



# Grant Thornton

An instinct for growth™

To the Recipient as Addressed

Friday, 28 September 2018

Dear Sir/Madam

## Initial Information for Creditors McPhie & Co Pty Ltd (In Liquidation) ACN 167 062 544 (the Company)

The purpose of this letter is to provide you with information about the liquidation of McPhie & Co Pty Ltd and your rights as a creditor.

### Notification of appointment

I was appointed Liquidator of the Company by the Court on Friday, 7 September 2018.

A copy of my Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) is attached at **Appendix 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. None of the relationships disclosed in this document affect my independence.

### What is a court liquidation?

A court liquidation is where an order to place a company into liquidation is made by the court. Usually this is on application of a creditor where the company has not paid its outstanding debt. Usually this means that the company is insolvent.

According to the Company's records, you may be a creditor of the Company.

### What happens to your debt?

All creditors of the Company are now creditors in the liquidation. As a creditor, you have certain rights, although your debt will be dealt with in the liquidation.

If you have leased the Company property, have a retention of title claim or hold a Personal Property Security in relation to the Company, please contact my staff as soon as possible.

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### Your rights as a creditor

Information regarding your rights as a creditor is provided in the information sheet included at **Appendix B**. This includes your right to:

- Make reasonable requests for a meeting;
- Make reasonable requests for information;
- Give directions to me;
- Appoint a reviewing liquidator; and
- Replace me as liquidator.

If you have not submitted a Proof of Debt Form, please complete the Proof of Debt Form attached at **Appendix C**.

### Summary of the Company's affairs

I received a Report as to Affairs (RATA) from the Director via email on 23 September 2018. A summary of the Company's affairs from the information in the RATA will be presented in detail, together with the findings of my investigations once completed, in my future statutory report.

### What happens next?

I will proceed with the liquidation, including:

- Recovering and selling any available property;
- Investigating the Company's affairs; and
- Reporting to the corporate regulator, the Australian Securities and Investments Commission (ASIC).

If I receive a request for a meeting that complies with the guidelines set out the creditor rights information sheet, I will hold a meeting of creditors.

I will write to you within three months of my appointment advising whether a dividend is likely and update you on the progress of my investigations.

I may write to you again after that with further information on the progress of the liquidation.

### Costs of the liquidation

Included at **Appendix D** is my Initial Remuneration Notice. This document provides you with information about how I will get paid for undertaking the liquidation.

I may write and ask that you approve my remuneration for the work that I do in completing the liquidation. If I do, I will provide you with detailed information so that you can understand what tasks I have undertaken and the costs of those tasks.

### Where can you get more information?

The Australian Restructuring Insolvency and Turnaround Association (ARITA) provides information to assist creditors with understanding liquidations and insolvency.

This information is available from ARITA's website at [www.arita.com.au/creditors](http://www.arita.com.au/creditors).

ASIC provides information sheets on a range of insolvency topics. These information sheets can be accessed on ASIC's website at [www.asic.gov.au](http://www.asic.gov.au) (search for "insolvency information sheets").

Should you have any queries in relation to the above, please contact Jessica Costanzo of my office on +61 2 9286 5410 or [jessica.costanzo@au.gt.com](mailto:jessica.costanzo@au.gt.com).

Yours sincerely



Cameron Crichton  
Liquidator

#### **Attachments**

Appendix A – Declaration of Independence, Relevant Relationships and Indemnities  
Appendix B – Information Sheet - Creditor Rights in Liquidation  
Appendix C – Proof of Debt Form (Form 535)  
Appendix D – Initial Remuneration Notice  
Appendix E – Document of Appointment

## Appendix A

Declaration of Independence, Relevant Relationships and Indemnities

# Declaration of Independence, Relevant Relationships and Indemnities

McPhie & Co Pty Ltd (In Liquidation)  
ACN 167 062 544 (the Company)

Practitioner/s 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; and
  - iv That there are no other relationships to declare.
- C Any indemnities given, or up-front payments made, to the Practitioner.

This declaration is made in respect of myself, my partners, Grant Thornton Australia Limited (GTAL) (the Firm) and any of the GTAL's associated entities.

## **A Independence**

I, Cameron Crichton of Grant Thornton Australia Limited, have undertaken a proper assessment of the risks to my independence prior to accepting the appointment as Liquidator of McPhie & Co Pty Ltd 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.

## **B Declaration of Relationships**

### **Circumstances of appointment**

This appointment was referred to me by Craddock Murray Neumann Lawyers, who acted on behalf of the Australian Taxation Office (ATO), the petitioning creditor.

