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Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
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File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v
JASON WALTER BETTLES
Registry: QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



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A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

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STATEMENT OF CLAIM

**Federal Court of Australia
District Registry: Queensland
Division: General**

No. QUD693 of 2019

**IN THE MATTER OF IRIDIUM HOLDINGS PTY LTD (IN LIQUIDATION) ACN 161 598
983, and others**

BETWEEN

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

and

JASON WALTER BETTLES

Defendant

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1.0 PARTIES

1.1 The Plaintiff

1. At all times material to this proceeding, the Plaintiff, Australian Securities and Investment Commission (**ASIC**) was:
 - (a) a body corporate pursuant to sec. 8(1)(a) of the *Australian Securities and Investments Commission Act 2001* (**the ASIC Act**);
 - (b) capable of suing in its corporate name pursuant to sec. 8(1)(d) of the ASIC Act;
 - (c) a person entitled to apply for an order under sec. 45-1(1) of the *Insolvency Practice Schedule (Corporations)* (**the Insolvency Practice Schedule**), being Schedule 2 to the *Corporations Act 2001* (**the Act**), pursuant to sec. 45-1(3)(b) of the Insolvency Practice Schedule.

1.2 The Defendant

2. At all times material to this proceeding, the Defendant was (and remains):
 - (a) a registered liquidator under the Act; and

- (b) a partner of Worrells Solvency & Forensic Accountants (**Worrells**).

1.3 The Defendant's Qualifications and Experience

3. The Defendant:

- (a) holds the degree of Bachelor of Accounting having graduated with the same from the Queensland University of Technology in or about 1996;
- (b) was first registered as a liquidator under the Act on 28 August 2002;
- (c) has been registered as a liquidator at all times since 28 August 2002;
- (d) has been a partner of Worrells since September 2004;
- (e) has been at all times material to this proceeding, and remains:
 - (i) a professional member of the Australian Restructuring Insolvency and Turnaround Association, ACN 002 472 362 (**ARITA**);
 - (ii) subject to the Code of Professional Practice promulgated from time to time by ARITA and, relevantly to this proceeding in particular, the Code of Professional Practice 3rd edition which commenced on 1 January 2014 (as amended on 18 August 2014) (**the ARITA Code**) as:
 - (1) a "*member*" of ARITA as defined in sec. 4.2 of the ARITA Code; and
 - (2) a "*practitioner*", as defined in sec. 4.2 of the ARITA Code.

2.0 THE PROCEEDING

2.1 Division 45 of the Insolvency Practice Schedule

- 4. Division 45 of the Insolvency Practice Schedule provides for Court oversight of registered liquidators, and the Court may:
 - (a) by sec. 45-1(1), make such orders as it thinks fit in relation to a registered liquidator; and

- (b) by secs. 45-1(2) and (3), exercise the power under sec. 45-1(1) either on its own initiative, during proceedings before the Court, or on an application by the registered liquidator himself or herself, or on an application by ASIC.

2.2 Matters the Court may take into account

5. Without limiting the matters which the Court may take into account, by sec. 45-1(4) of the Insolvency Practice Schedule, the Court may take into account:

- (a) by sec. 45-1(4)(a), whether the registered liquidator has faithfully performed, or is faithfully performing, the registered liquidator's duties; and
- (b) by sec. 45-1(4)(b), whether an action or failure to act by the registered liquidator is in compliance with the Act and the *Insolvency Practice Rules (Corporations) 2016 (Insolvency Practice Rules)*; and
- (c) by sec. 45-1(4)(c), whether an action or failure to act by the registered liquidator is in compliance with an order of the Court;
- (d) by sec. 45-1(4)(d), whether any person has suffered, or is likely to suffer, loss or damage because of an action or failure to act by the registered liquidator; and
- (e) by sec. 45-1(4)(e), the seriousness of the consequences of any action or failure to act by the registered liquidator including the effect of that action or failure to act on public confidence in registered liquidators as a group.

2.3 Additional Matters the Court may take into account

6. As the list of matters in sec. 45-1(4) of the Insolvency Practice Schedule is non-exhaustive, the Court may also take into account other matters and, relevantly to this proceeding, the Court may take into account:

- (a) whether the Defendant has acted, or failed to act, in breach of the relevant provisions of the ARITA Code;
- (b) whether the Defendant has acted, or failed to act, in breach of any relevant Principle of the ARITA Code (per secs 1.6 and 4.2 Part B of the ARITA Code) and, in particular:

- (i) Principle 1 which provides: “*In addition to the obligation to comply with the law, Members must exhibit the highest levels of integrity, objectivity and impartiality in all aspects of administrations and practice management*” (**Principle 1 of the ARITA Code**);
- (ii) Principle 2 which provides: “*When accepting or retaining an appointment the Practitioner must at all times during the administration be, and be seen to be, independent*” (**Principle 2 of the ARITA Code**);
- (c) whether the Defendant has acted, or failed to act, in breach of the spirit of the ARITA Code (per sec. 1 of the ARITA Code); and
- (d) whether the Defendant has acted, or failed to act, in breach of relevant principles of the common law concerning the duties of liquidators.

Particulars

The relevant principles of the common law concerning the duties of liquidators are referred to *herein* in respect of each of the items of conduct the subject of this Statement of Claim. They have been summarised in **Schedule C** to this Statement of Claim.

2.4 Available Remedies

- 7. The Court may impose in this proceeding such remedies as it thinks fit pursuant to sec. 45-1(1), which include, relevantly, those remedies sought by ASIC in its Originating Application filed on 7 November 2019, namely:
 - (a) an order that the Defendant’s registration as a Registered Liquidator be cancelled;
 - (b) an order that the Defendant be prohibited from reapplying for registration as a Registered Liquidator for such period as the Court considers appropriate;
 - (c) an order that the Defendant be prohibited from consenting to any appointment and acting as a liquidator for such period as the Court considers appropriate; and
 - (d) an order that the Defendant pay ASIC’s costs.

3.0 THE MA GROUP, ITS OWNERSHIP AND RELATED ENTITIES

3.1 Identification of the MA Group Companies – Table 1 of Schedule A

8. A group of companies called “*The Members Alliance Group*” (**the MA Group**) (also known as the Iridium Group):

- (a) was comprised of more than 50 companies, 23 of which are relevant to this proceeding, with approximately 12 more being referred to in this proceeding;

Particulars

Table 1 of Schedule A to this Statement of Claim lists particulars of the companies in the MA Group that are relevant to or referred to in this proceeding, by stating:

- (i) the name of each company;
- (ii) the ACN of each company;
- (iii) any former name by which the company may have been known;
- (iv) the directorships of each company (and, where relevant, how and when those directorships have changed at various times);
- (v) the shareholders of each company (and, where relevant, how and when those shareholdings have changed at various times);
- (vi) whether and, if so, when, each company became registered with the Australian Taxation Office (**the ATO**) as a member of a consolidated group for Goods and Services Tax (**the GST Consolidated Group**);
- (vii) the date of effect of such registration with the ATO as a member of the GST Consolidated Group;
- (viii) whether and, if so, when, each company became registered with the ATO as a member of a consolidated group for income tax (**the Income Tax Consolidated Group**);
- (ix) the date of effect of such registration with the ATO as a member of the Income Tax Consolidated Group;

- (x) the date on which any such member of the MA Group was issued with a statutory demand by the ATO and the amount of such statutory demand;
- (xi) if a company has gone into liquidation, the date on which the liquidator was appointed and the identity of the liquidator; and
- (xii) if an administrator has been appointed to a company, the date on which the administrator was appointed and the name of the administrator.

Note to Pleading

If the name of a company has been changed to its "ACN [as the case may be] Pty Ltd", in this pleading the company is referred to by its former name for ease of identification, and where appropriate, an abbreviated version of that name.

Where a company referred to in this pleading is a company listed in Schedule A, the number in parentheses after the name of the company is its number in Schedule A.

- (b) from in or about 2005 to in or about 2016:
 - (i) operated principally from the Gold Coast in the State of Queensland; and
 - (ii) engaged in the conduct of various businesses, including, relevantly to this proceeding, the provision of investment and financial advice to retail clients, focussing on residential property investment opportunities, property management, finance broking, call centre operations, construction, human resources and project marketing.

3.2 Iridium Holdings Pty Ltd

9. At all times material to this proceeding, Iridium Holdings Pty Ltd ACN 161 598 938 (**Iridium Holdings**) (1) was the sole shareholder and/or the ultimate holding company of approximately half of the companies in the MA Group.

Particulars

- (a) Iridium Holdings (1) was the sole shareholder of the companies referred to in line numbers 2, 3, 5, 7, 8, 9, 10, 17, 18, 19, 20, 21 and 23 of **Table 1 of Schedule A**, namely:
 - (i) Iridium Mortgage Fund Pty Ltd (2);

- (ii) Iridium Home Loans Pty Ltd (3);
 - (iii) Laver Resources Pty Ltd (5);
 - (iv) Members Alliance Rocket Pty Ltd (7);
 - (v) MAIC Human Resources Pty Ltd (8);
 - (vi) Provincial Property Investments (Aust) Pty Ltd (**PPI**) (9);
 - (vii) Silverback Investments Pty Ltd (10);
 - (viii) SS Residential NSW Pty Ltd (17);
 - (ix) Iridium Financial Planning Pty Ltd (18);
 - (x) Capricorn Securities Pty Ltd (19);
 - (xi) MM Prime Pty Ltd (20);
 - (xii) Airlie Beach (MA) Pty Ltd (21);
 - (xiii) MA Human Resources Pty Ltd (23).
- (b) Iridium Holdings (1) owned 98% of the shares in Syree Enterprises Pty Ltd (6).
- (c) Iridium Holdings (1) was the sole shareholder of Silverback Investments Pty Ltd (10) which, in turn, owned 100% of the shares in Silverback Constructions Pty Ltd (4).
10. At all times material to this proceeding until the winding up of Iridium Holdings (1) on 22 July 2016, the controllers of Iridium Holdings (1) were Richard Marlborough (**Marlborough**) and Colin MacVicar (**MacVicar**) by virtue of:
- (a) their directorships of Iridium Holdings (1):
 - (i) in the case of Marlborough, from incorporation on 11 December 2012 to 4 August 2017; and
 - (ii) in the case of MacVicar, from incorporation on 11 December 2012 to 13 July 2016;

- (iii) with David Domingo (**Domingo**) (the then-CEO of the MA Group) being a director for a short period from 16 June 2015 to 20 April 2016; and
- (b) their sole ownership of the shares in the two companies that owned 50% each of the shares in Iridium Holdings (1), namely:
 - (i) Astro Holdings Pty Ltd (**Astro Holdings Pty Ltd**) (number 1A in **Table 2 of Schedule A**) – 100% of the shares of which were owned by Marlborough; and
 - (ii) J.T. Prestige Pty Ltd (**JT Prestige Pty Ltd**) (number 2A in **Table 2 of Schedule A**) – 100% of the shares of which were owned by MacVicar.

Particulars

Table 2 of Schedule A to this Statement of Claim lists particulars of Astro Holdings Pty Ltd and JT Prestige Pty Ltd.

- 11. In the premises, by virtue of their control of Iridium Holdings (1), at all times material to this proceeding up to the dates referred to in sub-paragraph 10(a) above, Marlborough and MacVicar were the controllers of all of the companies referred to in paragraph 9 above.
- 12. Further, by virtue of their directorships and/or shareholdings, as set out in the particulars in **Table 1 of Schedule A**, Marlborough and MacVicar were the ultimate controllers of all but one of the companies listed therein.

3.3 MacVicar Interests

- 13. As at on or about 11 March 2015:
 - (a) JT Prestige Pty Ltd (2A) owned 50% of the shares in Iridium Holdings (1) as trustee for the Denominator Trust;
 - (b) the beneficiaries of the Denominator Trust were MacVicar and his wife, Jennifer MacVicar;
 - (c) 100% of the shares in JT Prestige Pty Ltd (2A) were owned by MacVicar;
 - (d) JT Prestige Pty Ltd (2A) had a then-current tax debt of \$43,789;

- (e) the financial statements for the Denominator Trust as at 30 June 2013 recorded:
 - (i) loans from JT Prestige Pty Ltd (2A) as trustee for the Denominator Trust to:
 - (1) MacVicar for approximately \$930,000;
 - (2) Jennifer MacVicar for approximately \$930,000;
 - (3) T MacVicar for approximately \$132,000; and
 - (4) HSINIF Trust for approximately \$100,000;
 - (ii) an unpaid present entitlement from the Denominator Trust to HSINIF Pty Ltd (13) totalling approximately \$1.804M; and
 - (iii) a loan to JT Prestige Pty Ltd (2A) as trustee for the Denominator Trust from MM Prime Pty Ltd (20) for approximately \$383,000;
- (f) the Denominator Trust had a then-current tax debt of \$321,249;
- (g) the trustee of the HSINIF Trust was Members Alliance Int. No 2 Pty Ltd, of which MacVicar was sole director;
- (h) the director of HSINIF Pty Ltd (13) was MacVicar;
- (i) HSINIF Pty Ltd (13) had a then-current tax debt of \$520,760;
- (j) the shareholder of HSINIF Pty Ltd (13) was CM INT. Pty Ltd (100%) (the director of which was MacVicar and the sole shareholder of which was J.T. Prestige);
- (k) CM INT Pty Ltd was trustee of the CM Investment Trust until CM INT Pty Ltd was deregistered;
- (l) All My Best Wishes Pty Ltd (16) became the trustee of the CM Investment Trust when CM INT Pty Ltd was deregistered; and
- (m) the shareholder of All My Best Wishes Pty Ltd (16) was JT Prestige Pty Ltd (2A).

3.4 Marlborough Interests

14. As at on or about 11 March 2015:

- (a) Astro Holdings Pty Ltd (1A) owned 50% of the shares in Iridium Holdings (1);
- (b) 100% of the shares in Astro Holdings Pty Ltd (1A) were owned by Marlborough;
- (c) Astro Holdings Pty Ltd (1A) owned 100% of the shares of Members Alliance Incorporated Pty Ltd (22) (**MAI**);
- (d) Marlborough was the sole director of MAI;
- (e) Astro Holdings Pty Ltd (1A) owned 50% of the shares of Silverback Investments Pty Ltd (10);
- (f) Marlborough was one of two directors of Silverback Investments Pty Ltd (10);
- (g) Astro Holdings Pty Ltd (1A) owned 2% of the shares of Syree Enterprises Pty Ltd (6);
- (h) Marlborough was the sole director of Syree Enterprises Pty Ltd (6);
- (i) Marlborough owned 100% of the shares of RJM Property Developments Pty Ltd (15);
- (j) Marlborough was the sole director of RJM Property Developments Pty Ltd (15);
- (k) Marlborough was one of two directors of Mapi (Qld) Pty Ltd (24) (the sole shareholder of which was Four Peat Pty Ltd, the shares of which were, in turn, owned by Astro Holdings Pty Ltd (1A) (50%) and JT Prestige (2A) (50%);
- (l) Marlborough was one of three directors of Image Building Group QLD Pty Ltd (11) (of which Iridium Holdings (1) was the sole shareholder);
- (m) Marlborough was the sole director of 2585 Gracemere Pty Ltd (12);
- (n) 100% of the shares of 2585 Gracemere Pty Ltd (12) were held by 2585 Gracemere No 2 Pty Ltd;
- (o) Marlborough was the sole director of 2585 Gracemere No 2 Pty Ltd;

- (p) Barrie Meerkin (General Counsel of the MA Group until about December 2015) (**Meerkin**) and Domingo each owned 50% of the shares in 2585 Gracemere No 2 Pty Ltd; and
- (q) Marlborough was the sole director of Trats Pty Ltd (14).

3.5 Other Relevant Individuals

15. At all times material to this proceeding:

Worrells Personnel

- (a) Rajendra Khatri (**Khatri**) was:
 - (i) a registered liquidator under the Act; and
 - (ii) a partner of Worrells;
- (b) Brian Carey (**Carey**) was a senior manager at Worrells;

MA Group Personnel

- (c) Liam Robert Young (**Young**) was:
 - (i) the acting general legal counsel of the MA Group from December 2015 (after Barrie Meerkin finished in that position) until in or about July 2016;
 - (ii) from in or about 15 July 2016 on their incorporation, the sole director of:
 - (1) Benchmark Private Wealth Pty Ltd (1B) (**BPW**);
 - (2) Benchmark Private Wealth Holdings Pty Ltd (2B) (**BPW Holdings**); and
 - (3) Young Corporation (NSW) Pty Ltd (4B) (**Young Corporation**);
 - (iii) a director, with Maighan Brown (Marlborough's daughter-in-law), of Benchmark Wealth Property Services Pty Ltd (3B) (**Benchmark Property**);

Particulars

Table 3 of Schedule A to this Statement of Claim lists particulars of BPW, BPW Holdings, Young Corporation and Benchmark Property.

- (d) Braiden Marlborough (**Braiden Marlborough**) was:
 - (i) Marlborough's son; and
 - (ii) the Land Acquisitions Manager for the MA Group;
- (e) Daniel Willis (**Willis**) was the National General Sales Manager for the MA Group;

Ramsden Lawyers

- (f) from in or about June 2016, Ramsden Lawyers were the solicitors for the MA Group;
- (g) John Ramsden (**Ramsden**) was:
 - (i) a solicitor; and
 - (ii) a principal of Ramsden Lawyers;
- (h) Oliver Alexander Jones (**Jones**) was an employed solicitor at Ramsden Lawyers;
- (i) Derek Finch (**Finch**) was an employed solicitor at Ramsden Lawyers;

WMS Chartered Accountants

- (j) WMS Chartered Accountants (**WMS**) were:
 - (i) the accountants for the MA Group;
 - (ii) had provided taxation and business services to the MA Group;
- (k) Aaron Charles Lavell (**Lavell**) was:
 - (i) an accountant; and
 - (ii) a principal of WMS; and

Crest Accountants and Crest Wealth

- (l) Peter Chesterton (**Chesterton**) was:

- (i) the accountant (trading as Crest Accountants Pty Ltd) for the MA Group prior to WMS; and
 - (ii) a shareholder of Crest Wealth Pty Ltd ACN 604 419 187 (**Crest**).
16. Further to the matters pleaded in paragraph 15 above, **Schedule B** to this pleading is a list of:
- (a) people and firms relevant to this proceeding; and
 - (b) the dates on which the particular positions of such people and firms were held (if known to the Plaintiff).

4.0 THE TAX CONSOLIDATED GROUPS

4.1 Registration of the Tax Consolidated Groups

17. On or about 28 November 2014, the 18 companies of the MA Group listed in the table below were registered with the ATO as the GST Consolidated Group with effect from the dates therein respectively set out, and each company listed became a contributing member within section 721-10(1)(b) of the *Income Tax Assessment Act 1997* (Cth) (**ITAA**).

Table 1: GST Consolidated Group

Name	Table 1 of Schedule A	Date of effect
1 st Home Pty Ltd	25	1 July 2014
Airlie Beach (MA) Pty Ltd	21	1 July 2014
Capricorn Securities Pty Ltd	19	1 July 2014
Duke Bowen (MA) Pty Ltd	26	1 July 2014
Iridium Accounting & Financial Services Pty Ltd	27	1 July 2014
Iridium Capital Management Pty Ltd	28	1 July 2014
Iridium Financial Planning Pty Ltd	18	7 August 2014
Iridium Mergers & Acquisitions Pty Ltd	29	1 July 2014
Image Building Group Pty Ltd	11	1 July 2014
MA Human Resources Pty Ltd	23	31 July 2014
Members Alliance Financial Planning Pty Ltd	2	1 July 2014
Yaaboc Pty Ltd	31	1 July 2014
Members Alliance Rocket Pty Ltd	7	1 July 2014

Members Alliance Home Loans Pty Ltd	3	1 July 2014
Provincial Property Investments (Aust) Pty Ltd	9	1 July 2014
Silverback Constructions Pty Ltd	4	1 July 2014
SS Residential NSW Pty Ltd	17	1 July 2014
MM Prime Pty Ltd	20	1 July 2014

18. The GST Consolidated Group was a GST Group within sec. 48-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**the GST Act**).
19. On or about 2 March 2015, the 18 companies of the MA Group listed in the table below, were registered with the ATO as the Income Tax Consolidated Group with effect from the dates therein respectively set out, and each company listed became a contributing member within section 721-10(1)(b) of the ITAA.

Table 2: Income Tax Consolidated Group

Name	Table 1 of Schedule A	Date Joined
1 st Home Pty Ltd	25	1 July 2013
Image Building Group QLD Pty Ltd	11	1 July 2013
Members Alliance Financial Planning Pty Ltd	2	1 July 2013
Members Alliance Home Loans Pty Ltd	3	1 July 2013
Iridium Home Loans Pty Ltd	35	1 July 2013
Yaaboc Pty Ltd	30	1 July 2013
Silverback Constructions Pty Ltd	4	1 July 2013
Silverback Investments Pty Ltd	10	1 July 2013
MM Prime Pty Ltd	20	1 July 2013
Image Building Constructions Pty Ltd	33	1 July 2013
Members Alliance Rocket Pty Ltd	7	1 July 2013
Laver Resources Pty Ltd	5	1 July 2013
SS Residential NSW Pty Ltd	17	1 July 2013
Provincial Property Investments (Aust) Pty Ltd	9	1 July 2013
Iridium Accounting & Financial Services Pty Ltd	27	9 October 2013
Iridium Mergers & Acquisitions Pty Ltd	29	9 October 2013
Airlie Beach (MA) Pty Ltd	21	3 March 2014
Capricorn Securities Pty Ltd	19	21 February 2014

20. On or about 2 March 2015, Iridium Holdings (1) was registered as:
- (a) the representative company of the GST Consolidated Group; and
 - (b) the head company of the Income Tax Consolidated Group.

(In this pleading, the two Tax Consolidated Groups are referred to, collectively, as **the Tax Consolidated Groups**).

4.2 Consequences of Membership of Tax Consolidated Groups

21. By sec. 721-5 of the ITAA, the object of Division 721 of the ITAA is to secure the payment of certain tax liabilities of the head company of a consolidated group where the head company fails to meet all of those liabilities by the time they become due and payable.
22. By section 721-5 of the ITAA:
- (a) if a relevant liability is not covered by a tax sharing agreement, Division 721 provides for a process to make certain entities that were subsidiary members of the group for at least part of the period to which each tax liability relates jointly and severally liable with the head company for those liabilities; or
 - (b) if a relevant liability is covered by a tax sharing agreement, Division 721:
 - (i) provides for a process to make each of those entities liable for the amount determined under the agreement in relation to the liability; but
 - (ii) exempts an entity from a liability determined under the agreement if it leaves the group in certain circumstances.
23. Neither the GST Consolidated Group nor the Income Tax Consolidated Group had a tax sharing agreement in respect of a relevant liability.
24. By sec. 721-15 of the ITAA, the head company of a tax consolidated group and each contributing member of the tax consolidated group are jointly and severally liable to pay the group liability, where:
- (a) a group liability is a tax-related liability in relation to the head company and each contributing member; and
 - (b) a contributing member is a subsidiary member of the group for at least part of the period to which the group liability relates within sec. 721-10(1)(b).

25. By the definition in sec. 955.1 of the ITAA, the expression "*tax-related liability*" has the meaning given by sec. 255-1 in Schedule 1 to the *Tax Administration Act 1953* (Cth), namely, sub-sec. 255-1(1) "*a pecuniary liability to the Commonwealth arising directly under a taxation law (including a liability the amount of which is not yet due and payable)*".
26. By the definition in sec. 955.1 of the ITAA, the expression "*taxation law*" means, relevantly to this proceeding, "*an Act of which the Commissioner has the general administration (including a part of an Act to the extent to which the Commissioner has the general administration of the Act)*".
27. By sec. 250-10(2), Item 5 in Schedule 1 to the *Tax Administration Act 1953* (Cth), an assessed net amount of GST under, relevantly, sec. 33-3 of the GST Act is a tax-related liability.
28. By sec. 444-90(1) of the *Tax Administration Act 1953* (Cth), the members of a GST group are jointly and severally liable to pay any amount (an ***indirect tax amount***) that is payable under an indirect tax law by the representative member for the group, where GST is an "*indirect tax amount*" (by sec. 955.1 of the ITAA) payable under the GST Act (which is an "*indirect tax law*" by sec. 955.1 of the ITAA).
29. In the premises of the matters pleaded in paragraphs 17 to 28 *above*, and in the absence of a tax sharing agreement:
 - (a) in the case of the members of the GST Tax Consolidated Group, the members and Iridium Holdings (1) were jointly and severally liable to pay any group liability; and
 - (b) in the case of the members of the Income Tax Consolidated Group, the members and Iridium Holdings (1) were jointly and severally liable to pay any group liability.
30. At all times material to this proceeding, the Defendant knew of the contents and effects of sec. 721-15 of the ITAA by reason of the fact that:
 - (a) he held the positions, qualifications and experience pleaded in paragraphs 2 and 3 *above*;
 - (b) no person who has held those positions, qualifications and experience would be unfamiliar with the contents and effects of sec. 721-15 of the ITAA;

- (c) at the 8 July 2016 Meeting (see paragraph 56 below), at which the Defendant was present, the fact that the liabilities of the companies in the Tax Consolidated Groups was joint and several, was discussed; and
- (d) the ATO sent letters, dated 1 September 2016, to Worrells which confirmed the companies in the Tax Consolidated Groups.

5.0 THE DEFENDANT'S PRELIMINARY KNOWLEDGE OF THE MA GROUP

5.1 The 2015 MacVicar Advice

31. On or about 11 March 2015, the Defendant provided written personal advice for MacVicar and his wife, Jennifer MacVicar (**the MacVicar Advice**).

Particulars

The MacVicar Advice was provided by the Defendant by letter dated 11 March 2015 addressed to the attention of Lavell of WMS, the accountants for the MacVicars.

32. The MacVicar Advice (among other things):
- (a) noted that WMS Chartered Accountants sought "*advice on the adverse financial consequences to Mr Colin and Mrs Jenny MacVicar personally should the Members Alliance group of companies cease to trade in a short timeframe because of an inability to pay outstanding debts to the Australian Taxation Office*";
 - (b) set out a review of the MacVicars' affairs based on the Defendant's "*understanding of the current state of affairs*", including, *inter alia*, the entities and relationships pleaded in paragraph 13 above;
 - (c) was designed to "*broadly identify the areas that may have a material effect on Mr & Mrs MacVicar and their associated entities, and therefore should be considered as part of a review of their affairs*"; and
 - (d) addressed specific potential consequences, if JT Prestige (2A) was wound up, for the MacVicars and for Iridium Holdings (1).

Particulars

The specific potential consequences included the liquidator of JT Prestige (2A) seeking recovery of debts owed to it by MacVicar and Jennifer MacVicar, and the result that the liquidator would control 50% of Iridium Holdings (1).

33. In the premises, as at 11 March 2015, the Defendant knew or ought to have known of the following matters by reason of the fact that they were included in the MacVicar Advice:
- (a) the entities and relationships pleaded in paragraph 13 *above*;
 - (b) the contents of the balance sheets and financial statements of at least:
 - (i) JT Prestige Pty Ltd (2A);
 - (ii) the Denominator Trust;
 - (iii) HSINIF Pty Ltd (13);
 - (iv) Members Alliance Int. No 2 Pty Ltd; and
 - (v) All My Best Wishes Pty Ltd (16);
 - (c) that the balance sheets noted various loans *“going both ways between the entities”*;
 - (d) MA Human Resources Pty Ltd (23) had a *“significant liability to the ATO”*;
 - (e) MM Prime Pty Ltd (20) acted as treasury for the MA Group;
 - (f) MM Prime Pty Ltd (20) owed MA Human Resources Pty Ltd (23) \$4,160,087; and
 - (g) the Denominator Trust owed the ATO \$321,249.
34. In the MacVicar Advice, the Defendant provided the following advices:
- (a) *“One of the first things an external administrator [would] do is call up loans and UPEs [unpaid present entitlements] owed to the company in administration. The administrator will be subject to the terms of the loan agreement (assuming it is not a voidable transaction). So if it is an at call loan then the administrator can make demand for payment immediately on appointment. If the borrower cannot satisfy the demand then the external administrator can, like any creditor, proceed to wind up/bankrupt the*

borrower. If that borrower owes money to other entities then the process can continue right throughout the group until all entities are in some sort of external administration.”

- (b) *“Should MA Human Resources Pty Ltd be wound up then the liquidator would be looking to seek recovery of the \$4,160,087 owed by MM Prime Investments Pty Ltd. If this resulted in MM Prime Investments Pty Ltd being wound up then this could have a significant impact on the Members Alliance Group because the liquidator may seek recoveries of all of the loans owing to MM Prime Investments Pty Ltd.”*
- (c) *“Should the ATO take legal action seeking recovery of this debt then it would need to take action against the trustee, as a trust is not a legal entity and therefore cannot be sued. The trustee is obviously JT Prestige Pty Ltd.”*
- (d) *“The winding up of J.T. Prestige Pty Ltd would give control of the Denominator Trust to the liquidator by virtue of the indemnity contained within the trust deed. The liquidator could then seek recovery of the debts owed to both J.T. Prestige Pty Ltd and Denominator Trust, which includes:*
- Loan totaling \$930,766 owed by CW MacVicar.*
 - Loan totaling \$930,766 owed by JL MacVicar.*
 - Loan totaling \$132,158 owed by T MacVicar.*
 - Loan totaling \$100,000 owed by The Hsinif Trust.”*
- (e) *“The winding up of J.T. Prestige Pty Ltd would also result in the liquidator controlling the 50% shareholding in Iridium Holdings Pty Ltd, which the liquidator would look to sell to any interested party.”*
- (f) *“Some particular areas you may wish to consider are:*
- Iridium Holdings Pty Ltd has not paid for the purchase of Provincial Property Investments (Aust) Pty Ltd. Rather it is intended to show a loan in the accounts of J.T. Prestige Pty Ltd, which will be offset by any amounts owing by other entities to the Members Alliance Group.*

Should a liquidator be appointed to J.T. Prestige Pty Ltd the liquidator could argue that because J.T. Prestige Pty Ltd did not physically receive the purchase price then the transaction is a voidable transaction and the liquidator would seek the return of the shareholding in Provincial Property Investments (Aust) Pty Ltd or the amount of the purchase price.

- *I note your advice that Mr MacVicar’s remuneration, which is directed to Denominator Trust, is derived from a fee of \$4,500 for each successful property settlement achieved by the Members Alliance Group. I also note that you are comfortable that this fee is reasonable. Given the total quantum of monies paid in this area it is likely to be a matter thoroughly investigated by a liquidator and consequently, if you have not documented how you arrived at the figure of \$4,500, I suggest you do so.”*
- (g) *“I am informed that the shareholders of J.T. Prestige Pty Ltd and Hsinif Pty Ltd are not actually those shareholders who are recorded on the ASIC’s records. It would be appropriate to have the ASIC’s records immediately corrected ensuring that appropriate supporting documentation is maintained about the transfers so as to deal with any enquiries by external parties.”*
- (h) *“Amongst your entities there are shareholding both beneficially held and not beneficially held. This may be an opportunity to review those shareholdings to clarify the exact position so as to avoid arguments with external administrators over who owns the shares.”*

5.2 The Defendant’s Knowledge as at 11 March 2015

35. As at 11 March 2015, the Defendant knew or ought to have known of the following matters (by reason of the matters contained in, and the advices given in, the MacVicar Advice pleaded in paragraph 34 above):
- (a) MM Prime Pty Ltd (20) acted as the “*treasury*” company for the MA Group;
 - (b) if MA Human Resources Pty Ltd (23) was placed in external administration and MM Prime Pty Ltd (20) was required to repay a loan of \$4,160,087 to MA Human Resources Pty Ltd (23), then MM Prime Pty Ltd (20) might be wound up;
 - (c) if MM Prime Pty Ltd (20) was wound up, all of the borrowings from this “*treasury*” company and owed by other companies in the MA Group could be called up;
 - (d) the winding up of MM Prime Pty Ltd (20) would have a significant impact on the members of the MA Group as the process could continue right through the Group; and

- (e) if the ATO pursued the Denominator Trust's tax debt of \$321,249, JT Prestige Pty Ltd (2A) would be the entity that was pursued as it was the trustee of the Denominator Trust.

