

**IN THE MATTER OF PROPERTY TUITION PTY LTD  
(ACN 129 421 281)**

Proceeding No: VID407/2015

**Australian Securities and Investments Commission**

Applicant

**Jamie Neville McIntyre** First Respondent

**Dennis McIntyre** Second Respondent

**Archery Road Pty Ltd  
(ACN 162 921 735)** Third Respondent

**Secret Valley Estate Pty Ltd  
(ACN 602 817 532)** Fourth Respondent

**Kingsway South Holdings Pty Ltd  
(ACN 159 230 976)** Fifth Respondent

**Bendigo Vineyard Estate Pty Ltd  
(ACN 600 088 211)** Sixth Respondent

**Melbourne Tarniet Estate Pty Ltd  
(ACN 603 945 393)** Seventh Respondent

**Property Tuition Pty Ltd  
(ACN 129 421 281)** Eighth Respondent

**Education Holdings Pty Ltd  
(ACN 129 551 917)** Ninth Respondent

**Sourcing Property Pty Ltd  
(ACN 602 474 779)** Tenth Respondent

Respondents

**Summary of the Disclosure Reports prepared in  
relation to the Third to Tenth Respondents  
(inclusive)**

**15 December 2015**



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## Definitions

21 <sup>st</sup> Century Group	Education Holdings Pty Ltd, Property Tuition Pty Ltd, Archery Road Pty Ltd, Secret Valley Estate Pty Ltd, Kingsway South Holdings Pty Ltd, Bendigo Vineyard Estate Pty Ltd, Melbourne Tarniet Estate Pty Ltd, Sourcing Property Pty Ltd and other entities controlled by Dennis and / or Jamie McIntyre
21 <sup>st</sup> Century Media Holdings Pty Ltd	Media Holdings
805 ARPL	805 Archer Road Pty Ltd (In Liquidation) (Subject to Deed of Company Arrangement)
ARITA	Australian Restructuring Insolvency and Turnaround Association
ARPL	Archery Road Pty Ltd
ASIC	The Australian Securities & Investments Commission
ATO	Australian Taxation Office
Bendigo property or Bendigo Vineyard Estate and Resort	51 St Andrews Road, Maiden Gully
Bendigo Scheme	Bendigo Vineyard Estate Scheme
Bendigo Vineyard	Bendigo Vineyard Estate Pty Ltd
Botanica	805 Archer Road, Kialla, Victoria
Broadview	Broadview Pinkett Pty Ltd
Corporate Respondents	Education Holdings Pty Ltd, Property Tuition Pty Ltd, Archery Road Pty Ltd, Secret Valley Estate Pty Ltd, Kingsway South Holdings Pty Ltd, Bendigo Vineyard Estate Pty Ltd, Melbourne Tarniet Estate Pty Ltd, Sourcing Property Pty Ltd
Date of Appointment	7 October 2015
Deloitte	Deloitte Touche Tohmatsu
Developments	805 Archer Road, Kialla, Victoria, 1955 Old Sydney Road, Bylands, Victoria, 124 Booth Road, Brookhill, Queensland, 51 St Andrews Road, Maiden Gully, Victoria and 1491 Dohertys Road, Mount Cottrell, Victoria
Development Companies	Archery Road Pty Ltd, Secret Valley Estate Pty Ltd, Kingsway South Holdings Pty Ltd, Bendigo Vineyard Estate Pty Ltd and Melbourne Tarniet Estate Pty Ltd
DIRRI	Declaration of Independence and Relevant Relationships and Indemnities
DOCA	Deed of Company Arrangement
Education Holdings	Education Holdings Pty Ltd, formerly 21 <sup>st</sup> Century Education Pty Ltd
ERV	Estimated Realisable Value
FME	Farm Management Enterprises Pty Ltd
Henry River	Henry River Pty Ltd
IOC3	Isle of Capri 3 Pty Ltd
Kialla property	805 Archer Road, Kialla
KS Holdings	Kingsway South Holdings Pty Ltd
LRA	Lot Reservation Agreement
LRD	Lot Reservation Deed
Management	Management of the Company
McIntyre Controlled Entities	Broadview Pinkett Pty Ltd, Pinnacle Event Management Pty Ltd, Financial Educators Association Pty Ltd, Salarium Services Pty Ltd, 21st Century Media Holdings Pty Ltd, Isle of Capri 2 Pty Ltd,

	Isle of Capri 3 Pty Ltd, Property Direct (International) Pty Ltd, GC Princess Boatshare Pty Ltd, Farm Management Enterprise Pty Ltd, Siddha Holdings Pty Ltd and Phoenix Investment Holdings LLC
Melbourne Grove Estate or Mt Cottrell Property	1491 Dohertys Road, Mount Cottrell, Victoria
MGE Scheme	Melbourne Grove Estate Scheme
MIS	Managed Investment Scheme
NAB	National Australia Bank Ltd
Oak Valley Lakes Estate and Resort	124 Booth Road, Brookhill, Queensland
Order	Order made by Middleton J. on 7 October 2015 in the Federal Court of Australia, Victoria General Division No.VID 407/2015
OVE Scheme	Oak Valley Estate Scheme
Pinnacle	Pinnacle Event Management Pty Ltd
POD	Proof of Debt
PPSA	Personal Properties Security Act
PPSR	Personal Property Securities Register
Proceeding	Federal Court of Australia, Victoria General Division No.VID 407/2015 between ASIC and Jamie Neville McIntyre &OR's commenced by Originating Process dated 3 August 2015
PDI	Property Direct (International) Pty Ltd
Provisional Liquidators	Simon Wallace Smith and Robert Scott Woods appointed pursuant to s472(2) of the Act as joint and several provisional liquidators of each of the Corporate Respondents pursuant to the Orders
PSA	Property Sourcing Agreement
PT	Property Tuition Pty Ltd formerly 21 <sup>st</sup> Century Property Pty Ltd
RATA	Report as to Affairs
Salarium Services	Salarium Services Pty Ltd
Schemes	Botanica, Secret Valley Estate, Oak Valley Lakes Estate and Resort, Bendigo Vineyard Estate and Resort and Melbourne Grove Estate
Secret Valley	Secret Valley Estate Pty Ltd
Secret Valley Estate or Wallan Property	1955 Old Sydney Road, Bylands, Victoria
Sourcing Property	Sourcing Property Pty Ltd
SV Scheme	Secret Valley Estate Scheme
Tarniet	Melbourne Tarniet Estate Pty Ltd
The Act	Corporations Act 2001
The Court	The Federal Court of Australia or any of the state Supreme Courts
The Regulations	Corporations Regulations 2001
Townsville Property	124 Booth Road, Brookhill, Queensland
WBC	Westpac Banking Corporation Ltd
www	What Working Women Want
Xero	Xero Accounting Software Program

## 1. Executive Summary

Our investigations into the affairs of the Corporate Respondents and / or Schemes during the period 1 June 2014 to the date of our appointment have revealed the following:

- As a result of the sale and / or promotion by the Corporate Respondents of options in land-banking schemes, the Corporate Respondents received funds totalling c.\$6.68m from approximately 152 investors;
- At the date of our appointment, the Corporate Respondents had collective cash at bank of \$145,716;
- Net payments made by the Corporate Respondents to McIntyre Controlled entities total c.\$6.7m, of which at least \$4.3m is uncollectible.<sup>1</sup> The collectability of the balance is unknown;
- 5 Schemes were promoted by the Corporate Respondents;
- We have not identified any separate assets or liabilities of the respective Schemes;
- Only 2 of the Corporate Respondents are the registered proprietors of the properties which were promoted to investors (ARPL and Bendigo Vineyard);
- Despite Bendigo Vineyard and ARPL raising approximately \$3.4m from investors, they sought and obtained finance from lenders secured by registered mortgages to fund the purchase of the respective properties<sup>2</sup> and thereby reducing the total equity in these properties by approximately \$1.54m;
- We have identified a number of potential offences under the Act which warrant further investigation by a liquidator, including:
  - Uncommercial transactions;
  - Insolvent trading;
  - Breaches of director's duties; and
  - Operating an unregistered Managed Investment Scheme on the basis of the way in which funds were raised and the Schemes promoted by the Corporate Respondents.
- Our investigations indicate that all of the Corporate Respondents are Insolvent; and
- We recommend, on the basis of our investigations to date, that the Corporate Respondents be wound up to enable a liquidator to conduct further investigations into their respective affairs and to identify any recoveries which may be made for the benefit of creditors.

