

2 August 2024

## **TO THE CREDITORS AS ADDRESSED**

Dear Sir / Madam,

**Xpress Fuel Australia Pty Ltd A.C.N 146 291 081 (“XFA”)**  
**Xpress Group Australia Pty Ltd A.C.N. 147 059 630 (“XGA”)**  
**Xpress Transport Solutions Pty Ltd A.C.N. 128 784 216 (“XTS”)**  
**(All Receivers and Managers Appointed) (All In Liquidation)**  
**(“the Companies”)**

I refer to the appointment of Rajiv Goyal and Chris Johnson as Liquidators of the Companies on 21 July 2023.

On 21 December 2023, following the resignation of Mr Johnson, Andrew McEvoy and Ian Niccol were appointed as additional joint and several liquidators of the Companies. In this Report, Messrs Goyal, McEvoy and Niccol are referred to as the “Liquidators”.

### **Application by the Receivers**

Between 30 March 2023 and 11 April 2023, Barry Kogan and Katherine Sozou were appointed by the National Australia Bank (“NAB”) as joint and several receivers and managers (“Receivers”) of all of the present and future property of Press Australia Pty Ltd (Receivers and Managers Appointed) (In Liquidation) (Controllers Appointed) (A.C.N. 151 214 836) both in its own capacity and as trustee for Lassab Trust (ABN 55 050 553 603) (“Press Australia”).

On 24 July 2024, the Liquidators were served with an application by the Receivers (“Application”) in the Supreme Court of New South Wales (“Court”). The Application is supported by an affidavit of Barry Kogan. The Companies are the second, third and fourth defendants to the Application.

The Application is listed before the Court at 10:00am on **5 August 2024**.

In the Application, the Receivers are seeking directions and declarations, including to the effect that:

- a) under an Interlocking Guarantee, Press Australia has guaranteed the obligations of XFA under an invoice finance facility granted by NAB to XFA on or around 4 April 2022 (“IFF”);
- b) further or alternatively, that under a guarantee and indemnity dated 4 April 2022 limited to \$18 million, XTS has guaranteed the obligations of XFA under the IFF and, in turn, under the Interlocking Guarantee, Press Australia has guaranteed the obligations of XTS under the guarantee and indemnity limited to \$18 million; and
- c) the Receivers are justified in proceeding on the basis set out in a) and or alternatiely in b) above.

If they are successful in their Application and obtain the directions and or declarations that they seek, the Receivers will be able to sell real properties (“Properties”) owned by Press Australia and apply the proceeds of sale of those Properties against not only debt owing to NAB by Press Australia directly as borrower, but also the debt owing to

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NAB by XFA and which Press Australia is liable to pay to NAB as a guarantor of that debt under the Interlocking Guarantee.

Putting aside any potential liability from Press Australia to NAB as guarantor under the Interlocking Guarantee, we understand the amount owing to NAB by:

- Press Australia is \$3,884,012.77; and
- XFA is \$19,195,595.04.

### **Investigations of the Liquidators**

Based on the Liquidators' investigations to date, a large amount of funds were provided to Press Australia by XFA. These funds are likely to have been used to purchase the Properties.

Accordingly, XFA or the Liquidators may have proprietary claims against Press Australia in relation to the Properties and / or the proceeds of the sale of the Properties.

The Liquidators are presently without funds that would enable the Liquidators to potentially pursue such claims in relation to the Properties.

Pursuing any claims of this kind will incur substantial liquidator / legal fees and require third party funding. Furthermore, the Liquidators would not commence any actions without an indemnity for costs.

Additionally, the Liquidators would only commence legal actions against Press Australia or in relation to the Properties if there was a benefit to the creditors of XFA in doing so and those actions were in the interest of creditors. In relation to these points:

- If a claim is made by XFA, any successful recovery will likely be subject to NAB's security interest over XFA, with no benefit to XFA's unsecured creditors.
- If a claim is brought by the Liquidators for uncommercial transactions, any successful recovery potentially may not be subject to NAB's security interest over XFA. That being so, and if the recovery is not the subject of NAB's security interest, such a recovery may potentially provide significant benefits to unsecured creditors of XFA.

This is a highly uncertain potential claim and the Liquidators would require substantial third party funding to undertake further investigations and, if appropriate following the outcome of those further investigations, pursue such a claim. The Liquidators would also require further legal advice in relation to whether the outcome of such claims of the Liquidators may or may not be the subject of NAB's security interest.

- In addition to NAB's security interest over Press Australia, some or all of the Properties are subject to caveats. The extent of these encumbrances are uncertain and NAB and the caveators likely have claims over the Properties or proceeds that will take priority to the claims of the Liquidators.



## **What consequences may occur from directions and declarations?**

If the Receivers obtain the directions and declarations that they are seeking in the Application, the amount recoverable by NAB against Press Australia and the Properties will be at least \$19,195,595.04 (plus further amounts in relation to costs and expenses) and the Receivers will be able to sell the Properties and apply the proceeds against this debt. The Receivers have estimated that the proceeds of the sale of the Properties would be insufficient to repay a debt to NAB of \$19,195,595.04.

If the Receivers are unsuccessful with obtaining the directions and declarations they seek in the Application, the Receivers have stated to the effect that they intend to market and sell only certain Properties to satisfy NAB's debt in Press Australia of \$3,884,012.77 (together with any associated costs), and then retire over Press Australia.

## **Requested Action by Creditors**

The Liquidators, on behalf of the Companies that are defendants to the Application, intend to seek an initial adjournment of the Application to ascertain whether any creditors of the Companies are willing to fund the Liquidators to further investigate and consider the merits of the Application and the potential claims raised above and, if appropriate, to oppose the Application. The Liquidators are currently unfunded and are therefore presently unable to fund the ongoing defence of the Application.

It is in the interests of the creditors of XFA and XTS that the Application and claims being asserted by NAB and the Receivers are fully considered and, if appropriate, opposed.

I therefore request that any creditor interested in funding the Liquidators to further investigate, consider and, if appropriate, oppose the Application, contact my office immediately (contact details below).

Interested creditors can contact the Liquidators to obtain a copy of the Application and supporting affidavit.

Should you have any queries regarding this request, please contact Kaiyan Wu via email at [kwu@astoncg.com.au](mailto:kwu@astoncg.com.au).

Yours faithfully,

**Xpress Fuel Australia Pty Ltd**

**Xpress Group Australia Pty Ltd**

**Xpress Transport Solutions Pty Ltd**

**(All Receivers and Managers Appointed) (All In Liquidation)**

**RAJIV GOYAL**

Joint and Several Liquidator