



IN THE SUPREME COURT OF WESTERN AUSTRALIA

COR/92/2023

EX PARTE:

**Richard Scott TUCKER as joint and several
administr AERISON GROUP LTD (ACN 614
735 474) (ADMINISTRATORS APPOINTED)
and Ors**

Plaintiffs

**ORDERS OF THE HONOURABLE JUSTICE STRK
MADE ON 15 JUNE 2023**

**UPON THE EX PARTE APPLICATION of the plaintiffs by an amended
interlocutory process filed on 15 June 2023 made under s 447A of the
Corporations Act 2001 (Cth), AND AFTER HEARING PR Edgar on behalf of
the plaintiffs, IT IS ORDERED THAT:**

1. Pursuant to s 447A of the Corporations Act 2001 (Cth), pt 5.3A of the Corporations Act is to operate as if s 443A(1) of the Corporations Act provides that:
 - (a) any debts or liabilities of the first plaintiffs incurred with respect to any obligations arising out of or in connection with the Water Corporation Project as defined in the second affidavit of Richard Tucker filed in these proceedings on 15 June 2023;
 - (b) any debts or liabilities of the first plaintiffs incurred with respect to any obligations arising out of, or in connection with, any future agreements:
 - (i) which the first plaintiffs cause any of the second to eighth plaintiffs (collectively, the Group Companies) to issue or enter into:
 - (A) with a third party;
 - (ii) that contain within their terms:
 - (A) a limited recourse provision substantially the same as the limited recourse provision reproduced at schedule A to these orders;
 - (B) notice of these orders; and
 - (iii) where the limited recourse provision referred to in order 1(b)(ii)(A) above has been accepted by the third party as forming part of the terms of the future agreement,

(together, the Future Agreements) are in the nature of debts incurred by the first plaintiffs in performance and exercise of their functions and powers as joint and several voluntary administrators of the Group Companies.

2. Pursuant to s 447A of the Corporations Act, the operation of s 443A(1) of the Corporations Act is modified, insofar as it applies to any liability of the first plaintiffs (in their capacities as joint and several administrators of the Group Companies) pursuant to the Water Corporation Project and Future Agreements, so that if the indemnity of the first plaintiffs under s 443D of the Corporations Act from the Group Companies is insufficient to meet any amount for which the first plaintiffs might be liable arising out of or in connection with the Future Agreements, then the first plaintiffs will not be personally liable to repay any such amount to the extent of the insufficiency.
3. Pursuant to s 447A of the Corporations Act, the first plaintiffs are to provide notice, in the Future Agreement or otherwise, to any counterparty to a Future Agreement of order 1 above, prior to that counterparty entering into an Future Agreement.
4. Pursuant to s 447A of the Corporations Act, the first plaintiffs are to keep a schedule noting each Future Agreement entered into by them on behalf of the Group Companies and provide an update to any committees of inspection formed in relation to the Group Companies (Committee), at each meeting of the Committee, as to the nature of the Future Agreements that they have entered into or proposed to be entered into, together with estimated total debts that may be incurred in respect of the Future Agreements, on behalf of the Group Companies.
5. The costs of this application be treated as costs and expenses in the administration of the Group Companies.
6. Any application for access pursuant to O 67B r 11 of the Rules of the Supreme Court 1971 (WA) to inspect the second confidential affidavit of Richard Scott Tucker filed in these proceedings on 15 June 2023, and the annexures referred to therein; and the confidential affidavit of Alistair Ronald Fleming filed in these proceedings on 15 June 2023 and the annexures referred to therein:
 - (a) be referred to the court; and
 - (b) is not be determined until notice of the application is given to the first plaintiffs, by their solicitors, and the first plaintiffs have reasonable opportunity to be heard in opposition to the application for inspection.
7. Any person who can demonstrate a sufficient interest to vary or discharge orders 1 - 6 above (including any creditor of the Group Companies) has liberty to apply to the court on three business days' written notice to the first plaintiff.

BY THE COURT

THE HONOURABLE JUSTICE L STRK

Schedule A

(a) the Administrators will only be liable under section 443A of the Corporations Act 2001 (Cth) on a limited recourse basis, namely limited to the assets of Aerison Pty Ltd from which the Administrators are indemnified for their personal liability under section 443D of the Corporations Act 2001 (Cth) and for which the Administrators have a lien over the assets of Aerison Pty Ltd under section 443F of the Corporations Act 2001 (Cth);

(b) the Administrators will not have any personal liability arising from entry into this [purchase order / agreement / deed] or the performance of any services in respect of this [purchase order / agreement / deed] in accordance with the terms of this [purchase order / agreement / deed], except to the extent of the limited recourse described in paragraph (a) above; and

(c) the parties acknowledge the Administrators have obtained orders in the Supreme Court of Western Australia pursuant to section 447A of the Corporations Act 2001 (Cth) to give effect to this limited recourse and limitation of liability, and a copy of these orders is available from the Administrators on request.