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<sup>1</sup> According to both Dennis and Jamie McIntyre, the Director/s and / or ultimate owners of the McIntyre Controlled Entities.

<sup>2</sup> The purchase of the Kialla property by ARPL involved a mortgage back to the vendor over the property.

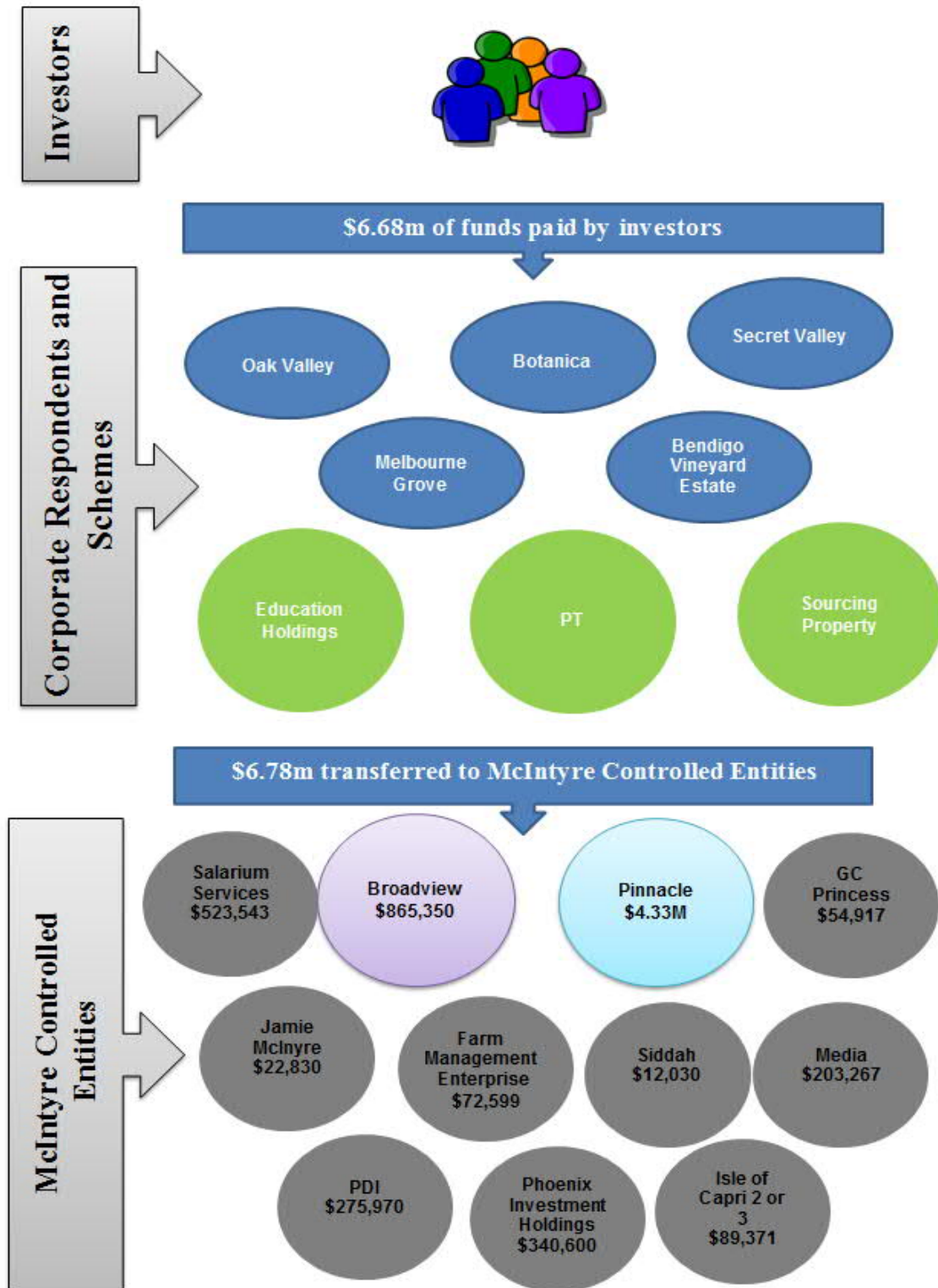
The table below is a summary of the position of the Corporate Respondents. The Corporate Respondents in our view have a collective estimated net asset deficiency of c\$16m.

	<b>Amount \$</b>
Funds raised from investors	6,687,218
Net value of identified payments made to McIntyre Controlled Entities	6,787,058 <sup>3</sup>
Cash at bank at appointment	145,716
Estimated value of realisable assets (excluding cash at bank)	554,880

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<sup>3</sup> We note that Education generated other income by way of operating activities and hence the amount paid to McIntyre controlled entities is higher than the amounts received by the Corporate Respondents from Investors.

Below is a summary of the net cash movements we have identified as being made by the Corporate Respondents to McIntyre controlled entities:





## 2. Overview of Appointment

On 7 October 2015, pursuant to an Order of the Federal Court of Australia, we, Simon Wallace-Smith and Robert Woods were appointed Joint and Several Provisional Liquidators of the Corporate Respondents.

By 15 December 2015, as Provisional Liquidators, we were required to provide to the Court, the plaintiff and the respondents a report as to the Provisional Liquidation of each of the Corporate Respondents (“**disclosure reports**”), including:

- a) the identification of the assets and liabilities of the Corporate Respondents;
- b) an opinion as to the solvency of the Corporate Respondents;
- c) the likely return to creditors of the Corporate Respondents;
- d) any other information necessary to enable the financial position of the Corporate Respondents to be assessed;
- e) any suspected contravention of the Act by any directors and of officers of the Corporate Respondents;
- f) the nature and identity of the Property of the Schemes
- g) the claims (actual, contingent and other) of third parties in relation to the Property of the Schemes including, but not limited to, whether the Property of the Schemes has been given as security for any debt or liability and if so, the nature of the security and the debt or liability so secured;
- h) in relation to the Investors:
  - i. the identities of the Investors and the nature and extent of their interests;
  - ii. any payments made to or by Investors in relation to the Schemes;
  - iii. any money owing to the Investors;
- i) the nature and identity of the liabilities of the Schemes including, but not limited to, liabilities to the Investors;
- j) the solvency of the Schemes;
- k) the most appropriate manner and timing of managing and realising any assets or Property of the Schemes so as to most benefit the Investors; and
- l) a recommendation as to the process for recovering all money owing to the Schemes, whether by way of loan or otherwise.

In order to fulfil these requirements for the Court, the Provisional Liquidators have been granted the following powers, including:

- all powers necessary to identify and secure the Property of each of the Schemes;
- to take possession and control of all assets of the Corporate Respondents;
- to deal and control any monies held by or on behalf of the Corporate Respondent, including any moneys that are received through the course of business;
- to have access to any bank accounts under the name of the Corporate Respondents, and to withdraw and pay into bank accounts that are opened and maintained by the Provisional Liquidator.

- To contract to services of other profession services to aid in the provisional liquidation process.
- To delegate within and outside the Provisional Liquidator's firm regarding tasks in which the Provisional Liquidators cannot do themselves.
- Engage in any activities for the purpose of maintaining and securing the assets of the Corporate Respondents.

The time period for providing the Disclosure Reports to the Court, the plaintiff and the first and second respondents was extended to 15 December 2015 by order made by Middleton J on 10 November 2015.