5.3 February 2016 Meeting

- 36. On or about 11 February 2016, the Defendant met with Derek Cronin (a solicitor of Cronin Lawyers), Lavell and Marlborough (**the February 2016 Meeting**).
- 37. During the February 2016 Meeting, Mr Cronin, Lavell, Marlborough and the Defendant discussed:
 - (a) the recent (3 February 2016) liquidation of MA Human Resources Pty Ltd (23);
 - (b) the appointment of JP Downey as liquidator of MA Human Resources Pty Ltd (23);
 - (c) the liquidation of that company in the context of:
 - (i) the MA Group as a whole and the effect it may have on the MA Group; and
 - (ii) the fact that the MA Group was in debt negotiations with the ATO at the time, and that the ATO might have concerns in that regard; and
 - (d) whether the Defendant would be available to accept appointments to companies in the MA Group.

5.4 The Defendant's Knowledge by 11 February 2016

- 38. In the premises, by and at the time of the February 2016 meeting, the Defendant knew or, alternatively, ought to have known by reason of the fact that it was told to him (as pleaded in paragraph 37 above) or because of his knowledge of the matters pleaded in paragraphs 33 to 34 above (regarding the MacVicar Advice), or because, given those matters and his qualifications and experience (as pleaded in paragraphs 2 and 3, *above*), he was able to infer it was the case that:
 - (a) MA Human Resources Pty Ltd (23) had gone into liquidation and JP Downey had been appointed liquidator;

- (b) the MA Group was indebted to the ATO;
- (c) the liquidation of MA Human Resources Pty Ltd (23) may have a significant effect on companies in the MA Group;
- (d) members of the MA Group may go into liquidation (whether as a result of the liquidation of MA Human Resources Pty Ltd (23) or otherwise); and
- (e) the Defendant may be requested to accept appointments as liquidator of companies in the MA Group.

6.0 ATO STATUTORY DEMANDS

39. The ATO issued companies in the MA Group with statutory demands for payment as follows:

Table 3: ATO Statutory Demands

Company	Schedule A	Date	Amount (\$)
Syree Enterprises Pty Ltd	6	5 January 2016	954,098.10
2585 Gracemere Pty Ltd	12	5 January 2016	996,615.97
Astro Holdings Pty Ltd	1A	5 January 2016	681,501.63
RJM Property Developments Pty Ltd	15	6 January 2016	549,745.62
Trats Pty Ltd	14	6 January 2016	722,837.78
Iridium Holdings	1	23 June 2016	2,178,490.16
Silverback Constructions Pty Ltd	4	23 June 2016	636,148.38
Iridium Mortgage Fund Pty Ltd	2	23 June 2016	69,039.21
Iridium Home Loans Pty Ltd	3	23 June 2016	74,102.63
MAIC Human Resources Pty Ltd	8	23 June 2016	599,395.64
HSINIF Pty Ltd	13	24 June 2016	592,540.87
Members Alliance Rocket Pty Ltd	7	24 June 2016	80,790.55
All My Best Wishes Pty Ltd	16	24 June 2016	687,282.36
PPI Pty Ltd	9	27 June 2016	173,282.42
Image Building Group QLD Pty Ltd	11	7 July 2016	1,385,287.71
Laver Resources Pty Ltd	5	8 July 2016	6,766,842.94
		TOTAL	17,148,001.97

40. As at 8 July 2016, the total amount of the statutory demands issued by the ATO to companies in the MA Group was \$17,148,001.97, rounded to **\$17 million**.
41. As at 1 March 2016, the MA Group's total liability to the ATO was \$27,987,794.62, rounded to **\$28 million**.
42. Approximately **\$11 million** owing to the ATO was attributable to the period after the Tax Consolidated Groups were formed.

7.0 THE MA TRADING COMPANIES and PPI PTY LTD (9)

43. Capricorn Securities Pty Ltd (19), Iridium FP Pty Ltd (18), MM Prime Pty Ltd (20), Airlie Beach (MA) Pty Ltd (21) and SS Residential NSW Pty Ltd (17) listed in **Table 1 of Schedule A** are referred to herein as **the MA Trading Companies**.

7.1 Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18)

44. As at mid-2016:
 - (a) Capricorn Securities Pty Ltd (19) was the holder of Australian Financial Services Licence 423717 (**AFSL**) and Iridium FP Pty Ltd (18) was a corporate authorised representative of Capricorn Securities Pty Ltd (19);
 - (b) in those roles, Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18) operated a financial services business, including risk insurances and financial planning; and
 - (c) when policies or investments were placed, Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18) would receive trail income in accordance with agreements with financial product issuers, including Macquarie and TAL (this entitlement to trail income is referred to as **the Client Book**);
45. In or about December 2015, Capricorn Securities Pty Ltd (19) (by Marlborough) appointed Lavell (WMS) as agent for the sale of the *"risk and superannuation trail book"* (ie., the Client Book) with the price listed on the Appointment of Property Agent Form of \$3.75 million plus GST;
46. The Client Book had been assigned the following values by Lavell:
 - (a) on or about 8 April 2016 in correspondence with the ATO as having:
 - (i) annual income of \$1,250,000; and

- (ii) an estimated asset value of \$3,750,000;
- (b) on or about 8 July 2016 in a Powerpoint document that Lavell had prepared **(the WMS Powerpoint)** as having:
- (i) for the *“risk trail”* (ie., the insurance trail commissions) a value of about \$800,000 to \$1,200,000;
 - (ii) for the *“risk advisor fees”* as a percentage (usually 1%) of funds under management of \$200,000 to \$600,000; and
 - (iii) *“work in progress risk”* (that is, commissions with respect to insurance business *“lodged but not yet received”*) of between \$100,000 and \$400,000.

7.2 MM Prime Pty Ltd (20)

47. As at mid-2016:

- (a) MM Prime Pty Ltd (20) held an entitlement to commissions on sales of properties;
- (b) the commissions were described in the WMS Powerpoint as being *“Work in Progress Property Sales”* and were valued as an asset between \$1,000,000 and \$3,000,000;
- (c) one such entitlement arose from a contract dated on or around 25 February 2015 with a company called Elderton Holdings Pty Ltd **(the Elderton Contract)**;
- (d) pursuant to the Elderton Contract:
 - (i) Elderton Holdings Pty Ltd **(Elderton)** would pay MM Prime Pty Ltd (20) \$60,000 for the sale of each lot of 8 lots of land in a development in Sydney known as *“The Ponds”*;
 - (ii) the payments would be in two instalments: \$20,000 commission on settlement of the sale and then \$40,000 on receipt by Elderton of the first progress payment during construction of a dwelling on each lot.

7.3 Airlie Beach (MA) Pty Ltd (21)

48. As at mid-2016, Airlie Beach (MA) Pty Ltd (21) held the management rights of units in a body corporate in Airlie Beach.
49. In the WMS Powerpoint, the management rights were described as having a value of \$450,000 to \$600,000, with an income of approximately \$10,500 per month (\$126,000 per annum).

7.4 PPI Pty Ltd (9)

50. As at mid-2016, PPI Pty Ltd (9) operated a rent roll, managing over 237 rental properties in Queensland, NSW and Victoria.
51. The assets of PPI Pty Ltd (9) were recorded in a PowerPoint presentation by Worrells (the **Worrells' PowerPoint**) as:
- (a) rent roll \$178,417; and
 - (b) related \$2,578,946.

7.5 SS Residential NSW Pty Ltd (17)

52. As at May 2016, SS Residential NSW Pty Ltd's (17) balance sheet recorded:
- (a) total assets of \$113,891.92;
 - (b) total liabilities of \$347,962.70; and
 - (c) a total equity position of (\$234,070.78) (ie., negative equity position).
53. As at mid-2016, SS Residential NSW Pty Ltd (17) held an entitlement to a payment by the Department of Transport of New South Wales in the amount of approximately \$450,000, being compensation for land resumption.

8.0 THE DEVELOPMENT OF THE STRATEGY

8.1 The 8 July 2016 Meeting

54. On or about 8 July 2016, a meeting was held at the offices of WMS at Robina at which the Defendant, Ramsden, Jones and Lavell were present (**8 July 2016 Meeting**).
55. The 8 July 2016 Meeting lasted for approximately 5 hours.
56. The Defendant was advised during the course of the 8 July 2016 Meeting:
- (a) that a number of the companies in the MA Group had received statutory demands from the ATO;
 - (b) that some companies in the MA Group were insolvent;
 - (c) that some companies in the MA Group were solvent, but their sole shareholders were insolvent;
 - (d) as to the operations of the entities in the MA Group;
 - (e) that it seemed likely that the whole Group would ultimately fail and Marlborough would end up bankrupt;
 - (f) the liquidations of each company would need to be staged because in some cases assets needed to be realised prior to liquidation otherwise the value in the asset would be lost; and
 - (g) Lavell would email the Defendant with spreadsheets on what each company did and which companies had received statutory demands.
57. The following matters were also discussed during the 8 July 2016 Meeting:
- (a) that Iridium Holdings (1) was the ultimate holding company for most of the companies in the MA Group;
 - (b) companies in the MA Group owed money to the ATO;
 - (c) due to the Tax Consolidated Groups, the companies were all jointly and severally liable for tax owed to the ATO;
 - (d) there was no tax sharing agreement;

- (e) the Office of State Revenue had not issued statutory demands yet but they were *“not far away”*;
- (f) a number of the entities had assets and income in the form of trail agreements, work in progress and entitlements to commissions, with the following being mentioned specifically:
 - (i) Capricorn Securities Pty Ltd (19) which had an AFSL and an entitlement to trail income;
 - (ii) Iridium FP Pty Ltd (18), which was a corporate authorised representative for Capricorn Securities Pty Ltd (19) had an entitlement to risk advisor fees and may be entitled to WIP of about \$400,000 depending on whether a client who may have signed up for insurance was accepted by the insurer (the effect being that if the insurance policy was placed, a commission (referred to by those at the meeting as the “WIP”) would be paid);
 - (iii) MM Prime Pty Ltd (20) held an entitlement to commissions on sales of properties;
 - (iv) Airlie Beach (MA) Pty Ltd (21) held management rights from a body corporate;
 - (v) PPI Pty Ltd (9) had property management rights;
 - (vi) SS Residential NSW Pty Ltd (17) would receive \$450,000 once a deed was signed;
- (g) that if the financial planning businesses could be quarantined from statutory demands, then they could be sold (there would be value) and the new owner could *“just sit there and collect cheques”*;
- (h) that Marlborough wanted to buy the MM Prime Pty Ltd (2) business and carry it on but needed \$500,000 so that he could collect the WIP and the means of doing this were considered and it was discussed in words to the effect that:
 - (i) the *“only way”* would be to *“pull out”* \$400,000 from the financial planning business but that would take 90 days; or
 - (ii) MM Prime Pty Ltd (20) could collect the WIP and then pay it to Marlborough, if there is no statutory demand, then it would cease to trade and say it was engaging someone else to collect debts;

- (i) Marlborough's intention ("*mindset*") was that he wanted to give "*some return to creditors but get rid of legacy debt*";
- (j) Marlborough intended that a new company should be created by Braiden Marlborough (Marlborough's son) with Young (then general counsel of the MA Group) as sole director and shareholder to take over the business of the MA Group;
- (k) arrangements for securing the payment of the fees of the professional advisors, in particular:
 - (i) regarding WMS Accountants:
 - (1) WMS Accountants was already owed \$165,000 in respect of past fees;
 - (2) to take security over assets of companies comprising the MA Group for payment of its fees;
 - (3) for WMS Accountants to find "*something with a guarantee for past fees*";
 - (4) for Marlborough to sign an old fee agreement (perhaps from 2 years prior) that had a guarantee provision, using words to the effect of "*Get old fee agreement and a guarantee provision to say made with all of the entries and in the event of non-payment, can demand from other Group members. Then on demand, put security interest in place.*";
 - (5) for WMS to "*draw on assets*" in particular SS Residential NSW Pty Ltd (17) which would be receiving \$450,000 once a deed with the New South Wales government was signed;
 - (ii) regarding Ramsden Lawyers:
 - (1) to take security over assets of companies comprising the MA Group for payment of its fees;
 - (2) there should be a security interest provision in the proposed fee agreement;
 - (3) there would be a PPSA clause in the fee agreement which would tie all of the MA Group members into the liabilities for

Ramsden Lawyer's fees, and then Ramsden Lawyers could register a security interest within 20 business days of entering into the fee agreement against any of the companies that had assets;

- (4) for Ramsden Lawyers to "*draw on assets*" in particular SS Residential Pty Ltd (17) which would be receiving \$450,000 once a deed with the New South Wales government was signed and/or the property management books from Airlie Beach (MA) Pty Ltd (21);
- (l) possible sources of income for the Defendant's fees, including that the Defendant "*would get money out of it*", and noting that there was \$450,000 in Astro Holdings (1A) and JT Prestige (2A); and
- (m) the contents of the WMS Powerpoint.

8.2 The Defendants' Knowledge as at 8 July 2016

58. In the premises, by the conclusion of the 8 July 2016 Meeting, the Defendant knew or ought to have known (by reason of the matters conveyed to him during the course of the 8 July 2016 Meeting, and his knowledge of the MA Group pleaded in paragraph 31 and 38 above) that:

- (a) the MA Group owed a significant amount of money to the ATO and, if he did not know the exact amount, he knew that it was at least \$17 million;
- (b) as well as, and or aside from, the statutory demands issued to companies in the MA Group individually by the ATO, Iridium Holdings (1) and the members of the Tax Consolidated Groups were jointly and severally liable for moneys owed to the ATO in respect of the GST Tax Consolidated Group and the Income Tax Consolidated Group;
- (c) Marlborough, with the assistance of the professional advisors (namely WMS Accountants and Ramsden Lawyers), was developing a strategy (**the strategy**) by which:
 - (i) Marlborough would register at least one new company which would be under his effective control (via his son, Braiden, and his employed general counsel, Young);

- (ii) Marlborough would arrange for the staged winding up of the companies so as to be able to transfer the income producing assets of certain companies to such a new company;
 - (iii) the new company would then be able to receive the income that would otherwise have gone to the existing companies;
 - (iv) Marlborough required \$500,000 in order to do this, and intended to obtain that from one or more of the entities that conducted the financial planning business or from the WIP of MM Prime Pty Ltd (20);
 - (v) the professional advisors (WMS Accountants and Ramsden Lawyers) intended to enter into arrangements which would enable them to take security for past and future fees over the assets of companies in the MA Group and with the effect that their professional fees should rank ahead of non-secured creditors; and
 - (vi) Marlborough wanted to limit the amounts available in MA Group companies that could be used to pay creditors, including the ATO.
59. At all times material to this proceeding, the Defendant knew or ought to have known that:
- (a) if the arrangements discussed during the course of the 8 July 2016 Meeting (that is, the strategy) were brought to fruition, then:
 - (i) without necessarily knowing all of the precise details as to how this would be accomplished, assets and income streams from companies in the MA Group which would have been available to creditors of the MA Group, including the ATO, would no longer be available for distribution to such creditors on the winding up of companies in the MA Group;
 - (ii) without necessarily knowing all of the precise details as to how this would be accomplished, assets or income streams which were or which would become available to companies in the MA Group were going to be used to fund commencement of the said new company or companies and/or to enable the transfer of assets or income streams from the MA Group companies to the new companies;

- (b) if those arrangements came to fruition, it was likely that Marlborough, as director of the companies in the MA Group as pleaded in **Table 1 of Schedule A**, would have acted in breach of:
- (i) sec. 180(1) of the Act in respect of each such company from which assets or income streams were transferred because:
 - (1) the companies that held those assets and incomes streams were members of tax consolidated groups and were jointly and severally liable for the tax owed, arising after membership of those groups arose, by other members of the group;
 - (2) those companies in fact owed monies to the ATO;
 - (3) the MA Group was insolvent and likely to fail; and
 - (4) the companies from which the assets and income streams were transferred were not going to be paid reasonable consideration for the same on an arms' length commercial basis, but that the assets and income streams were to be transferred to companies under Marlborough's control and, if any consideration was paid, it would have been channelled from another company or companies in the MA Group;
 - (ii) sec. 181(1) of the Act because:
 - (1) it was not in good faith in the best interests of any companies of the MA Group to have their assets and income streams transferred for no consideration or consideration which was not reasonable and where the transfers were not at commercial arms' length;
 - (2) it was not in good faith in the best interests of any companies of the MA Group to have their assets or capital used for the purposes of funding:
 - (A) the creation of any new company to which assets or income streams of other members of the MA Group might be transferred;
 - (B) the transfer of the said assets or income streams; and

(C) payment under an agreement governing the resignation of a director of some of the companies when there was no agreement nor reason for such payment;

(iii) sec. 182(1) of the Act because:

(1) Marlborough would be using his position as director to gain an advantage for a new entity of which he would have effective control, being the acquisition of assets or income streams for no or little consideration on non-commercial terms which were not at arms' length;

(2) Marlborough would be using his position to cause detriment to a company or companies in the MA Group by reason of the fact that they would be stripped of assets and income streams for no or little consideration on non-commercial terms which were not at arms' length; and

(3) in either case, such use of his position would be improper.

(c) the professional advisors to the MA Group intended to enter into arrangements with Marlborough and/or the MA Group which were designed to give priority to the payment of their fees (past and future) above payment of amounts owing to other creditors;

(d) if he was appointed liquidator of Iridium Holdings (1):

(i) he would be an officer of Iridium Holdings (1);

(ii) his duty would be to realise the assets of Iridium Holdings (1) and distribute the same to the creditors of the company;

(iii) as Iridium Holdings (1) was the sole shareholder of most of the companies of the MA Group (as pleaded in **Table 1 of Schedule A** to this Statement of Claim and listed in paragraph 9 above), he would be in a position to realise the assets of those companies for the benefit of the creditors of Iridium Holdings (1);

(iv) he could use the control he would have as an officer of Iridium Holdings (1) to call on its subsidiaries for repayment of any related entity loans;

- (v) he could use the control he would have as an officer of Iridium Holdings (1) to see to the payment of any liabilities held jointly and severally with the subsidiary companies of the MA Group from the assets or income streams of those companies;
- (vi) he could prevent the transfer of assets and income streams from those companies in the MA Group which were subsidiaries of Iridium Holdings (1) to a new company owned or controlled by Marlborough or those associated with Marlborough (including Braiden Marlborough and Young); and
- (vii) he could do so because he would be the controller of the shareholder of those companies, and therefore could call a general meeting of the same, remove and replace directors, move and pass motions protecting the assets and income streams of those companies and/or call in debts of those companies to enable payment of creditors, and/or cause the liquidation of those companies.

8.3 The WMS Powerpoint

- 60. The WMS Powerpoint discussed during the 8 July 2016 Meeting was:
 - (a) prepared by Lavell (WMS); and
 - (b) sent to the Defendant by email on 20 July 2016 in response to the Defendant's request for the same by email on 20 July 2016.
- 61. The Defendant had discussed the WMS Powerpoint at the 8 July 2016 Meeting.
- 62. The WMS Powerpoint:
 - (a) described the roles carried out by various companies within the MA Group, including project marketing, financial planning and risk services, property management, finance brokers, lease holding and building;
 - (b) listed the assets of various companies within the MA Group, including their low and high values;
 - (c) listed the assets (and their values) held by the MA Trading Companies and PPI Pty Ltd (9);

- (d) summarised the statutory demands against various companies within the MA Group;
 - (e) included the list of statutory demands as pleaded in paragraph 39 above;
 - (f) set out a timeline for various actions to be taken, including the appointment of Worrells by 15 July and the establishment of “Newco” (as referred to therein) by 13 July; and
 - (g) listed the proposed staff of Newco, being staff who had been employed by companies in the MA Group.
63. The WMS Powerpoint as emailed to the Defendant on 20 July 2016 had 14 slides and:
- (a) the second slide (**Slide 2**) had the heading “*Timeline*”, and included a list of action items, with a person noted as being responsible for that action, and the time by which the action was to be completed;
 - (b) one of the action items was described as, “*Newco establishment. Trustee co, Discretionary Trust, Holding Co, SPV Project Marketing Co, SPV HR Co, SPV Property Management Co*”, to be completed by Young and Marlborough by Wednesday 13 July [2016]; and
 - (c) the third slide (**Slide 3**) was headed “*Proposed Staff – New Co*” and included a list of staff then employed by companies in the MA Group and their proposed role and remuneration in the “*New Co*”.
64. In the premises, either when it was discussed during the course of the 8 July 2016 Meeting (as pleaded in paragraph 61 above), or after it was emailed to him on 20 July 2016, the Defendant knew or ought to have known:
- (a) the contents of the WMS Powerpoint including:
 - (i) the structure of the MA Group;
 - (ii) the businesses conducted by various companies in the MA Group;
 - (iii) which companies of the MA Group held assets and incomes streams and which did not;
 - (iv) which companies of the MA Group had received statutory demands from the ATO and the amount of those statutory demands;

- (b) that the strategy discussed during the 8 July 2016 Meeting pleaded in paragraph 57 *above* had been in development prior to the 8 July 2016 Meeting (which is to be inferred from the fact that it was available to be viewed and discussed in the form of the WMS Powerpoint for viewing at that meeting); and
- (c) that the strategy discussed during the 8 July 2016 Meeting contemplated that he would be appointed as liquidator of various companies in the Group, including Iridium Holdings (1).

8.4 The Defendant's Alteration of the WMS Powerpoint

- 65. After receiving the WMS Powerpoint by email on 20 July 2016, the Defendant altered the document by deleting Slide 2 and Slide 3 (**the Altered WMS Powerpoint**).
- 66. On or about 24 July 2016, the Defendant:
 - (a) made the Altered WMS Powerpoint available to be viewed by Worrells personnel on its document management system; and
 - (b) included a file note stating *"Here is a handy PowerPoint presentation prepared by WMS Chartered Accountants that sets out all the companies in the Members Alliance business and what each does"*, with a link to the Altered WMS Powerpoint.
- 67. As at 24 July 2016, the Defendant knew that the strategy being developed was not going to be, or in the alternative, not likely to be, of benefit to companies in the MA Group and/or in the interests of creditors of those companies (including the ATO), where such knowledge is to be inferred from:
 - (a) the Defendant's conduct in:
 - (i) deleting Slide 2 and Slide 3 of the WMS Powerpoint;
 - (ii) making only the Altered WMS Powerpoint available to Worrells personnel;
 - (iii) not including in the file note of 24 July 2016 that there was a longer version of the WMS Powerpoint available that:
 - (1) described the actions required for establishing a number of new companies or *"newcos"* (as referred to therein);

- (2) identified the persons responsible for undertaking those actions and the date by which they should be performed; and
 - (3) identified staff from MA Group companies which were proposed to be employed by the new companies or “newcos” (as referred to therein); and
- (b) the fact that there is no explanation for deleting the slides that is consistent with an absence of knowledge of that fact or those facts.

8.5 The 14 July 2016 Meeting

68. On or about 14 July 2016, a meeting was held at the offices of Ramsden Lawyers at which the Defendant, Ramsden and Jones (for at least part thereof) were present **(the 14 July 2016 Meeting)**.
69. At or about 11.36 am on the day of the 14 July 2016 Meeting (prior to the meeting), Ramsden and Jones received an email from Young (that was also copied to Marlborough and Genevieve White, a law clerk employed by Ramsden Lawyers) concerning the strategy which stated as follows *[and being amended to correct irrelevant word processing errors in the original]*:

In relation to the operations of NewCo and its management of current business of the Iridium Holdings group of companies for an appointed liquidator, I advise that NewCo requires the following:

1. *Payment of all property management fees paid to Provincial Property Investments Pty Ltd (PPI) and Airlie Beach (MA) Pty Ltd until such time as a Deed of Company Arrangement (DOCA) has been entered into and the Airlie Beach management rights are sold;*
2. *NewCo will offer to pay the existing ATO debt of PPI at 100c in the dollar as part of a DOCA in order to continue the operations of the company;*
3. *Payment of all trail income received by Capricorn Securities Pty Ltd and Iridium Financial Planning Pty Ltd in order to manage existing WIP while a sale to market is arranged;*
4. *Payment of 25% of any up-front commissions received in order for NewCo to pay relevant incentives to retained staff to complete existing WIP;*
5. *Any costs to maintain Capricorn or Iridium Financial Planning are to be paid from the remainder of up-front commissions received. This includes (but is not limited to) payment of the existing statutory demand, any required professional indemnity insurance and financial planning software;*

6. *The full sale price achieved for financial planning asset will be made available to the liquidator, once such sale is finalised;*
7. *In relation to MM Prime Investments Pty Ltd, NewCo to split WIP on a 50/50 basis for all settled sales;*
8. *In order to ensure NewCo has cash flow at the front end it will require 100% of sales for the first 10 settlements;*
9. *NewCo will split settled WIP on a 50/50 basis for the next 20 settled deals;*
10. *Thereafter, NewCo will split settled WIP on a 50/50 basis with adjustments to be made in order for the liquidator to recover the 50 share of commissions retained by NewCo on the initial 10 settlements;*
11. *Any costs required to manage existing WIP are to be met by the portion of funds retained by the liquidator. This would include, though is not limited to, maintaining the existing CRM and cloud access to allow NewCo access to client data; and*
12. *Payment of Sydney rent to be met until payment of funds from Transport NSW is received, NewCo to be given access to the Sydney premises in this time.*

The above is to be, where required, subject to an agreement being entered into between NewCo and the relevant group company.

Regards,

Liam Young

70. At the 14 July 2016 Meeting, the following matters (among others) were discussed:
 - (a) the operations of each entity in the MA Group;
 - (b) the contents of the email of 14 July 2016 received from Young;
 - (c) a strategy as to how the parties would proceed with the new company, including management of the funds, management of the assets by the new company, and realising those assets; and
 - (d) whether or not the Defendant would approve of the strategy or take steps to “undo” the strategy after he was appointed liquidator.

8.6 The Defendant’s Knowledge as at 14 July 2016

71. In the premises, by the conclusion of the 14 July 2016 Meeting, the Defendant knew or ought to have known (by reason of the matters conveyed to him during the course of the 14 July 2016 Meeting) that:

- (a) the strategy to transfer assets and income streams to one or more new companies or “*newcos*” had developed to the point that terms were being identified as to the practical implementation of the same, including the extent to which income would be diverted from MA Group companies to a new company or companies, and the extent to which it would be available to pay MA Group creditors;
- (b) as to PPI Pty Ltd’s (9) Rent Book:
 - (i) the whole of the income stream of PPI Pty Ltd (9) was to be diverted to a new company “*until a [deed of company arrangement] was entered into*”;
 - (ii) the new company would pay the ATO debt owed by PPI Pty Ltd (9) as part of a deed of company arrangement;
- (c) as to the income stream and management rights of Airlie Beach (MA) Pty Ltd (21) the whole of the income stream of Airlie Beach (MA) Pty Ltd (21) was to be diverted to a new company “*until a [deed of company arrangement] has been entered into and the Airlie Beach management rights have been sold*”.
- (d) in respect of the Client Book, the new company would require all trail income until the Client Book was sold, 25% of all up-front commissions, with the balance of those up-front commissions being used to pay the existing statutory demand, professional indemnity insurance and required software;
- (e) as to the income of MM Prime Pty Ltd (20) from commissions:
 - (i) the new company would:
 - (1) receive 50% of the work in progress (that is, commissions already due to MM Prime Pty Ltd (20) on settled sales);
 - (2) receive 100% of the commissions on the first 10 settlements in order to fund the new company’s start-up costs;
 - (3) receive 50% of the commissions on the next 20 settlements;
 - (4) receive 50% of the commissions on subsequent settlements, until “*the liquidator*” was able to recover 50% of the amount of the commissions diverted to the new company on the first 10 settlements; and

- (ii) the costs required to “*manage the WIP*” including maintaining the existing CRM and cloud access to allow “*NewCo*” access to client data would be met by “*the portion of the funds retained by the liquidator*”;
 - (f) the new company’s rental expense in Sydney was to be met by an existing MA Group company (possibly SS Residential NSW Pty Ltd (17)) given the reference to the “*Transport NSW funds*”); and
 - (g) the arrangements referred to above were to be the subject of written agreements between the relevant existing company and the new company.
72. In the premises of these matters, as at 14 July 2016, the Defendant knew or ought to have known that the strategy and the arrangements being developed in order to implement it:
- (a) were not in the interests of the existing MA Group companies because:
 - (i) the respective companies referred to therein would not be receiving adequate or any consideration for the diversion of their income streams or acquisition of their assets, in particular:
 - (1) the whole of PPI Pty Ltd’s (9) income stream would be diverted to a new company with the only benefit to PPI Pty Ltd (9) being the payment by the new company of PPI Pty Ltd’s debt to the ATO *if* a deed of company arrangement was entered into;
 - (2) the new company was not required to pay for PPI Pty Ltd’s (9) Rent Roll;
 - (3) the whole of Airlie Beach (MA) Pty Ltd’s (21) income stream would be diverted to a new company until a deed of company arrangement was entered into and the management rights were sold;
 - (4) the whole of the Client Book income stream by way of trail commissions would be diverted to a new company until the Client Book was sold;
 - (5) 25% of the Client Book income stream by way of new commissions would be diverted to a new company;

- (6) the new company would not be paying the ATO debt for Capricorn Securities Pty Ltd (19), nor its ongoing major expenses (professional indemnity insurance and financial planning software);
 - (7) the new company would receive the income stream in the percentage stated above from MM Prime Pty Ltd (20);
 - (8) the expenses necessary to divert the income stream from MM Prime Pty Ltd (20) to the new company would be met by MM Prime Pty Ltd (20) / its liquidator (not by the new company); and
 - (9) the new company's Sydney rent expenses would be paid by one or other MA Group companies;
- (b) were not in the interests of creditors of the MA Group companies for the reasons pleaded in (a) above; and
- (c) would reduce the funds available to meet liabilities to creditors.
73. By 14 July 2016, the Defendant knew or ought to have known that:
- (a) if the arrangements discussed during the course of the 14 July 2016 Meeting and in the email from Young sent on 14 July 2016 were brought to fruition, then:
 - (i) without necessarily knowing all of the details of agreements which were in contemplation but had not yet been entered into, assets and income streams from companies in the MA Group which would have been available to creditors of the MA Group, including the ATO, would no longer be available for distribution to such creditors on the winding up of companies in the MA Group;
 - (ii) without necessarily knowing all of the details of agreements which were in contemplation but had not yet been entered into, assets or income streams which were or which would become available to companies in the MA Group were going to be used to fund the commencement of the said new company or companies and/or to enable the transfer of assets or income streams from the MA Group companies to the new companies;

- (b) if those arrangements came to fruition, there was a reasonable likelihood that Marlborough, as director of the companies in the MA Group as pleaded in **Table 1 of Schedule A**, would have acted in breach of:
- (i) sec. 180(1) of the Act in respect of each such company from which assets or income streams were transferred because:
 - (1) the companies that held those assets and incomes streams were members of tax consolidated groups and were jointly and severally liable for the tax owed, arising after membership of those groups arose, by other members of the group;
 - (2) those companies in fact owed monies to the ATO;
 - (3) the MA Group was insolvent and likely to fail;
 - (4) the companies from which the assets and income streams were transferred were not going to be paid reasonable consideration for the same on an arms' length commercial basis, but that the assets and income streams were to be transferred to a new company or companies under Marlborough's effective control; and
 - (5) no director acting reasonably and in the best interests of a company would enter into those arrangements;
 - (ii) sec. 181(1) of the Act because:
 - (1) it was not in good faith in the best interests of any companies of the MA Group to have their assets and income streams transferred for no consideration or consideration which was not reasonable and where the transfers were not at commercial arms' length;
 - (2) it was not in good faith in the best interests of any companies of the MA Group to have their assets or capital used for the purposes of funding:
 - (A) the creation of any new company to which assets or income streams of other members of the MA Group might be transferred;
 - (B) the transfer of the said assets or income streams;

- (C) the Sydney rental expenses of a new company; and
 - (3) no director acting in good faith and in the best interests of a company would enter into those arrangements;
- (iii) sec. 182(1) of the Act because:
- (1) Marlborough would be using his position as director to gain an advantage for a new company or companies of which he would have effective control, being the acquisition of assets or income streams for no or little consideration on non-commercial terms which were not at arms' length;
 - (2) Marlborough would be using his position to cause detriment to a company or companies in the MA Group by reason of the fact that they would be stripped of assets and income streams for no or little consideration on non-commercial terms which were not at arms' length; and
 - (3) in either case, such use of his position would be improper.
- (c) if he was appointed liquidator of Iridium Holdings (1):
- (i) he would be an officer of Iridium Holdings (1);
 - (ii) his duty would be to realise the assets of Iridium Holdings (1) and distribute the same to the creditors of the company;
 - (iii) as Iridium Holdings (1) was the sole shareholder of most of the companies of the MA Group (as pleaded in **Table 1 of Schedule A** and listed in paragraph 9 above), he would be in a position to realise the assets of those companies for the benefit of the creditors of Iridium Holdings (1);
 - (iv) he could use the control he would have as an officer of Iridium Holdings (1) to call on its subsidiaries for repayment of any related entity loans;
 - (v) he could use the control he would have as an officer of Iridium Holdings (1) to see to the payment of any liabilities held jointly and severally with the subsidiary companies of the MA Group from the assets or income streams of those companies; and

- (vi) he could prevent the transfer of assets and income streams from those companies in the MA Group which were subsidiaries of Iridium Holdings (1) to a new company or to new companies owned or controlled by Marlborough or those associated with Marlborough (including Braiden Marlborough and Young); and
- (d) he could do so because he would be the controller of the shareholder of those companies, and therefore could call a general meeting of the same, remove and replace directors, move and pass motions protecting the assets and income streams of those companies and/or call in debts of those companies to enable payment of creditors, and/or cause the liquidation of those companies.

