

**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

Eighth Respondent's Report

**Property Tuition Pty Ltd
(Provisional Liquidators Appointed)**

15 December 2015



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Definitions

21 st 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 st 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 st 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 st 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

Property Tuition Pty Ltd

This report should be read in conjunction with our Summary Report.

PT was incorporated on 29 January 2008. Dennis McIntyre is the sole Director of PT. The sole shareholder of PT is Henry River. Jamie McIntyre is the sole shareholder of Henry River.

As discussed in further detail below, we consider that Jamie McIntyre is also a director of PT for the purposes of Section 9 of the Act.

Since 27 July 2015, the registered office and principal place of business of PT has been 'Corporate Centre One' Suite 8, 2 Corporate Court, Bundall, Queensland. Prior to this date, the registered office and principal place of business was Level 8, 96-100 Albert Road, South Melbourne, Victoria ("Albert Road premises").

A copy of the historical company extract maintained by ASIC is attached as **annexure PT-1**.

1. Business Activities

During interviews with both Dennis and Jamie McIntyre they advised that PT acted as a promoter of the following land-banking schemes and/or developments:

Schemes	Developments	Developers
Botanica	805 Archer Road, Kialla, Victoria	Archer 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

The Schemes were promoted to investors in the following ways:

- Contacting persons listed on the database of 21st Century Group¹. The details of parties were added to the database if they attended seminars of 21st Century Group, were paid up members of Education Holdings, or if they opted in to receive information from websites belonging to the 21st Century Group on land banking;
- Through the website "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;
- Events such as cocktail parties, information nights and day trips;
- 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;
- Contacting potential investors through publications. The Property Inc. Magazine is a print and online magazine published by related party 21st Century Media Holdings. The magazine has included articles and advertisements in relation to land banking and the Schemes. In addition,

¹ 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 21st Century companies by a licence agreement. We have not been provided with the agreement as evidence of same.

the Australian National Review is a print and online news subscription service operated by related party National Review Media Pty Ltd. The website address for the online version of the magazine is “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. PT has a Facebook page titled “21st Century Property”.

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

- a) A telemarketer, employed by 21st 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 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 PT 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.

2. Summary of Transactions

According to both Dennis and Jamie McIntyre, in consideration for promoting sales of lots in the Developments on behalf of the Development Companies, 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.”² We note that we have not been able to locate a copy of the commission agreement.

During separate interviews with both Jamie and Dennis McIntyre on 19 October 2015 and 20 October 2015, respectively we requested a copy of the commission agreement. On 20 October 2015, a list of documentation / information required to be provided to our office (including the commission agreement) was emailed to Michaela Prince of Carlton Ross.³ On 23 October 2015, Michaela Prince of Carlton Ross emailed our office and advised that Dennis McIntyre believed that a copy of the commission agreement had been provided to ASIC. We note that ASIC has advised that they have not been provided with or sighted a copy of the agreement. On 2 November 2015, Ms Stephanie Forgione of our office emailed Michaela Prince and requested details of who provided the commission agreement to ASIC and asked that they seek a copy of the agreement from that person. On 10 November 2015, we received a reply email advising that they were unsure who provided the commission agreement to ASIC and accordingly were unable to provide our office with this information.

On the basis of the above, we are concerned as to the existence of a documented commission agreement between the respective Development Companies and PT and we consider the payment of a 50% commission to be excessive and unreasonable in the circumstances. Further, it appears based on our investigations that 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.

In addition to the receipt of commission, our investigations have revealed that PT received amounts by way of loans from the Development Companies. The total amounts received by PT, whether by commission, loan or otherwise, totals c\$3.7m. These loans were unsecured and according to both Jamie and Dennis McIntyre there were no loan agreements in relation to, or in support of same. The aggregate of the commission and the loans exhausted almost all of the monies paid by investors to the Development Companies.

A summary of the net funds received from the Development Companies between the period 1 June 2014 and the date of our appointment is provided below:

Entity	Inflow From Development Companies (\$)	Outflow to Development Companies (\$)	Net Inflow / (Outflow) (\$)
ARPL	101,623	58,650	42,973
KS Holdings	-	5,000	(5,000)
Tarniet	-	101,700	(101,700)
Bendigo Vineyard	2,467,275	481,000	1,986,275
Secret Valley	1,811,771	10,000	1,801,771
Total	\$4,380,669	\$656,350	\$3,724,319

² Para 23 of affidavit of Jamie McIntyre, sworn on 31 August 2015

³ Carlton Ross represent Dennis and Jamie McIntyre

We note that our investigations have also revealed that PT made loans to related parties (not the Corporate Respondents) (“McIntyre controlled entities”). These loans also appear to be unsecured and undocumented. We have identified net funds transferred to McIntyre controlled entities totalling c.\$4.7m. In addition, we have identified net funds transferred to Education Holdings, one of the Corporate Respondents in the amount c\$1.1m.