I was approached by Craddock Murray Neumann Lawyers on 8 June 2018 and was requested to provide a consent to act for the winding up of the Company. An internal conflict check was complete and a consent to act provided on 12 June 2018. No prior communication regarding the Company was held.

I have provided no other information or advice to the Company, the Directors and its advisors prior to my appointment beyond that outlined in this DIRRI.

## Relevant Relationships (excluding Professional Services to the Insolvent)

I or a member of my firm, have, or have had within the preceding 24 months, a relationship with:

Name	Nature of relationship	Reasons
Australian Taxation Office (ATO)	We have had past dealings with the ATO in its capacity as a creditor of past insolvency administrations conducted by us as insolvency practitioners.	Our past involvement with the ATO will not influence our ability to fully comply with the statutory and fiduciary obligations associated with the conduct of the winding up of the Company in an objective and impartial manner.
Craddock Murray Neumann Lawyers	<p>Craddock Murray Newman Lawyers act as the lawyers for the Petitioning Creditor, the ATO, and as noted above approached Grant Thornton Australia Limited to act as Liquidators.</p> <p>Craddock Murray Neumann Lawyers periodically refers engagements to Grant Thornton Australia Limited.</p>	<p>I believe that this relationship does not result in a conflict of interest or duty because:</p> <ul style="list-style-type: none"><li>• Each professional engagement undertaken after referral by, or on instructions from Craddock Murray Neumann Lawyers, is conducted on an entirely separate basis, which has no connection with this appointment.</li><li>• These engagements are only commenced after full regard is given to potential conflicts of interest in relation to all interested stakeholders.</li><li>• Grant Thornton Australia Limited has not undertaken any engagement for the Company.</li><li>• The relationship with Craddock Murray Neumann Lawyers will not influence our ability to fully comply with the statutory and fiduciary obligations associated with the Liquidation of the Company in an objective and impartial manner.</li></ul>

## Prior Professional services to the Insolvent

Neither me, nor my firm, have provided any professional services to the Company in the previous 24 months.

## 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 whole of the Company's property that should be disclosed.

**C Indemnities and up-front payments**

I have not been indemnified in relation to this administration, other than any indemnities that I may be entitled to under statute and I have not received any up-front payments in respect of my remuneration or disbursements.

Dated: 28 September 2018



.....  
**CAMERON CRICHTON**  
**LIQUIDATOR**

**Note:**

1 If circumstances change, or new information is identified, I am are 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 table a copy of any replacement declaration at the next meeting of the insolvent's creditors.

2 Any relationships, indemnities or up-front payments disclosed in the DIRRI must not be such that the Practitioner is no longer independent. The purpose of components B and C of the DIRRI is to disclose relationships that, while they do not result in the Practitioner having a conflict of interest or duty, ensure that creditors are aware of those relationships and understand why the Practitioner nevertheless remains independent.

