I note that the only further inquiry that may need to be undertaken is continuing my correspondence with Ms Michelle John's solicitors.
- 11.2 If creditors are aware of a particular matter that requires further investigation, and that wasn't investigated by the company's previous liquidator, please contact this office immediately.

## 12. Possible recovery actions

- 12.1 I do not expect to uncover any further possible recovery actions but note that the most common recovery actions available to a liquidator are as follows:
  - (i) Insolvent trading.
  - (ii) Unfair preferences.
  - (iii) Uncommercial transactions.
  - (iv) Unfair loans.
  - (v) Unreasonable director-related transactions.

## 13. What happens next?

- 13.1 I will proceed with the liquidation, including my correspondence with Ms Michelle John's solicitors.
- 13.2 I may write to creditors again with further information on the progress of the liquidation.

## 14. Liquidator's remuneration

- 14.1 Attached at Annexure B is my Initial Remuneration Notice. This document provides you with information about how I propose to be paid for undertaking the liquidation.
- 14.2 Attached at Annexure C is a detailed report on my remuneration, called a Remuneration Approval Report. I am unable to pay my remuneration without the approval of creditors or the Court.
- 14.3 In accordance with the Initial Remuneration Notice and Remuneration Approval Report, my estimated remuneration for the external administration is \$7,500.00.

## 14. Liquidator's remuneration (cont.)

14.4 I propose to have my remuneration approved by a proposal without a meeting. Information about passing resolutions without a meeting and a Notice of Proposal to Creditors is enclosed. I request that you return to this office the completed Notice of Proposal to Creditors by 4.00pm on Wednesday, 15 May 2019.

#### 15. More information

- 15.1 Creditors can access information which may be of assistance on the following websites:
  - (i) Sheridans at www.sheridansac.com.au/downloads/
  - (ii) ARITA at www.arita.com.au/creditors
  - (iii) ASIC at www.asic.gov.au (search for "insolvency information sheets")

If you wish to discuss the above matters, please contact David Blanchett or Sarah Marsegaglia of this office.

Yours faithfully

JENNIFER E. LOW Liquidator of

ACN 126 959 206 Pty Ltd

## DECLARATION OF INDEPENDENCE, RELEVANT RELATIONSHIPS AND INDEMNITIES

Practitioners appointed to an insolvent entity are required to make declarations as to:

- A. their independence generally;
- B. relationships, including;
  - (i) the circumstances of the appointment;
  - (ii) any relationships with the company and others within the previous 24 months;
  - (iii) any prior professional services for the company within the previous 24 months;
  - (iv) that there are no other relationships to declare; and
- C. any indemnities given, or upfront payments made, to the Practitioner.

This declaration is made on my own behalf and on behalf of my firm, Sheridans.

#### Independence

I, Jennifer E. Low, of Sheridans, have undertaken a proper assessment of the risks to my independence prior to accepting the appointment as Liquidator of the company in accordance with the law and applicable professional standards. This assessment identified no real or potential risks to my independence. I am not aware of any reasons that would prevent me from accepting this appointment.

#### **Declaration of relationships**

## A. Circumstances of appointment

This appointment was referred to me by Guy Douglas of Douglas Cheveralls Lawyers, who acts for a contingent creditor of the company. I believe that this referral does not result in a conflict of interest or duty because referrals from solicitors, business advisors and accountants are commonplace and do not impact on my independence in carrying out my duties as liquidator.

I have provided prior to my appointment no other information or advice beyond that outlined in this DIRRI to the company or to its director or to any of its advisors.

#### B. Relevant relationships (excluding professional services to the company)

I and my firm, have, or have had within the preceding 24 months, no relationships with the company, an associate of the company, a former insolvency practitioner appointed to the company or any person or entity that has security over the whole or substantially the whole of the company's property.

#### C. Prior professional services to the company

I and my firm have provided no professional services to the company in the previous 24 months.

## Declaration of relationships (cont.)

## D. No other relevant relationships to disclose

There are no other known relevant relationships, including personal, business and professional relationships, from the previous 24 months with the company, an associate of the company, a former insolvency practitioner appointed to the company or any person or entity that has security over the whole or substantially the whole of the company's property that should be disclosed.

