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**JURISDICTION** : SUPREME COURT OF WESTERN AUSTRALIA  
IN CHAMBERS

**CITATION** : NEIL RAYMOND CRIBB as liquidator of BULLION  
BOURSE PTY LTD (In Liq) [2019] WASC 298

**CORAM** : MASTER SANDERSON

**HEARD** : 30 JULY 2019

**DELIVERED** : 30 JULY 2019

**PUBLISHED** : 19 AUGUST 2019

**FILE NO/S** : COR 152 of 2019

**MATTER** : BULLION BOURSE PTY LTD (In Liq)

EX PARTE

NEIL RAYMOND CRIBB as liquidator of BULLION  
BOURSE PTY LTD (In Liq)  
Plaintiff

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*Catchwords:*

Insolvency - Direction sought by liquidator as to how to deal with third party property in possession of insolvent company - Who should bear liquidator's costs

*Legislation:*

*Corporations Act 2001 (Cth)*

*Result:*

Orders made

*Category:* A

**Representation:**

*Counsel:*

Plaintiff : Mr R M Johnson

Non-party : Mr A J Camp

*Solicitors:*

Plaintiff : HWL Ebsworth Lawyers

Non-party : Alan Camp Solicitor

**Case(s) referred to in decision(s):**

Primary Securities Pty Ltd v Willmott Forests Ltd (Receiver & Manager Appointed) (In liq) [2016] 50 VR 752; (2016) VSCA 309

Re Arcabi Pty Ltd (Receivers & Managers Appointed) (In Liq); Ex parte Theobald & Herbert in their capacities as Receivers & Managers of Arcabi Pty Ltd (Receivers & Managers Appointed) (In Liq) [2014] WASC 310

White (In their capacities as voluntary administrators of Mossgreen Pty Ltd) (Administrators Appointed) v Robertson [2018] FCAFC 63

**MASTER SANDERSON:**

1           The plaintiff, Neil Raymond Cribb, is the liquidator of Bullion Bourse Pty Ltd. He was appointed by order of the Federal Court on 2 July 2019. The company traded as 'Perth Bullion Company' and operated a safe custody business; it also traded as a bullion and numismatics dealer from premises located at 180 Wright Street, Cloverdale. For reasons not presently relevant Mr Cribb was not able to obtain control of the Wright Street premises until 9 July 2019.

2           At par 17 of his affidavit, Mr Cribb outlines the key activities of the business at the time of his appointment.<sup>1</sup> He says the company provided safekeeping and storage services including safety deposit boxes, allocated storage and unallocated storage. Further, it traded in bullion, coins and jewellery including online and over the counter sales of gold and silver bullion, coins and online and over the counter purchases of gold or silver bullion, coins and jewellery from customers. At par 20 of his affidavit Mr Cribb gives a description of the Wright Street premises. It reads as follows:

The Premises, being formerly occupied by a bank, is fitted with three large in-situ vaults. Inside two of the vaults there are, amongst other things, numbered safety deposit box compartments of various sizes, presumably containing safety deposit boxes, and other standalone large safety deposit boxes. There are also nine other lockable vessels located on the Premises but not in the vaults including six unidentified safes. Inside each safe is a number of locked and unidentifiable compartments.

3           Mr Cribb then sets out various ways in which the company conducted its business. He sets these out in categories. The first category is 'safety deposit boxes'. Essentially a customer can pay to access a safety deposit box. That customer is then referred to as a 'SDB Holder'. There are different sizes of safety deposit boxes – the standard box, a 'Medium Lock Box' (MLB) and 'Extra Large Boxes' (ELB). Mr Cribb says he believes SDB Holders retain ownership of the goods contained in the safety deposit boxes (SDB Goods) and that the company's rights are limited to any contractual or equitable lien the company might have to secure payment of outstanding fees. It would appear no register exists of SDB Holders.

4           The second category referred to by Mr Cribb is 'allocated storage'. The company provided 'allocated storage facilities to customers' (ASG Customer). Essentially the storage was in a steel cabinet located in one of the vaults on the premises. Goods stored

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<sup>1</sup> Affidavit of Neil Raymond Cribb filed 29 July 2019.

included loose jewellery and loose gold and silver bullion and bars as well as a random assortment of goods. Once again it would appear the records of the company are in disarray and Mr Cribb is unable to be sure all costs and charges have been paid by each ASG Customer.

5           The third category is 'unallocated storage'. Just what is in this category appears to be uncertain. However, there is a lever arch file marked 'unallocated orders' which contains copies of receipts relating to amounts that appear to have been paid by unallocated storage customers. On the basis of information presently available Mr Cribb does not believe the 'unallocated storage' customers have any enforceable proprietary rights in any identifiable goods located in the vaults.