8.7 The 16 July 2016 Meeting

- 74. On or about 16 July 2016, a meeting was held at the offices of WMS at which the Defendant, Ramsden, Lavell and Justin Wowk (of WMS), Marlborough, Braiden Marlborough and Young were present (**the 16 July 2016 Meeting**).
- 75. The 16 July 2016 Meeting lasted for about 3 hours.
- 76. During the course of the 16 July 2016 Meeting those present discussed:
 - (a) the structure of the MA Group;
 - (b) the structure of the MA Group and the assets and liabilities of the companies in the MA Group by reference to the WMS Powerpoint;
 - (c) the contents of the WMS Powerpoint;
 - (d) the structure of the new companies or “newcos” and the fact that the Benchmark Group of companies (as pleaded in paragraph 78 *below*) had been registered the day before on 15 July 2016;
 - (e) that there were 21 cars leased from SGI Fleet and “*they [would] arrange for the vehicles to be dropped at SGI depots around the country*”; and
 - (f) that the records were saved on a server in the cloud and maintaining that server was “*necessary to complete the wip and sell the books and trails. Cost is \$11,000 per month.*”

8.8 The Defendant's Knowledge as at 16 July 2016

77. By 16 July 2016, in addition to the matters pleaded in paragraphs 71 to 73 *above*, the Defendant knew or ought to have known (by reason of the matters conveyed to him during the course of the 16 July 2016 Meeting):

- (a) that the implementation of the strategy had commenced with the registration of the new companies; and
- (b) the cost of that part of the strategy pleaded in sub-paragraph 71(e)(ii) whereby the "*liquidator*" of the relevant MA Group company would bear the cost (\$11,000 per month) required to "*manage the WIP*" including maintaining the existing CRM and cloud access to allow "*NewCo*" access to client data.

9.0 THE IMPLEMENTATION OF THE STRATEGY

9.1 Registration of new companies or "Newcos"

78. On or about 15 July 2016, four companies in the "*newco*" group (**the Benchmark Group**) (particulars of which are in **Table 3 of Schedule A** to this pleading) were incorporated as follows:

- (a) Benchmark Private Wealth Pty Ltd (**BPW**):
 - (i) director: Young (general counsel of the MA Group); and
 - (ii) ultimate holding company: Benchmark Private Wealth Holdings Pty Ltd;
- (b) Benchmark Wealth Property Services Pty Ltd (**Benchmark Property**):
 - (i) directors: Young and Maighan Brown (Richard Marlborough's daughter-in-law); and
 - (ii) ultimate holding company: Benchmark Private Wealth Holdings Pty Ltd;
- (c) Benchmark Private Wealth Holdings Pty Ltd (**BPW Holdings**):
 - (i) director: Young; and

(ii) shareholder: Young Corporation (NSW) Pty Ltd (**Young Corporation**), which had been incorporated a month before on 23 June 2016, with the following shares:

- (1) 95 shares were held by Young Corporation as trustee of The Structured Finance Trust settled on 15 July 2016, the appointors under which were Braiden Marlborough (Marlborough's son) and Deborah Marlborough (Marlborough's then-wife); and
- (2) 5 shares were held by Young Corporation as trustee of The Young Family Trust.

79. In the premises, Marlborough and/or Marlborough's relatives (**Marlborough Interests**) controlled the Benchmark Group by virtue of the 95% controlling interest pleaded *above*.

9.2 Registration of Security Interests

80. During the period from 13 July 2016 to 21 July 2016, the following individuals or entities obtained registered security interests against one or more of the companies within the MA Group, including the MA Trading Companies:

- (a) Domingo;
- (b) Domingo Superannuation Fund / Mellow Brae Pty Ltd;
- (c) Ramsden Law Pty Ltd (corporate vehicle for Ramsden Lawyers);
- (d) WMS Solutions Pty Ltd (corporate vehicle for WMS Accountants);
- (e) Crest Accountants Pty Ltd (the corporate vehicle for Crest Accountants, of which Peter Chesterton was principal, former accountants to the MA Group);
and
- (f) Members Windings Up Pty Ltd.

Particulars

Table 4: Registration of Security Interests

Date Security Registered	Grantor Details	Secured Party Details
13/07/2016	Airlie Beach (MA) Pty Ltd (21)	Ramsden Law Pty Ltd
13/07/2016	Iridium FP Pty Ltd (18)	Ramsden Law Pty Ltd
13/07/2016	PPI Pty Ltd (9)	Ramsden Law Pty Ltd
13/07/2016	SS Residential NSW Pty Ltd (17)	Ramsden Law Pty Ltd
15/07/2016	Airlie Beach (MA) Pty Ltd (21)	WMS Solutions Pty Ltd
15/07/2016	Iridium FP Pty Ltd (18)	WMS Solutions Pty Ltd
15/07/2016	PPI Pty Ltd (9)	WMS Solutions Pty Ltd
15/07/2016	SS Residential NSW Pty Ltd (17)	WMS Solutions Pty Ltd
18/07/2016	Iridium FP Pty Ltd (18) Image Building Group QLD Pty Ltd (11) Airlie Beach (MA) Pty Ltd (21) Iridium Mortgage Fund Pty Ltd (20) PPI Pty Ltd (9) Iridium Home Loans Pty Ltd (3) Iridium Holdings (1) Syree Enterprises Pty Ltd (6)	David Bruce Domingo
18/07/2016	Iridium FP Pty Ltd (18) Iridium Mortgage Fund Pty Ltd (2) Image Building Group QLD Pty Ltd (11) Airlie Beach (MA) Pty Ltd (21) PPI Pty Ltd (9) Iridium Home Loans Pty Ltd (3) Iridium Holdings (10) Syree Enterprises Pty Ltd (6)	Domingo Superannuation Fund / Mellow Brae Pty Ltd
21/07/2016	Iridium FP Pty Ltd (18)	Crest Accountants Pty Ltd
21/07/2016	Iridium FP Pty Ltd (18)	Members Windings Up Pty Ltd

9.3 Transfer of Staff from MA Group to BPW

81. On or about 1 August 2016, BPW employed, or offered employment to, no fewer than 33 individuals who had previously been employed by entities within the MA Group.

Particulars

The employees who were employed or to whom employment was offered were:

Table 5: Employees transferred to BPW

Employee Name	Role as per Slide 2 WMS Powerpoint
Jim Afendakis	Property Consultant
John Barr	<i>Not listed on Slide 2</i>
Darryl Bright	In-Home Consultant
Lucas Brine	Contracts Manager
Maighan Brown	National Property Manager
Bryson Cox	Not stated
Kym Davidson	In-Office Sales Consultant
Edward Douglas	Investment Analysis Co-Ordinator
Penelope Duke	21C: Data Operations
Troy Dyer	<i>Not listed on Slide 2</i>
James Foran	<i>Not listed on Slide 2</i>
Bernardo Francese	VIC State Manager
Lynda Hill	<i>Not listed on Slide 2</i>
Daniel Irvine	In-Office Sales Consultant
Margaret Jackson	Accounts/Property Manager
Nick Kalikajaros	<i>Not listed on Slide 2</i>
Michael Kearney	In-Office Sales Consultant
Natasha Leonard	Executive Assistant
Sharon Lovitt	<i>Not listed on Slide 2</i>
Warren Mann	In-Home Consultant
James Molloy	In-Home Consultant
James Papas	<i>Not listed on Slide 2</i>
Sandra Pepi	<i>Not listed on Slide 2</i>
Carley Phillips	<i>Not listed on Slide 2</i>
Heidi Philips	National Travel Coordinator
Heinz Robinson-Grone	<i>Not listed on Slide 2</i>

Employee Name	Role as per Slide 2 WMS Powerpoint
Tracey Shelton	<i>Not listed on Slide 2</i>
Paul Stafford	Marketing Manager
Nicholas Stephens	In-Office Property Consultant
Aimee Victorsen	<i>Not listed on Slide 2</i>
Carliene Zweers	Executive Assistant
Daniel Willis	National General – Sales Manager
Glenn Wright	Investment Analysis Co-ordinator

82. This list of employees included 22 of the employees on Slide 2 (*Proposed Staff – New Co*).
83. As at 20 July 2016 (when he received the WMS Powerpoint) or, alternatively, earlier when it was discussed in the 8 July Meeting, the 14 July Meeting or the 16 July Meeting, the Defendant knew or ought to have known that the transfer of the staff referred to above, holding those positions noted in the WMS Powerpoint (as pleaded *above*), would have a significant detrimental effect on the ability of companies in the MA Group to continue with their undertakings.

9.4 Appointment of the Defendant as Liquidator of MA Group Companies

84. On 22 July 2016, the following companies in the MA Group were placed into voluntary liquidation and the Defendant, together with Khatri, consented to being, and were appointed, as liquidators:
- (a) Iridium Holdings (1);
 - (b) Iridium Mortgage Fund Pty Ltd (2);
 - (c) Iridium Home Loans Pty Ltd (3);
 - (d) Silverback Constructions Pty Ltd (4);
 - (e) Laver Resources Pty Ltd (5);
 - (f) Syree Enterprises Pty Ltd (6);
 - (g) Members Alliance Rocket Pty Ltd (7);
 - (h) MAIC Human Resources Pty Ltd (8);

- (i) Silverback Investments Pty Ltd (10)
 - (j) 2585 Gracemere Pty Ltd (12);
 - (k) RJM Property Developments Pty Ltd (15);
 - (l) All My Best Wishes Pty Ltd (16);
 - (m) Iridium Mortgage Fund Pty Ltd (2) (prev. "Members Alliance Financial Planning");
 - (n) Iridium Home Loans Pty Ltd (3) (prev. "Members Alliance Home Loans") ;
 - (o) Astro Holdings Pty Ltd (1A); and
 - (p) JT Prestige Pty Ltd (2A).
85. On 22 July 2016, the following companies in the MA Group were placed into voluntary administration and the Defendant, together with Khatri, consented to being, and were appointed as, administrators:
- (a) PPI Pty Ltd (9);
 - (b) Image Building Group QLD Pty Ltd (11);
 - (c) HSINIF Pty Ltd (13); and
 - (d) Trats Pty Ltd (14).
86. On 22 August 2016, the following companies in the MA Group which had been placed in voluntary administration on 22 July 2016 were placed into liquidation and the Defendant, together with Khatri, consented to being, and were appointed as, liquidators:
- (a) HSINIF Pty Ltd (13); and
 - (b) Trats Pty Ltd (14).
87. On 25 August 2016, the following companies in the MA Group which had been placed in voluntary administration on 22 July 2016 were placed into liquidation and the Defendant, together with Khatri, consented to being, and were appointed as, liquidators:
- (a) PPI Pty Ltd (9); and

(b) Image Building Group Pty Ltd (11).

88. As at 22 July 2016, the MA Trading Companies, namely, Capricorn Securities Pty Ltd (19), Iridium FP Pty Ltd (18), MM Prime Pty Ltd (20) and Airlie Beach (MA) Pty Ltd (21), as well as SS Residential NSW Pty Ltd (17) remained trading.

9.5 Agreement with MacVicar – the SS Residential Deed

9.5.1 Circumstances of the SS Residential Deed

89. On a date unknown to the Plaintiff, but on or about 8 July 2016 when the WMS Powerpoint was discussed during the 8 July 2016 Meeting, and at least as at 20 July 2016 from the WMS Powerpoint (Slide 2) which was, by then, in his possession, the Defendant knew that:

(a) one aspect of the strategy for the transfer of income streams and assets from the MA Group companies to the “newco” involved the resignation of MacVicar as a director of the companies of which he was then a director (as per **Table 1 of Schedule A** to this pleading);

(b) SS Residential NSW Pty Ltd (17) had an asset value of \$450,000 in the nature of “Sydney rent compensation” (per Slide 1 of the WMS Powerpoint) and, regarding the same, that there was as at late June 2016, “pending compensation of approx. \$450,000 due to government resumption. Payable 21 days after deed execution. Deed draft pending. Potentially \$90k bond as well” (per Slide 12 of the WMS Powerpoint).

90. By deed dated 19 July 2016, MacVicar agreed to resign as director of the companies of which he was a director in the MA Group (particulars of which are in **Table 1 of Schedule A** to this pleading) in return for payment of \$250,000 (**the SS Residential Deed**).

91. It was a term of the SS Residential Deed that the payment would be made within 2 business days of a land resumption compensation payment of \$450,000 to SS Residential NSW Pty Ltd (17) by the Department of Transport, NSW pursuant to a deed.

92. Clause 4.2 of the SS Residential Deed, provided that the payment of \$250,000 was in lieu of a claim made by MacVicar that he was owed outstanding director fees for SS Residential NSW Pty Ltd (17) and the Iridium Group (the MA Group) since the date SS Residential NSW Pty Ltd (17) was incorporated (1 August 2011).

93. On or about 28 July 2016 at 12.23pm, the Defendant made a note in Worrells' file note 304536 to the effect that he had had a teleconference with Ramsden and Lavell in which he was told that the only asset of SS Residential NSW Pty Ltd (17) was a compensation payment from a landlord of around \$400,000.
94. On or about 6 September 2016 at 11.53am, the Defendant sent an email to Marlborough which listed as an agenda item "*arrange for signing and lodgement of the SS Residential Deed*" (where, in this email, "*SS Residential Deed*" is a reference to a deed with the New South Wales Department of Transport).
95. On or about 16 September 2016 at 10.48am, the Defendant sent an email to Finch (among others) which listed as an agenda item "*update from Ramsden as to the status of the SS Residential Deed*" (where, in this email, "*SS Residential Deed*" is a reference to a deed with the New South Wales Department of Transport).
96. The Defendant knew, or ought to have known, by no later than 16 September 2016, that a payment of around \$400,000 to \$450,000 was expected to be made to SS Residential NSW Pty Ltd (17) in the near future, with the knowledge of this to be inferred from the matters pleaded in paragraphs 89(b) and 95 *above*;
97. On or about 27 October 2016, the sum of \$500,492.30 was received by Ramsden Lawyers on behalf of SS Residential NSW Pty Ltd (17) from the Department of Transport, NSW for a surrender fee.
98. The Defendant knew, or ought to have known, by no later than 31 October 2016 an agreement either had been, or was going to be, entered into between SS Residential NSW Pty Ltd (17) and MacVicar for a payment of \$250,000 in exchange for his resignation as a director of the MA Group companies of which he had been a director, with the knowledge of this to be inferred from:
- (a) the matters pleaded in paragraphs 89(a) and 93 to 96 *above*; and
 - (b) the Defendant having directed Jones and/or Ramsden on or prior to 31 October 2016 not to disburse funds from SS Residential without his prior approval.
99. On or prior to 9 November 2016, the Defendant spoke with Ramsden regarding the payment to be made to MacVicar and advised Ramsden that he was of the view that he "*had no power to prevent the payment as shareholder*".
100. On about 9 November 2016:

- (a) \$250,000 was transferred from the Ramsden Lawyers trust account for SS Residential NSW Pty Ltd (17) to MacVicar; and
- (b) the Defendant received an email from Ramsden which attached an executed copy of the SS Residential Deed.

9.5.2 Defendant should have investigated and prevented the MacVicar Payment

101. As at, and sufficiently prior to 9 November 2016 to enable the payment of \$250,000 to MacVicar to be prevented (ie., on even the morning of 9 November 2016):

- (a) the Defendant:
 - (i) was the liquidator of Iridium Holdings (1);
 - (ii) was, therefore, an officer of Iridium Holdings (1);
- (b) Iridium Holdings (1) was the sole shareholder of SS Residential NSW Pty Ltd (17);
- (c) the Defendant had the power to control the conduct of SS Residential NSW Pty Ltd (17):
 - (i) as pleaded in paragraph 59(d) *above* because he had been appointed liquidator of Iridium Holdings (1):
 - (1) he was an officer of Iridium Holdings (1) as per sub-section (f) of the definition of “*officer*” in sec. 9 of the Act;
 - (2) his duty was to realise the assets of Iridium Holdings (1) and distribute the same to the creditors of the company;
 - (3) Iridium Holdings (1) was the sole shareholder of most of the companies of the MA Group (as pleaded in **Table 1 of Schedule A** and listed in paragraph 9 above);
 - (4) as the controller of the shareholder of those companies, he could:
 - (A) call a general meeting of the same (by sec. 249F of the Act);

- (B) remove and replace directors (by sec. 203C of the Act);
 - (C) request information concerning the assets and liabilities of those companies and, by virtue of his powers in (A) and (B), cause the requests to be answered;
 - (D) at such a general meeting, move and pass motions protecting the assets and income streams of those companies; and/or
 - (E) call in related entity loans of those companies to enable payment of creditors, and/or cause the liquidation of those companies;
- (5) he was therefore in a position to:
- (A) investigate the assets and liabilities of those companies; and
 - (B) realise the assets of those companies for the benefit of the creditors of Iridium Holdings (1); and
- (6) he was able to use the control he would have as an officer of Iridium Holdings (1) to see to the payment of any liabilities held jointly and severally with the subsidiary companies of the MA Group from the assets or income streams of those companies;
- (ii) in particular, he had the power to:
- (1) investigate whether MacVicar was in fact owed or entitled to \$250,000 in “*director’s fees*” or otherwise; and
 - (2) prevent SS Residential NSW Pty Ltd (17) from paying \$250,000 to MacVicar:
 - (A) by calling a general meeting of SS Residential NSW Pty Ltd (17);

- (B) by moving a motion directing Marlborough not to authorise Ramsden to make the payment of \$250,000 to MacVicar; or
 - (C) by removing Marlborough as director of SS Residential NSW Pty Ltd (17) and replacing him with an independent director; and
 - (D) by applying to the Court for an injunction to restrain the payment;
- (3) apply to the Court for directions pursuant to sec. 511 of the *Corporations Act 2001 (Cth)*, including directions as to the matters referred to in sub-paragraph (ii)(2) above;
 - (4) apply to the Court for the appointment of a provisional liquidator to SS Residential NSW Pty Ltd (17);
 - (5) inform ASIC of the intention of the director of SS Residential NSW Pty Ltd (17) to make the said payment to MacVicar; or
 - (6) direct Ramsden not to pay that amount from his trust account;
- (d) the Defendant knew that he had the powers pleaded in (c) above;
 - (e) the Defendant knew or ought to have known that he should not permit the payment under the SS Residential Deed to MacVicar, and that he should take the steps referred to in paragraph 101(c)(ii) above to prevent the said payment because:
 - (i) he knew that he had seen no documents nor received material or instructions otherwise which would suggest or evidence that MacVicar was entitled to the payment of \$250,000 as “*director’s fees*” or otherwise;
 - (ii) he knew from having prepared the MacVicar Advice that he had not been instructed at that time that MacVicar had an entitlement to \$250,000 or any amount by way of “*director’s fees*” or otherwise;
 - (iii) he had been told that the payment of \$450,000 (which transpired to be about \$500,000) was the only asset of SS Residential NSW Pty Ltd (17);

- (iv) he knew that SS Residential NSW Pty Ltd (17) was, and had been since 1 July 2013, a member of the GST Tax Consolidated Group;
- (v) he knew that SS Residential NSW Pty Ltd (17) was, and had been since 1 July 2014, a member of the Income Tax Consolidated Group;
- (vi) he knew that SS Residential NSW Pty Ltd's (17) assets could be called on and used to pay:
 - (1) Iridium Holding's (1) debts; and
 - (2) the joint and several debts to the ATO as a member of the Tax Consolidated Groups; and
- (vii) he knew that permitting the payment of \$250,000 to MacVicar would deplete SS Residential NSW Pty Ltd (17) of part of its cash asset and thereby deprive the creditors of both Iridium Holdings (1) and SS Residential NSW Pty Ltd (17) of the distribution of that amount; and
- (f) it is further to be inferred that he knew that the said payment should not be permitted given the following, belated conduct of the Defendant:
 - (i) on or about 11 November 2016, the Defendant sent a letter to Grants Law requesting advice about, inter alia, the payment of \$250,000 to MacVicar and what action (if any) should have been taken by the liquidators in their capacity as the sole shareholder of SS Residential NSW Pty Ltd (17); and
 - (ii) on or about 27 March 2017, the Defendant sent a letter to MacVicar which:
 - (1) enclosed a copy of the SS Residential Deed Pty Ltd (17); and
 - (2) asked MacVicar to provide a breakup of the director's fees he claimed to be owed.

9.5.3 Defendant's Breach of sec. 180 and Breach of Common Law Duties

102. In the premises of the matters pleaded in paragraph 101 *above*, by failing to investigate whether MacVicar was entitled to the payment of \$250,000 and to prevent the payment of \$250,000 on 9 November 2016 using the powers at his disposal, the Defendant:

- (a) was in breach of **sec. 180 of the Act** as an officer of Iridium Holdings (1) because:
- (i) Iridium Holdings (1) owed monies to creditors including the ATO both pursuant to the ATO statutory demand and as the head company of the Tax Consolidated Groups and the Defendant was aware of this fact;
 - (ii) no liquidator, exercising their powers and discharging their duties with the degree of care and diligence that a reasonable person would exercise if:
 - (1) they were the liquidator of a company in the circumstances of Iridium Holdings (1); and
 - (2) they occupied the office of, and had the same responsibilities as, liquidator of Iridium Holdings (1),would:
 - (3) fail to investigate whether or not MacVicar was entitled to the payment of \$250,000; and
 - (4) allow, and/or fail to prevent, the payment of \$250,000 to MacVicar in the circumstances pleaded in paragraph 101 *above*;
- (b) was in breach of the liquidators' duties as listed in **Schedule C** to this pleading, namely:
- (i) **Liquidator's Duty No. 1:** to identify, take possession of and realise the company's assets, to investigate and determine the claims against the company and to apply the assets to the satisfaction of those claims in accordance with the statutory scheme of priority, because he:
 - (1) failed to identify the assets of Iridium Holdings (1) by failing to ascertain the existence and value of the assets of SS Residential NSW Pty Ltd (17), of which it was the holding company;

- (2) failed to determine if there was a valid claim to any payment of “*director’s fees*” (or otherwise) by MacVicar from SS Residential NSW Pty Ltd (17); and
 - (3) failed to prevent SS Residential NSW Pty Ltd (17) from paying \$250,000 to MacVicar; and
- (ii) **Liquidator’s Duty No. 2:** to become thoroughly acquainted with the affairs of the company, because:
- (1) being acquainted with the affairs of Iridium Holdings (1) included being acquainted with the affairs of its wholly owned subsidiary, SS Residential NSW Pty Ltd (17); and
 - (2) he failed to ascertain whether MacVicar had a valid entitlement to payment of \$250,000 from SS Residential NSW Pty Ltd (17), where being acquainted with the affairs of Iridium Holdings (1) required that he be acquainted with the affairs of its wholly owned subsidiary, SS Residential NSW Pty Ltd (17).

9.5.4 Matters which may be taken into account under 45-1

103. The matters pleaded in:

- (a) paragraph 101 *above*, whether or not those matters are found to constitute a breach of any provision, code or duty, are matters which the Court may take into account under sec. 45-1 of the *Insolvency Practice Schedule* as:
 - (i) a matter under sec. 45-1(4)(a), as they indicate that the Defendant has failed to faithfully perform his duties;
 - (ii) a matter under sec. 45-1(4)(d), as SS Residential NSW Pty Ltd (17), Iridium Holdings (1), and therefore the creditors of Iridium Holdings (1) suffered loss or damage by reason of the Defendant’s failure to prevent the payment of \$250,000 to MacVicar;
 - (iii) a matter under sec. 45-1(4)(e), as the Defendant’s failure to:
 - (1) investigate the claim to “*director’s fees*”; and
 - (2) prevent the payment of \$250,000 to MacVicar,

is an omission likely to diminish public confidence in registered liquidators as a group due to the Defendant's abrogation of his role as liquidator in recovering and/or protecting assets for distribution to creditors;

- (b) paragraph 102(a) *above*, are matters which the Court may take into account under sec. 45-1 of the *Insolvency Practice Schedule* for the reasons pleaded in sub-paragraphs (a)(i), (ii) and (iii) *above*, and also because they are matters under sec. 45-1(4)(b), namely a failure to act which gives rise to a breach of the Act (*viz.* sec. 180 of the Act); and
- (c) paragraph 102(b) *above*, are matters which the Court may take into account under sec. 45-1 of the *Insolvency Practice Schedule* for the reasons pleaded in sub-paragraphs (a)(i), (ii) and (iii) *above*.

9.5.5 Independence – ARITA Code Rules 6.1, 6.8 and Principle 2

- 104. The engagement of the Defendant for the provision of the MacVicar Advice created a relationship pursuant to which the Defendant gave professional advice in insolvency to MacVicar and Jenny MacVicar.
- 105. The said relationship was therefore between the Defendant and one of the directors of most of the companies in the MA Group (particulars of which are in **Table 1 of Schedule A**), and the controller of the 50% shareholding entity of the MA Group (JT Prestige Pty Ltd (2A), particulars of which are in **Table 2 of Schedule A**).
- 106. Rule 6.8 of the ARITA Code provides that *“Subject to the exceptions identified below, Practitioners must not take an appointment if they have had a Professional Relationship with the Insolvent during the previous two years. The purpose of this restriction is to avoid any perception of a lack of independence of the Practitioner. This is referred to as the ‘two year rule’”*.
- 107. The spirit of rule 6.8 of the ARITA Code, by the expression of its purpose, is to avoid any perception of a lack of independence of the *“Practitioner”*.
- 108. The spirit of rule 6.8 of the ARITA Code required the Defendant to avoid taking any appointment which would give rise to any perception of a lack of independence as that expression is explained in rule 6.1 of the ARITA Code, *viz.* where:
 - (a) a reasonable and informed third party;

- (b) on the information available or which should have been available at the time;
 - (c) might reasonably form the opinion that the Practitioner might not bring an independent mind to the administration and thus may not be impartial or may in fact act with bias; and
 - (d) because of a lack of independence or a perception of a lack of independence.
109. The Defendant accepted appointments as liquidator of various companies in the MA Group as pleaded in **Table 1 of Schedule A**, and of JT Prestige Pty Ltd (2A) as pleaded in **Table 2 of Schedule A**, on the dates listed therein, being dates within 2 years of the relationship pleaded *above*.
110. As a consequence of rule 6.8 of the ARITA Code, and if acting in the spirit of rule 6.1 and rule 6.8, the Defendant ought not to have taken an appointment to any of the companies in the MA Group until, at the earliest 11 March 2018, because the provision of the MacVicar Advice created a significant risk of a perception of a lack of independence on the part of the Defendant.
111. In the premises, the Defendant acted inconsistently with the ARITA Code by so accepting those appointments.
112. Further, by accepting those appointments, the Defendant acted inconsistently with Principle 2 of the ARITA Code by failing to be seen to be independent.

9.5.6 Perception of a lack of independence – matter under 45-1

113. The breach of a rule of the ARITA Code is a matter that the Court may take into account in considering whether an order should be made and, if so, what order should be made, under sec. 45-1(4)(a) of the Insolvency Practitioners Schedule as pleaded in paragraph 5 *above*.
114. The matters pleaded in paragraphs 104 to 112 *above* created a risk that there would be a perception of a lack of independence of the Defendant as liquidator of the said companies in the MA Group.
115. Such consequences of the breach of the spirit of rules 6.1 and 6.8 of the ARITA Code and/or Principle 2 of the ARITA Code are matters which the Court may take into account in considering the seriousness of the consequences of any action or failure to act by the registered liquidator including the effect of that action or failure to act on

public confidence in registered liquidators as a group pursuant to sec. 45-1(4)(e) of the Insolvency Practitioners Schedule pleaded in paragraph 5 *above*.