## Indemnities and upfront payments

I have been provided with the following indemnity for the conduct of the liquidation:

Name	Relationship	Nature of indemnity or payment			
Michelle Bridgette John	Contingent	\$7,500 payable \$5,000 in advance,			
	creditor	followed by \$2,500 payable on demand.			

This does not include any statutory indemnities. I have not received any other indemnities or upfront payments that should be disclosed.

Dated: 17 April 2019

JENNIFER E. LOW

#### Note:

- If circumstances change, or new information is identified, I am required under the Corporations Act 2001 and the ARITA Code of Professional Practice to update this Declaration and provide a copy to creditors with my next communication as well as to table a copy of any replacement declaration at the next meeting of the company's creditors.
- Any relationships, indemnities or upfront payments disclosed in the DIRRI must not be such that the
  Practitioner is no longer independent. The purpose of the DIRRI is to disclose relationships that,
  while they do not result in the Practitioner's having a conflict of interest or duty, ensure that
  creditors are aware of those relationships and understand why the Practitioner nevertheless remains
  independent.

#### INITIAL REMUNERATION NOTICE

The purpose of this Initial Remuneration Notice is to provide you with information about how I propose my remuneration for undertaking the liquidation will be set.

#### 1. Remuneration methods

There are four basic methods that can be used to calculate the remuneration charged by an insolvency practitioner. They are:

- A. **Time based / hourly rates:** This is the most common method. The total fee charged is based on the hourly rate charged for each person who carried out the work multiplied by the number of hours spent by each person on each of the tasks performed.
- B. **Fixed fee:** The total fee charged is normally quoted at the commencement of the administration and is the total cost for the administration. Sometimes a practitioner will finalise an administration for a fixed fee.
- C. **Percentage:** The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of asset realisations.
- D. **Contingency:** The practitioner's fee is structured to be contingent on the achievement of a particular outcome.

#### 2. Method chosen

Given the nature of this administration I propose that my remuneration be calculated at an hourly rate for the time spent by each member of my staff. I believe this method to be appropriate because it accurately reflects the work required to administer this matter.

## 3. Explanation of hourly rates

The rates for my remuneration calculation are set out in the following table together with a general guide showing the qualifications and experience of staff engaged in the administration and the role they take in the administration. The hourly rates charged encompass the total cost of providing professional services and should not be compared to an hourly wage.

Staff Level	Hourly rate (excl. GST) \$	Experience rate classification
Registered Liquidator	538	Liquidator & Bankruptcy Trustee bringing her specialist skills to the administration or insolvency task.
Director	432	More than 10 years' insolvency experience, more than 4 years as a manager. Answerable to the appointee but otherwise responsible for all aspects of administration.
Senior Manager	381	More than 7 years' insolvency experience, more than 3 years as a manager, qualified accountant. Answerable to the appointee but otherwise responsible for most aspects of administration. Experienced and competent at all levels. Controls staff and their training.

## 3. Explanation of hourly rates (cont.)

	Hourly rate (excl. GST)			
Staff Level	\$	Experience rate classification		
Manager	301	6 - 7 years. Qualified accountant, with well-developed technical and commercial skills. Has significant conduct of most administrations. Answerable to the appointee but otherwise manages administrations on a day to day basis. Controls 2 - 4 staff.		
Supervisor	265	4 - 6 years. CA Program complete. Has conduct of minor administrations and experience in controlling 1 - 3 staff. Assists planning and control of medium to larger jobs.		
Senior 1	243	2 - 4 years. CA Program normally completed within this period. Assists planning and control of small to medium sized jobs as well as performing some of the more difficult work on larger jobs.		
Senior 2	221	2 - 3 years. CA Program would normally be commenced. Required to control the fieldwork on small jobs and is responsible for helping to complete fieldwork on medium to large jobs.		
Intermediate 1	185	1 - 2 years. Graduate required to assist in day-to-day field work under supervision of more senior staff.		
Intermediate 2	175	0 - 1 year. Trainee / graduate required to assist in day-to-day field work under supervision of more senior staff.		
Graduate	147	0 - 1 year. HSC, graduate or completing part-time degree. Required to assist in administration and day-to-day field work under supervision of more senior staff.		
Secretary	137	Appropriate skills including word processing competency.		