### 3. Overview of Corporate Respondents

	Bendigo Vineyard Estate Pty Ltd	Kingsway South Holdings Pty Ltd	Secret Valley Estate Pty Ltd	Archery Road Pty Ltd	Melbourne Tarniet Estate Pty Ltd	Source
<b>ACN</b>	600 088 211	159 230 976	602 817 532	162 921 735	603 945 393	6
<b>Director/s</b>	Dennis McIntyre	Dennis McIntyre	Dennis McIntyre	Dennis McIntyre	Dennis McIntyre	De
<b>Secretary</b>	Dennis McIntyre	Dennis McIntyre	Dennis McIntyre	Dennis McIntyre	Dennis McIntyre	De
<b>Shareholder</b>	Henry River	Henry River	Henry River	Henry River	Jamie McIntyre	F
<b>Ultimate Owner</b>	Jamie McIntyre	Jamie McIntyre	Jamie McIntyre	Jamie McIntyre	Jamie McIntyre	Ja
<b>State of Registration</b>	Victoria	Victoria	Victoria	Victoria	Victoria	
<b>Date of Incorporation</b>	12/06/2014	27/06/2012	12/11/2014	19/03/2013	30/01/2015	
<b>Registered Office</b>	Corporate Centre One' Suite 8, 2 Corporate Court, Bundall, Queensland	Level 8, 96 – 100 Albert Road South Melbourne, Victoria	Corporate Centre One Suite 8, 2 Corporate Court Bundall, Queensland	Corporate Centre One Suite 8, 2 Corporate Court Bundall, Queensland	Level 8, 96 – 100 Albert Road South Melbourne, Victoria	96 – Sou
<b>Principal Place of Business</b>	Corporate Centre One' Suite 8, 2 Corporate Court, Bundall, Queensland	Level 8, 96 – 100 Albert Road South Melbourne, Victoria	Corporate Centre One Suite 8, 2 Corporate Court Bundall, Queensland	Corporate Centre One Suite 8, 2 Corporate Court Bundall, Queensland	Level 8, 96 – 100 Albert Road South Melbourne, Victoria	96 – Sou
<b>Relevant Scheme</b>	Bendigo Vineyard	Oak Valley Estate and Resort	Secret Valley	Botanica	Melbourne Grove Estate	

### 4. Conduct of Provisional Liquidation

Upon our appointment, we conducted the following key tasks in relation to the Order of Justice Middleton made on 7 October 2015:

#### Securing and Preserving Assets:

- Searches of land titles databases in Victoria, New South Wales (“NSW”) and Queensland to identify any properties owned by the Corporate Respondents and / or Schemes;
- Attendance at and inspection of the Kialla and Bendigo properties;
- Notification of the appointment of Provisional Liquidators to creditors holding security over the Kialla and Bendigo properties;
- Notification of appointment and correspondence with secured creditors regarding security interests recorded on the PPSR;
- Engagement of a maintenance and security person to maintain the Bendigo property;
- Obtaining of formal valuations of the Kialla and Bendigo properties; and

- Liaising with insurance brokers regarding the appointment of the Provisional Liquidators and ongoing insurance requirements for the Corporate Respondents.

## **Investigations:**

- Review of affidavit material filed in the Proceedings;
- Attendance at the former registered office of the Corporate Respondents;
- Interviews of key personnel including the Director, Chief Executive Officer (“CEO”), Chief Financial Officer (“CFO”) and General Manager (“GM”);
- Correspondence with current and former advisors for the Corporate Respondents and / or Schemes;
- Preparation and issuance of statutory notices for the production of books and records on various parties that have acted for, or provided advice to the Corporate Respondents and / or Schemes;
- Meeting with representatives of the City of Greater Bendigo and Shepparton City Councils;
- Liaising with representatives of the Townsville City Council and Mitchell Shire Council;
- Review of the RATA for each of the Corporate Respondents;
- Conducted PPSR searches on each of the Corporate Respondents;
- Correspondence with major financial institutions to identify any bank accounts currently or previously operated by the Corporate Respondents and / or Schemes;
- Review of bank statements for accounts held by the companies;
- Review of intercompany loans and reconciliation of payments made between Corporate Respondents and / or related parties;
- Identified and analysed the accounting records from the Xero software used to account for the transactions of the companies;
- Correspondence and discussions with the Deed Administrators of 805 ARPL in relation to the Botanica Scheme and the Kialla property; and
- Issued correspondence to:
  - the Sheriff’s Offices in Victoria, New South Wales and Queensland to determine whether they were holding any goods or monies levied against the group of companies;
  - the Victorian, New South Wales and Queensland Commissioner of State Revenue in order to determine whether any payroll or land tax were outstanding
  - VicRoads, New South Wales Road Transport Authority and Queensland Transport to identify ownership of any vehicles;
  - Racing bodies in Victoria, New South Wales and Queensland to identify any equine interests; and
  - WorkCover authority offices in Victoria, New South Wales and Queensland to determine if any premiums were outstanding.

## **Investors:**

- Issued notification of the appointment of Provisional Liquidators;

- Establishment of email address for investor enquires;
- Communications with investors regarding the potential impact of the administration on their investment;
- Review of investors lists maintained by the Corporate Respondents and / or Schemes;
- Review of correspondence provided by investors;
- Liaising with investors regarding their investment;
- Perusal of lot reservation agreements and/or property sourcing agreements for each scheme; and
- Obtaining legal advice relating to the rights of investors and claims arising from their participation in the schemes.

## **Creditors:**

- Correspondence with creditors and responding to enquiries;
- Maintenance of creditor register for each of the Corporate Respondents;
- Review of creditors' claims.

## **Statutory**

- Lodgement of notice of appointment with ASIC for each Corporate Respondent;
- Lodgement of the RATAs for each of the Corporate Respondents with ASIC and the Court;
- Arrange advertisement of notification of appointment of Provisional Liquidators in The Australian; and
- Assist in the preparation of and swearing affidavit to obtain an extension of time to file the Disclosure Reports with the Court.

## **Books & Records**

- Obtaining access to the companies' accounting information system "Xero";
- Retrieval of records and marketing brochure at the principal place of business of the Corporate Respondents;
- Attendance at a storage facility holding books and records of the Corporate Respondents and / or Schemes;
- Cataloguing of books and records obtained;
- Imaging of the Corporate Respondents and / or Schemes cloud based server and review of records of the companies; and
- Attendance to review and preliminary investigations of books and records obtained.

On 7 October 2015, we attended the Albert Road premises and confirmed that the premises had been vacated by the Corporate Respondents and / or Schemes. Discussions with a representative of the business sub-letting the Albert Road premises revealed that the premises had only been vacated the week prior to our appointment. We note that our discussions with Mr Swarit Verma (CFO) confirmed

this and further that the Corporate Respondents and / or Schemes had ceased operations in Victoria and did not operate from the Bundall premises. Mr Verma advised that all documentation had been relocated to Guardian Storage in York Street, South Melbourne, Victoria (“Guardian storage”) and not the Bundall offices.

On 12 October 2015, Simon Wallace-Smith met with Mr Verma and Mr Doug Constable from Carlton Ross, who had been advising Dennis and Jamie McIntyre at Guardian Storage and inspected the four (4) storage sheds to which documents from the Albert Road premises were moved. Only two (2) sheds contained documentation pertaining to the Corporate Respondents and Schemes over which we were appointed. We have taken control of these records.

A copy of the listing of books and records obtained is attached as **annexure SR-1**.

We note that our investigations revealed that the Corporate Respondents (save Sourcing Property) used the cloud based accounting software program, Xero. We note that we were given access to these Xero accounts on 8 October 2015.

We have also obtained copies of the electronic information of the Corporate Respondents. Between 7 October 2015 and 28 October 2015, data collection of computer systems / equipment identified as belonging to the Corporate Respondents took place.

During this activity the following items were preserved;

- 26 user computer systems;
- 2 computer servers;
- 1 Network Attached Storage (NAS) device; and
- 13 External USB devices.