116. Having accepted the appointment as liquidator of Iridium Holdings (1) and the other companies in the MA Group (as per **Table 1 of Schedule A**), the failure by the Defendant to:

- (a) investigate whether MacVicar was entitled to a payment of \$250,000 as “*director’s fees*” or otherwise; and
- (b) prevent the payment of \$250,000 to MacVicar in the circumstance that he and MacVicar had the relationship pleaded in paragraph 104 *above* less than two years prior,

are matters which the Court may take into account in considering the seriousness of the consequences of any action or failure to act by the Defendant including the effect of that action or failure to act on public confidence in registered liquidators as a group pursuant to sec. 45-1(4)(e) of the Insolvency Practitioners Schedule pleaded in paragraph 5 *above*.

9.5.7 Marlborough’s Contravention of Sec. 180 regarding the SS Residential Deed

117. By executing the SS Residential Deed as director of SS Residential NSW Pty Ltd (17) (as pleaded in paragraph 90 *above*), containing the terms as pleaded in paragraphs 91 and 92 *above*, Marlborough engaged in conduct **in breach of sec. 180** of the Act because:

- (a) as a director of SS Residential NSW Pty Ltd (17), he was required to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise:
 - (i) if they were a director of SS Residential NSW Pty Ltd (17) in SS Residential’s circumstances;
 - (ii) if they occupied the office, namely as director, held by, and had the same responsibilities within SS Residential NSW Pty Ltd (17) as, Marlborough;
- (b) Marlborough knew, as was the case, that:
 - (i) MacVicar was not entitled to any payment of \$250,000 as “*director’s fees*” from SS Residential NSW Pty Ltd (17) or otherwise;

- (ii) MacVicar had not provided any documents suggesting or evidencing an entitlement to the payment of \$250,000 (or any other amount) from SS Residential NSW Pty Ltd (17) in “*director’s fees*” or otherwise;
 - (iii) SS Residential NSW Pty Ltd (17) had no assets save for the money that it was to receive from NSW Transport;
 - (iv) SS Residential NSW Pty Ltd (17) was a member of the Tax Consolidated Groups;
 - (v) SS Residential NSW Pty Ltd (17) was a wholly owned subsidiary of Iridium Holdings (1);
 - (vi) Iridium Holdings (1) was indebted to the ATO;
 - (vii) SS Residential NSW Pty Ltd (17) was jointly and severally liable for the debts to the ATO of companies in the Tax Consolidated Groups;
 - (viii) in any event, the assets of SS Residential NSW Pty Ltd (17) should have been available to Iridium Holdings (1), as its holding company, for the payment of creditors of Iridium Holdings (1);
 - (ix) the transfer of \$250,000 from SS Residential NSW Pty Ltd (17) to MacVicar depleted SS Residential’s assets;
- (c) **Marlborough’s Action 1:** execution of the SS Residential Deed causing SS Residential NSW Pty Ltd (17) to enter into the same was a failure by Marlborough to discharge his duty to SS Residential NSW Pty Ltd (17) under sec. 180 of the Act because no director of SS Residential NSW Pty Ltd (17):
- (i) exercising his powers and discharging his duties with the degree of care and diligence that a reasonable person would exercise;
 - (ii) with the knowledge and in the circumstances pleaded in subparagraph (b) *above*;
- would enter into the SS Residential Deed;
- (d) **Marlborough’s Action 2:** authorising the payment of \$250,000 to MacVicar purportedly pursuant to the SS Residential Deed was an act giving rise to a failure by Marlborough to discharge his duty to SS Residential NSW Pty Ltd (17) under sec. 180 of the Act because no director of SS Residential NSW Pty Ltd (17):

- (i) exercising their powers and discharging their duties with the degree of care and diligence that a reasonable person would exercise;
- (ii) with the knowledge and in the circumstances pleaded in subparagraph (b) *above*;

would have authorised the said payment to MacVicar.

9.5.8 Defendant's "Involvement" regarding SS Residential Deed

118. By sec. 79 of the Act , a person is involved in a contravention [of the Act] if, and only if, the person:

- (a) has aided, abetted, counselled or procured the contravention; or
- (b) has induced, whether by threats or promises or otherwise, the contravention; or
- (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with others to effect the contravention.

119. A person will be involved in a contravention as defined in sec. 79 of the Act, if they have knowledge of the essential acts or omissions constituting the contravention and participated in the contravention.

120. By reason of the matters pleaded in paragraph 101 above, the Defendant knew of:

- (a) each of Marlborough's acts which amounted to the contravention by Marlborough of sec. 180 of the Act as pleaded in paragraph 117 *above*; and
- (b) the circumstances in which they were undertaken as pleaded in paragraphs 89 to 100 *above*.

121. By failing to prevent the payment of \$250,000 to MacVicar in the circumstances pleaded in paragraphs 89 to 100 *above*, the Defendant was involved in Marlborough's contravention of sec. 180 of the Act as the word "*involved*" is used in sec. 79 of the Act because by not exercising his powers as pleaded in paragraph 101(c)(i) *above*, to prevent the payment of \$250,000 to MacVicar, the Defendant:

- (a) aided that payment (and therefore the contravention) within the meaning of sec. 79(a); or

- (b) alternatively, was knowingly concerned in that payment (and therefore the contravention) within sec. 79(c).

9.5.9 Involvement in Sec. 180 Contravention – matter under. 45-1

122. The matters pleaded in paragraphs 120 to 121 *above* are matters which the Court may take into account under sec. 45-1 of the Insolvency Practice Schedule as:

- (a) a matter under sec. 45-1(4)(a), because they indicate that the Defendant has failed to faithfully perform his duties;
- (b) a matter under sec. 45-1(4)(b) because they indicate that the Defendant has not acted in compliance with the Act by being involved in a contravention of sec. 180 by a director of a company;
- (c) a matter under sec. 45-1(4)(d), because SS Residential NSW Pty Ltd (17), Iridium Holdings (1) and therefore the creditors of Iridium Holdings (1) suffered loss or damage by reason of the Defendant's failure to prevent the payment of \$250,000 to MacVicar; and
- (d) a matter under sec. 45-1(4)(e), because the Defendant's failure to prevent the payment of \$250,000 to MacVicar is an omission likely to diminish public confidence in registered liquidators as a group due to the Defendant's abrogation of his role as liquidator in recovering and/or protecting assets for distribution to creditors.

9.6 Entry into the "Management Deeds"

9.6.1 The MM Prime Management Deed

- 123. On or about 11 October 2016, BPW and MM Prime Pty Ltd (20) entered into a Deed styled "*Management Deed*" (**MM Prime Management Deed**).
- 124. Marlborough executed the MM Prime Management Deed on behalf of MM Prime Pty Ltd (20) as its sole director.
- 125. Young executed the MM Prime Management Deed on behalf of BPW as its sole director.
- 126. The MM Prime Management Deed contained the following material terms:

- (a) clause 2.1: “*The Company appoints Benchmark Private Wealth to Manage the Business on behalf of the Company from the Commencement Date to the Termination Date (**‘Term’**)*”;
- (b) by clause 1.1:
 - (i) the Company was MM Prime Pty Ltd (20); and
 - (ii) the Commencement Date was backdated to 25 July 2016;
- (c) clause 3.1:
 - 3.1 *In consideration of Benchmark Private Wealth providing the Management Services, the Company will pay Benchmark Private Wealth the Management Fee, which is comprised of fifty percent (50%) of the work in progress collected on behalf of the Company with the division of the collected work in progress to be tiered such that Benchmark Private Wealth receives:*
 - (a) *one-hundred percent (100%) of all work in progress for the first five hundred and fifty thousand dollars (\$550,000.00) of payments received following the date of this Deed (**‘First Tranche Settlements’**);*
 - (b) *fifty percent (50%) of all work in progress for the next one million two hundred thousand dollars (\$1,200,000.00) of payments received following the First Tranche Settlements (**‘Second Tranche Settlements’**); and*
 - (c) *the remainder of the revenue following the Second Tranche Settlements will be divided between the Company and Benchmark Private Wealth such that the overall division between the Company and Benchmark Private Wealth for all work in progress for the Company is fifty percent (50%) each (**‘Final Settlements’**).*
- (d) clause 3.2:
 - 3.2 *The parties agree that the revenue from the Second Tranche Settlements and the Final Settlements will be paid directly to:*
 - (a) *Benchmark's nominated bank account; and*
 - (b) *Worrells National Trust Account (or such other trust account as the Company's sole shareholder may direct from time to time), or to any subsequently appointed external administrators' trust account, as the case may be.*

in accordance with the division set out at clause 3.1 above.

(e) clause 3.3:

3.3 Management Fee is to be Invoiced following the First Tranche Settlements and the Settlements and payment of any invoice will occur within two (2) days of the date that the associated invoice is received by the Company.

9.6.2 Capricorn Management Deed and Iridium FP Management Deed

127. On or about 13 October 2016:

(a) BPW and Capricorn Securities Pty Ltd (19) entered into a Deed styled "*Management Deed*" (**Capricorn Management Deed**); and

(b) BPW and Iridium FP Pty Ltd (18) entered into a Deed styled "*Management Deed*" (**Iridium FP Management Deed**).

128. Marlborough executed the Capricorn Management Deed and the Iridium FP Management Deed as director on behalf of those companies, respectively.

129. Young executed the Capricorn Management Deed and the Iridium FP Management Deed as director on behalf of BPW.

130. The Capricorn Management Deed contained the following material terms:

(a) clause 2.1: "*The Company appoints Benchmark Private Wealth to Manage the Business on behalf of the Company from the Commencement Date to the Termination Date*";

(b) by clause 1.1:

(i) the Company was Capricorn Securities Pty Ltd (19); and

(ii) the Commencement Date was backdated to 25 July 2016;

(c) clause 3.1:

"3.1 In consideration of Benchmark Private Wealth providing the Management Services, the Company will pay Benchmark Private Wealth the Management Fee, which is comprised of the following:

(a) All Trail Income received by the Company; and

(b) *Fifty percent (50%) of all Up-Front Commissions received by the Company."*

(d) clause 3.2:

"3.2 The parties agree that the Management Fee is to be invoiced on a monthly basis, and payment of any invoice will occur within two (2) days of the date that the associated invoice is received by the Company."

131. The Iridium FP Management Deed:

- (a) provided that BPW would manage the business of Iridium FP Pty Ltd (18) from the Commencement Date to the Termination Date;
- (b) by clause 1.1, had a Commencement Date of 25 July 2016; and
- (c) by clause 7.2, terminated automatically upon the sale of Iridium FP Pty Ltd's (18) risk trail book.

9.6.3 Airlie Beach Management Deed

132. On or about 20 October 2016, BPW and Airlie Beach (MA) Pty Ltd (21) entered into a Deed styled "*Management Deed*" (**Airlie Beach Management Deed**).

133. Marlborough executed the Airlie Beach Management Deed as director of Airlie Beach (MA) Pty Ltd (21).

134. Young executed the Airlie Beach Management Deed as director and secretary of BPW.

135. The Airlie Beach Management Deed contained the following material terms:

- (a) clause 2.1: "*The Company appoints Benchmark Private Wealth to Manage the Business on behalf of the Company from the Commencement Date to the Termination Date ('Term')*";
- (b) by clause 1.1:
 - (i) the Company was Airlie Beach (MA) Pty Ltd (21); and
 - (ii) the Commencement Date was backdated to 25 July 2016;
- (c) clause 3.1:

"3.1 In consideration of Benchmark Wealth Property providing the Management Services, the Company will pay Benchmark Wealth Property the Management Fee, which is comprised of:

- (a) payment of all property management fees paid to the Company during the term of this Deed; and
- (b) ten percent (10%) of the sales proceeds derived from sale of any of the Company's assets, including its Management Rights, plus all costs incurred by Benchmark Wealth Property in marketing and advertising the Company's assets."

(d) clause 3.2:

"3.2 The parties agree that the Management Fee is to be invoiced on a fortnightly basis, and payment of any invoice will occur within two (2) days of the date that the associated Invoice is received by the Company."

(e) clause 3.3:

"3.3 All invoices issued pursuant to clause 3.2 above which relate to payment of property management fees must include the following:

- (a) Details of each property being managed Including street address and real property details;
- (b) The rental incomes for each property identified at clause 3.3(a) above; and
- (c) The property management fees charged for each property identified at clause 3.3(a) above."

9.6.4 Draft PPI Management Deed

136. A draft deed styled "*Management Deed*" between PPI Pty Ltd (9) and Benchmark (**PPI Management Deed**) was prepared but never fully executed.

9.7 Redirection of Income Streams and the absence of any Management Services

137. BPW did not provide services to "*manage the business*" of MM Prime Pty Ltd (20) from 25 July 2016 or from any other date.

138. BPW did not provide any tax invoices identifying and seeking payment for any services for "*managing the business*" of MM Prime Pty Ltd (20).

139. Between July 2016 and March 2017, **\$171,690** in income was redirected from MM Prime Pty Ltd (20) to BPW (that is, transferred from the bank account of MM Prime Pty Ltd (20) to the bank account of BPW).
140. BPW did not provide any services to “*manage the business*” of either Capricorn Securities Pty Ltd (19) or Iridium FP Pty Ltd (18) from 25 July 2016 or from any other date.
141. BPW did not provide any tax invoices identifying and seeking payment for any services for “*managing the business*” of Capricorn Securities Pty Ltd (19) or Iridium FP Pty Ltd (18).
142. Between July 2016 and March 2017, **\$760,296** in income had been redirected from Capricorn Pty Ltd (19) to BPW (that is, transferred from the bank account of Capricorn Pty Ltd (19) to the bank account of BPW).
143. BPW did not provide any services to “*manage the business*” of Airlie Beach (MA) Pty Ltd (21) from 25 July 2016 or from any other date.
144. BPW did not provide any tax invoices identifying and seeking payment for any services for “*managing the business*” of Airlie Beach (MA) Pty Ltd (21).
145. Between July 2016 and March 2017, **\$125,816.98** in income had been redirected from Airlie Beach (MA) Pty Ltd (21) to Benchmark Property (that is, transferred from the bank account of Airlie Beach (MA) Pty Ltd (21) to the bank account of Benchmark Property).

9.8 Marlborough’s Breach of sec. 180 regarding the Management Deeds

146. By executing the Management Deeds as director of the MA Trading Companies (respectively), containing the terms as pleaded in paragraphs 126, 130, 131 and 135 above, Marlborough engaged in conduct **in breach of sec. 180** of the Act because:
 - (a) as a director of each of the MA Trading Companies, he was required to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise:
 - (i) if they were a director of the MA Trading Companies in each company’s circumstances; and

- (ii) if they occupied the office, namely as director, held by, and had the same responsibilities within each MA Trading Companies as, Marlborough;
- (b) Marlborough knew, as was the fact, that:
- (i) in the period from 25 July 2016 (the date to which the Management Deeds' commencement was, in each instance, backdated) to the date of execution of the Management Deeds (11 October 2016 for MM Prime Pty Ltd (20), as pleaded in paragraph 123 *above*, 13 October 2016 for Capricorn Securities Pty Ltd (19) and Iridium Holdings (1) , as pleaded in paragraph 127 *above*, and 20 October 2016 for Airlie Beach (MA) Pty Ltd (21), as pleaded in paragraph 132 *above*), none of the Benchmark Group companies had provided any services for the "*management of the businesses*" of the MA Trading Companies;
 - (ii) as the controller of the Benchmark Group companies (as pleaded in Section 9.1 *above*), he had not caused and would not cause any of the Benchmark Group companies to provided services for the "*management of the businesses*" of the MA Trading Companies either:
 - (1) in accordance with the Management Deeds;
 - (2) to the extent of the value provided for in the Management Deeds; or
 - (3) at all;
 - (iii) the MA Trading Companies were members of the GST Tax Consolidated Group;
 - (iv) MM Prime Pty Ltd (20), Capricorn Securities Pty Ltd (19) and Airlie Beach (MA) Pty Ltd (21) were members of the Income Tax Consolidated Group;
 - (v) the MA Trading Companies were each jointly and severally liable with Iridium Holdings (1) for group taxation liabilities within their respective Tax Consolidated Groups;
 - (vi) Iridium Holdings (1) was indebted to the ATO;

- (vii) each of the MA Trading Companies was a wholly owned subsidiary of Iridium Holdings (1);
 - (viii) Iridium Holdings (1) was in liquidation at the time that each of the Management Deeds were entered into;
 - (ix) the income and assets of each of the MA Trading Companies should have been available for the payment of:
 - (1) the tax liabilities for which the respective MA Trading Companies were jointly and severally liable; and
 - (2) the creditors (including the ATO) of Iridium Holdings (1);
 - (x) payment of any moneys under the Management Deeds would deplete the income and assets of each of the MA Trading Companies such that they would no longer be available for the payment of:
 - (1) the tax liabilities for which the respective MA Trading Companies were jointly and severally liable;
 - (2) their own creditors; and
 - (3) the creditors (including the ATO) of Iridium Holdings (1);
 - (xi) the Management Deeds were not entered into at arm's length on a commercial basis because:
 - (1) no analysis had been undertaken nor advice sought as to the commercial value of the services the subject of the Management Deeds; and
 - (2) the payments provided for in the Management Deeds would be made to a company or companies of which Marlborough was the effective controller and for which he or his family members would take the benefit; and
 - (xii) the Management Deeds were each a pretence, entered into to attempt to clothe the diversion of income streams from the MA Trading Companies to the Benchmark Companies with superficial legitimacy; and
- (c) no director of any of the MA Trading Companies:

- (i) exercising his powers and discharging his duties with the degree of care and diligence that a reasonable person would exercise; and
- (ii) with the knowledge and in the circumstances pleaded in subparagraph (b) *above*;

would enter into the Management Deeds, or any of them.

147. By **causing, permitting or enabling the payments** pleaded in paragraphs 139, 142 and 145 *above* as director of the MA Trading Companies (respectively), Marlborough engaged in conduct **in breach of sec. 180** of the Act because:

- (a) as a director of each of the MA Trading Companies, he was required to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise:
 - (i) if they were a director of the MA Trading Companies in each company's circumstances;
 - (ii) if they occupied the office, namely as director, held by, and had the same responsibilities within each of the MA Trading Companies as, Marlborough;
- (b) Marlborough knew, as was the fact:
 - (i) of each of the matters pleaded in paragraph 146(b) *above*;
 - (ii) that none of the Benchmark Group companies had provided services to the MA Trading Companies after the execution of the Management Deeds, being services:
 - (1) as described in the Management Deeds;
 - (2) to a value equivalent to the redirection of income streams contemplated by the Management Deeds; and/or
 - (3) at all;
 - (iii) that none of the companies in the Benchmark Group:
 - (1) had rendered a tax invoice to any of the MA Trading Companies for any services as referred to in the Management Deed;

- (2) had made a request or demand to any of the MA Trading Companies for payment of any amount;
- (3) had an entitlement to payment of any moneys by any of the MA Trading Companies;
- (4) each of the payments made by MA Trading Companies depleted the income and assets of the respective company available to pay the:
 - (A) tax liabilities for which the respective MA Trading Companies were jointly and severally liable;
 - (B) their own creditors; and
 - (C) the creditors (including the ATO) of Iridium Holdings (1); and
- (iv) the Management Deeds were each a pretence, entered into to attempt to clothe the diversion of income streams from the MA Trading Companies to the Benchmark Companies with superficial legitimacy; and
- (c) no director of any of the MA Trading Companies:
 - (i) exercising his powers and discharging his duties with the degree of care and diligence that a reasonable person would exercise;
 - (ii) with the knowledge and in the circumstances pleaded in subparagraph (b) *above*;

would permit the payments to be made by the MA Trading Companies to the Benchmark Group companies, or any of them.

9.9 Marlborough's Breach of sec. 181 regarding the Management Deeds

148. By executing each of the Management Deeds as director of the MA Trading Companies (respectively), containing the terms as pleaded in paragraphs 126, 130, 131 and 135 above, Marlborough engaged in conduct **in breach of sec. 181(1)** of the Act because:

- (a) as a director of each of the MA Trading Companies, he was required to exercise his powers and discharge his duties in good faith in the best interests of the corporation and for a proper purpose;
- (b) Marlborough knew, as was the case, that:
 - (i) of each of the matters pleaded in paragraph 146(b) *above*;
 - (ii) the Management Deeds were each a pretence, entered into to attempt to clothe the diversion of income streams from the MA Trading Companies to the Benchmark Companies with superficial legitimacy;
- (c) in the premises, the execution of the Management Deeds was not an exercise of power and a discharge of duties by Marlborough:
 - (i) in good faith in the best interests of the MA Trading Companies respectively, because:
 - (1) the MA Trading Companies had not, and were not going to, receive services *"to manage their businesses"*:
 - (A) as described in the Management Deeds;
 - (B) to a value equivalent to the redirection of income streams contemplated by the Management Deeds; and/or
 - (C) at all;
 - (2) it was not in the best interests of the MA Trading Companies for their income streams to be paid to the Benchmark Group of companies; and
 - (3) the redirection of the income streams was to personally benefit Marlborough and/or members of his family and the entry into the Management Deeds was a pretence, designed to clothe that fact with superficial legitimacy;
 - (ii) for a proper purpose because:
 - (1) the entry into the Management Deeds was to attempt to clothe the diversion of income streams from the MA Trading

Companies to the Benchmark Companies with superficial legitimacy in order to benefit Marlborough and/or members of his family; and

- (2) this was not a proper purpose *vis-à-vis* the MA Trading Companies.

149. By **causing, permitting or enabling the payments** pleaded in paragraphs 139, 142 and 145 *above* as director of the MA Trading Companies (respectively), Marlborough engaged in conduct **in breach of sec. 181** of the Act because:

- (a) as a director of each of the MA Trading Companies, he was required to exercise his powers and discharge his duties in good faith in the best interests of the corporation and for a proper purpose;
- (b) Marlborough knew, as was the case, that:
- (i) of each of the matters pleaded in paragraph 146(b) *above*;
- (ii) the Management Deeds were each a pretence, entered into to attempt to clothe the diversion of income streams from the MA Trading Companies to the Benchmark Companies with superficial legitimacy;
- (iii) the Benchmark Group companies had not provided services to the MA Trading Companies *“to manage their businesses”*:
- (1) as described in the Management Deeds;
- (2) to a value equivalent to the redirection of income streams contemplated by the Management Deeds; and/or
- (3) at all; and
- (iv) the Benchmark Group companies were not entitled to the payment of the amounts in fact paid, or any amounts;
- (c) in the premises, causing, permitting or enabling the payment of the amounts by the MA Trading Companies to the Benchmark Group companies was not an exercise of power and a discharge of duties by Marlborough:
- (i) in good faith in the best interests of the MA Trading Companies respectively, because:

- (1) the MA Trading Companies had not, and were not going to, receive services “to manage their businesses”:
 - (A) as described in the Management Deeds;
 - (B) to a value equivalent to the redirection of income streams contemplated by the Management Deeds; and/or
 - (C) at all;
 - (2) it was not in the best interests of the MA Trading Companies for their income streams to be paid to the Benchmark Group of companies; and
 - (3) the redirection of the income streams was to personally benefit Marlborough and/or members of his family and the entry into the Management Deeds was a pretence, designed to clothe that fact with superficial legitimacy;
- (ii) for a proper purpose because:
- (1) the entry into the Management Deeds was to attempt to clothe the diversion of income streams from the MA Trading Companies to the Benchmark Group companies with superficial legitimacy in order to benefit Marlborough and/or members of his family; and
 - (2) the payments from the MA Trading Companies to the Benchmark Group companies was to benefit Marlborough and/or members of his family personally and this was not a proper purposes *vis-à-vis* the MA Trading Companies.

9.10 Marlborough’s Breach of sec. 182 regarding the Management Deeds

150. By executing each of the Management Deeds as director of the MA Trading Companies (respectively), containing the terms as pleaded in paragraphs 126, 130, 131 and 135 above, Marlborough engaged in conduct **in breach of sec. 182(1)** of the Act because:

- (a) a director must not improperly use their position to gain an advantage for themselves or someone else or cause detriment to the corporations;

- (b) Marlborough knew, as was the case:
 - (i) of each of the matters pleaded in paragraph 146(b) *above*;
 - (ii) the Management Deeds were each a pretence, entered into to attempt to clothe the diversion of income streams from the MA Trading Companies to the Benchmark Companies with superficial legitimacy;
- (c) entry into the Management Deeds was a use by Marlborough of his position as director of the MA Trading Companies:
 - (i) to gain an advantage for:
 - (1) himself, because of his effective control of the Benchmark Group pleaded in **Section 9.1** *above*;
 - (2) members of his family, by reason of the matters pleaded in Section 9.1 *above*; and
 - (3) the Benchmark Group companies because they would be the recipients of the said income streams from the MA Trading Companies; and
 - (ii) to cause a detriment to the MA Trading Companies, and each of them:
 - (1) namely the depletion of their income streams and as a consequence their asset values; and
 - (2) because they had not, and were not going to, receive services to “*manage their business*” as consideration for the payment of monies to the Benchmark Group companies under the Management Deeds.

151. By **causing, permitting or enabling the payments** pleaded in paragraphs 139, 142 and 145 *above* as director of the MA Trading Companies (respectively), Marlborough engaged in conduct **in breach of sec. 182** of the Act because:

- (a) a director must not improperly use their position to gain an advantage for themselves or someone else or cause detriment to the corporations;
- (b) Marlborough knew, as was the case:

- (i) of each of the matters pleaded in paragraph 146(b) *above*;
 - (ii) the Management Deeds were each a pretence, entered into to attempt to clothe the diversion of income streams from the MA Trading Companies to the Benchmark Companies with superficial legitimacy; and
 - (iii) the Benchmark Group companies were not entitled to the payment of any monies by the MA Trading Companies:
 - (1) under the Management Deeds; or
 - (2) at all;
- (c) by causing, permitting or enabling the payment of the said moneys, Marlborough was using his position as director of the MA Trading Companies:
- (i) to gain an advantage for:
 - (1) himself, because of his effective control of the Benchmark Group pleaded in **Section 9.1** *above*;
 - (2) members of his family, by reason of the matters pleaded in Section 9.1 *above*; and
 - (3) the Benchmark Group companies because they would be the recipients of the said monies from the MA Trading Companies; and
 - (ii) to cause a detriment to the MA Trading Companies, and each of them:
 - (1) namely the depletion of their income streams and as a consequence their asset values; and
 - (2) because they had not, and were not going to, receive services to “*manage their business*” as consideration for the payment of monies to the Benchmark Group companies under the Management Deeds.

9.11 Defendant’s Knowledge of and Involvement in the Management Deeds

152. On or about 28 July 2016 at 8.49am, the Defendant sent an email to Ramsden, Lavell and Carey (a senior manager at Worrells) which stated, *inter alia*:

"John / Aaron

Everybody has Skype, so let's try to meet up using that at 10am this morning.

The matters I'd like to discuss are:

Provincial Property Investments (Aust) Pty Ltd

Management agreement

..."

153. On or about 28 July 2016 at 9.08am, the Defendant (among others) received from Jones (Ramsden Lawyers) an email which:

- (a) said, "*Gentlemen, Please find **attached** an updated version of the deed John just sent across*"; and
- (b) attached a draft deed styled "*Management Deed*" between BPW, MM Prime Pty Ltd (20), Iridium FP Pty Ltd (18) and Capricorn Securities Pty Ltd (19).

154. On or about 16 August 2016 at 9.48am, the Defendant (among others) received from Jones an email attached to which was a draft deed styled "*Management Deed*" between BPW and MM Prime Pty Ltd (20).

155. On or about 20 August 2016 at 9.44am, the Defendant replied to Jones' email pleaded in the preceding paragraph in the following terms:

"Oliver

I refer to your email dated 16 August 2016.

How is clause 3.2 going to work practically? I'm assuming MM Prime will not have any monies until each of the properties settle, so invoicing every week with payment due in two days won't work. Should the clause be changed to provide invoicing to be made on the settlement of each of the properties, with payment to occur within two days of settlement, other than for the second tranche were no remuneration is payable?"

156. On or about 16 August 2016 at 9.46am, the Defendant (amongst others) received an email from Jones which:

- (a) attached a draft deed styled "*Management Deed*" between BPW and PPI Pty Ltd (9); and
- (b) requested that the Defendant advise if any amendments were required to the draft deed.

157. On or about 20 August 2016 at 12.02pm, the Defendant forwarded Jones' email pleaded in the preceding paragraph (together with another email) to Michael Thomas of Worrells (amongst others).
158. On or about 17 August 2016:
- (a) at or about 12.44pm, the Defendant (amongst others) received an email from Jones, which attached a draft deed styled "*Management Deed*" between BPW, Iridium FP Pty Ltd (18) and Capricorn Securities Pty Ltd (19); and
 - (b) at or about 2.05pm, the Defendant made a file note to the effect that he had received a draft deed between BPW and Capricorn Securities Pty Ltd (19) / Iridium FP Pty Ltd (18).
159. On or about 20 August 2016:
- (a) at 11.19am, the Defendant made a file note addressed to "*Brian*" (Brian Carey of Worrells Insolvency (**Carey**)) in which he made comments on the drafting of the draft deed between BPW and PPI Pty Ltd (9) and requested that Carey review it; and
 - (b) at 12.03pm, the Defendant made a file note addressed to "*Brian*" (Carey) in which he made comments on the drafting of the draft deed between BPW and Capricorn Securities Pty Ltd (19) / Iridium FP Pty Ltd (18) and requested that Carey review it.
160. On or about 29 August 2016, Carey made a file note commenting on the potential issues with the draft deed between BPW and Capricorn Securities Pty Ltd (19) and BPW and Iridium FP Pty Ltd (18).
161. On or about 30 August 2016, the Defendant made a file note addressed to "*Brian*" (Carey) requesting that he draft a letter to Ramsden Lawyers with his suggested corrections to the draft deed between BPW and Capricorn Securities Pty Ltd (19) and BPW and Iridium FP Pty Ltd (18).
162. On or about 31 August 2016 at 3.44pm, the Defendant (amongst others) received an email from Carey which made comments about, and proposed amendments to, the draft deed between BPW and PPI Pty Ltd (9).
163. On or about 5 September 2016:

- (a) at 11.55am, the Defendant (amongst others) received an email from Finch setting an agenda for a meeting which included “5. *Management Deed between Benchmark and MM Prime*”;
 - (b) at 2.52pm, the Defendant replied to Finch’s email pleaded in the preceding subparagraph with (*inter alia*) an addition in red font, such that point 5 read: “5. *Management Deed between Benchmark and MM Prime, including the wording of the agreement particularly new remuneration arrangements;*”; and
 - (c) at or about 4.00pm, during a meeting at which the Defendant, Ramsden, Jones, Young, Marlborough, Finch and Carey were present (either in person or by phone), the draft management deed between BPW and MM Prime Pty Ltd (20) was discussed.
164. On or about 6 September 2016 at 11.53am, the Defendant sent an email to Marlborough (amongst others) which:
- (a) made reference to the deeds between MM Prime Pty Ltd (20) and BPW, and Iridium FP Pty Ltd (18), Capricorn Securities Pty Ltd (19) and BPW;
 - (b) listed, as action to be taken by Worrells: “*Forward to Ramsden suggested amendments to the deed between MM Prime Investment Pty Ltd and Benchmark.*”
165. On or about 7 September 2016 at 8.53am, the Defendant (amongst others) received an email from Carey commenting on the draft deed between BPW and MM Prime Pty Ltd (20).
166. On or about 9 September 2016 at 12.38pm, the Defendant made a file note making comments on the draft deed between BPW and PPI Pty Ltd (9).
167. On or about 16 September 2016 at 10.48am, the Defendant sent an email to Finch (amongst others), which included in an agenda for a meeting to be held the following Monday an update on amendments to deeds between BPW and Iridium FP Pty Ltd (18) and Capricorn Securities Pty Ltd (19), and an update on amendments to a deed between BPW and MM Prime Pty Ltd (20).
168. On or about 19 September 2016 at 4.00pm during a meeting attended by the Defendant, Ramsden, Young, Marlborough, Lavell, Finch and Jones, the draft deeds between BPW and Iridium FP Pty Ltd (18) and Capricorn Securities Pty Ltd (19) were discussed.