Sheridans' Scale of Fees is increased on 1 August each year (effective from 2014) in line with the CPI amount. Sheridans' current Scale of Fees is available from Sheridans' office on request.

#### 4. Estimated remuneration

I estimate that this administration will cost approximately \$7,500 to complete, subject to the variable of the work required to assist Ms Michelle John with her contingent claim against the company, which may have a significant effect on this estimate. I am unable to determine the effect of this variable until I have commenced work on this aspect of the administration.

I received an indemnity of \$7,500 to contribute to the estimated costs. This has been disclosed in my DIRRI. Approved remuneration may exceed the amount of this indemnity and can be paid from the assets of the administration after approval by creditors or the Court.

#### 5. 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 such as travel, accommodation and search fees these are recovered at cost.
- Internal disbursements such as photocopying, printing and postage. These disbursements, if charged to the Administration, would generally be charged at cost, though some expenses such as telephone calls, photocopying and printing may be charged at a rate that recoups both variable and fixed costs. The recovery of these costs must be on a reasonable commercial basis.

I am not required to seek creditor approval for disbursements paid to third parties, but must account to creditors. However, I must be satisfied that these disbursements are appropriate, justified and reasonable.

I am required to obtain creditor's consent for the payment of disbursements only where there may be a profit or advantage. Creditors will be asked to approve my disbursements where there is a profit or advantage before these disbursements are paid from the administration.

Details of the basis of recovering disbursements in this administration are provided below.

	Rate			
Disbursement	(excl. GST)			
Faxes	Local: \$2.50			
	Interstate: \$4.00			
	International: \$4.00			
Meeting room hire	\$150.00			
Postage	Local and interstate: \$1.50			
	International: cost			
	Other: cost			
Printing and photocopying	20 cents/page			
Storage	Cost			
Telephone	National calls (inc. mobile): \$1.00			
	International: cost			
Staff vehicle use	66 cents/per km			
Statutory advertising	Cost			

Dated: 17 April 2019

## ACN 126 959 206 PTY LTD FORMERLY CIVIC LEGAL PTY LTD ACN 126 959 206

(In Liquidation) ("the company")

#### REMUNERATION APPROVAL REPORT

This Remuneration Approval Report provides you with the information you need to be able to make an informed decision regarding the approval of my remuneration for undertaking the liquidation of the company. This report has the following information included:

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Part 2: Executive summary	1
Part 3: Remuneration	
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3.3 Total remuneration reconciliation	3
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#### Part 1: Declaration

I, Jennifer E. Low, of Sheridans, have undertaken a proper assessment of this remuneration claim for my appointment as Liquidator of the company in accordance with the law and applicable professional standards. I am satisfied that the remuneration claimed is in respect of necessary work to be properly performed in the conduct of the liquidation.

#### Part 2: Executive summary

The total remuneration for this appointment is estimated to be \$7,500. Remuneration currently claimed is summarised below:

Period	Report reference	Amount (excl. GST) \$
Resolution 1: 26 February 2019 to the conclusion of the liquidation*	Part 3	7,500

<sup>\*</sup> Approval for future remuneration sought is based on an estimate of the work necessary to the completion of the administration. Should additional work be necessary beyond what is contemplated, further approval may be sought from creditors.

Please refer to report section references detailed in the above table for full details of the calculation of the remuneration approval sought.

#### Part 3: Remuneration

#### 3.1 Remuneration claim resolutions

I will be seeking approval of the following resolution to approve my remuneration for the period 26 February 2019 to the conclusion of the liquidation:

That the Liquidator's future remuneration calculated on the basis of time spent by the Liquidator and her staff, at the standard scale rates set by Sheridans for work of this nature, be approved for the period 26 February 2019 to the conclusion of the liquidation to a limit of \$7,500 plus GST, and that the Liquidator be authorised to draw her fees on a monthly basis, or as required, beyond which further approval will be required in accordance with the Corporations Act 2001. The standard scale rates will be increased in accordance with the CPI at 1 August each year, rounded up to the nearest \$.

## 3.2 Details of remuneration

The table below sets out the expected costs for the major tasks that are likely to be performed by the Liquidator and her staff. The table also sets out a detailed description of the tasks likely to be performed within each task area.