An outsourced provider, Cymex, was identified as providing IT support to the 21st Century Group. We were informed by Cymax that as well as providing physical equipment and onsite support, they also hosted for 21st Century Group a Microsoft Exchange Email Server and a ‘Cloud’ service (“Soonr”)

We encountered significant delays in obtaining access to the information hosted by Cymax. A summary is provided below:

- On 9 October 2015, we issued correspondence to Cymax pursuant to Section 530B of the Act, requesting details of passwords for electronic data hosted on behalf of the Corporate Respondents;
- On 12 October 2015, we received a response from Mr Sean Dendle on behalf of Cymax advising they had suspended access to the data pending payment of their costs, which were not quantified and advising that they had concerns regarding allowing access to the data as it was hosted on behalf of the 21<sup>st</sup> Century Group not just the Corporate Respondents;
- On 13 October 2015, our lawyers issued correspondence to Cymax requiring production of the information in accordance with Section 530B of the Act;
- On the same day, Cymax advised that they would allow access to the server for a period of 2 weeks however they did not hold passwords to enable access and advised that the CFO of the Corporate Respondents may hold same;

- Between 13 October 2015 and 20 October 2015, we made several attempts to obtain the passwords from the CFO who advised that he did not hold same;
- On 20 October 2015, we received correspondence from Parkston Lawyers on behalf of their clients, Jamie and Dennis McIntyre advising that they would allow access to the data hosted by Cymax once they had established which emails may contain privileged information;
- Following a series of correspondence, on 26 October 2015 a protocol was agreed to with Parkston Lawyers in relation to accessing and downloading the data hosted by Cymax. In accordance with this protocol, we gained access to this data on 30 November 2015.

A copy of the above correspondence is attached as **annexures SR-2 to SR-8**.

As a consequence, we have not yet had the opportunity to examine in any detail the emails and other data hosted on behalf of the Corporate Respondents by Cymax.

## 5. Business activities

Our investigations into the affairs of the Corporate Respondents revealed they were involved in the promotion, sale and/or development of various land-banking projects and the promotion and / or hosting of educational seminars and training programs in finance, real estate and securities.

The Corporate Respondents operated under the 21<sup>st</sup> Century Group banner which included a number of entities ultimately controlled by Jamie McIntyre. The Corporate Respondents and the 21<sup>st</sup> Century Group operated from leased premises at Level 8, 96-100 Albert Road, South Melbourne (“Albert Road premises”).

We note that the Corporate Respondents did not employ staff. According to both Jamie and Dennis McIntyre, all 21<sup>st</sup> Century Group staff were employed by a related entity, Salarium Services. We note that we have not seen any contracts of employment or other documentation which would suggest otherwise.

Five of the eight Corporate Respondents, were involved (or to be involved) in the development of various land-banking Schemes in Victoria and Queensland.

A summary of these is provided in the table below:

Scheme	Development	Developers
Botanica	805 Archer Road, Kialla, Victoria	Archery Road Pty Ltd
Secret Valley Estate	1955 Old Sydney Road, Bylands, Victoria	Secret Valley Estate Pty Ltd
Oak Valley Lakes Estate and Resort	124 Booth Road, Brookhill, Queensland	Kingsway South Holdings Pty Ltd
Bendigo Vineyard Estate and Resort	51 St Andrews Road, Maiden Gully, Victoria	Bendigo Vineyard Estate Pty Ltd
Melbourne Grove Estate	1491 Dohertys Road, Mount Cottrell, Victoria	Melbourne Tarniet Estate Pty Ltd

Land-banking Schemes generally involve the sale (or reservation) of an option to purchase lots / portions of a large parcel of land to investors. This land is mostly in undeveloped and / or rural areas and not zoned for residential use. Investors are invited with representations about high returns by those promoting the Scheme in the event that the land is re-zoned and developed and the investor able to exercise their option.

Besides these intended development activities, the Development Companies, with the exception of Bendigo Vineyard, did not have any other trading activities. Located on the Bendigo property is a Bed & Breakfast and a Vineyard which was operated by Bendigo Vineyard. This is discussed in further details in the Bendigo Vineyard report.

We note that Sourcing Property did not have any trading activities that we have identified.

Education Holdings provided educational seminars and training programs in finance, real estate and securities.

PT operated as the promoter of the above Schemes on behalf of the Developers and also the promoter for other, third party developments.



The Schemes were promoted to investors in the following ways:

- a) Contacting persons listed on the database of 21<sup>st</sup> Century Group<sup>4</sup>. The details of parties were added to the database if they attended seminars of 21<sup>st</sup> Century Group, were paid up members of Education Holdings, or if they opted in to receive information from websites belonging to the 21<sup>st</sup> Century Group on land banking;
- b) Through the website “[www.landbanking.com.au](http://www.landbanking.com.au)” (the “Land Banking Website”) that promoted the Schemes and multiple other websites which redirected internet traffic to the Land Banking Website;
- c) Events such as cocktail parties, information nights and day trips;
- d) Education Holdings would hold “2 Day Education for Life” seminars in Melbourne, Sydney, Perth and Brisbane, where information concerning land banking generally and the Schemes would be promoted;
- e) Contacting potential investors through publications. The Property Inc. Magazine is a print and online magazine published by related party Media Holdings. The magazine has included articles and advertisements in relation to land banking and the Schemes. In addition, the Australian National Review is a print and online news subscription service operated by a related party National Review Media Pty Ltd. The website address for the online version of the magazine is “[www.australiannationalreview.com.au](http://www.australiannationalreview.com.au)” and this website would have links to the Land Banking Website which could be accessed by clicking on advertisements on the site;
- f) Contacting potential investors through social media. Property Tuition has a Facebook page titled “21<sup>st</sup> Century Property”.

When a potential investor expressed an interest in one of the Schemes, the following process would occur:

- a) A telemarketer, employed by 21<sup>st</sup> Century Group would call potential investors that had made an inquiry on the Land Banking Website. The potential investor would be provided with further information about land banking and an appointment would be made for them to speak with a property consultant;
- b) The property consultant would make contact with the potential investor and provide them with information about the Scheme, which would include a due diligence kit and sometimes a brochure, research material and a price list. The frequently asked questions (“FAQs”) on the Land Banking Website would be used as a script by the property consultant if questions about the Scheme were asked;
- c) Potential investors would be encouraged to review the Land Banking Website and complete the home study material on the website to ensure they were informed about land banking;
- d) The property consultant would call the person again and ask if the potential investor had any questions. An assessment would be made about how much money the potential investor had

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<sup>4</sup> According to the affidavit of Jamie McIntyre, there are over 250,000 people on the database. We were advised that the database was owned by the McIntyre Family Trust and licenced to various 21<sup>st</sup> Century companies by a licence agreement. We have not been provided with the agreement as evidence of same.

and would recommend a Development based on their financial circumstances, age, income and dependents;

- e) If the investor did not have the required funds to invest, the investor could purchase the option with their superannuation if sufficient funds were held. The investor was then referred to Sequoia Asset Management Pty Ltd, an unrelated financial services company to discuss establishing a self-managed superannuation fund;
- f) When an investor agreed to invest in a development, a deposit of \$1,000 was required along with the completion of an expression of interest form. Upon receipt of the deposit, the investor would be provided with a standard lot reservation agreement;
- g) Investors would choose the lot in the Development they wanted to purchase;
- h) Investors could be referred to a solicitor suggested by Property Tuition to receive legal advice regarding investing in the Scheme for a fixed fee of \$440 inclusive of GST. Alternatively, an investor could obtain their own independent legal advice;
- i) If the investor wished to proceed, the investor would execute the standard lot reservation agreement;
- j) The investor would be issued with an invoice for the lot reservation fee.

PT utilised a client database which according to Dennis and Jamie McIntyre is not owned by any of the Corporate Respondents but rather used by PT pursuant to a licence agreement. We have not been provided with, or identified any licence agreement as evidence of same.

## 6. Investors

Our investigations have revealed that as at the date of our appointment, the Development Companies had raised \$6.68m from approximately 152 investors by way of lot reservation fees in the 5 Schemes. In one of the land projects promoted by KS Holdings, investors were offered membership services, which included the reservation of a lot in the OVE Scheme as consideration for the payment of a "membership fee" to Sourcing Property. The membership fee included a combination of a membership services and a "\$0"(zero) reservation fee but with the same consequences for the investors.

As outlined above, these investors were approached by PT as promoter of the various Schemes on behalf of the Development Companies to reserve an opportunity to exercise an option to purchase a lot in an unregistered plan of subdivision in the event that approval of the Developments was obtained from the respective councils. Investors signed a Lot Reservation Agreement ("LRA")<sup>5</sup> in order to reserve their lot and / or right to exercise an option to purchase the lot at a future date and paid a lot reservation fee as consideration for same. We note that these Schemes were promoted as being long term and the LRA's generally provided the Development Companies with a period of 20 years in which to obtain development approval.