6           The fourth category is 'bullion and coin sales'. This involved both online and over the counter sale of bullion or coins. The system was the same for all customers. An order was placed and the goods were paid for. Once payment was made an employee of the company would 'pick the goods and place them into a plastic container or cardboard box within a safe or a vault'. It would seem that a number of the orders are incomplete.

7           The final category is 'bullion, coin and jewellery purchases'. The company engaged in purchasing bullion, coin and jewellery from members of the public. This was referred to as 'Buy Backs'. It would seem the company has possession of some items it has agreed to purchase but has not yet paid for in full or in part.

8           In pars 46 through to 50 of his affidavit Mr Cribb sets out the activities he has undertaken to date. Really what he is attempting to do is recreate the books of the company to allow him to ascertain who is entitled to what. This has involved producing an accurate stock list and register of safety deposit box holders. He also has been attempting to produce a register of unmarked safes and security boxes, a register of allocated storage customers, a register of unallocated storage customers and reconciliation of holders of unallocated products to stock on hand. By par 48 of his affidavit he sets out the purpose of this application. That paragraph reads as follows:

In light of the paucity of the information available, I make this application to seek the Court's guidance, by way of directions, regarding:

- (a) the process that I ought to undertake to identify, preserve and facilitate the return of third party property in the Company's

possession to the owners of that property where they can be identified;

- (b) how I ought to deal with third party property in respect of which the owner cannot be identified;
- (c) who ought to bear the cost of undertaking the process having regard to the benefit to the relevant stakeholders in undertaking the various activities that form the process; and
- (d) if the whole or part of the cost ought to be borne by the property owners, how that cost should be apportioned, imposed and collected.

9 Attached to and forming parts of these reasons are the orders that I made on Mr Cribb's application. As counsel acknowledged the orders made drew heavily on the orders I made in *Re Arcabi Pty Ltd (Receivers & Managers Appointed) (In Liq); Ex parte Theobald & Herbert in their capacities as Receivers & Managers of Arcabi Pty Ltd (Receivers & Managers Appointed) (In Liq)* [2014] WASC 310. A reading of that decision really is a necessary precursor to understanding the reasons in this case. (Counsel in that case was Ms Banks-Smith SC (as her Honour then was). Much of the reasoning found in the case and the form of the orders reflect her Honour's diligence in addressing the issues raised on the application).

10 Under s 90-15 of the Insolvency Practice Schedule (Corporations) in sch 2 of the *Corporations Act 2001* (Cth), the court is empowered to make any orders it thinks fit in relation to the liquidation of a company. Clearly in this case there was a need for orders. Counsel identified three matters which justified orders being made. First, the uncertainty regarding who ought to bear the costs of the liquidator's proposed course of action in relation to each class of third party goods. Second, the extent to which was appropriate that third party owners bear the costs (in full or in part) the liquidator sought directions he was acting reasonably in recouping that cost from the third party owners in the manner proposed. Finally, if the liquidator did not obtain directions at this early stage he runs the risk of incurring cost in returning the third party property to the owners without any recourse to the third party property or the property of the company to recover those costs. It is both proper and appropriate that the liquidator adopted a conservative position and sought the orders he did at an early stage.

11 Perhaps the most important question in this case was who ought to bear the liquidator's costs. There were two alternatives. Either

costs could be recouped from the owners of the third party goods or the costs could be borne by the company as part of the costs of the liquidation. I determined in conformity with submissions made on behalf of the liquidator, the costs ought be borne, if not whole, in part, by the owners of the third party goods.

12           There are valid arguments both ways on this issue. Before detailing those arguments I should mention that at the hearing Mr Camp of counsel appeared on behalf of 'some box holders' (to use Mr Camp's phrase). Mr Camp also appears to have been advising one of the former directors of the company. Sensibly, the liquidator had engaged in discussions with Mr Camp and the former director. Mr Camp said, as a consequence of the discussions he had with the liquidator, he was satisfied the orders sought were appropriate. His main concern had been the imposition of costs on persons who were not in a position to meet those costs. Mr Camp gave two examples. First of a lad who had invested his pocket money in coins which were held by the company. He was not in a position to pay any levy. The other case was of a person in distressed circumstances who also could not afford to pay. The liquidator indicated he would not levy charges against these two individuals or any person in a similar situation. The orders I eventually made did not reflect exemptions from the levy nor did they set out a procedure by which the liquidator could work out who was and who was not entitled to an exemption. But there are limits to how detailed orders can be made before they become unworkable. The liquidator is an officer of the court. Having given an assurance he would treat third party owners in a way that respected their individual circumstances I did not see any need for introducing a regime to deal with individual cases. The orders did provide liberty to apply generally.