169. On or about 6 October 2016:
- (a) at 1.08pm, the Defendant sent an email to Finch (amongst others), which included in an agenda for a meeting to be held that afternoon updates on amendments to deeds between BPW and Iridium FP Pty Ltd (18) and Capricorn Securities Pty Ltd (19), and BPW and PPI Pty Ltd (9), and the estimate of time for Ramsden Lawyers to produce an amended deed between BPW and MM Prime Pty Ltd (20);
 - (b) after 1.08pm, during a meeting at which the Defendant, Carey, Finch, Ramsden, Jones, Young, Marlborough and Braiden Marlborough were present (either in person or by phone), the management deeds were discussed.
170. Between 7 October 2016 and 11 October 2016, the Defendant (amongst others) received:
- (a) various emails about amendments to a draft deed between BPW and MM Prime Pty Ltd (20);
 - (b) various further drafts of a draft deed between BPW and MM Prime Pty Ltd (20).

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- (i) Email from Jones to the Defendant (amongst others), 7 October 2016 at 2.55pm;
- (ii) Email from Carey to the Defendant (amongst others), 10 October 2016 at 11.21am;
- (iii) Email from Jones to the Defendant (amongst others), 10 October 2016 at 3.53pm;
- (iv) Email from Young to the Defendant (amongst others), 11 October 2016 at 8.27am;
- (v) Email from Jones to the Defendant (amongst others), 11 October 2016 at 8.27am;
- (vi) Email from Carey to the Defendant (amongst others), 11 October 2016 at 10.25am.

171. On or about 13 October 2016 at 5.03pm, the Defendant (amongst others) received an email from Jones:
- (a) commenting about amendments made to a draft deed between BPW and PPI Pty Ltd (9); and
 - (b) attaching a further draft deed between BPW and PPI Pty Ltd (9).
172. On or about 24 October 2016 at 3.49pm, the Defendant sent an email to Marlborough (amongst others) which included in an agenda for a meeting, discussion about the deeds between BPW and Iridium FP Pty Ltd (18) and Capricorn Securities Pty Ltd (19), and BPW and PPI Pty Ltd (9).
173. On or about 25 October 2016 at 11.43am, the Defendant (amongst others) received an email from Jones:
- (a) commenting about amendments made to a draft deed between BPW and PPI Pty Ltd (9); and
 - (b) attaching a '*finalised*' management deed between BPW and PPI Pty Ltd (9).
174. On or about 27 October 2016, during a telephone conversation with Paul Dunn of ASIC, the Defendant confirmed that he was aware of the:
- (a) Capricorn Management Deed;
 - (b) MM Prime Management Deed;
 - (c) Airlie Beach Management Deed; and
 - (d) PPI Management Deed.
175. On or about 9 November 2016, the Defendant caused a letter to be sent to ASIC in which he confirmed that he was aware of the Iridium FP Management Deed.
176. On or about 29 November 2016, the Defendant:
- (a) caused a letter concerning Airlie Beach (MA) Pty Ltd (21) to be sent to ASIC which confirmed that Worrells:
 - (i) had reviewed the Airlie Beach Management Deed; and
 - (ii) suggested amendments to the Airlie Beach Management Deed;

- (b) caused a letter concerning Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18) to be sent to ASIC which confirmed that Worrells:
 - (i) had reviewed the Capricorn Management Deed;
 - (ii) had reviewed the Iridium FP Management Deed;
 - (iii) suggested amendments to the Capricorn Management Deed; and
 - (iv) suggested amendments to the Iridium FP Management Deed;
 - (c) caused a letter concerning MM Prime Pty Ltd (20) to be sent to ASIC which confirmed that Worrells:
 - (i) had reviewed the MM Prime Management Deed; and
 - (ii) suggested amendments to the MM Prime Management Deed; and
 - (d) caused a letter concerning PPI Pty Ltd (9) to be sent to ASIC which confirmed that liquidators had not executed the PPI Management Deed.
177. In the premises of the matters pleaded in paragraphs 153, 154, 155, 163, 164, 165, 167, 169, 170, 174 and 176, the Defendant:
- (a) was involved in the preparation of the MM Prime Management Deed; and/or,
 - (b) had knowledge of the MM Prime Management Deed prior to its execution and/or such knowledge is to be inferred from those matters; and/or
 - (c) was in a position to influence whether the MM Prime Management Deed was entered into.
178. In the premises of the matters pleaded in paragraphs 153, 158, 159, 160, 161, 164, 167, 168, 169, 172, 174, 175 and 176, the Defendant:
- (a) was involved in the preparation of the Capricorn Management Deed; and/or
 - (b) had knowledge of the Capricorn Management Deed prior to its execution and/or such knowledge is to be inferred from those matters; and/or
 - (c) was in a position to influence whether the Capricorn Management Deed was entered into.
179. In the premises of the matters pleaded in paragraphs 153, 158, 159, 160, 161, 164, 167, 168, 169, 172, 174, 175 and 176, the Defendant:

- (a) was involved in the preparation of the Iridium FP Management Deed; and/or
 - (b) had knowledge of the Iridium FP Management Deed prior to its execution and/or such knowledge is to be inferred from those matters; and/or
 - (c) was in a position to influence whether the Iridium FP Management Deed was entered into.
180. In the premises of the matters pleaded in paragraphs 174 and 176, the Defendant:
- (a) was involved in the preparation of the Airlie Beach Management Deed; and/or
 - (b) had knowledge of the Airlie Beach Management Deed prior to its execution and/or such knowledge is to be inferred from those matters; and/or
 - (c) was in a position to influence whether the Airlie Beach Management Deed was entered into.
181. In the premises of the matters pleaded in paragraphs 152, 156, 157, 159, 162, 164, 166, 169, 171, 172, 173, 174 and 176, the Defendant:
- (a) was involved in the preparation of the PPI Management Deed; and/or
 - (b) had knowledge of the PPI Management Deed, and/or such knowledge is to be inferred from those matters; and/or
 - (c) was in a position to influence whether the PPI Management Deed was entered into.

9.12 The Defendant's Involvement in Marlborough's Contraventions

182. By sec. 79 of the Act, a person is involved in a contravention [of the Act] if, and only if, the person:
- (a) has aided, abetted, counselled or procured the contravention; or
 - (b) has induced, whether by threats or promises or otherwise, the contravention; or
 - (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or
 - (d) has conspired with others to effect the contravention.

183. A person will be involved in a contravention as defined in sec. 79 of the Act, if they have knowledge of the essential acts or omissions constituting the contravention and participated in the contravention.
184. On and from the dates referred to in Section 9.11 *above*, the Defendant was at all times material to this proceeding aware that Marlborough intended to execute each of the documents styled as “*management deeds*” on behalf of the MA Trading Companies, the effects of which were:
- (a) to transfer assets and/or income streams from MA Trading Companies to the Benchmark Group; and
 - (b) to do so without any company of the Benchmark Group (or any entity otherwise) providing adequate or any consideration for the same.
185. Further, on and from the dates referred to in Section 9.11 *above*, the Defendant was at those times, and in those ways, involved in the drafting of the Management Deeds.
186. In the premises, the Defendant knew of each of Marlborough’s acts which amounted to the contravention by Marlborough of:
- (a) sec. 180 of the Act as pleaded in paragraph 146 *above*;
 - (b) sec. 181(1) of the Act as pleaded in paragraph 148 *above*; and
 - (c) sec. 182(1) of the Act as pleaded in paragraph 150 *above*.
187. In the premises, the Defendant was involved in Marlborough’s contraventions of each of:
- (a) sec. 180 of the Act;
 - (b) sec. 181(1) of the Act; and
 - (c) sec. 182(1) of the Act,
- as the word “*involved*” is used in sec. 79 of the Act and/or secs 181(2) and 182(2) of the Act, respectively, because the Defendant:
- (d) aided the entry into the Management Deeds (and therefore the contravention) within the meaning of sec. 79(a) by:
 - (i) reviewing the draft Management Deeds and assisting with the drafting of the Management Deeds; and

- (ii) failing to take any steps to prevent entry into the Management Deeds where:
 - (1) his agreement to the same had been sought and could, therefore, have been declined; and
 - (2) as the liquidator of Iridium Holdings (1), he could have used the powers pleaded in paragraph 101(c)(i) above to prevent the entry into the Management Agreements; and
 - (e) alternatively, was knowingly concerned in the entry into the Management Deeds (and therefore the contravention) within sec. 79(c).
188. Further and in the alternative, the Defendant knew of each of Marlborough's acts which amounted to the contravention by Marlborough of:
- (a) sec. 180 of the Act as pleaded in paragraph 147 *above*;
 - (b) sec. 181(1) of the Act as pleaded in paragraph 149 *above*; and
 - (c) sec. 182(1) of the Act as pleaded in paragraph 151 *above*.
189. In the premises, the Defendant was involved in Marlborough's contraventions of each of:
- (a) sec. 180 of the Act;
 - (b) sec. 181(1) of the Act; and
 - (c) sec. 182(1) of the Act,
- as the word "*involved*" is used in sec. 79 of the Act and/or secs 181(2) and 182(2) of the Act, respectively, because the Defendant:
- (d) aided the payment of amounts from the MA Trading Companies to the Benchmark Group (and therefore the contravention) within the meaning of sec. 79(a) by failing to use the powers available to him as liquidator of Iridium Holdings (1) (as pleaded in paragraph 101(c)(i) above) to prevent the payments;
 - (e) alternatively, was knowingly concerned in the payments from the MA Trading Companies to the Benchmark Group (and therefore the contravention) within sec. 79(c).

9.13 Involvement in Contraventions re Management Deeds – matters under. 45-1

190. The matters pleaded in paragraphs 182 to 189 *above* are matters which the Court may take into account under sec. 45-1 of the Insolvency Practice Schedule as:

- (a) a matter under sec. 45-1(4)(a), because they indicate that the Defendant has failed to faithfully perform his duties;
- (b) a matter under sec. 45-1(4)(b), because they indicate that the Defendant has not acted in compliance with the Act by being involved in a contravention of sec. 180 by a director of a company;
- (c) a matter under sec. 45-1(4)(d), because the MA Trading Companies, Iridium Holdings (1) and therefore the creditors of Iridium Holdings (1) suffered loss or damage by reason of the Defendant's failure to prevent the payment of monies in accordance with each of the Management Deed to the Benchmark Group; and
- (d) a matter under sec. 45-1(4)(e), because the Defendant's failure to prevent the Management Deed payments to the Benchmark Group is an omission likely to diminish public confidence in registered liquidators as a group due to the Defendant's abrogation of his role as liquidator in recovering and/or protecting assets for distribution to creditors.

9.14 Breach of Sec. 180 by the Defendant regarding the Management Deeds

191. In the premises of the matters pleaded in paragraphs 152 to 189 *above*, **by agreeing to, and/or allowing or failing to prevent, entry into the Management Deeds, and/or failing to prevent each and any of the Management Deed payments** pleaded in paragraphs paragraphs 139, 142 and 145 *above*, using the powers held by him as liquidator of Iridium Holdings (1) as pleaded in paragraph 101(c)(i) *above*, the Defendant:

- (a) was in breach of **sec. 180 of the Act** as an officer of Iridium Holdings (1) because:
 - (i) Iridium Holdings (1) owed monies to creditors including the ATO both pursuant to the ATO statutory demand and as the head company of

the Tax Consolidated Groups and the Defendant was aware of this fact;

- (ii) no liquidator exercising their powers and discharging their duties with the degree of care and diligence that a reasonable person would exercise if they were the liquidator of a company in the circumstances of Iridium Holdings (1) and occupied the office of, and had the same responsibilities as, liquidator of Iridium Holdings (1), would:

- (1) assist in the drafting of the Management Deeds;
- (2) allow, and/or fail to prevent, the entry into the Management Deeds;
- (3) allow, and/or fail to prevent, the backdating of the Management Deeds;
- (4) allow, and/or fail to prevent, the making of payments under the Management Deeds;
- (5) permit the payments under the Management Deeds to be made when he knew that the Benchmark Group had not provided "*management services*" under the Management Deeds:
 - (A) from 25 July 2016; and/or
 - (B) at all; and
- (6) permit the payments under the Management Deeds to be made without ascertaining:
 - (A) whether invoices had been rendered in respect of the same; and
 - (B) whether the management services the subject of the Management Deeds had in fact been provided; and
 - (C) if so, what those services were and whether they held the values claimed;

- (b) was in breach of the liquidators' duties as listed in **Schedule C** to this pleading, namely:

- (i) **Liquidator's Duty No. 1:** to identify, take possession of and realise the company's assets, to investigate and determine the claims against the company and to apply the assets to the satisfaction of those claims in accordance with the statutory scheme of priority, because the Defendant:
- (1) failed to identify the assets of Iridium Holdings (1) by failing to ascertain the existence and value of the assets of the MA Trading Companies, of which it was the holding company;
 - (2) failed to investigate if there had been the provision of any management services by the companies of the Benchmark Group to the MA Trading Companies, and, if so, what services and what value those services had;
 - (3) then failed to ascertain that there had been no provision of services from the Benchmark Group to the MA Trading Companies;
 - (4) failed to investigate if there had been any invoices rendered by any companies in the Benchmark Group to the MA Trading Companies;
 - (5) failed to prevent income of the MA Trading Companies from being diverted to the Benchmark Group companies;
- (ii) **Liquidator's Duty No. 2:** to become thoroughly acquainted with the affairs of Iridium Holdings (1), where being acquainted with the affairs of Iridium Holdings (1) required that he be acquainted with the affairs of its wholly owned subsidiaries, the MA Trading Companies, because he failed to ascertain:
- (1) whether each of the Management Deeds were in the best interests of the MA Trading Companies and therefore whether they were in the best interests of Iridium Holdings (1) and the creditors of Iridium Holdings (1);
 - (2) that in fact each of the Management Deeds were contrary to the interests of the MA Trading Companies and therefore contrary to the interests of Iridium Holdings (1) and the creditors of Iridium Holdings (1);

- (3) whether for the period, in particular, from 25 July 2016 (the date to which the management deeds were backdated) to October 2016 (when the management deeds were executed) and thereafter, the Benchmark Group provided any services to the MA Trading Companies that would justify:
- (A) entry into the management deeds;
 - (B) backdating the management deeds to 25 July 2016;
and
 - (C) payment of any amounts of money by the MA Trading Companies to the Benchmark Group.

9.15 Matters to be taken into account under 45-1 regarding the Management Deeds

192. The matters pleaded in paragraphs 191 *above* are matters which the Court may take into account under sec. 45-1 of the Insolvency Practice Schedule as:
- (a) a matter under sec. 45-1(4)(a), because they indicate that the Defendant has failed to faithfully perform his duties;
 - (b) a matter under sec. 45-1(4)(b), because they indicate that the Defendant has not acted in compliance with the Act by contravening sec. 180 of the Act;
 - (c) a matter under sec. 45-1(4)(d), because the MA Trading Companies, Iridium Holdings (1) and therefore the creditors of Iridium Holdings (1) suffered loss or damage by reason of the Defendant's failure to prevent the payment of monies under the Management Deeds to the Benchmark Group;
 - (d) a matter under sec. 45-1(4)(e), because the Defendant's failure to prevent the payment of monies under the Management Deeds to the Benchmark Group is an omission likely to diminish public confidence in registered liquidators as a group due to the Defendant's abrogation of his role as liquidator in recovering and/or protecting assets for distribution to creditors;
and
 - (e) the breach of common law liquidators' duties, namely duties 1 and 2 outlined in **Schedule C**.

9.16 The Elderton Transaction and MM Prime Pty Ltd (20)

9.16.1 The Circumstances of the Elderton Transaction

193. On or about 25 February 2015, MM Prime Pty Ltd (20) and Elderton entered into an agreement by which Elderton would pay to MM Prime Pty Ltd (20) commission of \$60,000 on each of the sales of 8 lots of land in Sydney (**the MM Prime Commission**).
194. The MM Prime Commission was payable by way of instalments of:
- (a) \$20,000 on the settlement of the sale of the land; and
 - (b) \$40,000 on receipt by Elderton of the first progress payment during construction of a dwelling on each lot.
195. At all times material to this proceeding:
- (a) Astro Holdings Pty Ltd (1A) was a shareholder of MAI (22); and
 - (b) Elderton was a part of a group of companies referred to as the "RILOW Group".
196. On 22 July 2016, the Defendant was appointed as liquidator of:
- (a) Iridium Holdings (1); and
 - (b) Astro Holdings Pty Ltd (1A).
197. Marlborough was the sole director of:
- (a) MAI (22), as at 22 July 2016 and until 4 August 2017; and
 - (b) MM Prime Pty Ltd (20), as at 22 July 2016 and until 4 August 2017.
198. Between 11 April 2016 and 13 April 2016 MM Prime Pty Ltd (20) issued Elderton 8 invoices totalling \$160,000 for the MM Prime Commission (**the First Tranche MM Prime Commission Invoices**).

Particulars

Table 6: First Tranche MM Prime Commission Invoices

Date of invoice	Invoice number	Amount
11/04/2016	57256187	\$20,000

11/04/2016	57266188	\$20,000
11/04/2016	57276182	\$20,000
11/04/2016	57286184	\$20,000
11/04/2016	57296181	\$20,000
11/04/2016	57306186	\$20,000
11/04/2016	57316183	\$20,000
13/04/2016	57336185	\$20,000

199. The First Tranche MM Prime Commission Invoices sought payment into a Commonwealth Bank of Australia Account held by MM Prime Pty Ltd (20) (**the MM Prime CBA Account**).

Particulars

Ac Name: MM Prime Investment Pty Ltd

Bank: Commonwealth Bank of Australia

BSB: 064445

Account: 10534536

200. Between 18 April 2016 and 20 May 2016, Elderton made payments totalling \$140,000 to the MM Prime CBA Account in payment of the First Tranche MM Prime Commission Invoices.
201. On or about 26 September 2016, the Defendant, in his capacity as liquidator of Astro Holdings Pty Ltd (1A), caused to be issued to Marlborough:
- (a) in Marlborough's personal capacity, a letter of demand for a debt in the amount of \$6.79 million; and
 - (b) in Marlborough's capacity as director of MAI, a letter of demand for a debt in the amount of \$7,809.00 (**the Astro Demand to MAI**).
202. Between 17 October 2016 and 16 December 2016, MM Prime Pty Ltd (20) issued Elderton 6 invoices totalling \$240,000 for the MM Prime Commission (**the Second Tranche MM Prime Commission Invoices**).

Particulars

Table 7: The Second Tranche MM Prime Commission Invoices

Date of invoice	Invoice number	Amount
17/10/2016	5819L6	\$40,000
17/10/2016	5820L5	\$40,000
08/11/2016	5831L1	\$40,000
08/11/2016	5832L3	\$40,000
08/11/2016	5833L4	\$40,000
16/12/2016	5859L2	\$40,000

203. The Second Tranche MM Prime Commission Invoices sought payment into a Westpac Account held by MAI (**the MAI Westpac Account**).

Particulars

Ac Name: Members Alliance Incorporated Pty Ltd

Bank: Westpac

BSB: 036 011

Account: 332 179

204. On or about 18 October 2016:

- (a) at 9.55am, Michael Thomas of Worrells made a file note in Worrells file note #304296 in the following terms:

"PC in from Alan Robson. He is the financial controller for a company that owes Members Alliance Incorporated Pty Ltd Money (now known as Astro Holdings Pty Ltd).

His company contracted with Astro Holdings Pty Ltd to sell 7 lots. A previous payment was paid to MM Prime Investments, but he was unsure if the debt was with Astro Holdings Pty Ltd now in liquidation. He did not want to provide any further details including the company he was calling from or his phone number. I asked if he was willing to discuss the contract more with you (but he wasn't) and asked if he could send through some correspondence to our office for us to review.

He will discuss this with the directors and revert back in due course.

Emailed BNC, JB and LB regarding conversation."

- (b) at 2.37pm, Michael Thomas of Worrells made a file note in Worrells file note #304296 in the following terms:

"PC in from Alan Robson from Rolo Group (or it could have been Bolo Group).

Alan advised one of the company's director's had spoken to Mr Marlborough and John Ramsden from Ramsden Lawyers and was satisfied the monies were being paid to a company not in liquidation."

205. On or about 19 October 2016:

- (a) at 1.41pm, Lee Bragg of Worrells made a file note in Worrells file note #304296 in the following terms:

"JB, did you want to speak to Richard Marlborough regarding this supposed debt."

- (b) at approximately 4.25pm:

- (i) the Defendant telephoned Marlborough, during which call:

- (1) the Defendant asked about Alan Robson;
- (2) Marlborough said to the Defendant words to the effect that the RILOW Group had done a deal with MAI in relation to 7 properties sold to Chinese buyers that Braiden Marlborough knew, and that Marlborough wasn't sure why Mr Robson had thought that Astro Holdings Pty Ltd (1A) was involved because it was merely a "bucket" company.

- (ii) the Defendant made a file note in Worrells file note #304296:

- (1) recording the discussion with Marlborough pleaded in the preceding subparagraph; and
- (2) recording his conclusion that *"Based upon the above it seems there is nothing here to recover."*

206. In the premises of the two preceding paragraphs, the Astro Demand to MAI, and the Defendant's involvement in the drafting of the MM Prime Management Deed, it is to be inferred that as at 19 October 2019, the Defendant knew or ought to have known that:

- (a) the RILOW Group had an arrangement in relation to the sale of properties under which it had previously paid money to MM Prime Pty Ltd (20);
 - (b) MM Prime Pty Ltd's (20) remaining business was collecting commissions payable on the sale of properties;
 - (c) the financial controller of the RILOW Group thought the RILOW Group owed money to MAI but was unsure if it may have been owed to Astro Holdings Pty Ltd (1A) (of which the Defendant was a liquidator); and
 - (d) MAI owed money to Astro Holdings Pty Ltd (1A).
207. Between 18 October 2016 and 9 January 2019, Elderton made payments totalling \$240,000 into the MAI Westpac Account.

Particulars

Table 8: Payments to the MAI Westpac Account

Date of payment	Amount
18/10/2016	\$40,000
18/10/2016	\$40,000
24/11/2016	\$40,000
02/12/2016	\$40,000
12/12/2016	\$40,000
09/01/2017	\$40,000

9.16.2 Breach of sec. 180 regarding the Elderton Transaction

208. In the premises, by failing to investigate whether MM Prime Pty Ltd (20) was entitled to the First and Second Tranche MM Prime Commission Payments and permitting the payments to be made to MAI rather than MM Prime Pty Ltd (20), the Defendant was in breach of **sec. 180 of the Act** as an officer of Iridium Holdings (1) because:
- (a) Iridium Holdings (1) owed monies to creditors including the ATO both pursuant to the ATO statutory demand and as the head company of the Tax Consolidated Groups and the Defendant was aware of this fact;
 - (b) the Defendant had the power to control the conduct of MM Prime Pty Ltd (20):
 - (i) as pleaded in paragraph 59(d) *above* because he had been appointed liquidator of Iridium Holdings (1):

- (1) he was an officer of Iridium Holdings (1) as per sub-section (f) of the definition of “*officer*” in sec. 9 of the Act;
- (2) his duty was to realise the assets of Iridium Holdings (1) and distribute the same to the creditors of the company;
- (3) Iridium Holdings (1) was the sole shareholder of most of the companies of the MA Group (as pleaded in **Table 1 of Schedule A** and listed in paragraph 9 above);
- (4) as the controller of the shareholder of those companies, he could:
 - (A) call a general meeting of the same (by sec. 249F of the Act);
 - (B) remove and replace directors (by sec. 203C of the Act);
 - (C) request information concerning the assets and liabilities of those companies and, by virtue of his powers in (A) and (B), cause the requests to be answered;
 - (D) at such a general meeting, move and pass motions protecting the assets and income streams of those companies; and/or
 - (E) call in related entity loans of those companies to enable payment of creditors, and/or cause the liquidation of those companies;
- (5) he was therefore in a position to:
 - (A) investigate the assets and liabilities of those companies; and
 - (B) realise the assets of those companies for the benefit of the creditors of Iridium Holdings (1); and
- (6) he was able to use the control he would have as an officer of Iridium Holdings (1) to see to the payment of any liabilities held jointly and severally with the subsidiary companies of the

MA Group from the assets or income streams of those companies;

- (ii) in particular, he had the power to:
 - (1) investigate and ascertain that MM Prime Pty Ltd (20) should be paid the Second Tranche MM Prime Commissions, and not MAI;
 - (2) act to ensure that payments of the Second Tranche MM Prime Commission Invoices were made to MM Prime Pty Ltd (20) in circumstances where he was the liquidator of Iridium Holdings (1), the sole shareholder of MM Prime Pty Ltd (20); and/or
 - (3) act to require payment by MAI of the Astro Demand to MAI or a redirection of part of the money paid by Elderton to MAI in satisfaction of the demand;

(c) the Defendant knew that he had the powers pleaded in (b) above;

(d) no liquidator, exercising their powers and discharging their duties with the degree of care and diligence that a reasonable person would exercise if:

- (i) they were the liquidator of a company in the circumstances of Iridium Holdings (1); and
- (ii) they occupied the office of, and had the same responsibilities as, liquidator of Iridium Holdings (1),

would

- (iii) fail to take any or any adequate action to ascertain the true arrangement between Elderton and MM Prime Pty Ltd (20); and/or
- (iv) fail to take any or any adequate action to ensure that payments of the Second Tranche MM Prime Commission Invoices were made to MM Prime Pty Ltd (20) in circumstances where he was the liquidator of Iridium Holdings (1), the sole shareholder of MM Prime Pty Ltd (20); and/or
- (v) fail to take any action to secure payment by MAI of the Astro Demand to MAI or a redirection of part of the money paid by Elderton to MAI in satisfaction of the demand.

9.16.3 Breach of Liquidator's Duties regarding Elderton Transaction

209. The Defendant was in breach of the liquidators' duties as listed in **Schedule C** to this pleading, namely:

- (a) **Liquidator's Duty No. 1:** to identify, take possession of and realise the company's assets, to investigate and determine the claims against the company and to apply the assets to the satisfaction of those claims in accordance with the statutory scheme of priority, because he failed to take any adequate action to ascertain the true arrangement between Elderton and MM Prime Pty Ltd (20); and/or
- (b) **Liquidator's Duties Nos 1, 2 and 4:** failed to take any action to ensure that payments of the Second Tranche MM Prime Commission Invoices were made to MM Prime Pty Ltd in circumstances where he was the liquidator of Iridium Holdings (1), the sole shareholder of MM Prime Pty Ltd (20); and/or
- (c) **Liquidator's Duties Nos 1 and 2:** failed to take any action to secure payment by MAI of the Astro Demand to MAI or a redirection of part of the money paid by Elderton to MAI in satisfaction of the demand.

9.16.4 Matters under 45-1 of the Insolvency Practice Schedule

210. The matters pleaded in paragraph 208 and 209 *above*, whether or not those matters are found to constitute a breach of any provision, code or duty, are matters which the Court may take into account under sec. 45-1 of the Insolvency Practice Schedule as:

- (a) a matter under sec. 45-1(4)(a), as they indicate that the Defendant has failed to faithfully perform his duties;
- (b) a matter under sec. 45-1(4)(d), as MM Prime Pty Ltd (20), Iridium Holdings (1), and therefore the creditors of Iridium Holdings (1) suffered loss or damage by reason of the Defendant's failure to prevent the diversion of the Second Tranche MM Prime Commission Payments to MAI;
- (c) a matter under sec. 45-1(4)(e), as the Defendant's failure to
 - (i) investigate the Elderton Transaction; and
 - (ii) prevent the diversion of the Second Tranche MM Prime Commission Payments to MAI,

is an omission likely to diminish public confidence in registered liquidators as a group due to the Defendant's abrogation of his role as liquidator in recovering and/or protecting assets for distribution to creditors.

9.17 Sale of the Client Book

9.17.1 Circumstances of entry into the Client Book Sale

211. On or about 8 April 2016, in a proposal made on behalf of the Tax Consolidated Groups to the ATO, Lavell (of WMS) advised the ATO that:
- (a) the annual trail income for the Client Book was \$1,250,000; and
 - (b) the indicative value of the Client Book was \$3,750,000 (**the First WMS Client Book Value Representation**).
212. The WMS Powerpoint, received by the Defendant as pleaded in paragraph 60 *above*, contained in slide 1 a valuation of the Client Book at \$1,100,000 to \$2,200,000 (the aggregate of the values in lines 4, 5 and 10 of the table on slide 1) (**the Second WMS Client Book Value Representation**).
213. On or around 16 November 2016, Advice First Pty Ltd (**Advice First**) made three alternative offers to purchase the Client Book which were materially as follows:
- (a) offer one: client book \$850,000 / consulting fee to key person \$300,000;
 - (b) offer two: client book \$930,000 / consulting fee to key person \$250,000; and
 - (c) offer three: client book \$1,005,000 / consulting fee to key person \$200,000.
214. On or about 17 November 2016, the Defendant received an email from Ramsden to the effect that (*inter alia*):
- (a) Chesterton (of Crest) had made a verbal offer to buy the Client Book, the material terms of which were that Crest would pay \$900,000 for the Client Book and a \$400,000 consultancy fee to Marlborough and BPW (**the Crest Offer**);
 - (b) Ramsden was instructed to seek the Defendant's approval to accept the Crest Offer; and
 - (c) Advice First's proposal (particularly option 3) would offer more return to the vendors.