We note that we do not have a complete set of LRAs in relation to each of the Schemes.

Furthermore, we note that only 2 of the 5 Development Companies (Bendigo Vineyard and ARPL) owned the land in the Developments at the date of our appointment and / or at the time the Developments were promoted by PT. We further note that we have spoken to the respective councils

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<sup>5</sup> We note that in relation to KS Holdings, investors signed a Property Sourcing Agreement ("PSA") with Sourcing Property and a Lot Reservation Deed ("LRD") with KS Holdings to reserve their lot. This is discussed in further details in the KS Holdings Disclosure Report.

in relation to the Bendigo Vineyard and ARPL properties and have been advised that neither Council is likely to consider re-zoning of the respective properties in the next 10 – 15 years and from our discussions with these Councils, we have doubts as to whether any consideration will be given to the respective development in the next 20 years.

We note generally that the LRA's signed by investors provided the following. The specific terms of each LRA is discussed in the Disclosure Reports for the respective Developments Companies.

- The Development Companies would have a period of 10 - 20 years to obtain development approval;
- If approval was not obtained following the expiry of the 10 - 20 year period, investors would have **45 days** to request a refund of their reservation fee, failing which their investment would roll over for a further 5 year period;
- If approval was not obtained following the expiring of the additional 5 year period, the LRA would terminate and “no monies would be refundable whatsoever.”



In the event that development approval was obtained, the investor would have a period of 30 days following receipt of notice of the approval, to exercise the option to purchase the lot they reserved.

In accordance with the LRAs, investors would only be entitled to a refund of their reservation fee in the event that the Development Company elected to terminate the agreement. Given that the Development Companies had a period of between 10 - 20 years, followed by a further period of 5 years to obtain development approval following which the LRA would automatically terminate with no amount refundable to investors, it is inconceivable that the Development Companies would elect to terminate the agreement. The LRA essentially provided the Development Companies with the ability to raise funds by way of lot reservation fees, potentially do nothing for a period of 15 - 25<sup>6</sup> years and have no obligation to refund any remaining amounts to investors who did not successfully make a claim for a refund within the requisite 45 day period.

We note that, of the amounts paid by investors to the respective Development Companies and / or PT, at the date of our appointment, the Development Companies only had cash at bank of \$145,219. Our investigations have revealed that of the funds paid by investors to the Development Companies, amounts totalling c.\$3.8m were paid to PT.

According to Dennis and Jamie McIntyre, in consideration for promoting sales of lots in the Developments, PT was entitled to, pursuant to a commission agreement between the respective companies, receive 50% of the lot reservation fees paid by investors. This fee was to satisfy “administrative expenses, marketing expenses and commissions paid to PT.”<sup>7</sup> We note that we have been unable to identify any documentation or information which would suggest that the obligation to pay a 50% commission to PT was disclosed to investors in any marketing, due diligence or other material they received from either PT or the Development Companies or that they had investors’ authority to pay the lot reservation fees to PT or anyone else.

<sup>6</sup> We note that the LRAs would automatically roll over and extend for a further 5 years in the event that development approval was not obtained in the first period.

<sup>7</sup> Para 23 of affidavit of Jamie McIntyre, sworn on 31 August 2015

We have not been provided with, or have been able to locate, a copy of the commission agreement. Further, we consider the payment of a 50% commission to be excessive and unreasonable in the circumstances and further that the detriment to the respective Development Companies far outweighed any benefits obtained by virtue of PT promoting the respective Schemes. These payments are discussed in further detail below and in the respective Disclosure Reports.

We have identified a number of reservation fees paid by investors directly to PT and not the respective Development Companies. These amounts total c.\$1.1m. In addition, the majority of the remaining monies (50%) paid by investors also appears to have been transferred and / or loaned to related parties.

A liquidator, if appointed, would be required to undertake a complete funds tracing exercise in order to properly identify and confirm amounts paid by and / or refunded to investors in relation to the various Schemes.

Below is a summary of the investors we have identified in each of the Schemes who paid a lot reservation fee and / or sourcing fee to the Corporate Respondents and / or Scheme. This is based on our investigations conducted to date.

Scheme	ASIC records			21st Century Client List			Provisional Liquidators' Investigations		
	No. of Lots Sold	No. of Investors	Amounts Paid	No. of Lots Sold	No. of Investors	Amounts Paid	No. of Lots Sold	No. of Investors	Amounts Paid
Melbourne Grove Estate	n/a	n/a	n/a	3	3	\$127,000	3	3	\$127,000
Oak Valley Estate & Resort	8	8	\$568,000	14	14	\$703,697	14	14	\$704,698
Bendigo Vineyard Estate	66	72	\$2,959,241	120	87	\$3,025,805	120	87	\$3,057,480
Botanica <sup>8</sup>	20	17	\$372,175	20	17	\$372,175	20	17	\$372,175
Secret Valley	17	18	\$1,609,750	34	31	\$2,429,515	34	31	\$2,425,865
<b>Total</b>	<b>111</b>	<b>115</b>	<b>\$5,509,166</b>	<b>191</b>	<b>152</b>	<b>\$6,658,192</b>	<b>191</b>	<b>152<sup>9</sup></b>	<b>\$6,687,218</b>

<sup>8</sup> This does not include any of the 91, 805 investors whose rights may have transferred to ARPL by virtue of the DOCA. This is discussed in further details in the Disclosure Report prepared in relation to the Third Respondent. The value of the 805 investors is c.\$4.7m.

<sup>9</sup> We note that the number of investors is taken as a maximum on the basis of our investigations and the client information provided by Carlton Ross on behalf of the Corporate Respondents and / or Development Companies. We note that until such time as a funds tracing exercise is undertaken, we are unable to verify the investor position.

## 7. Assets and Liabilities

Our investigations to date have revealed that only two (2) of the five (5) Development Companies are the registered proprietor of properties, being Bendigo Vineyard and ARPL. The other three (3) Developers, KS Holdings, Secret Valley and Tarniet had entered into contracts for the purchase of the Development properties however these contracts have not settled. The Secret Valley property has since been resold by the vendor to an unrelated third party. It is unlikely that the deposits paid will be recovered.

At the date of our appointment, we have identified the following assets and liabilities of the Corporate Respondents. We note the following however:

- Only 4 of the 8 Corporate Respondents were registered for GST<sup>10</sup> and further these four entities all have outstanding income tax returns and / or business activity statements and accordingly we cannot confirm the extent of any taxation liabilities;
- We have not called for proofs of debt from creditors; and
- A detailed funds tracing exercise would need to be conducted in order to verify intercompany loan positions and details of investors.

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<sup>10</sup> Educations Holdings Pty Ltd, Archery Road Pty Ltd, Property Tuition Pty Ltd and Kingsway South Pty Ltd

The following is a summary of our estimated realisable values ERV for each of the Corporate Respondents