A summary of the cash movements between PT and the McIntyre controlled entities between 1 June 2014 and the date of our appointment is provided below:

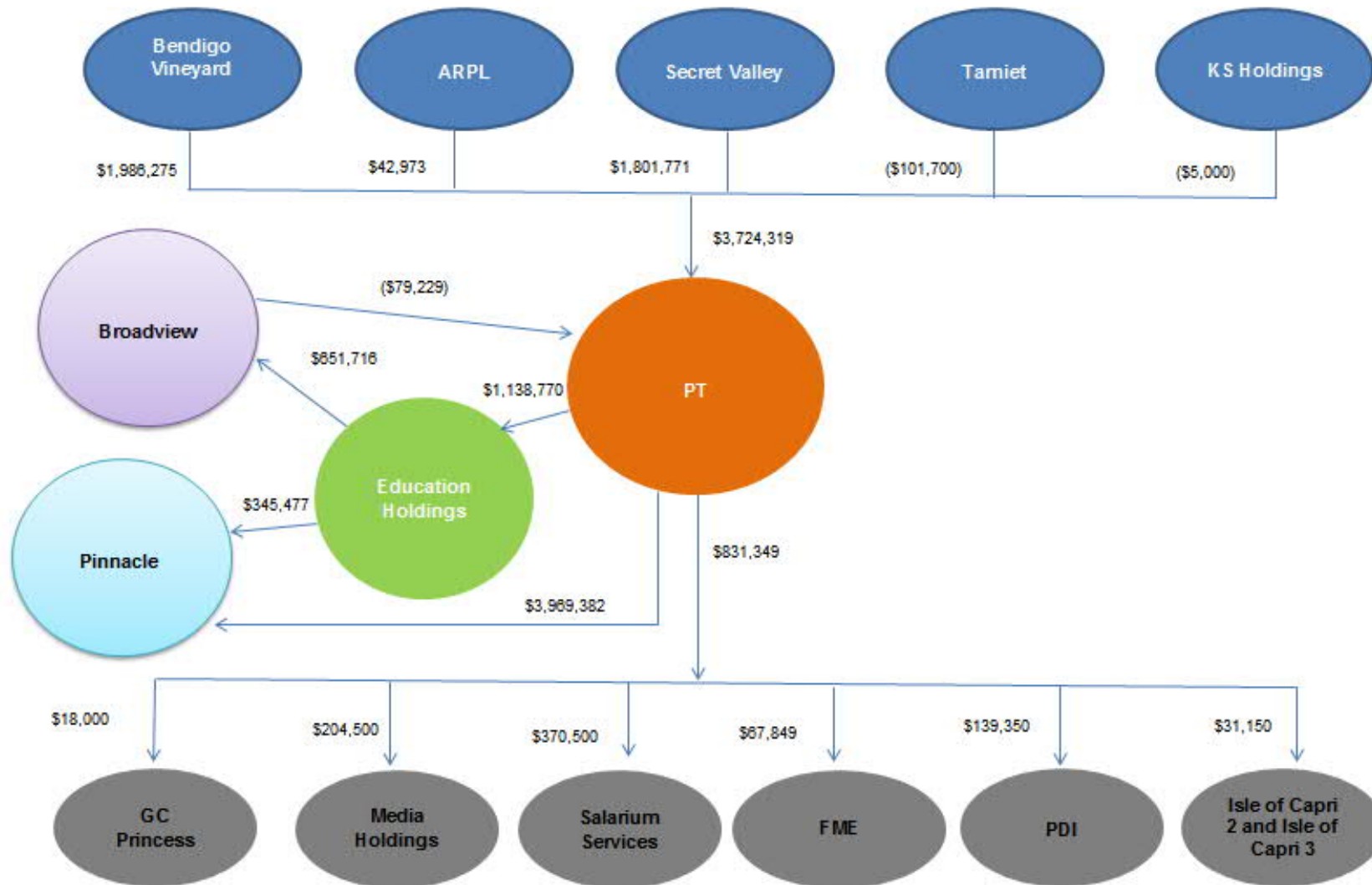
Entity name	Inflow (\$)	Outflow (\$)	Net Inflow / (Outflow) (\$)
Broadview	92,200	12,971	79,229
Pinnacle	790,600	4,759,982	(3,969,382)
Salarium Services	7,000	377,500	(370,500)
Media Holdings	28,800	233,300	(204,500)
Isle of Capri 2 Pty Ltd OR Isle of Capri 3 Pty Ltd	-	31,150	(31,150)
PDI	13,000	152,350	(139,350)
GC Princess Boatshare Pty Ltd	29,000	47,000	(18,000)
FME	-	67,849	(67,849)
Totals	\$960,600	\$5,682,102	(\$4,721,502)

At the date of our appointment, PT had cash at bank of \$234. Our investigations indicate that the majority of funds received by PT from the Development Companies were subsequently paid / loaned to McIntyre controlled entities absent any security or documented loan agreements in support of same.