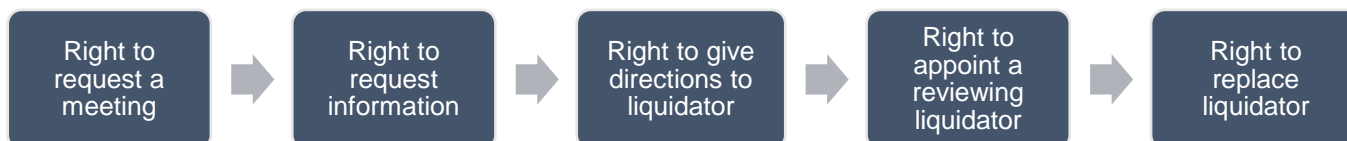
## Appendix B

Information Sheet – Creditor Rights in Liquidation



# 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.

## 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.

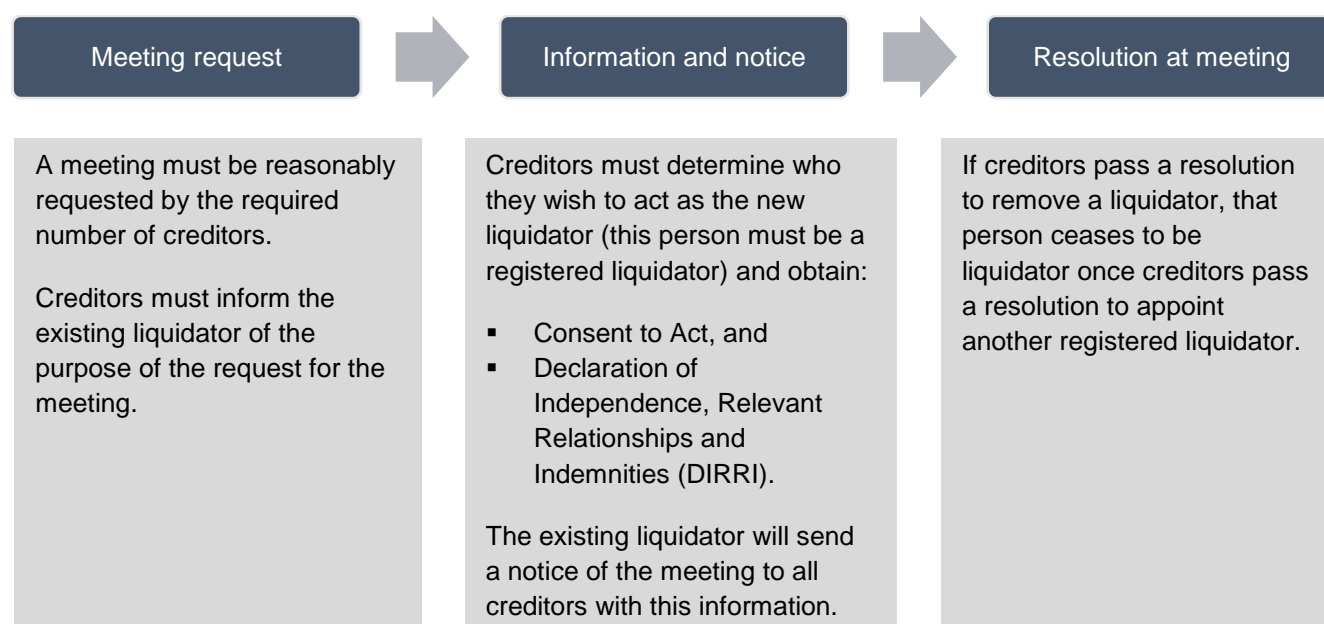
The cost of the reviewing liquidator is paid from the assets of the liquidation, in priority to creditor claims.

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)**

## Appendix C

Proof of Debt Form (Form 535)

**ACN 167 062 544  
FORM 535**

Subregulation 5.6.49(2)  
Corporations Act (2001)

**FORMAL PROOF OF DEBT OR CLAIM  
(GENERAL FORM)**

To the Liquidator of McPhie & Co Pty Ltd (In Liquidation)

1 This is to state that the company was on Friday, 7 September 2018, and still is, justly and truly indebted to:

\_\_\_\_\_

(full name and address of the creditor and, if applicable, the creditor's partners. If prepared by an employee or agent of the creditor, also insert a description of the occupation of the creditor) for

\$\_\_\_\_\_ and \_\_\_\_\_ cents.

Date	Consideration (state how the Debt arose)	Amount \$ c	Remarks (include details of voucher substantiating payment)

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 \* 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.

4 \* I am the creditor's agent authorised in writing to make this statement in writing. 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.

.....  
Signature  
Occupation:

Dated

Phone:

Address:

Email:

**\*Do not complete if this proof is made by the creditor personally.**

## Appendix D

### Initial Remuneration Notice

# Initial Remuneration Notice

McPhie & Co Pty Ltd (In Liquidation)  
ACN 167 062 544 (the Company)

The purpose of the Initial Remuneration Notice is to provide you with information about how my remuneration for undertaking the Court 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:

### ***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.

### ***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.

### ***Percentage***

The total fee charged is based on a percentage of a particular variable, such as the gross proceeds of assets realisations.

### ***Contingency***

The practitioner's fee is structured to be contingent on a particular outcome being achieved.

## 2 Method chosen

Given the nature of this administration I propose that my remuneration be calculated on the time based / hourly rates method. In my opinion, this is the fairest method for the following reasons:

- I will only be paid for work done, subject to sufficient realisations of the Company assets. Or, if there are insufficient assets realised, subject to the indemnity provided to me (please refer to our Declaration of Independence, Relevant Relationship and Indemnities).
- It ensures creditors are only charged for work that is performed. Time is recorded and charged in six minute increments and staff are allocated to duties according to their relevant experience and qualifications.
- I am required to perform a number of tasks which do not relate to the realisation of assets, for example responding to creditor enquiries, reporting to ASIC, distributing funds in accordance with the provisions of the Corporations Act.
- I am unable to estimate with certainty the total amount of fees necessary to complete all tasks required in the external administration.
- I have a time recording system that is able to produce a detailed analysis of time spent on each type of task by each individual staff member utilised in the administration.
- The method provides full accountability in the method of calculation.