215. On or around 18 November 2016, the Defendant received a letter from WMS which contained a valuation of the Client Book at \$850,000 - \$1,000,000 (**the Third WMS Client Book Value Representation**).
216. The Third WMS Client Book Value Representation was not independent because:
- (a) WMS had previously provided taxation and business services to Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18); and
 - (b) at the time of its completion, WMS was a secured creditor of Iridium FP Pty Ltd (18) (as pleaded in Section 9.2 *above*).
217. At no time did the Defendant ask Lavell why:
- (a) at \$1,100,000 to \$2,200,000, the Second WMS Client Book Value Representation was \$1.55 million to \$2.65 million **less** than the First WMS Client Book Value Representation; and
 - (b) at \$850,000 to \$1,000,000, the Third WMS Client Book Value Representation was:
 - (i) \$2.75 million to \$2.9 million **less** than the First WMS Client Book Value Representation at \$3.75 million; and/or
 - (ii) \$250,000 to \$1.2 million **less** than the Second WMS Client Book Value Representation at \$1.1 million to \$2.2 million.
218. On or around 25 November 2016:
- (a) Lavell expressed his preliminary view to the Defendant that while the sale contract for the Client Book should have both Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18) as sellers, all of the proceeds should be paid to Capricorn Securities Pty Ltd (19) as the AFSL holder;
 - (b) the Defendant received an advice from Grants Law Firm to the effect that (inter alia) (**Grants Advice**):
 - (i) enquiries should be made with Ramsden Lawyers as to how the proceeds of the sale of the Client Book would be apportioned between Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18);
 - (ii) Ramsden Lawyers, amongst other entities, had securities over Iridium FP Pty Ltd (18) but not Capricorn Securities Pty Ltd (19); and

- (iii) *“following a better understanding of the issues”* raised in the Grants Advice *“and a proposed method of moving forward”* the Defendant should then immediately provide full details of these items to ASIC and *“seek any comment from them with respect to proceeding in that manner”*.
219. On or about 30 November 2016 at 5.34pm, the Defendant received an email from Julian Blanchard of Grants Law Firm which forwarded an email that he had earlier sent to Ramsden (amongst others) (**Grants Ramsden Email**) to the effect that the contracts giving rise to the income stream were between Capricorn Securities Pty Ltd (19) and Macquarie and TAL, not Iridium FP Pty Ltd (18) and those companies.
220. On or about 1 December 2016 at 3.35pm, the Defendant received an email from Ramsden (**the Ramsden Crest Email**) to the effect that (inter alia):
- (a) the purchaser was insisting on the Defendant’s consent to the sale of the Client Book;
 - (b) it was the position of both Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18) that the going concern of the business and the assets were for the benefit of Iridium FP Pty Ltd (18) notwithstanding that Capricorn Securities Pty Ltd (19) was the entity to which the income was actually paid;
 - (c) the distribution of the net proceeds of the sale was still being calculated, but that secured parties would receive close to the full balance which was not retained by Crest under the sale agreement; and
 - (d) the secured parties who would be paid from the proceeds would be Crest Accounting, Members Windings Up Pty Ltd, WMS and Ramsden Lawyers.
221. On 2 December 2016, the Defendant instructed Grants Law Firm to send a letter to Ramsden Lawyers communicating that the *“liquidators of the shareholder company do not oppose the sale contract”*.
222. By written contract dated 2 December 2016, Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18) sold to Crest their Financial Planning Business (comprising Capricorn Securities Pty Ltd (19)’s Client Book, being its entitlement to annual trail income), for \$900,000 (**the Client Book Sale Agreement**).
223. By special condition 7.1 of the Client Book Sale Agreement, it was a pre-condition to completion of the Client Book Sale Agreement that Crest would enter into a consultancy agreement with the director of the seller, MAI on terms which required

MAI to provide consultancy services for two years from the date of completion for the total consideration of \$400,000.

224. The shares in MAI were owned by Astro Holdings Pty Ltd (1A), the shares of which were, in turn, as pleaded *above*, owned by Marlborough.
225. By Deed dated 2 December 2016, Crest and BPW agreed that BPW would provide consulting services to Crest for a total fee of \$400,000 (**the Crest Consulting Agreement**).
226. The Crest Consulting Agreement was entered into in purported compliance with special condition 7.1 of the Client Book Sale Agreement.
227. At no time did the Defendant provide full details of the Client Book Sale (or any matters pertaining to it) to ASIC nor did he “*seek any comment from them with respect to proceeding in that manner*”.
228. The Client Book sale resulted in (*inter alia*):
 - (a) at least the following payments from the proceeds being made to the following secured creditors of Iridium FP Pty Ltd (18):
 - (i) \$557,568.40 to Ramsden Lawyers; and
 - (ii) \$54,752.20 to WMS;
 - (b) payments of:
 - (i) \$63,432.41 being paid on behalf of Airlie Beach (MA) Pty Ltd (21) to the Office of State Revenue, NSW; and
 - (ii) \$42,300 being paid on behalf of MM Prime Pty Ltd (20) to the Office of State Revenue, Western Australia;
 - (c) payments of \$89,943.64 and \$85,939.41 to Mercedes Benz Financial Services and Toyota Financial Services;
 - (d) distribution of the entirety of the proceeds by 6 February 2017; and
 - (e) no proceeds being distributed to Iridium Holdings (1) (as shareholder of Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18)).

229. The Defendant, as liquidator of Iridium Holdings (1) (being the sole shareholder of Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18)), ought not to have consented to the Client Book sale in circumstances where:
- (a) the First WMS Client Book Value Representation placed a significantly greater value on the Client Book than the Second WMS Client Book Value Representation or the Third WMS Client Book Value Representation;
 - (b) the Defendant had not obtained any independent valuation of the Client Book;
 - (c) the Defendant had not asked Lavell why there was so significant a difference between the three valuations, respectively;
 - (d) the maker of the value representations (WMS) was a secured creditor of one of the vendors (Iridium FP Pty Ltd (18));
 - (e) Chesterton of Crest had previously been the accountant for the MA Group;
 - (f) Crest Accountants Pty Ltd was a secured creditor of one of the vendors (Iridium FP Pty Ltd (18));
 - (g) the Crest Offer involved a lucrative (\$400,000) “*consultancy fee*” to Marlborough;
 - (h) the Client Book sale to Crest had converted that “*consultancy fee*” to Marlborough to a “*consultancy fee*” to the Benchmark Group (which was under the effective control of Marlborough given the matters pleaded in paragraphs 78 and 79 *above*);
 - (i) the Defendant had sought no advice as to the benefit to Capricorn Securities Pty Ltd (19) and/or Iridium FP Pty Ltd (18) for the acceptance of the Crest Offer rather than one of the three alternatives from Advice First (two of which were for a higher amount for the Client Book);
 - (j) it was not in the interests of Iridium Holdings (1), as the holding company for Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18), to have those companies accept the Crest Offer rather than one of the three alternatives of the Advice First offer;
 - (k) in the premises of the Grants Advice, certain creditors had security over the assets of Iridium FP Pty Ltd (18) but not Capricorn Securities Pty Ltd (19);

- (l) in the premises of the Grants Ramsden email, the Defendant knew that Capricorn Securities Pty Ltd (19) was the entity that held the income-generating contracts, not Iridium FP Pty Ltd (18);
- (m) in the premises of the Ramsden Crest Email, the Defendant knew that:
 - (i) the controllers of the vendors proposed to structure the deal in such a way that Iridium FP Pty Ltd (18) would be the beneficiary of the sale proceeds and not necessarily Capricorn Securities Pty Ltd (19);
 - (ii) consequently, the secured parties would receive close to the full proceeds of the sale; and
 - (iii) as a result, Iridium Holdings (1) would receive no amount from the sale;
- (n) notwithstanding the Grants Advice, the Defendant had not informed ASIC of the sale of the Client Book nor sought ASIC's comment.

9.17.2 Matters relevant to the entry into the Client Book Sale

230. As at, and sufficiently prior to 2 December 2016 to enable entry into the Client Book Sale Agreement to be prevented:
- (a) the Defendant:
 - (i) was the liquidator of Iridium Holdings (1);
 - (ii) was, therefore, an officer of Iridium Holdings (1);
 - (b) Iridium Holdings (1) was the sole shareholder of Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18);
 - (c) the Defendant had the power to control the conduct of Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18):
 - (i) as pleaded in paragraph 59(d) *above* because he had been appointed liquidator of Iridium Holdings (1):
 - (1) he was an officer of Iridium Holdings (1) as per sub-section (f) of the definition of "*officer*" in sec. 9 of the Act;

- (2) his duty was to realise the assets of Iridium Holdings (1) and distribute the same to the creditors of the company;
- (3) Iridium Holdings (1) was the sole shareholder of most of the companies of the MA Group (as pleaded in **Table 1 of Schedule A** and listed in paragraph 9 above);
- (4) as the controller of the shareholder of those companies, he could:
 - (A) could call a general meeting of the same (by sec. 249F of the Act);
 - (B) remove and replace directors (by sec. 203C of the Act);
 - (C) request information concerning the assets and liabilities of those companies and, by virtue of his powers in (A) and (B), cause the requests to be answered;
 - (D) at such a general meeting, move and pass motions protecting the assets and income streams of those companies; and/or
 - (E) call in related entity loans of those companies to enable payment of creditors, and/or cause the liquidation of those companies;
- (5) he was therefore in a position to:
 - (A) investigate the assets and liabilities of those companies; and
 - (B) realise the assets of those companies for the benefit of the creditors of Iridium Holdings (1); and
- (6) he was able to use the control he would have as an officer of Iridium Holdings (1) to see to the payment of any liabilities held jointly and severally with the subsidiary companies of the MA Group from the assets or income streams of those companies;

- (ii) in particular, he had the power to:
 - (1) investigate the value of the Client Book;
 - (2) enquire of Lavell as to any reason for the difference between the value in the First WMS Client Book Value Representation and the Second WMS Client Book Value Representation;
 - (3) prevent the Client Book Sale Agreement from being entered into:
 - (A) by calling a general meetings of Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18);
 - (B) by moving a motion directing Marlborough not to enter into the agreement; or
 - (C) by removing Marlborough as director of Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18) and replacing him with an independent director;
- (d) the Defendant knew that he had the powers pleaded in (c) *above*;
- (e) the Defendant was able to inform ASIC about the circumstances surrounding the Client Book Sale and seek ASIC's comments regarding the same;
- (f) the Defendant knew or ought to have known that he should not permit the entry into the Client Book Sale, and that he should take the steps referred to above to prevent the said entry, because:
 - (i) he knew that he had received no independent valuation of the Client Book and the valuations he did have diverged in the order of \$2.75 million to \$3 million with no explanation for the same;
 - (ii) he knew that the Client Book Sale Agreement involved the lesser of the two offers which had been received; and
 - (iii) he knew that the Client Book Sale Agreement:
 - (1) was not on a commercial, arm's length basis because the purchaser Crest, through its related entity Crest Accountants Pty Ltd, was a secured creditor of the vendor; and

- (2) involved a lucrative “*consultancy fee*” to be paid to a Benchmark Group company with no consideration being given for the same, and with Marlborough to benefit from the same;
- (iv) Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18) were members of the GST Tax Consolidated Group;
- (v) Capricorn Securities Pty Ltd (19) was a member of the Income Tax Consolidated Group;
- (vi) he knew that the assets of Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18) could be called on and used to pay:
 - (1) Iridium Holding’s debts; and
 - (2) joint and several debts to the ATO as a member of the Tax Consolidated Groups;
- (vii) he knew that there was a real risk that the purchase price under the Client Book Sale Agreement was at an undervalue and that it was being entered into because it involved a “*consultancy fee*” for Marlborough which was not the subject of the Advice First offer; and
- (viii) he knew that he had not informed ASIC nor sought ASIC’s comments regarding the Client Book Sale notwithstanding the fact that he held legal advice (the Grants Advice) that he should do so.

9.17.3 Defendant’s Breach of sec. 180 and Breach of Common Law Duties

231. In the premises of the matters pleaded in paragraph 230 *above*, by failing to prevent the entry into the Client Book Sale Agreement using the powers at his disposal, the Defendant:

- (a) was in breach of **sec. 180 of the Act** as an officer of Iridium Holdings (1) because:
 - (i) Iridium Holdings (1) owed monies to creditors including the ATO both pursuant to the ATO statutory demand and as the head company of the Tax Consolidated Groups and the Defendant was aware of this fact;

(ii) no liquidator, exercising their powers and discharging their duties with the degree of care and diligence that a reasonable person would exercise if:

- (1) they were the liquidator of a company in the circumstances of Iridium Holdings (1); and
- (2) they occupied the office of, and had the same responsibilities as, liquidator of Iridium Holdings (1),

would:

- (3) fail to obtain an independent valuation of the Client Book; and
- (4) allow, and/or fail to prevent, the entry into the Client Book Sale Agreement;

(b) was in breach of the liquidators' duties as listed in **Schedule C** to this pleading, namely:

(i) **Liquidator's Duty No. 1:** to identify, take possession of and realise the company's assets, to investigate and determine the claims against the company and to apply the assets to the satisfaction of those claims in accordance with the statutory scheme of priority, because he:

- (1) failed to identify the value of the Client Book;
- (2) failed to determine whether it was the asset of Capricorn Securities Pty Ltd (19) or Iridium FP Pty Ltd (18); and
- (3) failed to prevent the entry into the Client Book Sale Agreement;

(ii) **Liquidator's Duty No. 2:** to become thoroughly acquainted with the affairs of the company, because:

- (1) being acquainted with the affairs of Iridium Holdings (1) included being acquainted with the affairs of its wholly owned subsidiaries, Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18); and

- (2) he failed to ascertain whether entry into the Client Book Sale Agreement was in the interests of Iridium Holdings (1).

9.17.4 Matters which may be taken into account under 45-1

232. The matters pleaded in:

- (a) paragraph 230 and 231 *above*, whether or not those matters are found to constitute a breach of any provision or duty, are matters which the Court may take into account under sec. 45-1 of the Insolvency Practice Schedule as:
- (i) a matter under sec. 45-1(4)(a), as they indicate that the Defendant has failed to faithfully perform his duties;
 - (ii) a matter under sec. 45-1(4)(d), as Capricorn Securities Pty Ltd (19), Iridium FP Pty Ltd (18), Iridium Holdings (1), and therefore the creditors of Iridium Holdings (1) suffered loss or damage by reason of the Defendant's failure to prevent entry into the Client Book Sale both because doing so deprived those companies (or either of them) of the trail income and doing was at risk of being at a considerable undervalue;
 - (iii) a matter under sec. 45-1(4)(e), as the Defendant's failure to:
 - (1) investigate the value of the Client Book; and
 - (2) prevent the entry into the Client Book Sale Agreement that was at real risk of being at an undervalue; and
 - (3) prevent the entry into the Client Book Sale Agreement where it appeared to involve a "*kick back*" referred to as a "*consultancy fee*" for Marlborough

is an omission likely to diminish public confidence in registered liquidators as a group due to the Defendant's abrogation of his role as liquidator in recovering and/or protecting assets for distribution to creditors;
- (b) paragraph 231(a) *above*, are matters which the Court may take into account under sec. 45-1 of the Insolvency Practice Schedule for the reasons pleaded in sub-paragraphs (a)(i), (ii) and (iii) above, and also because they are matters

under sec. 45-1(4)(b), namely a failure to act which gives rise to a breach of the Act (viz. sec. 180 of the Act); and

- (c) paragraph 231(b) *above*, are matters which the Court may take into account under sec. 45-1 of the Insolvency Practice Schedule for the reasons pleaded in sub-paragraphs (a)(i), (ii) and (iii) *above*.

9.18 PPI Rent Roll – Disclaimer of onerous property and engaging unlicensed agent

9.18.1 Circumstances of the PPI Rent Roll Disclaimer

233. As at on or about 22 July 2016, PPI Pty Ltd (9) managed approximately 237 rental properties located across Queensland, New South Wales (**NSW**) and Victoria (**Rent Roll**).
234. PPI Pty Ltd (9) was entitled to receive a 7.5% management commission from each respective property's rental remittance (**Management Commission**).
235. In or about late July 2016, the Defendant (as administrator of PPI Pty Ltd (9)) entered into an arrangement with Benchmark Property (**the Roll Arrangement**) whereby:
- (a) Benchmark Property would manage the properties on the Rent Roll on behalf of the liquidators of PPI Pty Ltd (9) in return for the Management Commission; and
- (b) Benchmark Property would negotiate the sale of the Rent Roll at a price suitable to the liquidators of PPI Pty Ltd (9) at no cost.

Particulars

The best particulars that the plaintiff is able to provide is that the Benchmark Property arrangement was an oral arrangement entered into on a date between 22 July 2016 and 28 July 2016.

236. On or about 9 September 2016, the Defendant (as liquidator of PPI Pty Ltd (9)) and Benchmark Property agreed to vary the Benchmark Property/PPI Pty Ltd (9) arrangement such that Benchmark Property would negotiate the sale of the Rent Roll at a price suitable to the liquidators of PPI Pty Ltd (9) in consideration for a commission of 10% of the sale price and the payment of costs associated with the sale (**the Varied Rent Roll Arrangement**).

Particulars

The Varied Benchmark Property/PPI Pty Ltd (9) arrangement was an oral agreement made between the Defendant on behalf of PPI Pty Ltd (9) and Young on behalf of Benchmark Property.

237. On or about 12 August 2016, the Defendant received a valuation of the Rent Roll from WMS dated 11 August 2016 (**WMS Rent Roll Valuation**).
238. The WMS Rent Roll Valuation:
- (a) noted that WMS had provided taxation and business services to the Iridium Holdings group of companies (the MA Group);
 - (b) valued the Rent Roll on a “*sum of parts*” basis for a “*going concern*” sale at \$390,000;
 - (c) valued the Rent Roll on a “*sum of parts*” basis for a “*forced*” sale at \$255,000;
 - (d) valued the Rent Roll on an “*in one line*” basis for a “*going concern*” sale at \$273,000; and
 - (e) valued the Rent Roll on an “*in one line*” basis for a “*forced*” sale at \$178,000.
239. By no later than on or about 12 September 2016, the Defendant was aware that Benchmark Property was not licensed to manage and sell that portion of the Rent Roll located in Victoria.

Particulars

- (a) On or about 9 September 2016, the Defendant was party to a telephone conversation with Lee Bragg of Worrells and Matthew Sargeant of Consumer Affairs Victoria in which Mr Sargeant said words to the effect that Benchmark Property may not have an appropriate licence to manage properties and collect rent in Victoria and that if it continued to do so it may become an issue for it.
 - (b) On or about 12 September 2016, the Defendant received by email a letter from Matthew Sargeant of Consumer Affairs Victoria in which Mr Sargeant noted that neither Benchmark Property nor its agents held a Victorian estates agents licence or mutual recognition of an interstate licence.
240. By no later than 21 October 2016, the Defendant was aware that Benchmark Property was not licensed to manage and sell that portion of the Rent Roll located in NSW.

Particulars

On or about 21 October 2016 at 3.41pm, the Defendant (amongst others) received an email from Young in which Young advised that Benchmark Property was only licensed in Queensland and that it was not undertaking to manage the properties held by PPI Pty Ltd (9) under its own licence but under the existing licences held by PPI Pty Ltd (9).

241. On or about 27 October 2016:

- (a) at approximately 10.22am, the Defendant asked Lavell if WMS could assist in selling the Rent Roll;
- (b) Lavell said that WMS could not assist in selling the Rent Roll in regional areas;
- (c) at approximately 10.38am, the Defendant asked Graeme Downie of Johnston Business Sales if he could assist in selling the Rent Roll;
- (d) Mr Downie said that he could not help ((a) to (d) together, the **PPI Marketing Inquiries**); and
- (e) at approximately 4.26pm, the Defendant attended a meeting at which Carey, Young and Maighan Brown of Benchmark Property were present (**27 October 2016 Meeting**).

242. At the 27 October 2016 meeting:

- (a) it was confirmed that Benchmark Property did not hold licences to act as a real estate agent in both Victoria and NSW; and
- (b) it was agreed that the liquidators of PPI Pty Ltd (9) would write to all of the remaining owners of properties (with the exception of the Airlie Beach Summit Apartments) advising them that PPI Pty Ltd (9) could “*no longer manage their properties and asking that they find new agents*”.

243. On or about 13 and 14 December 2016, the Defendant purported to disclaim, in writing pursuant to s.568(1) of the Act, the exclusive leasing and managing agency authority for 108 properties on the Rent Roll (**the PPI Disclaimer**).

Particulars

The specific properties are identified in signed notices which form part of the following documents lodged with ASIC: 7E8618796, 7E8618840, 7E8621983.

244. The Defendant did not obtain leave of the court pursuant to s.568(1A) of the Act for the PPI Disclaimer.
245. The WMS Rent Roll Valuation was not independent because:
 - (a) WMS had previously provided taxation and business services to the MA Group; and
 - (b) at the time of its completion, WMS was a secured creditor of PPI Pty Ltd (9) (as pleaded in Section 9.2 *above*);
246. In the premises of paragraph 238(a) herein, the Defendant knew that the WMS Rent Roll Valuation was not independent.
247. The Defendant (and Worrells) did not obtain an independent valuation of the Rent Roll.
248. Other than the PPI Marketing Enquiries, the Defendant:
 - (a) made no other inquiries with respect to the sale of the properties remaining on the Rent Roll; and
 - (b) did not attempt to market the properties remaining on the Rent Roll.
249. In the premises of the preceding paragraph, the Defendant made no proper attempt to sell the remaining properties on the Rent Roll before the PPI Disclaimer.
250. By failing to obtain an independent valuation of the Rent Roll and making no proper attempt to the sell the remaining properties on the Rent Roll before making the PPI Disclaimer, the Defendant failed to exercise the degree of care and diligence required of a registered liquidator.
251. Benchmark Property continued to receive the Management Commission under the Benchmark Property/PPI Pty Ltd (9) arrangement or Varied Benchmark Property / PPI Pty Ltd (9) arrangement until no earlier than 29 November 2016.
252. The Defendant was aware that Benchmark Property continued to receive the Management Commission under the Benchmark Property / PPI Pty Ltd (9)

arrangement or Varied Benchmark Property / PPI Pty Ltd (9) arrangement until no earlier than 29 November 2016.

Particulars

By letter dated 29 November 2019 addressed to ASIC, the Defendant advised ASIC of the agreement for Benchmark Property to receive the Management Commission and that the management of the properties *“will of course continue in the meantime as set out above.”*

253. In the premises of the preceding paragraph, and paragraphs 239 and 240, the Defendant permitted Benchmark Property to continue to receive the Management Commission for the NSW and Victorian properties despite knowing that Benchmark Property was not licensed to manage those properties.
254. By permitting Benchmark Property to continue to receive the Management Commission for the NSW and Victorian properties despite knowing that Benchmark Property was not licensed to manage those properties, the Defendant failed to exercise the degree of care and diligence required of registered liquidator.

9.18.2 Breach of sec. 180 regarding the PPI Rent Roll Disclaimer

255. As at the date of the PPI Rent Roll Disclaimer (13 and/or 14 December 2016):
- (a) the Defendant was:
 - (i) the liquidator of Iridium Holdings (1);
 - (ii) therefore, an officer of Iridium Holdings (1), as per sub-section (f) of the definition of *“officer”* in sec. 9 of the Act;
 - (iii) the liquidator of PPI Pty Ltd (9); and
 - (iv) therefore, an officer of PPI Pty Ltd (9), as per sub-section (f) of the definition of *“officer”* in sec. 9 of the Act;
 - (b) Iridium Holdings (1) was the sole shareholder of PPI Pty Ltd (9);
 - (c) the Defendant had the power to control the conduct of PPI Pty Ltd (9) because he was its liquidator as well as being the liquidator of its holding company, Iridium Holdings (1):

- (d) the Defendant's duty was to realise the assets of PPI Pty Ltd (9) and Iridium Holdings (1) and distribute the same to the creditors of the companies;
- (e) the Defendant was therefore in a position to:
 - (i) investigate the assets and liabilities of the companies; and
 - (ii) realise the assets of those companies for the benefit of the creditors of PPI Pty Ltd (9) and Iridium Holdings (1); and
- (f) in particular, the Defendant had the power to:
 - (i) investigate the value of the PPI Rent Roll, including by obtaining an independent valuation; and
 - (ii) not disclaim the rent roll;
- (g) the Defendant knew that he had the powers pleaded in subparagraphs (c), (e) and (f) *above*;
- (h) the Defendant knew or ought to have known that he should not disclaim the PPI Rent Roll at all, or in the absence of an independent valuation of the same, because he knew, as was the fact:
 - (i) that he had seen no documents nor received material or instructions indicating a reliable, independently provided value of the PPI Rent Roll;
 - (ii) PPI Pty Ltd (9) was a member of the GST Tax Consolidated Group;
 - (iii) PPI Pty Ltd (9) was a member of the Income Tax Consolidated Group;
 - (iv) he knew that PPI Pty Ltd's (9) assets could be called on and used to pay:
 - (1) Iridium Holding's (1) debts; and
 - (2) joint and several debts to the ATO as a member of the Tax Consolidated Groups; and
 - (v) that permitting disclaiming the PPI Rent Roll would deprive the creditors of both Iridium Holdings (1) and PPI Pty Ltd (9) of the distribution of the asset value on sale of the PPI Rent Roll.

256. In the premises of the matters pleaded in paragraph 255 *above*, by disclaiming the PPI Rent Roll the Defendant:

(a) was in breach of **sec. 180 of the Act** as an officer of PPI Pty Ltd (9) and Iridium Holdings (1) because:

(i) no liquidator, exercising their powers and discharging their duties with the degree of care and diligence that a reasonable person would exercise if:

(1) they were the liquidator of a company in the circumstances of Iridium Holdings (1); and

(2) they occupied the office of, and had the same responsibilities as, liquidator of Iridium Holdings (1), and/or

(3) they were the liquidator of a company in the circumstances of PPI Pty Ltd (9); and

(4) they occupied the office of, and had the same responsibilities as, liquidator of PPI Pty Ltd (9),

would:

(5) fail to investigate the value of the PPI Rent Roll;

(6) fail to properly market the PPI Rent Roll; and

(7) disclaim the PPI Rent Roll;

(b) was in breach of the liquidators' duties as listed in **Schedule C** to this pleading, namely:

(i) **Liquidator's Duty No. 1:** to identify, take possession of and realise the company's assets, to investigate and determine the claims against the company and to apply the assets to the satisfaction of those claims in accordance with the statutory scheme of priority, because he:

(1) failed to identify the assets of PPI Pty Ltd (9) (and therefore Iridium Holdings (1)) by failing to obtain an independent valuation of the PPI Rent Roll;

- (2) failed to determine whether the PPI Rent Roll should be marketed for sale; and
 - (3) disclaimed the PPI Rent Roll;
- (ii) **Liquidator's Duty No. 2:** to become thoroughly acquainted with the affairs of the company, because:
- (1) being acquainted with the affairs of PPI Pty Ltd (9) included ascertaining the value of the PPI Rent Roll from an independent valuer; and
 - (2) being acquainted with the affairs of Iridium Holdings (1) included being acquainted with the affairs of its wholly owned subsidiary, PPI Pty Ltd (9); and
- (iii) **Liquidator's duty no. 4:** to exercise his particular professional skill and a high standard of care and diligence in the performance of his duties because:
- (1) failed to identify the assets of PPI Pty Ltd (9) (and therefore Iridium Holdings (1)) by failing to obtain an independent valuation of the PPI Rent Roll;
 - (2) failed to determine whether the PPI Rent Roll should be marketed for sale; and
 - (3) disclaimed the PPI Rent Roll.

9.18.3 PPI Rent Roll Disclaimer – Matters under sec. 45-1 Insolvency Practice Schedule

257. The matters pleaded in:

- (a) paragraphs 255 to 256 *above*, whether or not those matters are found to constitute a breach of any provision or duty, are matters which the Court may take into account under sec. 45-1 of the *Insolvency Practice Schedule* as:
 - (i) a matter under sec. 45-1(4)(a), as they indicate that the Defendant has failed to faithfully perform his duties;

- (ii) a matter under sec. 45-1(4)(d), as PPI Pty Ltd (9), the creditors of PPI Pty Ltd (9) and/or the creditors of Iridium Holdings (1) suffered loss or damage by reason of the Defendant's disclaimer of the PPI Rent Roll both because doing so deprived those companies (or either of them) of the asset value of the Rent Roll;
- (iii) a matter under sec. 45-1(4)(e), as the Defendant's:
 - (1) failure to investigate the value of PPI Rent Roll; and
 - (2) failure to properly market the PPI Rent Roll; and
 - (3) disclaimer of the PPI Rent Roll,

are omissions likely to diminish public confidence in registered liquidators as a group due to the Defendant's abrogation of his role as liquidator in recovering and/or protecting assets for distribution to creditors;
- (b) paragraph 256(a) *above*, are matters which the Court may take into account under sec. 45-1 of the *Insolvency Practice Schedule* for the reasons pleaded in sub-paragraphs (a)(i), (ii) and (iii) above, and also because they are matters under sec. 45-1(4)(b), namely a failure to act which gives rise to a breach of the Act (*viz.* sec. 180 of the Act); and
- (c) paragraph 256(b) *above*, are matters which the Court may take into account under sec. 45-1 of the *Insolvency Practice Schedule* for the reasons pleaded in sub-paragraphs (a)(i), (ii) and (iii) above.

10.0 Members' Voluntary Windings Up

10.1 Relevant Circumstances

258. As at 30 November 2016:

- (a) Iridium Holdings (1) was the sole shareholder of each of SS Residential NSW Pty Ltd (17), Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18);
- (b) the Defendant was the liquidator of Iridium Holdings (1), having been appointed on 22 July 2016;

- (c) Richard Marlborough was the sole director of SS Residential NSW Pty Ltd (17), Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18);
- (d) Iridium Holdings (1) was the representative member of the Income Tax Consolidated Group of which 18 of the MA Group companies were members, including SS Residential NSW Pty Ltd (17) and Capricorn Securities Pty Ltd (19);
- (e) Iridium Holdings (1) was the representative member of the GST Tax Consolidated Group of which 18 of the MA Group companies were members, including SS Residential NSW Pty Ltd (17), Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18);
- (f) the ATO had notified the Defendant of the existence and members of the Income Tax Consolidated Group and GST Tax Consolidated Group by letter dated 1 September 2016;
- (g) by reason of being members of the Income Tax Consolidated Group (and there being no relevant Tax Sharing Agreement), each of SS Residential NSW Pty Ltd (17) and Capricorn Securities Pty Ltd (19) was jointly and severally liable for the Income Tax Group liability;
- (h) by reason of being a member of the GST Tax Consolidated Group (and there being no relevant Tax Sharing Agreement), each of SS Residential NSW Pty Ltd (17), Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18) was jointly and severally liable for the GST Group liability;
- (i) the ATO had served statutory demands upon 16 companies in the MA Group, which included Iridium Holdings (1), Silverback Constructions Pty Ltd (4), Members Alliance Rocket Pty Ltd (7), PPI Pty Ltd (9) and Image Building Group QLD Pty Ltd (11) (**Statutory Demands**) in circumstances where each of these companies (**Statutory Demand Recipients**) were members of both the Income Tax Group and the GST Group;
- (j) SS Residential NSW Pty Ltd (17) and Capricorn Securities Pty Ltd (19) were jointly and severally liable for the income tax debts identified in the Statutory Demands;
- (k) SS Residential NSW Pty Ltd (17), Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18) were jointly and severally liable for the GST debts identified in the Statutory Demands;

- (l) the Statutory Demands had not been met; and
- (m) each of the Statutory Demand Recipients had been placed in liquidation, with the Defendant appointed as liquidator.

10.2 Steps Undertaken

259. On or about 3 December 2016, the Defendant prepared a Members' Voluntary Liquidation Appointment Package for SS Residential NSW Pty Ltd (17).

Particulars

File Note by "JB" dated 3 December 2016 in the Worrells document entitled "*Potential Report*".

260. On 22 December 2016:

- (a) the Defendant attended a meeting of SS Residential NSW Pty Ltd (17) with both Marlborough and Young, at which Marlborough signed:
 - (i) a resolution of the directors that SS Residential NSW Pty Ltd (17) be voluntarily wound up in a members' voluntary winding up; and
 - (ii) a declaration of solvency;

Particulars

- (1) Defendant's file note dated 23 December 2016;
 - (2) Statement of Resolutions by Directors dated 22 December 2016; and
 - (3) Form 520 Declaration of Solvency dated 22 December 2016.
- (b) the Defendant and Raj Khatri signed a Consent to Act as Liquidators of SS Residential NSW Pty Ltd (17) pursuant to sec. 532(9) of the Act.