These transactions appear to be uncommercial and in breach of the Act and further that the director/s have breached duties owed to PT by virtue of entering into these transactions to the detriment of PT. We also consider that both Dennis and Jamie McIntyre may have gained personal benefits by virtue of receipt of these funds in entities which they control.

As we have not been appointed to the McIntyre controlled entities, we cannot determine where these funds were ultimately paid. A liquidator, if appointed, would be required to conduct further investigations in order to confirm, identify and trace any further transactions which may be recoverable for the benefit of creditors.

Below is an illustration of the net movement of funds between the Development Companies, PT and McIntyre Controlled entities.



3. Assets and Liabilities

Dennis McIntyre provided our office with a completed a RATA on 4 November 2015. A copy of the RATA is attached as **annexure PT-2**. We lodged the RATA with ASIC on 5 November 2015.

On 8 October 2015, we were provided access to the Xero accounting software maintained by 7 of the 8 Corporate Respondents over which we were appointed, including PT.

A summary of the RATA and the Xero accounts is provided below together with our estimated ERV of assets and liabilities from investigations conducted to date.

Category	Provisional Liquidators' ERV (\$)	RATA (\$)	Management Accounts (Xero) (\$)
ASSETS			
<u>Current Assets</u>			
Cash at Bank	234	Nil	739
Accounts Receivable	Nil	123,241	43,649
Prepayments	Nil	Nil	1,660
	234	123,241	46,048
<u>Non-Current Assets</u>			
Rental Bond (Contingency)	Unknown	Nil	77,996
Plant and Equipment	Nil	34,248	34,248
Motor Vehicle	Nil	32,181	32,182
Development Fund	Nil	Nil	73,665
Related Party Loans	18,104	Nil	5,587,806 ⁴
	18,104	66,429	5,805,897
Total Assets	18,338	189,670	5,851,945
LIABILITIES			
<u>Current Liabilities</u>			
GST	Unknown	Nil	290,427
Accounts Payable	94,937	48,038	94,937
Secured Creditor	Unknown	Nil	Nil
Other	Nil	Nil	2,081
	94,937	48,038	387,445
<u>Non-Current Liabilities</u>			
Related Party Loans	3,910,247	78,801	2,672,578
Total Liabilities	3,910,247	78,801	2,672,578
	4,005,184	126,839	3,060,023
Net Surplus / (Deficiency) (Before the costs of the Provisional Liquidation)	(\$3,986,846)	\$62,831	\$2,791,922

⁴ Loans totalling \$5,587,806 were recorded in Xero as negative liabilities and have been restated as non-current assets.

3.1 Current Assets

3.1.1 Cash at Bank

Our investigations revealed that PT operated two business bank accounts with Westpac at the date of our appointment with a combined credit balance of \$234. We note that the Xero accounts list an amount of \$739 for cash at bank.

Following our appointment, we placed a freeze on the above accounts and have taken control of the credit funds held.

No further accounts have been located.

3.1.2 Accounts Receivable

The RATA of Dennis McIntyre lists 10 debtors totalling \$123,241.

The Xero accounts record aged debtors of \$43,649.

	RATA (\$)	Xero (\$)	Days Overdue	Narration from Xero
BTDC Pty Ltd	34,783	34,783	483	Land management commissions
Changing Places	20,060	20,060	506	Land management commissions
Citrus Internet Pty Ltd	6,531	11,531	90	Rent from sublet of premises
██████████	4,495	4,495	483	Membership fees
██████████	1	-	-	-
Midland Hwy Pty Ltd	17,420	17,420	474	Marketing fee and commissions
██████████	1	-	-	-
██████████████████	1,300	1,300	398	Marketing expenses
██████████████████	1	(48,180)	-	Deposit - South Melbourne
██████████	38,649	2,240	565	Membership fees
Total	\$123,241	\$43,649		

We note that Midland Hwy Pty Ltd is in liquidation. We have reviewed documentation from the liquidators and do not consider this amount to be collectible.

We have not conducted a detailed analysis of the recoverability of these debtors, however given their age, we consider that the above amounts would not be recoverable save for the claim against Citrus Internet Pty Ltd (“Citrus”) for rent. We note that PT sublet a portion of the office space it leased at the Albert Road premises to Citrus. We intend to seek to recover the outstanding rental amounts owed by Citrus.

Further, we note that Step Forward Investments is recorded as a negative asset in the accounts, which should be recorded as a liability. The transaction was recorded in the accounts on 19 December 2013. A liquidator, if appointed would need to conduct further investigations to determine if a valid claim exists against the company.

3.1.3 Prepayments

The Xero accounts list an amount of \$1,660 as a current asset due to prepayments of accounts.

A number of prepayments were recorded to this account, including rental bond (subsequently journalled out of the account), and other payments in relation to which information is not provided.

We would need further information regarding prepayments to determine whether they are collectible.

The RATA does not list any prepayments.

3.2 Non-Current Assets

3.2.1 Rental Bond

The Xero accounts record that PT paid a rental bond of \$77,996 in relation to the lease of the Albert Road premises.