Category	Provisional Liquidators' ERV (\$)								Total
	Archevy Road	Bendigo Vineyard Estate	Kingsway South Holdings	Melbourne Tarniet Estate	Secret Valley	Property Tuition	Education Holdings	Sourcing Property	
<b>ASSETS</b>									
<b><u>Current Assets</u></b>									
Cash at Bank	810	24,876	784	2,478	116,271	234	263	Nil	145,716
Planning and Development Costs	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
Accounts Receivable	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
Prepayments - Deposit for land	Nil	Nil	Nil	Nil	45,000	Nil	Nil	Nil	45,000
	<b>810</b>	<b>24,876</b>	<b>784</b>	<b>2,478</b>	<b>161,271</b>	<b>234</b>	<b>263</b>	<b>Nil</b>	<b>190,716</b>
<b><u>Non-Current Assets</u></b>									
Interest in Land	670,000	1,350,000	Nil	Nil	Nil	Nil	Nil	Nil	2,020,000
Related Party Loans	Nil	Nil	Unknown	Nil	Nil	18,104	Unknown	Nil	18,104
	<b>670,000</b>	<b>1,350,000</b>	<b>Unknown</b>	<b>Nil</b>	<b>Nil</b>	<b>18,104</b>	<b>Unknown</b>	<b>Nil</b>	<b>2,038,104</b>
<b>Total Assets</b>	<b>670,810</b>	<b>1,374,876</b>	<b>Unknown</b>	<b>2,478</b>	<b>161,271</b>	<b>18,338</b>	<b>Unknown</b>	<b>Nil</b>	<b>2,228,820</b>
<b>LIABILITIES</b>									
<b><u>Current Liabilities</u></b>									
GST	12,884	Unknown	Unknown	Nil	Nil	Nil	Unknown	Nil	12,884
Accounts Payable	11,247	41,799	596	Nil	Nil	94,937	57,459	Nil	206,037
Holding Deposits from Customers	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
	<b>24,131</b>	<b>41,799</b>	<b>596</b>	<b>Nil</b>	<b>Nil</b>	<b>94,937</b>	<b>57,459</b>	<b>Nil</b>	<b>218,921</b>
<b><u>Non-Current Liabilities</u></b>									
Secured Creditors	505,120	965,000	Nil	Nil	Nil	Nil	Nil	Nil	1,470,120
Investors / Contingent Liability	5,168,179	3,057,480	Nil	127,000	2,425,865	Nil	Nil	704,697	11,483,221
Related Party Loans	225,769	20,085	860	76,192	100	3,910,247	1,167,203	Nil	5,400,456
	<b>5,899,068</b>	<b>4,042,565</b>	<b>860</b>	<b>203,192</b>	<b>2,425,965</b>	<b>3,910,247</b>	<b>1,167,203</b>	<b>704,697</b>	<b>18,353,797</b>
<b>Total Liabilities</b>	<b>5,923,199</b>	<b>4,084,364</b>	<b>Unknown</b>	<b>203,192</b>	<b>2,425,965</b>	<b>4,005,184</b>	<b>1,224,662</b>	<b>704,697</b>	<b>18,572,718</b>
<b>Net Surplus / (Deficiency) (Subject to costs of provisional liquidation)</b>	<b>(\$5,252,389)</b>	<b>(\$2,709,488)</b>	<b>Unknown</b>	<b>(\$200,714)</b>	<b>(\$2,264,694)</b>	<b>(\$3,986,846)</b>	<b>(\$1,224,399)</b>	<b>(\$704,697)</b>	<b>(\$16,343,898)</b>

We have not identified any assets and liabilities of the Schemes. This is discussed in further detail below and in the respective reports for each of the Development Companies.

Investors who paid funds, including lot reservation fees in relation to the purchase or reservation of lots with respect to the Schemes and / or Developments may have rights as contingent creditors of the various Development Companies for the amounts advanced.

Investors rights may be clarified if declarations are made in accordance with paragraph 3 of the Originating Process filed in the Proceedings for a declaration that the Schemes were unregistered managed investment schemes. If a declaration is made then the agreements between investors and the respective Development Companies may be voidable<sup>11</sup> at the option of the investor. If this was to occur, investors would be entitled to restitution of the amounts invested.

At this stage and pending clarification and or further declarations we have accordingly classified investors' claims as unsecured contingent liabilities.

## 8. Solvency of the Corporate Respondents

Pursuant to Section 95A of the Act:

- a) a person is solvent if, and only if, the person is able to pay all the person's debts, as and when they become due and payable.
- b) a person who is not solvent is insolvent.

Solvency can be assessed on both a balance sheet and cash flow test. In accordance with the statutory definition, our approach in determining whether the Corporate Respondents were insolvent at all relevant times is based on balance sheet and cash-flow tests. In particular, a working definition of 'insolvency', as an inability to pay debts, as and when they fall due, is dependent on the ability of a company to meet liabilities from the company's assets on hand and/ or the ability to generate sufficient cash flows to meet payment of its debts, as and when they fall due.

We consider that each of the Corporate Respondents is insolvent. This is discussed further in the Disclosure Reports for each of the respective Corporate Respondents.

As outlined above, only 2 of the 8 Corporate Respondents own property and / or have any realisable assets, save the collection of related party loans which at this stage appear to be largely uncollectible. This is discussed in further detail in each of the Disclosure Reports.

There will likely be a small surplus after payment of amounts owing to secured creditors in both ARPL and Bendigo in the event that their respective properties are sold, however creditor claims against those companies exceed any expected surplus. Accordingly, we consider ARPL and Bendigo to be insolvent from a balance sheet perspective.

Furthermore, all of the Corporate Respondents are insolvent from a cash flow perspective, as they did not generate and / or were unlikely to generate sufficient cash from business activities (if any) to meet ongoing operating expenses. This is discussed further in each of the Disclosure Reports also.

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<sup>11</sup> Pursuant to Section 601MB of the Act



## 9. Likely Return to Creditors

We consider that there may be a small return to creditors / investors in relation to the following Corporate Respondents:

- ARPL;
- Bendigo Vineyard; and
- Secret Valley.

The quantum of any return however is dependent on the value of identified creditor claims following:

- The completion of a funds tracing exercise;
- Calling for, and adjudication of proofs of debt from creditors; and
- Determination of the rights / claims of investors.

At present, we do not consider that there will be any return to creditors in relation to the other five Corporate Respondents.

If the Corporate Respondents are placed into liquidation, a liquidator would conduct further investigations into their affairs and determine whether there are any claims which may be made, or any transactions which may be recoverable for the benefit of creditors. Given the quantum and value of related party transactions, we consider a complete funds tracing exercise to be critical to understand and confirm the balance of related party loans and to identify any transactions and / or loans which may be recovered for the benefit of creditors.

Any likely return would be dependent on the successful outcome of any recovery proceedings.

## 10. Suspected contraventions of the Act

Our investigations into the affairs of the Corporate Respondents conducted to date have identified a number of possible contraventions of the Act. A liquidator if appointed, would be required to investigate these and other further possible offences of the Act to determine whether any claims can be made or action taken in relation to identified offences.

A summary of possible offences is provided in the following table:

Corporations Act Reference	Offence
Sections 180 – 183	Breach of Directors Duties (civil)
Section 184	Breach of Directors Duties (criminal)
Section 286	Failure to Maintain Proper Books and Records
Section 588G	Insolvent Trading
Section 588FB	Uncommercial Transactions
Section 601ED	Unregistered Managed Investment Scheme
Section 911A	Need for an Australian Financial Services Licence
Section 1020A	Offers relating to certain managed investment schemes not to be made in certain circumstances

In addition to the above offences, we consider that investors may have separate claims against the Directors in relation to the promotion of the respective Schemes, including the operating of an unregistered MIS and deceptive and misleading conduct.

It will be for investors to determine whether they wish to take any action against the Directors in relation to this conduct.

## **10.1. Breach of Directors Duties**

As outlined above, Dennis McIntyre is the sole appointed director of 7 of the 8 Corporate Respondents. Matthew Dolheguy is the sole appointed director of Education Holdings. We note that Matthew Dolheguy was only appointed director of Education in June 2015. Prior to this, Dennis McIntyre was the sole director of Education.

Section 9 of the Act defines a director to include a person who, despite not being validly appointed as a director, acts in that capacity or the directors of the company are accustomed to acting in accordance with that person's instructions.

We consider that Jamie McIntyre is a director of the Corporate Respondents within the definition of section 9 of Act by virtue of the following:

- He liaised with and made representations to ASIC regarding the Company's financial position;
- It is clear, from interviews conducted with the group's Chief Financial Officer and General Manager that they were all accustomed to acting in accordance with the instructions of Jamie McIntyre;
- Swarit Verma (the CFO) advised during his interview that transactions from the bank account were approved by Jamie McIntyre; and
- Dennis McIntyre, the Director was accustomed to acting in accordance with his instructions.
- Accordingly we consider that Jamie McIntyre may be liable for any potential breaches of directors' duties.

## **10.2. Sections 180 – 183 of the Act**

Our investigations have identified conduct which would indicate that both Dennis and Jamie McIntyre have failed to act in good faith, in the best interests of the Corporate Respondents and for a proper purpose.

In each of the Corporate Respondents, we have identified a number of transactions which would indicate that the Directors have failed to discharge their duties by engaging in conduct and / or entering into, or authorising transactions which were contrary to the interests of the Corporate Respondents.