Task area	General description	Includes			
Creditors	Creditor enquiries,	Receive and respond to creditor enquiries			
\$5,000	requests & directions	Maintaining creditor request log			
		Review and prepare initial correspondence to creditors and			
		their representatives			
		Considering reasonableness of creditor requests			
		Obtaining legal advice on requests			
		Documenting reasons for complying or not complying with			
		requests or directions			
		Compiling information requested by creditors			
	Creditor reports	Preparing Statutory Report by Liquidator and general reports			
		to creditors			
	Dealing with Proofs of	Receipting and filing POD when not related to a dividend			
	Debt	Corresponding with ATO regarding 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			
		Preparation and lodgement of proposal outcome with ASIC			
Administration	Correspondence	General correspondence			
\$2,500 Document		First month, then six-monthly administration reviews			
	maintenance/file	Filing of documents			
	review/checklist	File reviews			
		Updating checklists			
	Bank account	Preparing correspondence opening and closing accounts			
	administration	Bank account reconciliations			
	1616.5	Correspondence with bank regarding specific transfers			
	ASIC Forms	Preparing and lodging ASIC forms including 205, 505 etc			
		Preparing Annual Administration Returns			
	ATO and other	Correspondence with ASIC regarding statutory forms			
	ATO and other	Notification of appointment			
	statutory reporting	Preparing BAS			
	Finalisation	Notifying ATO of finalisation			
		Cancelling ABN / GST / PAYG registration			
	Dianning / Povious	Completing checklists  Discussions regarding status of administration			
	Planning / Review	Discussions regarding status of administration			
	Books and records /	Dealing with records in storage			
	storage	Sending job files to storage			

## Part 3: Remuneration (cont.)

#### 3.3 Total remuneration reconciliation

At this point in time I estimate that the total remuneration for this liquidation will be \$7,500, being the current approval amount being sought. This is consistent with the estimate provided in the Initial Remuneration Notice dated 17 April 2019.

In preparing this Remuneration Approval Report, I have made my best estimate of what I believe the liquidation will cost to complete. However, should the liquidation not proceed as expected, I will advise creditors and I may seek approval of further remuneration and provide details on why the remuneration has changed.

## 3.4 Likely impact on dividends

A Liquidator is entitled to receive remuneration for necessary work that has been properly performed in relation to the liquidation.

A Liquidator must distribute any property realised in accordance with the prescribed order and priorities set out by Section 556 of the Corporations Act 2001. Given that a Liquidator's remuneration is generally afforded priority ahead of any distribution to creditors, any such payment of remuneration approved by creditors will reduce the funds available for distribution to creditors.

The quantum (if any) of the dividend to creditors is ultimately impacted by the Liquidator's remuneration, the asset realisations achieved by the Liquidator and the value of creditor claims admitted to participate in the dividend.

#### 3.5 Remuneration recovered from external sources

I received an indemnity, in the form of a contribution of \$7,500, to contribute to the estimated costs. This has been disclosed in my DIRRI. Approved remuneration may exceed the amount of this indemnity and can be paid from the assets of the administration after approval by creditors or the Court.

#### Part 4: Disbursements

See my Initial Remuneration Notice (Annexure B) for details of the types of disbursements.

I have undertaken a proper assessment of disbursements claimed for the company, in accordance with the law and applicable professional standards. I am satisfied that the disbursements claimed are necessary and proper and do not require creditor approval.

#### Part 5: Summary of receipts and payments

To date, the only receipt has been \$5,000 of the \$7,500 indemnity from a contingent creditor of the company, Ms Michelle John.

To date, the only payment in the liquidation has been \$7 for bank fees.

#### Part 6: Queries

If you have any queries in relation to the information in this report, please contact David Blanchett or Sarah Marsegaglia of this office.

General information is also available on the ARITA and ASIC websites (see section 15 of the attached report to creditors).