We have issued correspondence to the landlord and requested confirmation of the bond held together with a refund of same. We have not received a reply to this correspondence.

On 13 November 2015, our office was issued with a Notice of Determination of Lease and Re-entry to Property by the landlord. We understand that the landlord is currently attempting to re-let the premises. The landlord will be able to offset any outstanding rent under the lease from the bond held. Accordingly, we cannot confirm what portion of this bond will be refunded to PT.

3.2.2 Plant and Equipment

The RATA lists office furniture and fixtures with a value of \$32,248. We note that the office furniture and fixtures were used at PT's (and the other Corporate Respondents') principal place of business at level 8, 96-100 Albert Road, South Melbourne. These included desks, filing cabinets and bookshelves.

Following our appointment we instructed Lockwood & Co. Pty Ltd ("Lockwood") to provide us with a sworn valuation for the furniture and fixtures on site. Lockwood has advised that the furniture and fixtures had an auction realisable value of \$2,375 inclusive of GST. A copy of the valuation report is attached as **annexure PT-3**.

Lockwood further advised that the cost of disassembling, removal and transport of the furniture and fixtures to their auction room was estimated to be \$2,000 and that the costs of holding an on-site auction sale would exceed the expected realisation proceeds.

Accordingly, we considered it to be uncommercial to realise the plant and equipment and have abandoned same.

3.2.3 Motor Vehicle

The Xero accounts list a "Tomcar" all-terrain vehicle at a cost of \$32,181.82.

Our investigations with VicRoads reveal that this vehicle is not currently registered to PT, nor has been in the past 12 months.

We have requested information regarding the Tomcar from the CFO however have not received a response.

3.2.4 Development Fund

The Xero accounts record amounts incurred for planning and development for property located in Vanuatu. We note that such costs would be added to the cost base of the property recorded in the

accounts of the owner. The RATA and Xero accounts of PT do not list an interest in real property in Vanuatu.

A liquidator, if appointed would need to conduct further investigations to determine if PT has any interest (equitable or otherwise) in the Vanuatu property.

3.2.5 Related Party Loans

The RATA does not list any amounts due to PT from related parties.

However the Xero accounts list the following related party debtors in the amount of \$5.58m. We note that from the analysis of the PT bank account/s we have identified the following net amounts paid to related parties:

Entity	Notes	Xero 7 October 2015 (\$)	Net payments identified in PT bank account (\$)	Provisional Liquidators' ERV (\$)
Education Holdings	1	1,251,436	1,138,770	Nil
ARPL	2	224,769	-	Unknown ⁵
Tarniet	3	80,467	101,700	Nil
Media Holdings		4,400	204,500	4,400
Isle of Capri 2 Pty Ltd		710	31,150	Unknown
Managed Event Services Pty Ltd		451	-	Unknown
Pinnacle	4	4,011,870	3,969,382	Nil
Siddha Holdings Pty Ltd	5	13,704	-	13,704
PDI		-	139,350	Unknown
KS Holdings		-	5,000	Nil
FME		-	67,849	Unknown
GC Princess		-	18,000	Unknown
Salarium Services		-	370,500	Unknown
Total		\$5,587,807	\$6,046,201	\$18,104

The amounts owed by Education Holdings, ARPL, Tarniet and Pinnacle were recorded in Xero as negative liabilities which are in fact assets and accordingly, have been restated as non-current assets.

On 7 October 2015, we were also appointed as Provisional Liquidators of Education Holdings, ARPL and Tarniet. The comments in relation to these three entities are made following examination of their respective Xero accounts and from the investigations we have conducted to date.

1. Education Holdings had a net asset deficiency of \$1.32m and incurred a net loss of \$225,000 as at 30 June 2015. Further, at the date of our appointment it had cash at bank of \$263. We do not consider the loan to the company to be collectible;
2. ARPL is the registered proprietor of real property located in Kialla, Victoria. Our assessment is that there is approximately \$164,000 equity in this property, subject to selling costs however we are aware of other creditor claims and contingent claims by investors in ARPL. A portion of this debt may be collectible;
3. At the date of our appointment, Tarniet had cash at bank of \$2,478 and does not have any other assets. We do not consider the loan to the company to be recoverable; and

⁵ We note that any return from ARPL will be dependent on the surplus in the Kialla property following the sale of same.

4. Dennis McIntyre is the sole director and secretary of Pinnacle. 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;
5. Jamie McIntyre has advised that Siddha Holdings Pty Ltd would be able to repay the debt to PT. We are unable to confirm same; and

The balance of the debts owed to PT total \$5,561 from Media Holdings, Isle of Capri 2 Pty Ltd and Managed Event Services Pty Ltd. We are unable to determine if these companies are able to repay these debts at this stage. Further investigations will be required from a liquidator, if appointed to determine the recoverability of these loans.

We note there is discrepancy between the loan balances as recorded in Xero and the cash inflows / outflows identified in PT bank accounts. A review of the PT Xero accounts 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 however PT was incorporated in January 2008. It appears that the first transactions recorded in the Xero accounts were in November 2013 however these transactions were not inputted or created in Xero until April 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.