This conduct includes:

- Entering into an alleged agreement in their capacity as Directors of the Development Companies for the payment of a 50% commission to PT for their role in promoting the respective Schemes;
- Authorising the transfer of funds between the Corporate Respondents;
- Making undocumented loans to related parties; and
- The use of confidential information of the respective Corporate Respondents for the benefit of other entities they were directors of, or acted in that capacity.

### **10.3. Section 184 of the Act**

We consider that Dennis and Jamie McIntyre may have been reckless in the exercise of their duties of directors of the Corporate Respondents in breach of Section 184 of the Act in relation to the following conduct:

- Recklessly transferring funds to related entities which they should have known, did not have the ability to repay;
- Entering into agreements with related parties in relation to the payment of investor funds as commissions; and
- Making loans to related parties in the absence of any documented loan agreements outlining the terms of these loans.

### **10.4. Failure to maintain proper books and records**

From an examination of the available books and records we have obtained, there appears to have been a failure by the Directors to have prepared and maintained proper financial records. We note the following in this regard:

- We have been unable to locate a complete set of executed LRAs for each of the Development Companies;
- There had been a failure to prepare and lodge income tax returns and business activity statements;
- We have identified numerous transactions, primarily loans made to related companies which are not supported or explained by any documentation. This is discussed in further detail below.

There is a deficiency in primary source records, including but not limited to the following:

- Payment vouchers;
- Receipt vouchers;
- Loan agreements; and

- Documents explaining purpose and nature of intercompany transactions.

Pursuant to Section 286 of the Act, a company must keep written financial records that correctly record and explain its transactions, financial position and performance and would enable true and fair financial statements to be prepared and presented in accordance with the accounting standards.

We have not been able to examine the electronic data collected from and hosted by Cymax and accordingly we cannot make any definitive comments regarding the adequacy of books and records maintained.

## **10.5. Uncommercial Transactions**

Our investigations have identified a number of transactions which were entered into to the detriment of the respective Corporate Respondents. These include:

- Making related party loans;
- Entering into alleged agreements in relation to the Development Companies for the payment of commission to PT; and
- The making of commission payments.

### **Commission Agreement**

According to the Directors, in consideration for promoting sales of lots in the Developments, PT was entitled to, pursuant to a commission agreement between the respective companies, receive 50% of the lot reservation fees paid by investors. This fee was to satisfy “administrative expenses, marketing expenses and commissions paid to PT.”<sup>12</sup>

We note that we have not been provided with or have been able to locate a copy of the commission agreement.

We consider that the payment of a 50% commission appears to be excessive and unreasonable in the circumstances and further that the detriment to the respective Development Companies far outweighed any benefits obtained by virtue of PT promoting the respective Schemes.

We also note the following in relation to the obligation to pay commission:

- It was for a fixed percentage of 50% irrespective of the actual costs incurred by PT in promoting each individual Scheme;
- When PT promoted developments on behalf of non-related entities, it only charged a 20% commission<sup>13</sup>;
- PT promoted the Schemes to the same database, using the same employees / sales staff, from the same offices and accordingly there would have been considerable economies of scale;
- The purported obligation to pay a 50% commission was not disclosed to investors in any of the due diligence or marketing material provided to them by PT or the Development Companies with respect to the Developments and / or Schemes; and

<sup>12</sup> Para 23 of affidavit of Jamie McIntyre, sworn on 31 August 2015

<sup>13</sup> As advised by both Jamie and Dennis McIntyre during separate interviews conducted with them.

- We have identified commission payments made directly to sales staff involved in the sale of lots in the Developments by the Development Companies in addition to the commission payments made (or payable) to PT.

## Related Party Loans

Our investigations have revealed numerous loans made between the Corporate Respondents and / or other related parties which were in addition to any payments of commission made pursuant to the alleged commission agreement/s.

We have located a secured loan agreement (“SLA”), executed on 24 March 2013, between the following parties:

- PT;
- Pinnacle;
- ARPL; and
- Jamie McIntyre

Dennis McIntyre is the sole director of all three (3) entities and their shareholder, Henry River. Jamie McIntyre is the sole shareholder of Henry River.

A copy of the SLA is attached as **annexure SR-9**.

We note the following in relation to the SLA:

- It did not in fact provide ARPL with any security in relation to funds lent to the parties;
- It allowed borrowing to be made to the parties on an interest free basis; and
- It did not require repayment of any prospective borrowings made to the parties until 2020.

We note that the terms of the SLA do not in fact provide or grant any security to the lender from time to time.

We have been advised by Jamie McIntyre that he does not consider there to be any additional loan agreements made between the Corporate Respondents and / or related parties. Further, we have not been able to locate any such documentation.

Our investigations have revealed that the Corporate Respondents collectively raised approximately \$6.68m from investors in relation to the sale of lots in the respective Developments. At the date of our appointment, the Corporate Respondents had total collective cash at bank of approximately \$145,716.

As outlined previously, only 2 of the 5 Development Companies actually settled on the purchase of the properties they were intended to develop. These are owned by ARPL and Bendigo Vineyard. We note that finance was obtained and secured by registered mortgages in relation to both properties in order to fund (in whole or part) settlement. This is discussed in further details in the ARPL and Bendigo Vineyard Disclosure Reports.

We have conducted a preliminary analysis of the bank accounts maintained by each of the Corporate Respondents from June 2014 to the date of our appointment.<sup>14</sup>

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<sup>14</sup> This period refers to when PT commenced selling lots on behalf of the Development Companies.

This exercise has revealed the following:

- Majority of funds received by the Development Companies were paid to PT and Education Holdings;
- Funds received by PT and Educations Holdings were paid to McIntyre controlled entities;
- At the date of our appointment, the Corporate Respondents had collective cash at bank of \$145,716.

We note that we cannot confirm the opening balances of any loan accounts between the Corporate Respondents and McIntyre controlled entities as at 1 June 2014 however note that during the interview with the Directors, neither disputed the amounts identified as owing to the Corporate Respondents.

A liquidator, if appointed would undertake further investigations in order to confirm the funds movements between the Corporate Respondents and McIntyre controlled entities and determine whether any claims can be made for recovery of same.

Below is a summary of the net cash movements from bank accounts maintained by the Corporate Respondents to McIntyre controlled entities from 1 June 2014 to the date of our appointment. We note that the total cash outflow to McIntyre controlled entities is c.\$6.7m.

<b>Entity</b>	<b>Inflow to Corporate Respondents from McIntyre Controlled Entities (\$)</b>	<b>Outflow from Corporate Respondents to McIntyre Controlled Entities (\$)</b>	<b>Net cash inflow / (Outflow) (\$)</b>
Broadview	257,852	1,123,203	<b>(865,351)</b>
Pinnacle	1,171,122	5,505,800	<b>(4,334,678)</b>
Financial Educators Association Pty Ltd	477,450	469,350	<b>8,100.00</b>
Salarium Services	55,978	579,522	<b>(523,543)</b>
Media Holdings	114,650	317,917	<b>(203,267)</b>
Isle of Capri 2 Pty Ltd OR Isle of Capri 3 Pty Ltd	4,867	94,238	<b>(89,371)</b>
PDI	46,050	322,020	<b>(275,970)</b>
GC Princess	29,000	83,918	<b>(54,918)</b>
FME	-	67,849	<b>(67,849)</b>
Siddha Holdings Pty Ltd	3,870	15,900	<b>(12,030)</b>
Phoenix Investment Holdings LLC	-	340,600	<b>(340,600)</b>
Land Farm Management	-	4,750	<b>(4,750)</b>
Jamie McIntyre	470	23,300	<b>(22,830)</b>
<b>Totals</b>	<b>\$2,161,309</b>	<b>\$8,948,367</b>	<b>(\$6,787,058)</b>

As outlined in the table above, the majority of funds paid by the Corporate Respondents was paid to Pinnacle (\$4.3m). We note that Dennis McIntyre is the sole director and secretary of Pinnacle. Henry River is the sole shareholder of Pinnacle and Jamie McIntyre is the sole shareholder of Henry River. During our interview with Dennis McIntyre, he advised that Pinnacle was unable to repay this debt. We further note that we have reviewed the financial accounts for Pinnacle which record a net asset

deficiency in excess of \$3.7m as at 30 June 2015 and a net loss for the financial year ended 30 June 2015 of over \$2.4m. Accordingly, we do not consider this amount to be collectible.