Particulars

Consent to Act as Liquidators dated 22 December 2016.

261. On 12 January 2017, at a general meeting of SS Residential NSW Pty Ltd (17), the Defendant, in his capacity as liquidator of the sole shareholder of SS Residential NSW Pty Ltd (17) (namely, Iridium Holdings (1)), supported a resolution that SS

Residential NSW Pty Ltd (17) be wound up voluntarily and that the Defendant and Khatri be appointed liquidators.

Particulars

The resolution made on 12 January 2017.

262. On or about 3 December 2016, Worrells prepared a Members' Voluntary Liquidation Appointment Package for Capricorn Securities Pty Ltd (19).

Particulars

Worrells Members' Voluntary Liquidation Appointment Package.

263. On or about 3 December 2016, Worrells prepared a Members' Voluntary Liquidation Appointment Package for Iridium FP Pty Ltd (18).

Particulars

Worrells Members' Voluntary Liquidation Appointment Package.

264. On 30 January 2017, the Defendant, in his capacity as liquidator of the sole shareholder of Capricorn Securities Pty Ltd (19) (namely, Iridium Holdings (1)), sent a letter marked to Marlborough's attention requesting that he immediately call a meeting of members of the company to consider resolutions that Capricorn Securities Pty Ltd (19) be wound up voluntarily and that the Defendant and Khatri be appointed liquidators.

Particulars

Letter from the Defendant to Capricorn Securities Pty Ltd (19) dated 30 January 2017.

265. On 6 February 2017, the Defendant and Khatri signed Consents to Act as Liquidators of Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18), pursuant to sec. 532(9) of the Act .

Particulars

Consent to Act as Liquidators (Capricorn Securities Pty Ltd (19)) dated 6 February 2017.

Consent to Act as Liquidators (Iridium FP Pty Ltd (18)) dated 6 February 2017.

266. On 7 February 2017, Marlborough signed declarations of solvency with respect to Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18).

Particulars

Form 520 Declaration of Solvency (Capricorn Securities Pty Ltd (19)) dated 7 February 2017.

Form 520 Declaration of Solvency (Iridium FP Pty Ltd (18)) dated 7 February 2017.

267. On 10 February 2017, at general meetings of Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18), the Defendant, in his capacity as liquidator of the sole shareholder of Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18) (being Iridium Holdings (1)), supported resolutions that Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18) be wound up voluntarily and that the Defendant and Khatri be appointed liquidators.

Particulars

Resolution of Capricorn Securities Pty Ltd (19) made on 10 February 2017.

Resolution of Iridium FP Pty Ltd (18) made on 10 February 2017.

10.3 Wrongdoing by the Defendant

268. The declarations of solvency signed by Marlborough in respect of SS Residential NSW Pty Ltd (17), Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18) were not made on reasonable grounds, in that they did not state the company's tax liabilities.

Particulars

Each declaration of solvency attached a statement of assets and liabilities which stated that each of the companies' liabilities was \$Nil.

269. The Defendant, having regard to his knowledge of the matters stated in paragraph 258, knew or ought to have known that:
- (a) SS Residential NSW Pty Ltd (17), Capricorn Securities Pty Ltd (19) and Iridium FP Pty Ltd (18) (**the Subject Companies**) were insolvent and, therefore, could not be wound up via members' voluntary liquidations;
 - (b) as a registered liquidator, he could not, and should not, either initiate or implement any process by which the Subject Companies were placed in liquidation via members' voluntary liquidations;

- (c) Marlborough could not, and should not, swear a declaration of solvency because he (Marlborough) could not form the opinion required by sec. 494(1) of the Act;
- (d) any declarations of solvency sworn by Marlborough would, therefore, not be made on reasonable grounds in contravention of sec. 494(4) of the Act;
- (e) he was unable to sign, and ought not to have signed, a Consent to Act as Liquidator in respect of the Subject Companies in light of the matters pleaded in sub-paragraphs (a) to (d) *above*; and
- (f) if the Subject Companies were to be placed in liquidation, then the process should have been initiated by creditors' voluntary liquidations in each instance.

10.4 Members' Voluntary Windings Up – Matters under 45-1

270. The matters in paragraphs 268 and 269 *above*, whether or not those matters are found to constitute a breach of any provision or duty, are matters which the Court may take into account under sec. 45-1 of the *Insolvency Practice Schedule*:
- (a) under sec. 45-1(4)(a), because they indicate that the Defendant has failed to faithfully perform his duties as a registered liquidator; and
 - (b) under sec. 45-1(4)(e), because the conduct of the Defendant in consenting to be the liquidator of companies in circumstances where he knew or ought to have known that the declarations of solvency were false is a matter which may or would diminish public confidence in registered liquidators as a group.

11.0 Accepting Appointments of Capricorn Securities, Iridium FP and SS Residential

11.1 Acceptance of Appointments

271. The Defendant consented to appointments as liquidator of SS Residential NSW Pty Ltd (17), Iridium FP Pty Ltd (18) and Capricorn Securities Pty Ltd (19) (**the Subject Companies**) as pleaded in Section 10.2 *above*.
272. As liquidator of the Subject Companies, the Defendant was required to, and had the power to:

- (a) investigate transactions which occurred prior to the liquidation involving the redirection or disposition of assets and income streams; and
 - (b) in the premises, investigate the matters pleaded in:
 - (i) Section 9.5 *above* regarding the SS Residential Deed; and
 - (ii) Sections 9.6 to 9.15 *above* regarding the Capricorn Securities Management Deed and the Iridium FP Management Deed.
273. By **Principal 1** of the ARITA Code, *“In addition to the obligation to comply with the law, Members must exhibit the highest levels of integrity, objectivity and impartiality in all aspects of administrations and practice management”*.
274. By **Principal 2** of the ARITA Code, *“When accepting or retaining an appointment the Practitioner must at all times during the administration be, and be seen to be, independent”*.
275. By **Liquidator’s Duty No. 6**, a liquidator must not only be independent of the company but must also be seen to be independent of the company.

11.2 Breach of ARITA Code and Liquidator’s Duty No. 6

276. By accepting the appointments as liquidator of the Subject Companies:
- (a) the Defendant breached Principal 1 of the ARITA Code by placing himself in a position of conflict where he accepted the appointment to a position which:
 - (i) would require him to investigate his own conduct, being that conduct pleaded in paragraphs 89 to 192 *above*, and, in doing so, acted with a lack of integrity, objectivity and impartiality; and
 - (ii) he knew or ought to have known would require him to investigate his own conduct;
 - (b) the Defendant breached Principal 2 of the ARITA Code by failing to be, and failing to be able to be seen to be, independent because he placed himself in a position of conflict where he accepted the appointment to a position which:
 - (i) would require him to investigate his own conduct, being that conduct pleaded in paragraphs 89 to 192 *above*, and, in doing so, acted with a lack of integrity, objectivity and impartiality; and

- (ii) he knew or ought to have known would require him to investigate his own conduct; and
- (c) the Defendant breached Liquidator's Duty No. 6 by failing to be independent of the Subject Companies and failing to be able to be seen to be independent, because he accepted the appointment to a position which:
 - (i) would require him to investigate his own conduct, being that conduct pleaded in paragraphs 89 to 192 *above*, and, in doing so, acted with a lack of integrity, objectivity and impartiality; and
 - (ii) he knew or ought to have known would require him to investigate his own conduct.

11.3 Matters to be Taken into Account under 45-1

277. The matters pleaded in paragraph 276 *above* are matters which the Court may take into account under sec. 45-1 of the Insolvency Practice Schedule as:
- (a) matters under sec. 45-1(4)(a), as they indicate that the Defendant has failed to faithfully perform his duties;
 - (b) matters under sec. 45-1(4)(d), as they indicate that the creditors of the Subject Companies would have suffered, or would have been likely to suffer, loss and damage because the Defendant accepted an appointment which placed himself in a position of conflict such that:
 - (i) he would not (and did not) investigate the transactions pleaded in Sections 9.5 and 9.6 to 9.15 *above*; and
 - (ii) he would not (and did not) take any steps to recover the redirected or disposed of assets and income streams; and
 - (c) matters under sec. 45-1(e), because the acceptance to the position of liquidator involving such conflict and lack of independence is an act which is likely to diminish public confidence in registered liquidators as a group.

12.0 Declarations of Independence, Relevant Relationships and Indemnities

12.1 Content and Signing of the DIRRIs

278. On or about 22 July 2016, the Defendant signed a Declaration of Independence, Relevant Relationships and Indemnities (**DIRRI**) as required by sec. 506A(2) of the Act in respect of the following companies:

- (a) Iridium Holdings (1);
- (b) Iridium Home Loans Pty Ltd (3);
- (c) Iridium Mortgage Fund Pty Ltd (2);
- (d) Laver Resources Pty Ltd (5);
- (e) MAIC Human Resources Pty Ltd (8);
- (f) PPI Pty Ltd (9);
- (g) Members Alliance Rocket Pty Ltd (7);
- (h) Silverback Investments Pty Ltd (10);
- (i) Silverback Constructions Pty Ltd (4); and
- (j) Syree Enterprises Pty Ltd (6)

(together, the **DIRRIs**).

279. Each of the DIRRIs referred to in the preceding paragraph contained the following statement:

"On 11 March 2015 we provided a written advice to WMS Chartered Accountants in respect of the affairs of Mr Colin MacVicar, one of the directors and/or shareholders of a number of the above listed companies. The advice provided a general overview of:

The voidable disposition provisions of the Corporations Act

The Australian Taxation Office director penalty regime

A director's duty to prevent companies from trading whilst insolvent

Court decisions in respect of the payment of dividends to shareholders

In some cases we related the above mentioned to the companies' affairs, however at no time did we provide advice on how to restructure Mr

MacVicar's affairs, how Mr MacVicar should deal with his affairs in light of the above provision, or instruct WMS Chartered Accountants on how to record any transactions that Mr MacVicar or the companies had undertaken.

We do not believe that providing this advice to Mr MacVicar results in a conflict of interest in us taking the appointment as liquidators/voluntary administrators of the companies because we have been informed that Mr MacVicar has not been involved in the operations of the Members Alliance trading companies for some time. Mr MacVicar is not a current director of the Members Alliance trading companies, and the advice we provided was general in nature."

280. In the premises of the two preceding paragraphs, and the content of the MacVicar Advice as pleaded above, the Defendant failed to adequately disclose in the DIRRIs the nature of his relationship with MacVicar and the nature of the MacVicar Advice:
- (a) contrary to clause 6.10.3 of the ARITA code; and, further, or alternatively
 - (b) contrary to the spirit of clause 6.8.1 of the ARITA Code.

12.2 Content of the DIRRIs – Matters under sec. 45-1

281. The matters pleaded in paragraph 278 to 280 above, whether or not those matters are found to constitute a breach of any provision or duty, are matters which the Court may take into account under sec. 45-1 of the *Insolvency Practice Schedule* because:
- (a) under sec. 45-1(4)(a), they indicate that the Defendant has failed to faithfully perform his duties; and
 - (b) under sec. 45-1(4)(e), the Defendant's failure to declare the relationship with MacVicar is an omission likely to diminish public confidence in registered liquidators as a group.

13.0 FAILURE TO OBTAIN BOOKS AND RECORDS

282. On or about the dates listed in the column headed "Date" of the table below, the Defendant lodged with ASIC reports pursuant to sec. 533 of the Act for the companies listed in the column headed "Company" of the table below (**Section 533 Reports**):

Table 9: Lodgement of Section 533 Reports

	Date	Company
(a)	3/03/17	Iridium Holdings (1)
(b)	7/03/17	Laver Resources Pty Ltd (5)
(c)	10/03/17	Syree Enterprises Pty Ltd (6)
(d)	14/03/17	Silverback Constructions Pty Ltd (4)
(e)	20/03/17	Iridium Financial Planning Pty Ltd (18)
(f)	20/03/17	Iridium Home Loans Pty Ltd (3)
(g)	20/03/17	SS Residential NSW Pty Ltd (17)
(h)	21/03/17	Iridium Mortgage Fund Pty Ltd (2)
(i)	21/03/17	Members Alliance Rocket Pty Ltd (7)
(j)	21/03/17	Silverback Investments Pty Ltd (10)
(k)	23/03/17	HSINIF Pty Ltd (13)
(l)	23/03/17	MAIC Human Resources Pty Ltd (8)
(m)	23/03/17	PPI Pty Ltd (9)
(n)	23/03/17	Capricorn Securities Pty Ltd (19)
(o)	18/04/17	Image Building Group QLD Pty Ltd (11)

283. In each of the Section 533 Reports, the Defendant:

- (a) declared that he had obtained or inspected the company's books and records;
and
- (b) made a declaration as to the adequacy of the company's books and records.

Particulars

The Defendant made the declarations as to the adequacy of each company's books and records as set out in the table below.

Table 10: Declarations as to Adequacy of Books and Records

Company name	Books and records adequate?
Iridium Holdings (1)	No
Laver Resources Pty Ltd (5)	No
Syree Enterprises Pty Ltd (6)	Yes
Silverback Constructions Pty Ltd (4)	No
Iridium Financial Planning Pty Ltd (18)	No
Iridium Home Loans Pty Ltd (3)	Yes
SS Residential NSW Pty Ltd (17)	Yes

Company name	Books and records adequate?
Iridium Mortgage Fund Pty Ltd (2)	No
Members Alliance Rocket Pty Ltd (7)	Yes
Silverback Investments Pty Ltd (10)	No
HSINIF Pty Ltd (13)	No
MAIC Human Resources Pty Ltd (8)	No
PPI Pty Ltd (9)	Yes
Capricorn Securities Pty Ltd (19)	No
Image Building Group QLD Pty Ltd (11)	No

284. From in or about July 2016, the Defendant had in his possession or control approximately 761 boxes of records related to companies forming the MA Group.

285. As at on or about 14 March 2017:

- (a) the Defendant had not reviewed all of the 761 boxes of records; and
- (b) the Defendant was of the belief that the records of the companies comprising the MA Group were intermingled; and
- (c) the Defendant was not able to identify which records related to which company in the MA Group;

Particulars

The matters pleaded in (a) to (c) above are to be inferred from the contents of the Defendant's letter addressed to ASIC dated 14 March 2017.

286. In the premises of the two preceding paragraphs, the Defendant:

- (a) could not have properly formed an opinion as to whether each of the companies in relation to which he lodged the Section 533 Reports maintained adequate books and records; and
- (b) knew that he could not have properly formed such an opinion.

Particulars

That the Defendant knew he was unable to properly form an opinion as to whether each of the companies in relation to which he lodged the Section 533 Reports maintained adequate books and records is to be inferred from the following matters:

- (c) the Defendant's knowledge of the existence of the 761 boxes or records;
 - (d) that the Defendant had not reviewed the contents of the 761 boxes;
 - (e) the Defendant's belief that the records of the MA Group were intermingled;
 - (f) that the Defendant was not able to identify which records related to which company of the MA Group; and
 - (g) the Defendant's experience as a liquidator, having first been registered in 2002.
287. In the premises of the preceding paragraph, by lodging the Section 533 Reports containing a declaration as to the adequacy of each of the company's books and records, the Defendant made statements that he knew were false or misleading in a material particular, contrary to sec.1308(2) of the Act.
288. As at about 6 April 2017, there were approximately 16 terabytes of computer records of the companies of the MA Group held on servers (**the MA Group Computer Records**).
289. By in or about August 2016, and as at no later than 6 April 2017, the Defendant was aware of the MA Group Computer Records.

Particulars

- (a) The Defendant's knowledge is to be inferred from information received by the Defendant and/or recorded in Worrells' file note system referring to the same:
 - (i) on 11 August 2016, noting that *"there had been a whole room at Helensvale that had contained servers and a whole IT department maintaining the servers..."*;
 - (ii) on 20 September 2016, noting *"discussion with JB [a reference to the Defendant] the size of the servers is larger than the Worrells QLD group 35 servers which is a massive amount..."*;
 - (iii) on 19 January 2017, noting *"we need to sort a contact email from Chirs Beaumont and email him to sort an estimate of the costs to retrieve the data and to arrange the best way forward with the collection process"*;

- (iv) on 17 February 2017, noting *“I have left a message for Rob Atkins from ICT Forensics to return my call regarding copying server data”*; and
 - (v) on 23 February 2017, noting [editing for typographical errors] *“Discussed with Rob [Atkins] the background to the MA business, the data storage location, number of servers, etc. Rob is going to consider the info provided and revert to us in the early days of next week to work out a quote, timeline, etc. He also discussed the possibility of assembling the data using a new ix style platform which would make the data more user friendly for both the liquidators and ASIC”*; and
- (b) the Defendant’s knowledge of the existence of the MA Group Computer Records is also to be inferred from the contents of his letter addressed to ASIC dated 6 April 2017.
290. The Defendant did not obtain or inspect the MA Group Computer Records.
291. In the premises of the three preceding paragraphs, the Defendant’s declarations in each of the Section 533 reports that he had obtained or inspected the company’s books and records were false.
292. By failing to obtain the MA Group Computer Records, the Defendant failed to discharge his obligations as a registered liquidator to obtain relevant books and records of the companies in relation to which he lodged the Section 533 Reports.
293. The Defendant’s failure as pleaded above is a matter the Court may take into account under:
- (a) sec. 45-1(4)(a) of the *Insolvency Practice Schedule* as it indicates that the Defendant has failed to faithfully perform his duties;
 - (b) sec. 45-1(4)(b) of the *Insolvency Practice Schedule* as it indicates that the Defendant has failed to comply with the Act; and
 - (c) sec. 45-1(4)(e) of the *Insolvency Practice Schedule* because the failure to comply with the Act in this regard may have a detrimental effect on public confidence in registered liquidators as a group.

14.0 RELIEF SOUGHT BY ASIC

14.1 Cumulative Effect of the Defendant's Conduct

294. The cumulative effect of the conduct of the Defendant pleaded herein was to deprive MA Group Companies, Iridium Holdings (1) and the creditors of the companies of which he was a liquidator, of assets and income streams from which distributions could have been made in the liquidations of those companies, where:

- (a) **the conduct of the Defendant** is a reference to the conduct pleaded in:
- (i) Section 8.4 – the Defendant's alteration of the WMS Powerpoint;
 - (ii) Section 9.4 – appointment of the Defendant as liquidator of MA Group Companies;
 - (iii) Section 9.5.2 – the Defendant should have investigated and prevented the MacVicar Payment;
 - (iv) Section 9.5.3 – the Defendant's breach of sec. 180 and the common law duties regarding the MacVicar Payment;
 - (v) Section 9.5.8 – the Defendant's involvement regarding the SS Residential Deed;
 - (vi) Section 9.11 – the Defendant's knowledge and involvement in the Management Deeds;
 - (vii) Section 9.12 – the Defendant's involvement in Marlborough's contraventions regarding the Management Deeds;
 - (viii) Section 9.14 – the Defendant's breach of sec. 180 regarding the Management Deeds;
 - (ix) Section 9.16.2 – the Defendant's breach of sec. 180 regarding the Elderton Transaction;
 - (x) Section 9.16.3 – the Defendant's breach of liquidator's duties regarding the Elderton Transaction;
 - (xi) Section 9.17.2 – the Defendant's conduct regarding entry into the Client Book Sale;

- (xii) Section 9.17.3 – the Defendant’s breach of sec. 180 and liquidator’s duties regarding the Client Book Sale;
 - (xiii) Section 9.18.2 – the Defendant’s breach of sec. 180 regarding the PPI Rent Roll Disclaimer;
 - (xiv) Section 10.3 – the Defendant’s conduct regarding the Members’ Voluntary Liquidations;
 - (xv) Section 11.0 – the Defendant’s acceptance of appointments to Capricorn Securities Pty Ltd (19), Iridium FP Pty Ltd (18) and SS Residential NSW Pty Ltd (17);
 - (xvi) Section 12.0 – the Defendant’s declarations of independence, relevant relationships and indemnities; and
 - (xvii) Section 13.0 – the Defendant’s failure to obtain books and records.
- (b) **the assets and income streams** is a reference to assets and income streams as follows:
- (i) \$250,000 as the MacVicar Payment pleaded in paragraph 100(a) *above*;
 - (ii) not less than \$1,057,802.90, as pleaded in Section 9.7, being redirected income streams from MM Prime Pty Ltd (20), Capricorn Securities (19) and Airlie Beach (MA) Pty Ltd (21) pleaded in paragraphs 139, 142 and 145 *above*;
 - (iii) \$240,000 as the Elderton Transaction payments (Section 9.16) as pleaded in paragraph 207 *above*;
 - (iv) the Client Book, which had been valued by WMS at \$3.75 million in April 2016;
 - (v) the income stream from the Client Book received after sale by the purchaser of the same (which would have been received by Capricorn Securities Pty Ltd (19) and/or Iridium FP Pty Ltd (18) had the sale not occurred) of not less than \$2 million in the period from 2 December 2016 to 30 June 2018 and continuing thereafter;

- (vi) the \$893,936 distributed from the proceeds of the Client Book sale as pleaded in paragraph 228 *above* (albeit not in addition to the value of the Client Book itself); and
 - (vii) the PPI Rent Roll pleaded in Section 9.18 *herein*, which had been valued by WMS as between \$178,000 and \$390,000.
295. The conduct of the Defendant pleaded herein had, and/or was likely to have had and may have had, the effect of avoiding or reducing scrutiny being given to elements of the strategy and its implementation, because:
- (a) by deleting slides 2 and 3 of the WMS Powerpoint (as pleaded in Section 8.4 *above*), personnel of Worrells (other than the Defendant) would not have known of that aspect of the development of the strategy and therefore paid more attention to whether or not it was lawful and in the best interests of the companies of which the Defendant was or became liquidator;
 - (b) the preparation, terms of and entry into the Management Deeds (as pleaded in Section 9.6 *above*), would clothe the transactions to which they related, respectively, with superficial legitimacy (as pleaded in sub-paragraphs 146(b)(xii), 147(b)(iv), 148(b)(ii), 149(b)(ii), 150(b)(ii) and 151(b)(ii) *above*);
 - (c) by failing to advise ASIC of the Client Book Sale (as pleaded in paragraph 227 *above*), he did not have ASIC's comments in relation to the same and ASIC was not able to consider and scrutinise the terms of the sale, the consideration for the sale and the relationship with the purchaser;
 - (d) the liquidation of the MA Trading companies by member's voluntary liquidation (as pleaded in Section 10.0 *above*) rather than by creditor's voluntary liquidation avoided the scrutiny of creditors which would have attached to the latter;
 - (e) the acceptance of appointment as liquidator of Capricorn Securities Pty Ltd (19), Iridium FP Pty Ltd (18) and SS Residential NSW Pty Ltd (17) in the circumstances pleaded in Section 11.0 *above* prevented an independent liquidator from scrutinising the transactions pleaded in paragraph 272 *above*; and
 - (f) the contents and execution of the DIRRs (as pleaded in Section 12.0 *above*) would dissuade creditors from viewing the Defendant's conduct in the context of an absence of independence.

296. The Defendant consented to act as liquidator of MA Group companies (including Iridium Holdings (1)), as pleaded in Section 9.4 *above*, when he knew or ought to have known of the strategy (as defined in paragraph 58(c) *above*) and in the following circumstances:
- (a) he knew or ought to have known of the indebtedness to the ATO as pleaded in sub-paragraph 58(a) *above*;
 - (b) he knew or ought to have known of the Tax Consolidated Groups and the effect of the companies being in those groups as pleaded in sub-paragraph 58(b) *above*;
 - (c) he knew or ought to have known of the matters pleaded in sub-paragraphs 59(a) to 59(c) *above*, which were, in summary:
 - (i) the effect that the strategy would have on the companies of the MA Group and the creditors (*namely* to deprive creditors of companies in the MA Group of assets and income streams that would otherwise have been available for distribution);
 - (ii) that if the strategy was brought to fruition it would involve the breaches of secs 180(1), 181(1) and 182(1) of the Act by Marlborough; and
 - (iii) the professional advisors to the MA Group intended to enter into arrangements designed to give the payment of their fees priority over the payment of amounts owing to other creditors;
 - (d) he knew or ought to have known that, as pleaded in sub-paragraph 59(d) *above*, he could prevent those consequences if he was appointed liquidator of Iridium Holdings (1);
 - (e) he had been shown and given a copy of the **WMS Powerpoint** (as pleaded in paragraphs 60 to 63 *above*) and he knew or ought to have known of the matters pleaded in paragraph 64 *above*, in particular, that the strategy discussed in the 8 July 2016 meeting had been in development prior to that meeting;
 - (f) he had altered the WMS Powerpoint to delete slides that referred to the implementation of the strategy (slides 2 and 3) and made only the **Altered WMS Powerpoint** available to be viewed by Worrells personnel, as pleaded in paragraphs 65 and 66 *above*;

- (g) he knew by 24 July 2016, if he had not known earlier, that **the strategy** was not going to be or was not likely to be of benefit to companies in the MA Group and/or in the interests of creditors, as pleaded in paragraph 67 *above*;
- (h) he knew or ought to have known that, by 14 July 2016, the details of **the strategy** had been developed to the point that terms were being identified as to its practical implementation as pleaded in paragraph 71 *above* and, from the matters pleaded therein, he knew or ought to have known that the strategy and arrangements being developed:
 - (i) were not in the interests of the existing MA Group companies as pleaded in paragraph 72(a) *above*;
 - (ii) were not in the interests of creditors of the MA Group companies as pleaded in sub-paragraph 72(b) *above*; and
 - (iii) would reduce the funds available to meet debts owed to creditors as pleaded in sub-paragraph 72(c) *above*;
- (i) he knew or ought to have known of the consequences pleaded in paragraph 73 *above* if arrangements pleaded in paragraph 69 and 71 *above* were implemented;
- (j) he knew or ought to have known that, by 16 July 2016, further details as to the implementation of the strategy had been developed as pleaded in paragraphs 74 to 77 *above*; and
- (k) he knew or ought to have known of the transfer of employment of the staff as pleaded in Section 9.3 *herein*.

297. Notwithstanding the matters pleaded in paragraph 296 *above* the Defendant:

- (a) consented to act as liquidator of the MA Group companies as pleaded in Sections 10.0 and 11.0 *above*;
- (b) took no steps to prevent the implementation of the strategy or ameliorate the effects;
- (c) engaged in conduct designed to avoid or reduce scrutiny of the strategy as pleaded in paragraph 295 *above*.

298. The Court may take into account the cumulative nature and effect of the conduct of the Defendant under div. 45-1(4) of the Act.

299. The conduct of the Defendant pleaded in paragraph 294(a) *above*, together with the matters pleaded in paragraphs 295, 296 and 297 *above*, viewed cumulatively, constituted so gross a departure from, and abrogation of, the duties of a registered liquidator, as to warrant:
- (a) the cancellation of the Defendant's registration as a Registered Liquidator;
 - (b) a lifetime prohibition on the Defendant from reapplying for registration as a Registered Liquidator;
 - (c) a lifetime prohibition on the Defendant from consenting to any appointment and acting as a liquidator; and
 - (d) an order that the Defendant pay ASIC's costs.

14.2 Individual Items of the Defendant's Conduct

300. Each individual item of the Defendant's Conduct pleaded *herein* (being that conduct listed in paragraph 294(a) *above*) and the matters pleaded in paragraphs 295, 296 and 297 *above*, or any one of more item of the same taken in combination, is conduct which may be taken into account by the Court pursuant to div 45-1(4) of the *Insolvency Practice Schedule*.
301. The conduct of the Defendant pleaded *herein*, viewed as individual items of conduct or one or more item taken in combination, constituted so gross a departure from, and abrogation of, the duties of a registered liquidator, as to warrant:
- (a) the cancellation of the Defendant's registration as a Registered Liquidator;
 - (b) a lifetime prohibition on the Defendant from reapplying for registration as a Registered Liquidator;
 - (c) a lifetime prohibition on the Defendant from consenting to any appointment and acting as a liquidator; and
 - (d) an order that the Defendant pay ASIC's costs.

302. ASIC seeks the relief set out in paragraphs 1 to 5 of the Originating Process.

Date: 19 February 2021

A handwritten signature in black ink, appearing to read 'Glen Williams', written over a light grey rectangular background.

.....

Signed by Glen Williams

Lawyer for the Plaintiff

This pleading was prepared by Cate Heyworth-Smith QC, Scott Seefeld and Kate Slack of Counsel.

Certificate of lawyer

I, Glen Williams, certify to the Court that, in relation to the statement of claim filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 19 February 2021

A handwritten signature in black ink, appearing to read 'Glen Williams', written in a cursive style.