3.3 Current Liabilities

3.3.1 GST

The Xero accounts record a liability to the Australian Taxation Office (“ATO”) in the amount of \$290,427. We note that we have not reviewed the liability recorded in Xero to determine its accuracy.

The ATO has advised that it does not presently have a claim against PT, however the ATO has advised that the income tax returns for the financial year ended 30 June 2015 is outstanding. The ATO has also advised that there may be a liability owed by PT once this return is lodged.

3.3.2 Accounts Payable

The RATA and Xero accounts record total current liabilities of \$126,839 and \$94,937, respectively, as follows:

	RATA (\$)	Xero (\$)
Media Holdings Pty Ltd	16,351	16,351
Ezaz Ahamad	1	(2,500)
██████████	1,900	1,900
Big Voice Media Group Pty Ltd	1	(165)
Changing Places	1,250	1,250
Citrus Internet Pty Ltd	51	51
Dangerfield Exley Lawyers Pty Ltd	18,854	18,854
Daniel Boules Pty Ltd	1	(2,530)
Eplot Digital Printing	1	(1,026)
██████████	1	(12,610)
FME	1	(1,423)
██████████	1	(1,763)
Gruppent Solutions Pty Ltd	215	215
Isle of Capri 3	850	850
Jam Creative Services	1,150	1,150
Jamie McIntyre	61,600	61,600
Melborne Website Services	1	(700)
Parkston Lawyers	5,169	5,169
██	1	(1,000)
Renovex Pty Ltd	2,760	2,760
██████████	2,477	2,477
██████████	12,649	12,649
Salarium Services	1	(2,500)
Simply Energy	1,549	1,549
██████████	1	(2,400)
Spirit Telecom	1	(1,154)
Web Active Corporation	1	(44)
██████████	1	(2,073)
Total	\$126,839	\$94,937

The following entities are related parties. Total amounts recorded in the RATA as owed to these entities is \$78,801.

- Media Holdings;
- Salarium Services;
- Isle of Capri; and
- FME.

Further, we note that we have not called for proofs of debt from creditors to verify these amounts recorded as owed.

3.3.3 Secured Creditor

A search of the PPSR reveals that Westpac Banking Corporation Ltd (“WBC”) holds a security interest over PT. We have issued correspondence to WBC and are awaiting a response on the nature of the security and balance outstanding, if any.

3.4 Non-Current Liabilities

3.4.1 Related Party Loans

We have conducted an analysis of the bank accounts maintained by PT from 1 June 2014. This has revealed net cash received from the Development Companies totalling \$3,831,019. Further, according to this analysis it appears that net funds were paid received from Broadview⁶ totalling \$79,229. We cannot however confirm the opening balances of any loan accounts prior to June 2014 and therefore verify this liability.

A summary of this analysis, together with the amounts owed to related parties are recorded in the Xero accounts and RATA is provided below:

Entity	Xero (\$)	RATA (\$)	Provisional Liquidators' Investigations (\$)
KS Holdings	327,248	-	-
Bendigo Vineyard	1,069,286	-	1,986,275
Financial Educator Associations Pty Ltd	7,390	-	-
PDI	222,594	-	-
Secret Valley	1,043,831	-	1,801,771
Isle of Capri	-	850	-
Media Holdings	-	16,351	-
Jamie McIntyre	-	-	-
The McIntyre Trust	2,229	61,600	-
ARPL	-	-	42,973
Broadview	-	-	79,228
Total	\$2,672,578	\$78,801	\$3,910,247

A review of the Xero accounts reveals that the amount owed to PDI is comprised of a payment recorded as “payment for Shepparton paid on behalf of Archery” in the amount of \$330,935 and other “administrative costs” paid by PDI on PT’s behalf. We note that ARPL (Archery) is the registered proprietor of the Kialla (Shepparton) property. This payment was recorded as a loan to PT from PDI and then a loan from PT to ARPL in the PT Xero accounts. We note that this loan was purportedly made on 10 April 2013, however was only recorded via manual journal in Xero on 25 August 2015. Further investigation would need to be conducted to confirm whether PDI advanced these funds and whether the transaction should be properly classified as a loan to ARPL, not PT.

As outlined above, according to Dennis and Jamie McIntyre, in consideration for promoting the sale of lots on behalf of the Development Companies, 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.”⁷ We note that we have not been able to locate a copy of the commission agreement. Furthermore, we have not identified any documentation and or information which would suggest that the obligation to pay a commission of 50% to PT was disclosed to investors in any of the marketing and / or due diligence material provided to investors in relation to the respective Schemes.

⁶ We note that Broadview Pinkett Pty Ltd is the Trustee for the McIntyre family trust.