We note that there is discrepancy between the loan balances as recorded in Xero accounts maintained by the Corporate Respondents and the cash inflows / outflows identified in the bank accounts of the respective Corporate Respondents. We note that a review of the Xero accounts for each of the Corporate Respondents reveals that a number of manual journal entries were made to the accounts which do not reflect actual cash movements. Further, we cannot confirm the opening balances of any loan accounts as there were no transactions recorded in Xero prior to the financial year ended 30 June 2014.

Accordingly, a liquidator, if appointed, would need to conduct further investigations regarding the amounts paid to related parties in order to determine the basis on which they were paid and whether any payments which are identified as loans, as opposed to a payment for services or otherwise, are recoverable for the benefit of creditors.

We make the following comments in relation to the above payments:

- We have been unable to locate any loan agreements in support of these payments;
- According to Jamie McIntyre, these loans were unsecured and not made pursuant to any loan agreements;
- We have not seen any evidence of any demands for repayments of the above amounts;
- We have been unable to identify or locate any documentation, source documents or any other documentation which provide explanation regarding the funds paid;
- These payments were made in circumstances where both Dennis and Jamie McIntyre ought to have known that the recipient entities did not have the ability to repay;
- These transactions provided no benefit to the Corporate Respondents and we cannot see that any consideration (whether by the provision of services or otherwise) was given by the recipient entities in exchange for these funds;
- The majority of funds (\$4.3m) were paid to Pinnacle. Dennis McIntyre is the sole director of Pinnacle and Jamie McIntyre the ultimate shareholder / owner. Of the \$4.3m paid to Pinnacle, \$3.9m was paid by PT. We note that PT received c.\$3.7m from the Development Companies either pursuant to the purported commission agreement or by way of unsecured loans;
- We do not consider that a reasonable person would have entered into these transactions having regard to the financial position of Corporate Respondents and the detriment to same;
- These transactions were entered into without the consent of, and disclosure to the investors;  
and
- These transactions were entered into whilst the Corporate Respondents were insolvent and / or they became insolvent by virtue of entering into these transactions.

An illustration of the movement of funds between the Corporate Respondents and McIntyre controlled entities is provided above in the Executive Summary.

## 10.6. Unregistered Managed Investment Scheme

Section 9 of the Act contains the following definition of a managed investment scheme:

- a) *‘a scheme that has the following features:*
- i. *people contribute money or money's worth as consideration to acquire rights ( **interests** ) to benefits produced by the scheme (whether the rights are actual, prospective or contingent and whether they are enforceable or not);*
  - ii. *any of the contributions are to be pooled, or used in a common enterprise, to produce financial benefits, or benefits consisting of rights or interests in property, for the people (the **members** ) who hold interests in the scheme (whether as contributors to the scheme or as people who have acquired interests from holders);*
  - iii. *the members do not have day-to-day control over the operation of the scheme (whether or not they have the right to be consulted or to give directions); or*
- b) *a time-sharing scheme;*

A scheme that falls within the definition of section 9 of the Act above must be registered if:

1. it has more than 20 members;<sup>15</sup>
2. it was promoted by a person, or an associate of a person, who was, when the scheme was promoted, in the business of promoting managed investment schemes;<sup>16</sup> or
3. if ASIC has determined and provided the operator written notice that the scheme, as a part of a number of closely related schemes, has to be registered when the total number of members of the schemes exceeds 20 members.<sup>17</sup>

However, a scheme does not have to be registered if all the issues of interests in the scheme that have been made would not have required the giving of a Product Disclosure Statement under Division 2 of Part 7.9 of the Act.<sup>18</sup>

In this regard and as referred to at paragraph 2, as part of the Schemes, investors were offered the opportunity to reserve a lot on the concept plan (of an unregistered plan of subdivision) by payment of a lot reservation fee to the Development Companies.

By virtue of reserving a lot and paying a reservation fee, investors were granted the benefit of an option to purchase the lot for a pre-agreed option price sometime in the future in the event that development approval of the plan of subdivision in relation to the Developments was obtained.

We note that in relation to KS Holdings, investors were offered membership services, which included the reservation of a lot in the Oak Valley Scheme as consideration for the payment of a “membership fee” to Sourcing Property. This arrangement is discussed in further details in the KS Holdings Disclosure Report.

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<sup>15</sup> Section 601ED(1)(a) of the Act

<sup>16</sup> Section 601ED(1)(b) of the Act

<sup>17</sup> Section 601ED(1)(c) and (3) of the Act

<sup>18</sup> Section 601ED(2) of the Act



We note the following in relation to each of the Schemes;

- Investors paid a contribution by way of a lot reservation fee (or membership fee);
- This contribution was paid to reserve a lot on the concept plan (and thereby acquired a contingent right to exercise an option in the future in the event that development approval was obtained);
- More than 20 lots were available to be, and intended to be sold to investors; and
- The investors did not have day to day control in relation to any activities of the respective Development Companies, including the development of the properties and the sale of lots.

By virtue of the manner in which funds were raised, we consider that it would be open to a the Court to determine that the respective Development Companies were operating unregistered Managed Investment Schemes within the definition of the Act and that they were required to be registered in accordance with Section 601ED of the Act.

Ultimately however, it will be for the Court to determine this issue

As referred to at paragraph 3.4.4 of the Originating Process, if investors' rights are clarified and declarations are made that the Bendigo Scheme was required to be registered and therefore an unlawful unregistered managed investment scheme in accordance with paragraphs 3 and 4 of the Originating Process filed in the Proceedings, the investors may:

1. pursuant to section 601MB(1) of the Act, render the lot reservation agreements entered into by them to subscribe for an interest in the Bendigo Scheme voidable at their option by providing notice to the person(s) who offered an interest in the scheme; and
2. if such a notice was validly given, have the potential to seek restitution.

If orders are made in accordance with paragraphs 9 and 11 of the Originating Process filed in the Proceedings to wind up the respective Schemes and appoint the Provisional Liquidators as liquidators, further investigations will be required to investigate whether:

1. the Development Companies breached section 911A of the Act which requires person(s) who carry on a financial services business to hold an Australian Financial Services Licence;
2. the person(s) who offered an interest in the respective Schemes may have contravened section 1012B of the Act; and
3. the Development Companies and any other person(s), either alone or together, carried out the Schemes for a purpose (that is not incidental) of avoiding the application of any provision of Part 7.7A of the Act.<sup>19</sup>

The above matters require further investigation for the purposes of providing a Section 533 report to ASIC about possible contraventions, offences and for civil recoveries from directors and/or other parties.

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<sup>19</sup> This would be a breach of section 965 of the Act

## 11. The Schemes

We note that our investigations to date have not revealed any property of the Schemes. As outlined above, Bendigo Vineyard and ARPL are the registered owners of the Kialla and Bendigo properties. However we have not seen any documentation or been provided with any information which would suggest that these properties are not owned beneficially by ARPL and Bendigo Vineyard, respectively and / or that they hold these properties on trust or otherwise for any other party, including investors.

We have not identified any separate liabilities of the Schemes.

On this basis we do not provide comment with respect to:

- The solvency of the Schemes;
- Realisation of Scheme property; and
- Recovery of money owed to the Schemes.

In the event that the Court makes the declarations that the Schemes are unregistered managed investment scheme, orders should be sought from the Court appointing the Provisional Liquidators as liquidators of the respective Schemes.

This is to enable the liquidators of the Schemes to carry out further investigations into contraventions of the Act by the person(s) who offered interests in the Schemes.

## 12. Provisional Liquidators' Recommendation

Given the nature of the breaches committed by the Directors and the financial position of the Corporate Respondents, we recommend that each of the Corporate Respondents be wound up to enable proper investigations to be conducted.

## Annexures

Document No.	Description of Document
1	Books and records listing
●	[REDACTED]
●	[REDACTED]
●	[REDACTED]
●	[REDACTED]
●	[REDACTED]
●	[REDACTED]
●	[REDACTED]
●	[REDACTED]
9	Secured Loan Agreement executed 24 March 2015