### 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.

Position	Description	Hourly Rate (excl GST)
Appointee	Registered Liquidator / Trustee. Partner bringing specialist skills to Administrations and Insolvency matters. Controlling all matters relating to the assignment.	\$600
Director	Qualified accountant (CA/CPA) and may be a registered Liquidator/Trustee. Minimum 7/8+ years' experience. Likely to be appointed as a director in due course. Highly advanced technical and commercial skills. Planning and control of all Administration and Insolvency tasks. Controlling substantial matters relating to the assignment and reporting to the appointee.	\$525
Senior Manager	Qualified accountant (CA/CPA). 7/8+ years' experience. Well developed technical and commercial skills. Planning and control of all Administration and Insolvency tasks. Controlling substantial matters relating to the assignment and reporting to the appointee.	\$500
Manager	Typically CA/CPA Qualified. 5-8 years' experience. Well developed technical and commercial skills. Planning and control of Administration and Insolvency tasks with the assistance of the appointee.	\$455
Senior Associate	Typically CA/CPA Qualified. 3-5 years' experience. Required to control the fieldwork on Administrations and Insolvency tasks.	\$375-410
Associate	Typically undertaking CA/CPA Qualifications. Up to 3 years' experience. Required to conduct the fieldwork on smaller Administrations and Insolvency tasks and assist with fieldwork on medium to large Administrations and Insolvency tasks.	\$220-300
Secretary	Carries out all secretarial functions relating to an Administration.	\$195
Administrator	Conducts all aspects relating to administering the accounts function.	\$195

### 4 Estimated remuneration

I estimate that this administration will cost approximately \$10,000 to \$20,000 to complete, subject to the following variables which may have a significant effect on this estimate and that I am unable to determine at this early stage in the administration:

- Realisation of assets;
- Investigations required;
- Liaising with creditors;
- Dividends (if applicable); and
- Any other unforeseen matters.

Prior to my appointment, no estimate of the cost of the administration was provided to the petitioning creditor. Due to the nature of my appointment, no information regarding the Company was available to assess the level of assets, liabilities or co-operation which might be provided. Therefore an estimate was unable to be provided. The estimate above is based on our initial understanding and investigations into the business but may be subject to change depending on any difficulties encountered with asset realisations, investigations and creditor dealings. I have not received any upfront payment of indemnity to contribute to the estimated costs, as confirmed in my DIRRI.

## 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 which 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 internal disbursements where there may be a profit or advantage. Creditors will be asked to approve my internal disbursements where there is a profit or advantage prior to these disbursements being paid from the administration.

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

### **Basis of disbursement claim**

<b>Disbursements</b>	<b>Rate (Excl GST)</b>
Externally provided professional services	At Cost
Externally provided non-professional services	At Cost
Internal disbursements	
Courier	At Cost
Postage (large)	\$1.91 per page
Postage (small)	\$0.99 per page
Fax (interstate)	\$2.00 per page
Fax (local)	\$1.00 per page
Staff vehicle use	Paid at the ATO set rate

Scale applicable for financial year ending 30 June 2019.

Date of issue: Friday, 28 September 2018



# Appendix E

## Document of Appointment



Federal Court of Australia  
District Registry: Queensland  
Division: General

No: QUD525/2018

**DEPUTY COMMISSIONER OF TAXATION**  
Plaintiff

**MCPHIE & CO PTY LTD ACN 167 062 544**  
Defendant

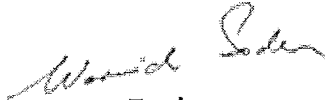
**ORDER**

**REGISTRAR:** DEPUTY DISTRICT REGISTRAR LYNCH  
**DATE OF ORDER:** 7 September 2018  
**WHERE MADE:** Brisbane

**THE COURT ORDERS THAT:**

1. MCPHIE & CO PTY LTD ACN 167 062 544 be wound up in insolvency under the provisions of the *Corporations Act 2001* (Cth).
2. Cameron Alexander CRICHTON, a registered liquidator, be appointed liquidator of the company.
3. The plaintiff's costs be fixed in the sum of \$2,942.10 and reimbursed in accordance with section 466(2) of the *Corporations Act 2001* (Cth).

Date that entry is stamped: 7 September 2018

  
Registrar

Subsection 35A (5) of the *Federal Court of Australia Act 1976* (the *Act*) provides that a party to proceedings in which a Registrar has exercised any of the powers of the Court under subsection 35A (1) of the Act may, within the time prescribed by the Rules of Court, or within any further time allowed in accordance with the Rules of Court, apply to the Court to review that exercise of power.

Rule 3.11 provides that a party may apply to the Court under subsection 35A (5) of the Act for review of the exercise of a power of the Court by a Registrar and that any application must be made within 21 days after the day on which the power was exercised. A party seeking a review can apply to the Court to dispense with any requirement of the Rules (Rule 1.34).