⁷ Para 23 of affidavit of Jamie McIntyre, sworn on 31 August 2015

The analysis of amounts identified as being received from the Development Companies in the above table is made subject to the following qualifications:

- Given the quantum of transactions, we have only conducted an analysis of the PT bank account from 1 June 2014;
- We cannot confirm the opening balances of any loan accounts prior to this date however we note that of the three Development Companies recorded in the table above, only ARPL was incorporated prior to June 2014; and
- We cannot confirm what portion of funds paid, were paid pursuant to the alleged commission agreement and those paid by way of loans.

We note that the RATA of Dennis McIntyre did not list the above related party liabilities to the Development Companies.

A liquidator, if appointed, would be required to conduct further investigations and a detailed funds tracing exercise in order to determine and confirm any loan balances.

4. Opinion as to Solvency

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 Company was 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.

According to the Xero accounts, PT had a positive net asset position as at 7 October 2015 and for the financial years ended 30 June 2014 and 2015 respectively. A copy of the comparative balance sheet is attached as **annexure PT-4**.

Set out below is a summary of the net asset position as at 30 June 2014, 30 June 2015 and 7 October 2015.

	7 October 2015 ⁸ (\$)	30 June 2015 (\$)	30 June 2014 (\$)
Total Current Assets	46,048	44,757	172,560
Total Non-Current Assets	5,805,897	6,029,779	1,964,229
Total Assets	5,851,945	6,074,536	2,136,789
Total Current Liabilities	387,445	796,195	261,295
Total Non-Current Liabilities	2,672,578	2,404,483	298,350
Total Liabilities	3,060,023	3,200,678	559,645
Net Assets	\$2,791,922	\$2,873,858	\$1,577,144

We provide the following commentary in relation to the above Xero accounts:

- Current assets have decreased by approximately \$127,000 over a period of 18 months. This was due to a decrease in cash at bank and accounts receivable of \$35,000 and \$92,000 respectively;
- Current assets comprise debtors and pre-payments which we do not consider collectable;
- Non-current assets include a motor vehicle and office furniture and fittings with a combined recorded value of \$66,000. As outlined above, PT is not the registered owner of any vehicle/s and further the plant and equipment has no commercial realisable value;
- The balance of non-current assets comprise unsecured loans to related parties totalling \$5.58m. The loan account balances as at 7 October 2015, 30 June 2015 and 30 June 2014 are outlined below;

We note that the Xero accounts indicate that loans to related parties increased by c.\$3.8m during the financial year ended 30 June 2015, with \$3.3m attributable to additional loans made to Pinnacle. As outlined above, Pinnacle is unable to repay these loans.

	7 October 2015 (\$)	30 June 2015 (\$)	30 June 2014 (\$)
Education Holdings	1,251,436	1,283,416	911,008
Media Holdings	4,400	168,349	98,699
ARPL	224,769	232,438	192,385
Isle of Capri 2 Pty Ltd	710	710	-
Managed Event Services Pty Ltd	451	-	-
GC Princess Boatshare	-	29,000	-
Bendigo Vineyard	-	-	78,000
Tarniet	80,467	105,975	-
Jamie McIntyre	-	5,574	5,574
Pinnacle	4,011,870	3,974,670	664,856
Siddha Holdings Pty Ltd	13,704	13,704	13,704
Total	\$5,587,807	\$5,813,836	\$1,964,226

⁸ We note that the Xero accounts annexed to this report are as at 31 October 2015. We note that Xero is only able to produce a balance sheet as at month end not between specified periods. This does not alter the amounts recorded in the financials.

We were appointed Provisional Liquidators of Education Holdings, ARPL and Tarniet. We note that it is unlikely that Education Holdings and Tarniet will be able to repay these loans. ARPL may be in a position to repay a portion of the amount outstanding; and

- Current liabilities comprise trade creditors totalling \$94,000 and a GST liability in the amount of \$290,000. We note that we have been unable to confirm the taxation liability as returns remain outstanding to the ATO.

Based on the above, we have restated the balance sheet as at 31 October 2015, which results in a net asset deficiency, detailed below:

	7 October 2015 (\$)
Total Current Assets	234
Total Non-Current Assets	18,104 ⁹
Total Assets	18,338
Total Current Liabilities	94,937
Total Non-Current Liabilities	3,910,924
Total Liabilities	4,005,861
Net Assets / (Deficiency)	(\$3,987,523)

As a result, we consider PT to be insolvent from a balance sheet perspective.

The profit and loss recorded in Xero is set out in the table below. A copy of the profit and loss for the period ended 31 October 2015 is attached as **annexure PT-5** and the comparative profit and loss statements for the years ended 30 June 2013 to 2015 inclusive are attached as **annexure PT-6**.