#### Part 7: Approval of remuneration

In summary, approval of the following proposal is being sought:

That the Liquidator's future remuneration calculated on the basis of time spent by the Liquidator and her staff, at the standard scale rates set by Sheridans for work of this nature, be approved for the period 26 February 2019 to the conclusion of the liquidation to a limit of \$7,500 plus GST, and that the Liquidator be authorised to draw her fees on a monthly basis, or as required, beyond which further approval will be required in accordance with the Corporations Act 2001. The standard scale rates will be increased in accordance with the CPI at 1 August each year, rounded up to the nearest \$5.

Attached is a Notice of Proposal to Creditors form for the above resolution. I would be grateful if you would complete the form and return it to this office by no later than 4:00pm on Wednesday, 15 May 2019.

If you require any assistance in completing the form, please contact David Blanchett or Sarah Marsegaglia of this office.

An information sheet concerning proposals without meetings can be found at the ARITA website, arita.com.au/creditors.

## PROOF OF DEBT OR CLAIM

This is to sta	te tha	at the company wa	s on	18 March 201	15	and still is justly a	and truly indebted
to				for:			
		\$		and		cents	
		Consideration		Amount \$		emarks (include d	
Date	(h	ow the debt arose	he debt arose)			substantiatin	g payment)
had or recei following: (ii the company	ved a nsert v, asse	or belief the credit ny satisfaction or particulars of all s ess the value of the ern in a schedule in	secu secui se s	urity for the rities held. If ecurities. If a	su th iny	m or any part of ne securities are o v bills or other neg	it except for the on the property of
Date		Drawer		Acceptor		Amount \$	Due date
				•		·	
statement. I debt, to the I am the cre that the deb	know best of editor' of was	by the creditor and that the debt work of my knowledge and sagent authorised incurred for the old belief, remains ur	as ir nd bo d in cons	ncurred for the lief, remains writing to maideration state	he s u ake	consideration stanpaid and unsatisfee this statement id and that the del	ited and that the ried. ①
① Delete l	both i	f this proof is mad					vise, strike out or
Please ensur	re this	s proof is signed fo	or co	ompletion, be	efo	ore lodgement.	
Date:							
Signature:							
Name:							
Occupation:							
Creditor's a	ddres	s:					
		to receive electror 600G of the Corpo					

#### NOTICE OF PROPOSAL TO CREDITORS

#### Proposal for creditor approval

That the Liquidator's future remuneration calculated on the basis of time spent by the Liquidator and her staff, at the standard scale rates set by Sheridans for work of this nature, be approved for the period 26 February 2019 to the conclusion of the liquidation to a limit of \$7,500 plus GST, and that the Liquidator be authorised to draw her fees on a monthly basis, or as required, beyond which further approval will be required in accordance with the Corporations Act 2001. The standard scale rates will be increased in accordance with the CPI at 1 August each year, rounded up to the nearest \$.

#### Reasons for the proposal and likely impact on creditors if passed

The proposal is a request to creditors for approval of my prospective remuneration. If my remuneration is approved, I will draw these funds from current and future funds available. This will reduce the dividend payable (if any) to creditors of the company. Failure to approve remuneration via circular resolution means that I shall be required to call a meeting of creditors to seek approval of my remuneration. This action will result in additional fees and costs for which I shall seek approval.

#### Vote on proposal

Creditors have the option of approving, not approving or objecting to the proposal being resolved without a meeting of creditors. Please select the appropriate Yes, No or Object box referred to below: Yes I approve the proposal Nο I do not approve the proposal I object to the proposal being resolved without a meeting of creditors Object Your claim against the company must be admitted by the Liquidator, for the purposes of voting, for your vote to count. Please select the option that applies: I have previously submitted a Proof of Debt and supporting documents I have enclosed a Proof of Debt and supporting documents with this form Creditor details Name of creditor: \_\_\_\_\_ \_\_\_\_\_ ACN/ABN: \_\_\_\_\_ I am not a related creditor of the company I am a related creditor of the company, relationship:

Please complete this document and return with any supporting documents by no later than 4:00pm on Wednesday, 15 May 2019 for your vote to be counted, by email to general@sheridansac.com.au or by facsimile to (08) 9221 9340. Completed forms may also be sent by post to PO Box Z5209, Perth WA 6831, although you should ensure these are sent in time to arrive by the date the vote closes.

Name of creditor/authorised person: \_\_\_\_\_\_

Signature: \_\_\_\_\_\_ Date: \_\_\_\_\_