Signed by Glen Williams

Lawyer for the Plaintiff

Federal Court of Australia
District Registry: Queensland
Division: General

No. QUD693 of 2019

IN THE MATTER OF IRIDIUM HOLDINGS PTY LTD (IN LIQUIDATION) ACN 161 598 983, and of the other companies identified in the Schedule

BETWEEN

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

and

JASON WALTER BETTLES
Defendant

SCHEDULE A to the STATEMENT OF CLAIM

TABLE 1 - MA GROUP COMPANIES

No	Company Name	ACN	ABN	Former Company Name	Directors	Shareholders	Date registered with the ATO as GST consolidated group	Date of effect of registration with ATO as GST consolidated group	Date registered with ATO as income tax consolidated group	Date of effect of registration with ATO as income tax consolidated group	Date issued with statutory demand by ATO	Liquidator appointed	Administrator appointed
1	ACN 161 598 938 Pty Ltd (In Liquidation) (Iridium Holdings)	161 598 938	96 161 598 938	Iridium Holdings Pty Ltd	Marlborough (11.12.2012 to 04.08.2017) MacVicar (11.12.2012 to 13.07.2016) Domingo (16.06.2015 to 20.04.2016)	Astro Holdings Pty Ltd (50%) JT Prestige Pty Ltd (50%)	28.11.2014	01.07.2014	02.03.2015	01.07.2013	23.06.2016 (\$2,178,490.16)	McCann (13.07.2017 to present) Bettles (22.07.2016 to 13.07.2017) Khatri (22.07.2016 to 13.07.2017)	

No	Company Name	ACN	ABN	Former Company Name	Directors	Shareholders	Date registered with the ATO as GST consolidated group	Date of effect of registration with ATO as GST consolidated group	Date registered with ATO as income tax consolidated group	Date of effect of registration with ATO as income tax consolidated group	Date issued with statutory demand by ATO	Liquidator appointed	Administrator appointed
2	ACN 147 346 192 Pty Ltd (In Liquidation)	147 346 192	28 147 346 192	Iridium Mortgage Fund Pty Ltd	Marlborough (19.08.2014 to 04.08.2017; 12.11.2010 to 24.06.2013) Domingo (22.05.2015 to 12.04.2016; 24.06.2013 to 26.03.2014) MacVicar (23.10.2014 to 22.05.2015; 09.03.2012 to 19.08.2014; 12.11.2010 to 29.04.2011) Kelly (21.07.2014 to 09.10.2014) Meerkin (26.06.2013 to 26.03.2014) Jolley (18.05.2012 to 24.06.2013) Christensen (09.03.2012 to 18.05.2012) Heale (12.11.2010 to 29.04.2011)	Iridium Holdings (100%)	28.11.2014	01.07.2014	02.03.2015	01.07.2013	23.06.2016 (\$69,039.21)	McCann (13.07.2017 to present) Bettles (22.07.2016 to 13.07.2017) Khatri (22.07.2016 to 13.07.2017)	
3	ACN 144 889 270 Pty Ltd (In Liquidation)	144 889 270	67 144 889 270	Iridium Home Loans Pty Ltd (07.04.2016 to 19.07.2016) Members Alliance Home Loans Pty Ltd (25.11.2014 to 06.04.2016) Members Alliance Home Loans (Qld) Pty Ltd (28.06.2010 to 24.11.2014)	Marlborough (28.06.2010 to 04.08.2017) Domingo (22.12.2015 to 20.04.2016) MacVicar (28.06.2010 to 02.12.2010)	Iridium Holdings (100%)	28.11.2014	01.07.2014	02.03.2015	01.07.2013	23.06.2016 (\$74,102.63)	McCann (13.07.2017 to present) Bettles (22.07.2016 to 13.07.2017) Khatri (22.07.2016 to 13.07.2017)	

No	Company Name	ACN	ABN	Former Company Name	Directors	Shareholders	Date registered with the ATO as GST consolidated group	Date of effect of registration with ATO as GST consolidated group	Date registered with ATO as income tax consolidated group	Date of effect of registration with ATO as income tax consolidated group	Date issued with statutory demand by ATO	Liquidator appointed	Administrator appointed
4	ACN 129 388 969 Pty Ltd (In Liquidation)	129 388 969	19 129 388 969	Silverback Constructions Pty Ltd	Marlborough (20.04.2016 to 04.08.2017; 05.06.2015 to 20.10.2015; 2.10.2012 to 10.12.2012) Domingo (10.12.2012 to 20.04.2016; 03.05.2012 to 02.10.2012) Backman (19.08.2010 to 04.05.2012) Milne (23.03.2011 to 17.02.2012) Porrett (25.01.2010 to 19.08.2010) Backman (24.01.2008 to 25.01.2010) Adams (24.01.2008 to 11.12.2009)	Silverback Investments Pty Ltd (100%) (in turn, owned by Iridium Holdings (100%))	28.11.2014	01.07.2014	02.03.2015	01.07.2013	23.06.2016 (\$636,148.38)	McCann (13.07.2017 to present) Bettles (22.07.2016 to 13.07.2017) Khatri (22.07.2016 to 13.07.2017)	
5	ACN 159 641 371 Pty Ltd (In Liquidation)	159 641 371	70 159 641 371	Laver Resources Pty Ltd	Marlborough (24.05.2013 to 04.08.2017; 25.07.2012 to 24.05.2013) MacVicar (24.05.2013 to 13.07.2016; 25.07.2012 to 24.05.2013) Meerkin (24.05.2013 to 24.05.2013)	Iridium Holdings (100%)			02.03.2015	01.07.2013	08.07.2016 (\$6,766,842.94)	McCann (13.07.2017 to present) Bettles (22.07.2016 to 13.07.2017) Khatri (22.07.2016 to 13.07.2017)	

No	Company Name	ACN	ABN	Former Company Name	Directors	Shareholders	Date registered with the ATO as GST consolidated group	Date of effect of registration with ATO as GST consolidated group	Date registered with ATO as income tax consolidated group	Date of effect of registration with ATO as income tax consolidated group	Date issued with statutory demand by ATO	Liquidator appointed	Administrator appointed
6	ACN 117 674 236 Pty Ltd (In Liquidation)	117 674 236	20 117 674 236	Syree Enterprises Pty Ltd	Marlborough (30.06.2011 to 04.08.2017; 22.12.2005 to 27.01.2006) Chillman (16.04.2008 to 30.06.2011) Spaenburg (19.10.2007 to 16.04.2008) Reedman (02.04.2007 to 19.10.2007) Deselys-Claite (27.01.2006 to 02.04.2007) Passione (22.12.2005 to 27.01.2006)	Iridium Holdings (98%) Astro Holdings Pty Ltd (2%)	Precise date not presently known but before 01.09.2016	Precise date not presently known but before 01.09.2016	Precise date not presently known but before 01.09.2016	01.07.2013	05.01.2016 (\$954,098.10)	McCann (13.07.2017 to present) Bettles (22.07.2016 to 13.07.2017) Khatri (22.07.2016 to 13.07.2017)	
7	ACN 161 904 776 Pty Ltd (In Liquidation)	161 904 776	33 161 904 776	Members Alliance Rocket Pty Ltd	Marlborough (11.01.2013 to 04.08.2017) MacVicar (11.01.2013 to 18.07.2016) Domingo (11.01.2013 to 21.03.2013)	Iridium Holdings (100%)	28.11.2014	01.07.2014	02.03.2015	01.07.2013	24.06.2016 (\$80,790.55)	McCann (13.07.2017 to present) Bettles (22.07.2016 to 13.07.2017) Khatri (22.07.2016 to 13.07.2017)	
8	MAIC Human Resources Pty Ltd (In Liquidation)	169 019 685	88 169 019 685	N/A	Marlborough (09.04.2014 to 04.08.2017) MacVicar (09.04.2014 to 25.01.2016)	Iridium Holdings (100%)	Precise date not presently known but before 01.09.2016	Precise date not presently known but before 01.09.2016			23.06.2016 (\$599,395.64)	McCann (13.07.2017 to present) Bettles (22.07.2016 to 13.07.2017) Khatri (22.07.2016 to 13.07.2017)	

No	Company Name	ACN	ABN	Former Company Name	Directors	Shareholders	Date registered with the ATO as GST consolidated group	Date of effect of registration with ATO as GST consolidated group	Date registered with ATO as income tax consolidated group	Date of effect of registration with ATO as income tax consolidated group	Date issued with statutory demand by ATO	Liquidator appointed	Administrator appointed
9	Provincial Property Investments (Aust) Pty Ltd (In Liquidation)	074 099 424	95 074 099 424	N.A	Marlborough (03.04.2014 to 04.08.2016) Brown (21.05.2015 to 20.01.2016) Domingo (20.07.2015 to 20.01.2016) Trent MacVicar (21.08.2000 to 02.07.2015) MacVicar (03.04.2014 to 21.05.2015; 11.11.1997 to 21.08.2000) Lumsden (21.08.1996 to 27.11.2001) Cooper (11.11.1997 to 21.08.2000) Wood (11.11.1997 to 21.08.2000) Cooper (23.05.1996 to 21.08.1996)	Iridium Holdings (100%)	28.11.2014	01.07.2014	02.03.2015	01.07.2013	27.06.2016 (\$173,282.42)	McCann (13.07.2017 to present) Bettles (25.08.2016 to 13.07.2017) Khatri (25.08.2016 to 13.07.2017)	Bettles (22.07.2016 to 25.08.2016) Khatri (22.07.2016 to 25.08.2016)
10	Silverback Investments Pty Ltd (In Liquidation)	158 141 658	67 158 141 658	N.A	Domingo (20.10.2015 to present) MacVicar (03.05.2012 to 20.10.2015) Marlborough (03.05.2012 to 20.10.2015)	Iridium Holdings (100%)			02.03.2015	01.07.2013		McCann (13.07.2017 to present) Bettles (22.07.2016 to 13.07.2017) Khatri (22.07.2016 to 13.07.2017)	

No	Company Name	ACN	ABN	Former Company Name	Directors	Shareholders	Date registered with the ATO as GST consolidated group	Date of effect of registration with ATO as GST consolidated group	Date registered with ATO as income tax consolidated group	Date of effect of registration with ATO as income tax consolidated group	Date issued with statutory demand by ATO	Liquidator appointed	Administrator appointed
11	ACN 151 259 675 Pty Ltd (In Liquidation)	151 259 675	15 151 259 675	Image Building Group QLD Pty Ltd	Marlborough (20.04.2016 to 04.08.2017; 20.10.2014 to 09.02.2016; 21.05.2014 to 07.08.2014) Domingo (27.02.2015 to 20.04.2016; 23.06.2014 to 24.02.2015; 10.12.2012 to 30.05.2014) MacVicar (09.02.2015 to 09.02.2016; 21.05.2014 to 21.05.2014) Cruickshank (02.06.2011 to 10.12.2012)	Image Building Constructions Pty Ltd (100%) (in turn, owned by Iridium Holdings (100%))	28.11.2014	01.07.2014	02.03.2015	01.07.2013	07.07.2016 (\$1,385,287.71)	McCann (13.07.2017 to present) Bettles (25.08.2016 to 13.07.2017) Khatri (25.08.2016 to 13.07.2017)	Bettles (22.07.2016 to 25.08.2016) Khatri (22.07.2016 to 25.08.2016)
12	2585 Gracemere Pty Ltd (In Liquidation)	166 679 956	65 166 679 956	N.A	Marlborough (20.01.2015 to 04.08.2017) Domingo (08.11.2013 to 20.01.2015) Meerkin (08.11.2013 to 20.01.2015)	2585 Gracemere No 2 Pty Ltd (100%)					05.01.2016 (\$996,615.97)	McCann (13.07.2017 to present) Bettles (22.07.2016 to 13.07.2017) Khatri (22.07.2016 to 13.07.2017)	
13	HSINIF Pty Ltd (In Liquidation)	163 383 542	66 163 383 542	N.A	MacVicar (19.04.2013 to 10.05.2017)	CM INT. Pty Ltd (100%)					24.06.2016 (\$592,540.87)	McCann (13.07.2017 to present) Bettles (22.08.2016 to 13.07.2017) Kkatri (22.08.2016 to 13.07.2017)	Bettles (22.07.2016 to 22.08.2016) Khatri (22.07.2016 to 22.08.2016)

No	Company Name	ACN	ABN	Former Company Name	Directors	Shareholders	Date registered with the ATO as GST consolidated group	Date of effect of registration with ATO as GST consolidated group	Date registered with ATO as income tax consolidated group	Date of effect of registration with ATO as income tax consolidated group	Date issued with statutory demand by ATO	Liquidator appointed	Administrator appointed
14	Trats Pty Ltd (In Liquidation)	163 384 398	62 163 384 398	N.A	Marlborough (19.04.2013 to 04.08.2017)	RM INT. Pty Ltd (100%)					06.01.2016 (\$722,837.78)	McCann (13.07.2017 to present) Bettles (22.08.2016 to 13.07.2017) Khatri (22.08.2016 to 13.07.2017)	Bettles (22.07.2016 to 22.08.2016) Khatri (22.07.2016 to 22.08.2016)
15	RJM Property Developments Pty Ltd (In Liquidation)	108 118 734	40 108 118 734	N.A	Marlborough (24.02.2004 to 04.08.2017)	Marlborough (100%)					06.01.2016 (\$549,745.62)	McCann (13.07.2017 to present) Bettles (22.07.2016 to 13.07.2017) Khatri (22.07.2016 to 13.07.2017)	
16	All My Best Wishes Pty Ltd (In Liquidation)	145 562 714	62 145 562 714	N.A	MacVicar (03.08.2010 to 10.05.2017) Jennifer MacVicar (22.06.2013 to 03.12.2014) Marlborough (03.08.2010 to 22.06.2013) Domingo (17.11.2011 to 22.06.2013) Trent MacVicar (29.04.2011 to 17.11.2011) Sainsbury (03.08.2010 to 29.04.2011)	J.T. Prestige Pty Ltd (100%)					24.06.2016 (\$687,282.36)	McCann (13.07.2017 to present) Bettles (22.07.2016 to 13.07.2017) Khatri (22.07.2016 to 13.17.2017)	

No	Company Name	ACN	ABN	Former Company Name	Directors	Shareholders	Date registered with the ATO as GST consolidated group	Date of effect of registration with ATO as GST consolidated group	Date registered with ATO as income tax consolidated group	Date of effect of registration with ATO as income tax consolidated group	Date issued with statutory demand by ATO	Liquidator appointed	Administrator appointed
17	SS Residential NSW Pty Ltd (In Liquidation)	152 401 851	51 152 401 851	N.A	Marlborough (01.08.2011 to 04.08.2017) MacVicar (01.08.2011 to 22.11.2016)	Iridium Holdings (100%)	28.11.2014	01.07.2014	02.03.2015	01.07.2013		McCann (03.05.2017 to present) McKinnon (03.05.2017 to present) Bettles (11.01.2017 to 03.05.2017) Khatri (11.01.2017 to 03.05.2017)	
18	Iridium Financial Planning Pty Ltd (In Liquidation)	601 124 341	37 601 124 341	N.A	Marlborough (07.08.2014 to 04.08.2017) MacVicar (07.08.2014 to 22.11.2016)	Iridium Holdings (100%)	28.11.2014	07.08.2014				McCann (03.05.2017 to present) McKinnon (03.05.2017 to present) Bettles (10.02.2017 to 03.05.2017) Khatri (10.02.2017 to 03.05.2017)	
19	ACN 143 933 644 Pty Ltd (In Liquidation)	143 933 644	24 143 933 644	Capricorn Securities Pty Ltd	Marlborough (31.10.2014 to 04.08.2017) Domingo (23.07.2015 to 20.04.2016) MacVicar (31.10.2014 to 23.07.2015) Domingo (11.04.2014 to 03.11.2014) Kelly (21.07.2014 to 09.10.2014) Meerkin (11.04.2014 to 26.05.2014) Hockley (28.05.2010 to 11.04.2014)	Iridium Holdings (100%)	28.11.2014	01.07.2014	02.03.2015	21.02.2014		McCann (03.05.2017 to present) McKinnon (03.05.2017 to present) Bettles (10.02.2017 to 03.05.2017) Khatri (10.02.2017 to 03.05.2017)	

No	Company Name	ACN	ABN	Former Company Name	Directors	Shareholders	Date registered with the ATO as GST consolidated group	Date of effect of registration with ATO as GST consolidated group	Date registered with ATO as income tax consolidated group	Date of effect of registration with ATO as income tax consolidated group	Date issued with statutory demand by ATO	Liquidator appointed	Administrator appointed
20	ACN 133 019 093 Pty Ltd (In Liquidation)	133 019 093	78 133 019 093	MM Prime Investment Pty Ltd	Marlborough (01.09.2008 to 04.08.2017) MacVicar (01.05.2010 to 13.07.2016) Jennifer MacVicar (01.09.2008 to 01.05.2010) Fitzgerald (01.09.2008 to 31.01.2010)	Iridium Holdings (100%)	28.11.2014	01.07.2014	02.03.2015	01.07.2013		McCann (05.05.2017 to present) McKinnon (05.05.2017 to present)	
21	Airlie Beach (MA) Pty Ltd (In Liquidation)	168 345 113	52 168 345 113	N.A	Marlborough (03.03.2014 to 04.08.2017) Brown (17.04.2014 to 20.01.2016) Trent MacVicar (03.11.2014 to 20.05.2015) MacVicar (03.03.2014 to 10.04.2015)	Iridium Holdings (100%)	28.11.2014	01.07.2014	02.03.2015	03.03.2014	21.04.2017 (\$2,193,769.07)	McCann (05.05.2017 to present) McKinnon (05.05.2017 to present)	
22	Members Alliance Incorporated Pty Ltd (Deregistered 27.04.2018)	117 456 201	91 117 456 201	N.A	Marlborough (18.04.2007 to 04.08.2017; 06.12.2005 to 09.02.2006) Deselys-Claite (06.06.2006 to 18.04.2007) Passione (06.12.2005 to 06.06.2006)	Construction Forestry Mining & Energy Union (98%) Astro Holdings Pty Ltd (2%)							
23	MA Human Resources Pty Ltd	601 009 974	72 601 009 974	N.A	Marlborough (31.07.2014 to 04.08.2017) MacVicar (31.07.2014 to 10.05.2017)	Iridium Holdings (100%)	28.11.2014	30.07.2014				Downey (03.02.2016 to present)	

No	Company Name	ACN	ABN	Former Company Name	Directors	Shareholders	Date registered with the ATO as GST consolidated group	Date of effect of registration with ATO as GST consolidated group	Date registered with ATO as income tax consolidated group	Date of effect of registration with ATO as income tax consolidated group	Date issued with statutory demand by ATO	Liquidator appointed	Administrator appointed
24	MAPI (QLD) Pty Ltd (Deregistered 03.03.2017)	144 889 332	82 144 889 332	N.A	MacVicar (28.06.2010 to 03.03.2017) Marlborough (03.07.2014 to 03.03.2017; 28.06.2010 to 28.06.2010)	Four Peat Pty Ltd						Combis (02.07.2014 to 16.12.2016) Dinoris (02.07.2014 to 03.11.2016)	
25	1 st Home Pty Ltd (Deregistered 12.09.2016)	157 926 675	71 157 926 675	N.A	Marlborough (20.04.2012 to 12.09.2016) MacVicar (20.04.2012 to 19.07.2016)	Iridium Holdings (100%)	28.11.2014	01.07.2014	02.03.2015	01.07.2013			
26	Duke Bowen (MA) Pty Ltd	169 846 173	63 169 846 173	N.A	Marlborough (30.05.2014 to 04.08.2017) MacVicar (30.05.2014 to 26.05.2015)	Yaaboc Pty Ltd (100%)	28.11.2014	01.07.2014				McCann (08.09.2017 to present)	
27	Iridium Accounting & Financial Services Pty Ltd (Deregistered 19.03.2016)	166 188 414	26 166 188 414	N.A	MacVicar (09.10.2013 to 19.03.2016) Marlborough (09.10.2013 to 19.03.2016)	Iridium Holdings (100%)	28.11.2014	01.07.2014	02.03.2015	09.10.2013			
28	Vibe Capital Pty Ltd (Deregistered 19.09.2016)	163 387 755	88 163 387 755	Iridium Capital Management Pty Ltd	MacVicar (01.10.2013 to 19.09.2016) Marlborough (01.10.2013 to 05.05.2015) Edwards (19.04.2013 to 08.11.2013)	Yaaboc Pty Ltd (100%)	28.11.2014	01.07.2014					
29	Iridium Mergers & Acquisitions Pty Ltd (Deregistered 19.03.2016)	166 188 905	38 166 188 905	N.A	MacVicar (09.10.2013 to 19.03.2016) Marlborough (09.10.2013 to 19.03.2016)	Iridium Holdings (100%)	28.11.2014	01.07.2014	02.03.2015	09.10.2013			

No	Company Name	ACN	ABN	Former Company Name	Directors	Shareholders	Date registered with the ATO as GST consolidated group	Date of effect of registration with ATO as GST consolidated group	Date registered with ATO as income tax consolidated group	Date of effect of registration with ATO as income tax consolidated group	Date issued with statutory demand by ATO	Liquidator appointed	Administrator appointed
30	Yaaboc Pty Ltd (Deregistered 06.02.2017)	154 144 108	38 154 144 108	Members Alliance Pty Ltd	MacVicar (08.11.2011 to 06.02.2017) Marlborough (08.11.2011 to 05.05.2015)	Vibe Capital Pty Ltd (100%)	28.11.2014	01.07.2014	02.03.2015	01.07.2013		Darryl Kirk (10.02.2016 to 21.11.2016) Derrick Vickers (10.02.2016 to 21.11.2016)	
31	The Trustee for Property Unit Trust Pty Ltd	N.A	83 119 432 241				28.11.2014	01.07.2014	02.03.2015	01.07.2013			
32	The Trustee for Silverback Construction Unit Trust Pty Ltd	N.A	54 886 766 592				Precise date not presently known but before 01.09.2016	Precise date not presently known but before 01.09.2016	02.03.2015	01.07.2013			
33	ACN 160 606 628 Pty Ltd (Deregistered 03.03.2017)	160 606 628	14 160 606 628	Image Building Constructions Pty Ltd	Marlborough (20.10.2014 to 03.03.2017; 03.10.2012 to 08.08.2014) MacVicar (03.10.2012 to 13.07.2016)	Iridium Holdings (100%)			02.03.2015	01.07.2013			
34	The Trustee for X 5 Unit Trust Pty Ltd	N.A	79 365 993 398						02.03.2015	01.07.2013			
35	ACN 154 256 569 Pty Ltd (Deregistered 07.04.2017)	154 256 569	78 154 256 569	Iridium Home Loans Pty Ltd (24.11.2014 to 06.04.2016) Members Alliance Home Loans Pty Ltd (14.11.2011 to 23.11.2014)	MacVicar (14.11.2011 to 19.07.2016) Marlborough (14.11.2011 to 07.04.2017)	Iridium Holdings (100%)			02.03.2015	01.07.2013			

TABLE 2 - MARLBOROUGH AND MACVICAR COMPANIES

No	Company Name	ACN	ABN	Former Company Name	Directors	Shareholders	Date registered with ATO as GST consolidated group	Date of effect of registration with ATO as GST consolidated group	Date registered with ATO as tax consolidated group	Date of effect of registration with ATO as tax consolidated group	Date issued with statutory demand by ATO	Liquidator appointed	Administrator appointed
1A	Astro Holdings Pty Ltd (In Liquidation)	116 933 325		N.A	Marlborough (31.10.2005 to 04.08.2017) Passione (31.10.2005 to 18.11.2005)	Marlborough (100%)					05.01.2016 (\$681,501.63)	McCann (13.07.2017 to present) Bettles (22.07.2016 to 13.07.2017) Khatri (22.07.2016 to 13.07.2017)	
2A	J.T. Prestige Pty Ltd (In Liquidation)	088 919 466	52 088 919 466	N.A	MacVicar (04.04.2014 to 10.05.2017; 02.08.1999 to 28.08.2000) Jennifer MacVicar (04.02.2008 to 09.10.2014) Trent MacVicar (28.08.2000 to 04.02.2008) Christensen (02.08.1999 to 28.08.2000) Gilltrap (02.08.1999 to 02.08.1999)	MacVicar (100%)						McCann (13.07.2017 to present) Bettles (22.07.2016 to 13.07.2017) Khatri (22.07.2016 to 13.07.2017)	

TABLE 3 - BENCHMARK GROUP COMPANIES

No	Company Name	ACN	ABN	Former Company Name	Directors	Shareholders	Date registered with ATO as GST consolidated group	Date of effect of registration with ATO as GST consolidated group	Date registered with ATO as tax consolidated group	Date of effect of registration with ATO as tax consolidated group	Date issued with statutory demand by ATO	Liquidator appointed	Administrator appointed
1B	Benchmark Private Wealth Pty Ltd (In Liquidation)	613 692 818	32 613 692 818	N.A	Young (15.07.2016 to 09.07.2018)	Liam Young (100%)						McCann (23.03.2018 to present) McCann (provisional liquidator, 03.11.2017 to 23.03.2018)	
2B	Benchmark Private Wealth Holdings Pty Ltd (In Liquidation)	613 692 354	26 613 692 354	N.A	Young (15.07.2016 to 09.07.2018)	Young Corporation (NSW) Pty Ltd (100%)						McCann (23.03.2018 to present) McCann (provisional liquidator, 03.11.2017 to 23.03.2018)	
3B	Benchmark Wealth Property Services Pty Ltd (In Liquidation)	613 693 593	23 613 693 593	N.A	Young (15.07.2016 to 09.07.2018) Brown (16.11.2016 to 17.11.2017)	Benchmark Private Wealth Holdings Pty Ltd (100%)						McCann (23.03.2018 to present) McCann (provisional liquidator, 03.11.2017 to 23.03.2018)	
4B	Young Corporation (NSW) Pty Ltd (In Liquidation)	613 215 437		N.A	Young (23.06.2016 to 09.07.2018)	Liam Young (50%) Stacie Young (50%)						McCann (23.03.2018 to present) McCann (provisional liquidator, 03.11.2017 to 23.03.2018)	

Federal Court of Australia
 District Registry: Queensland
 Division: General

No. QUD693 of 2019

**IN THE MATTER OF IRIDIUM HOLDINGS PTY LTD (IN LIQUIDATION) ACN 161 598 983, and
 of the other companies identified in the Schedule**

BETWEEN

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

and

JASON WALTER BETTLES
Defendant

SCHEDULE B to the STATEMENT OF CLAIM

Individual	Role
Benchmark Group	Group of companies incorporated by Liam Young on 15 July 2016 including: <ul style="list-style-type: none"> a) Benchmark Private Wealth Pty Ltd ACN 613 692 818 (BPW); b) Benchmark Private Wealth Holdings Pty Ltd ACN 613 692 354 (BPW Holdings); and c) Benchmark Wealth Property Services Pty Ltd ACN 613 693 593 (Benchmark Property)
Julian Blanchard	Lawyer at Grants Law Firm.
Wesley Bothma	Director of Crest Accountants.
Lee Bragg	Employee at Worrells Solvency & Forensic Accountants (Worrells).
Maighan Brown	Wife of Braiden Marlborough. Director of Benchmark Property.
Brain Carey	Senior manager at Worrells. Worked with Bettles.
Peter Chesterton	Accountant and Partner of Crest Accountants and a shareholder of Crest Wealth Pty Ltd ACN 604 419 187 (Crest).
Crest Accountants	Accountants for the MA Group (prior to WMS Chartered Accountants (WMS)) and the personal accountants for Colin MacVicar and his family.
Crest	Purchaser of the Client Book.

Individual	Role
Derek Cronin	Partner of Cronin Miller Litigation, solicitors for the MA Group (prior to Ramsden Lawyers).
Mark Dillman	Solicitor at MacPherson Kelley, lawyers acting for Crest in the Iridium FP Client Book sale.
David Domingo	Director of numerous companies in the MA Group.
Anthony Douglas	National financial planning manager for the MA Group. Responsible manager for the Capricorn Securities AFSL.
(Phillip) Graeme Downie	Advisor to Colin MacVicar. Director of Members Windings Up Pty Ltd
James Downey	Liquidator from JP Downey & Co, liquidators of MA Human Resources Pty Ltd.
Troy Dyer	Financial planner employed by the MA Group and subsequently employed by BPW.
Elderton Holdings Pty Ltd	Part of the RILOW Group. Elderton Holdings Pty Ltd engaged MM Prime to market 8 house and land parcels at "The Ponds" in Sydney.
Derek Finch	Solicitor at Ramsden Lawyers.
Shane Grant	Solicitor at Grants Law Firm.
Grants Law Firm	Former solicitors for Jason Bettles.
Lynda Hill	Payroll officer at the MA Group, and subsequently employed by BPW.
Victoria Hine	Employed as an accountant at Worrells. Worked with Bettles.
Michael Jeffriess	Chief Financial Officer of the MA Group.
Oliver Jones	Solicitor at Ramsden Lawyers.
Rajendra Khatri	Registered liquidator and a partner of Worrells.
Aaron Lavell	An accountant and principal of WMS.
MA Group	Group of approximately 59 companies which provided investment and financial advice to potential investors of residential properties.
Colin MacVicar	Director of numerous companies in the MA Group.
Jenny MacVicar	Wife of Colin MacVicar.
Braiden Marlborough	Marlborough's son and Land Acquisitions Manager for the MA Group.

Individual	Role
Richard Marlborough	Director of numerous companies in the MA Group.
Deborah Marlborough	Wife of Richard Marlborough.
Loren McFarlane	WMS Employee, Personal assistant to Aaron Lavell.
Barrie Meerkin	Former General Counsel of the MA Group.
Members Windings Up Pty Ltd	Registered a security interest on the PPSR against the property of Iridium FP on 21 July 2016. The registration listed the contact at Members Windings Up Pty Ltd as Phillip Graeme Downie. Mr Downie is also the person who spoke with Jason Bettles on 27 October 2016 about the sale of the PPI rent roll parcels (Mr Downie was then speaking to Mr Bettles as representative of Johnston Business Sales).
Sandra Pepi	Finance administrator for the MA Group and subsequently employed by BPW.
Dennis Perry	Managing Partner of financial advice business, Advice First. Advice First were prospective buyers of the Iridium FP Client Book.
Ramsden Lawyers	Solicitors for the MA Group.
John Ramsden	Solicitor and principal of Ramsden Lawyers.
Alan Robson	Financial controller of the RILOW Group.
Gemma Sullivan	Lawyer at Ramsden Lawyers.
Michael Thomas	Worrells employee. Worked with Bettles.
Dean Waters	Divisional Director of Corporate Finance at WMS. Worked with Aaron Lavell.
Genevieve White	Law clerk employed by Ramsden Lawyers.
Richard Whitehead	Managing Director of the RILOW Group.
Daniel Willis	National General Sales Manager for the MA Group and subsequently employed by BPW.
WMS	Accountants for the MA Group who provided taxation and business services to the MA Group.
Worrells	A firm providing solvency management, insolvency administration and forensic investigation services. Jason Bettles is a Partner.
Justin Wowk	Accountant at WMS. Worked with Aaron Lavell.

Individual	Role
Liam Young	<p>The general legal counsel of the MA Group. He was the sole director of:</p> <ul style="list-style-type: none"> a) BPW; b) (BPW Holdings); c) Young Corporation (NSW) Pty Ltd ACN 613 215 437 (Young Corporation). <p>He was also a director of Benchmark Property.</p>
Stacie Young	Wife of Liam Young. Shareholder of Young Corporation.

Federal Court of Australia
District Registry: Queensland
Division: General

No. QUD693 of 2019

**IN THE MATTER OF IRIDIUM HOLDINGS PTY LTD (IN LIQUIDATION) ACN 161 598 983, and
of the other companies identified in the Schedule**

BETWEEN

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION
Plaintiff

and

JASON WALTER BETTLES
Defendant

SCHEDULE C to the STATEMENT OF CLAIM

Liquidators' Duties

1. Liquidators are required to identify, take possession of and realise the company's assets, to investigate and determine the claims against the company and to apply the assets to the satisfaction of those claims in accordance with the statutory scheme of priority: *ASIC v Edge* (2007) 211 FLR 137 at [40].
2. Liquidators are required to become thoroughly acquainted with the affairs of the company and must not suppress and conceal anything that arises in the course of the investigation into the company: *Re Contract Corporation (Gooch's Case)* (1871) LR 7 Ch App 207 at 211.
3. Liquidators are subject to the same statutory duties as directors: *ASIC v Dunner* (2013) 303 ALR 98; [2013] FCA 872 at [28].
4. Liquidators are appointed and paid to exercise a particular professional skill and a high standard of care and diligence is required in the performance of their duties: *Pace v Antlers Pty Ltd (in liq)* (1998) 80 FCR 485 at 497, 499.
5. Liquidators are obligated to perform their duties in accordance with high standards of honesty, impartiality and probity: *ASIC v Edge* (2007) 211 FLR 137 at [44]; *Re Owston Nominees No 2 Pty Ltd (in liq) (rec and mgrs apptd)* (2013) 94 ACSR 500; [2013] NSWSC 538 at [24].
6. Liquidators must not only be independent of the company but must also be seen to be independent of the company: *Re National Safety Council of Australia, Victorian Div* [1990]

VR 29; (1989) 15 ACLR 602; *Bovic Lend Lease Pty Ltd v Wily* (2003) 45 ACSR 612; 21 ACLC 1737; [2003] NSWSC 467 at [123].

7. Liquidators are under a duty to complete the administration of the assets within a reasonable time and not to protract the liquidation unduly: *Re House Property & Investment Co* [1954] Ch 576 at 612.
8. Liquidators are required to pay close attention to their obligations under the Code of Practice for Insolvency Practitioners: *Re Monarch Gold Mining Co Ltd; Ex parte Hughes* (2008) WASC 201 at [37]-[40].