	7 October 2015 (\$)	30 June 2015 (\$)	30 June 2014 (\$)
Income			
Commission	3,118	2,651,414	1,676,045
Memberships	-	(4,541)	230,963
Other Income	1	6	256
Total Income	3,119	2,646,879	1,907,264
Less Cost of Sales	9,505	559,528	208,998
Gross Profit	(6,385)	2,087,351	1,698,266
Less Operating Expenses			
Rent and Office	(14,233)	149,753	27,919
Legal	89,182	50,483	58,219
Travel	-	2,758	17,356
Employment	100	567,209	15,816
Other	502	20,434	1,812
Total Operating Expenses	75,551	790,637	121,122
Net Profit / (Loss)	(\$81,936)	\$1,296,714	\$1,577,144

We provide the following commentary in relation to the above Xero accounts:

- The primary income stream for PT was recorded as “Land Management Commissions”. Narrations in the transactions journals indicate that these amounts relate primarily to commission payments received by PT pursuant to the commission agreement between PT and

⁹ We have included the debts owed by Media Holdings, Isle of Capri 2 Pty Ltd, Managed Event Services Pty Ltd and Siddha Holdings Pty Ltd as collectible on the basis of discussion with both Dennis and Jamie McIntyre.

the respective Development Companies. As outlined above, we have doubts as to the existence of a documented commission agreement and accordingly PT's right to this income. We note that but for any alleged commission agreement, this income should have been treated as an unsecured loan in the accounts of PT, payable to the Development Companies;

- “Cost of Sales” includes commissions paid to property sales consultants and marketing expenses which amounted to \$189,000 and \$120,000 respectively for the financial year ended 30 June 2014.
- Employment expenses for the year ended 30 June 2015 include:
 - Payments made to contractors totalling \$213,000 of which \$156,000 is recorded as being paid to Jamie McIntyre with the narration “consulting charges”; and
 - Net Payments made to Salarium Services in the amount of \$333,545 between 1 March 2015 and 30 June 2015 with the narration “Secretarial Services”.

We note that according to both Dennis and Jamie McIntyre, PT did not employ any staff. We consider that the payments made to Salarium Services may have been paid by way of labour hire. Investigations would need to be conducted however to confirm same.

We have also reviewed the cash position of PT as recorded in the Xero accounts and note that the majority of cash inflows were generated as a result of commissions received from the Development Companies during the period 1 May 2015 to 31 July 2015 in the amount of \$2.2m. We note however for the same period, closing cash at bank was \$1,858. Cash outflows in relation to operating expenses were recorded as \$568,869 with the balance of cash available used for non-operating cash expenses which predominately comprise cash transfers made to related parties.

An extract of the cash summary of PT is attached as **annexure PT-7**.

It appears that the majority of cash inflows generated by PT were being used to fund unsecured and undocumented loans to related parties, the majority of which are uncollectible.

For the above reasons, we consider PT to be insolvent from a cash flow perspective also.

We note that the Xero accounts had no transactions recorded prior to the financial year ended 30 June 2014 however PT was incorporated in January 2008. It appears that the first transactions recorded in the Xero accounts were in November 2013 however that these transactions were not input or created in Xero until April 2014.

A liquidator, if appointed would need to gain access to any accounts maintained by PT prior to this financial period in order to confirm PT's solvency position and the date it became insolvent (as applicable).

5. Likely return to creditors

A dividend to unsecured creditors is unlikely.

We note that if PT is placed into liquidation, a liquidator would conduct further investigations into its affairs to determine whether there are any claims which may be made, or any transactions which may be recoverable for the benefit of creditors. Any likely return would be dependent on the successful outcome of any recovery proceedings.

6. Other information necessary to enable the Company's financial position to be assessed

In order to enable a proper assessment of the financial position of PT, we would be required to do the following:

- Undertake a complete funds tracing exercise of the bank accounts operated in order to determine the movement of funds;
- Obtain proofs of debt from each creditor;
- Obtain and review source documents in order to verify and explain transactions;
- Obtain outstanding income tax returns for financial year ended 30 June 2015;
- Obtain and review any commission agreements giving rise to a contractual right to charge commission for the promotion of each of the Schemes on behalf of the Development Companies; and
- Obtain and review any loan agreements between the Corporate Respondents and McIntyre controlled entities.

7. Suspected contraventions of the Act

7.1 Uncommercial Transactions

We consider that the following transactions constitute uncommercial transactions pursuant to Section 588FB of the Act:

- The loans to related parties totalling c\$6m which are largely not collectible and for which there appears to be no commercial basis.

Section 588FB defines an uncommercial transaction as a transaction where it may be expected that a reasonable person in the company's circumstances would not have entered into the transaction, having regard to:

- a) the benefits (if any) to the company of entering into the transaction; and
- b) the detriment to the company of entering into the transaction; and
- c) the respective benefits to other parties to the transaction of entering into it; and
- d) any other relevant matter.

As outlined above, during the period 1 June 2014 to the date of our appointment, PT made unsecured and undocumented loans to related parties totalling c\$6.04m. For reasons outlined above, we consider at least \$5.2m to be uncollectible.

Entity	Net funds received from PT (\$)
KS Holdings	5,000
Tarniet	101,700
Pinnacle	3,969,382
Salarium Services	370,500
Media Holdings	204,500
Isle of Capri 2 Pty Ltd OR Isle of Capri 3 Pty Ltd	31,150
Education Holdings Pty Ltd	1,138,770
PDI	139,350
GC Princess	18,000
FME	67,849
Total	\$6,046,201

We note that the majority of uncollectible funds, totalling \$5.2m were transferred / loaned to Pinnacle and Education Holdings. We consider that these funds were transferred in circumstances where the Directors ought to have known that they were not collectible. Further, we consider that a reasonable person would not have entered into these transactions having regard to the detriment to PT.

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 PT 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 (\$3.9m) were paid to Pinnacle. Dennis McIntyre is the sole director of Pinnacle and Jamie McIntyre the ultimate shareholder / owner;
- We do not consider that a reasonable person would have entered into these transactions having regard to the financial position of PT and the detriment to PT; and
- These transactions were entered into whilst PT was insolvent and / or it became insolvent by virtue of entering into these transactions.

Accordingly, we consider that these transactions constitute uncommercial transactions. We note that a liquidator, if appointed, would conduct further investigations regarding these transactions in order to identify any further transactions which may be recoverable for the benefit of creditor.

7.2 Insolvent Trading

We consider that the Directors have failed in their duty to prevent insolvent trading pursuant to Section 588G of the Act.

Section 588G(1) of the Act applies if:

- a) a person is a director of a company at the time when the company incurs a debt; and
- b) the company is insolvent at that time, or becomes insolvent by incurring that debt, or by incurring at that time debts including that debt; and
- c) at that time, there are reasonable grounds for suspecting that the company is insolvent, or would so become insolvent, as the case may be; and
- d) that time is at or after the commencement of this Act.

As outlined above:

- We consider PT to be insolvent and that it has been insolvent from at least 30 June 2014; and
- After this date, PT continued to incur liabilities by way of lease of the Albert Road premises and other operating costs which it was unable to service.

As outlined above, a liquidator, if appointed, would conduct further investigations regarding the date PT became insolvent and quantify the debts incurred during this time.

We note that the Directors may be personally liable for insolvent trading.

7.3 Failure to maintain proper books and records

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.

As outlined in the Summary Report, from an examination of the books and records we have obtained it appears that there has been a failure to maintain proper books and records.

Whilst there were financial statements prepared and found amongst PT's records, the transactions underlying the compilation of these accounts were not supported by primary source records such as vouchers, invoices, loan agreements, journals and/or an explanation of the purpose of intercompany transactions. In our opinion, the deficiency in primary source records and the absence of records explaining the significant movement of funds between director related entities did not enable an accurate set of financial statements to be prepared.

7.4 Breach of Director's Duties

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 PT 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.

We further consider that both Dennis and Jamie McIntyre (the "Directors") have breached the following duties as directors.

7.4.1 Failure to act in good faith, in the best interests of the company and for a proper purpose

We have been advised that only Swarit Verma (CFO) and the Directors were signatories to the PT bank account/s and / or had the ability to authorise payments from same. We have further been advised that it was custom for Jamie McIntyre to approve all transactions.

As previously discussed, according to the Xero accounts, PT has lent funds totalling \$5.58m on an unsecured basis to related parties. We note that our investigations indicate that this amount is approximately \$6.04m. We can confirm that at least \$5.2m of these loans are uncollectible. We have been unable to confirm the collectability of the balance.

We note that as Directors and / or former Directors of the related parties, the Directors ought to have known that the respective entities were not capable of repaying these loans. Accordingly, we consider that the Directors have acted improperly, in the absence of good faith and without care and diligence to the detriment of PT, which has resulted in a benefit to other entities they control.

Furthermore, we consider that these loans were made in circumstances where the Directors ought to have known that these related parties did not have the ability to repay. Accordingly, we consider that the Directors may have been reckless and in breach of section 184 of the Act which extends the civil penalty to a criminal one where it can be shown the director acted recklessly or with intentional dishonesty and failed to act in the best interests of the company or for a proper purpose.

As outlined above, a liquidator, if appointed would be required to conduct further investigations regarding PT's affairs and identify any further breaches of the Act and any additional transactions which may be recoverable for the benefit of creditor.

8. Provisional Liquidators' Recommendation

Given the nature of the breaches identified and the financial position of PT, we recommend that PT be wound up to enable proper investigations to be conducted into its affairs.

A liquidator would be required to undertake detailed funds tracing exercise in order to identify any transactions which may be recoverable for the benefit of creditors.

Annexures

Document No.	Description of Document
1	Historical extract of the company as at 7 October 2015
2	Report as to Affairs of Dennis McIntyre dated 5 November 2015
3	Valuation of Lockwood & Co. Pty Ltd dated 9 October 2015
4	Comparative balance sheet extracted from Xero
5	Profit and loss statement for the period 1 July 2015 to 31 October 2015 extracted from Xero
6	Comparative profit and loss for the financial years ended 30 June 2015 to 30 June 2015 extracted from Xero
7	Cash Summary Report for the period 1 January 2015 to 31 October 2015 extracted from Xero