13           Turning then to the factors supporting the recoupment of costs from the owners of the third party goods, the liquidator pointed out that in the present case he does not propose to realise the third party goods or otherwise create a 'fund'. That does not deny the existence of a lien over the third party goods in favour of the liquidator to secure costs and expenses reasonably incurred in and exclusively referable to the care and preservation of third party goods as assets under his care or control: see *Primary Securities Pty Ltd v Willmott Forests Ltd (Receiver & Manager Appointed) (In liq)* [2016] 50 VR 752; (2016) VSCA 309.

14           There seems little doubt that such a lien would arise in equity. Creditors of a company in liquidation who stand to benefit from the actions taken by the liquidator with respect to relevant assets should

meet the liquidator's costs. By extension, owners of third party goods who stand to benefit from the actions from the liquidator should also meet the costs. This is consistent with the decision of the Full Court of the Federal Court of Australia in *White (In their capacities as voluntary administrators of Mossgreen Pty Ltd) (Administrators Appointed) v Robertson* [2018] FCAFC 63 their Honours said:

In our view, there can be (an equitable lien) in favour of administrators in respect of costs incurred in dealing with claims for the return of items even where there is no claim to ownership by the company under administration, including costs in holding them and keeping them secure in the meantime [23].

15 The owners of the third party goods receive the incontrovertible benefit of the work undertaken by the liquidator to identify, preserve and facilitate the return of the third party goods. Goods that become 'unclaimed goods' will be dealt with by the liquidator in the ordinary course of the liquidation. The costs which form the Base Levy are exclusively referable to facilitating the identification and return of the third party goods to their owners.

16 A question does arise as to proportionality. Some of the third party goods may be very valuable; others may have little value. But it is intended to raise the same base levy on all goods. Effectively there is no alternative. The value of the majority of the third party goods is unknown. To attempt to value these goods and have a levy on a sliding scale is unworkable. Using the Base Levy is the only option.

17 Then to the alternative argument. Much of the work required to identify the owners of the third party goods is necessitated by the company's failure to keep adequate record particularly in relation to the goods stored in the unidentified boxes and the unidentified goods. It is arguable that the costs the liquidator stands to incur in order to identify the ownership of the third party property, at least in relation to the bailed goods, results from the company's breach of its obligations as bailee. That being so, it is arguable the general creditors of the company should bear these costs ahead of the owners.

18 Both arguments are respectable. On balance, I am satisfied the liquidator's preferred option is the better alternative. Apart from anything else, it has the advantage of being relatively straightforward. It also spreads the costs of the collapse of the company more widely than if the unsecured creditors were left responsible for the liquidator's costs. It recognises the liquidator's equitable lien which

might otherwise have been exercised to the detriment of the owners of the third party goods.

19           The weight of the authority is to the effect that an insolvency practitioner is entitled to assert an equitable lien for their remuneration, costs and expenses in relation to identification of other's goods by stocktake or other enquiry in the performance of their statutory functions. That arises from the observations of the court in *Mossgreen*. The liquidator submits, and I accept, that this is a case where a lien will arise with respect to the third party goods. What the liquidator sought at this stage was a direction confirming the entitlement, relying upon the principle that the entitlement to a lien and the actual amount so secured can be determined separately.

20           For these reasons I made orders in terms attached to these reasons.

IN THE MATTER OF BULLION BOURSE PTY LTD (IN LIQUIDATION) ACN 140 221 067

NEIL RAYMOND CRIBB AS LIQUIDATOR OF BULLION BOURSE PTY  
LTD (IN LIQUIDATION) ACN 140 221 067

Plaintiff



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**ORDERS**  
**MASTER SANDERSON**  
**30 JULY 2019**

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UPON APPLICATION of the Plaintiff dated 29 July 2019 and upon hearing Mr R M Johnson of Counsel for the Plaintiff and Mr A Camp of Counsel for certain safety deposit box holders IT IS ORDERED THAT:

**Safety deposit boxes**

Identified SDB Goods

1. The goods contained in the safety deposit boxes in respect of which:
  - (a) the plaintiff is able to identify the safety deposit box holder (**Identified SDB Holder**) by reference to the available records of Bullion Bourse Pty Ltd (In Liquidation) ACN 140 221 067 (**Company**); or
  - (b) a person is able to provide documentation to the reasonable satisfaction of the plaintiff which identifies them as the Identified SDB Holder,

**(Identified SDB Goods)** are:

  - (c) the property of the relevant Identified SDB Holders; and
  - (d) able to be collected from the plaintiff by the Identified SDB Holders or their authorised representative by the method outlined in these directions.
2. The plaintiff is justified, and is otherwise acting reasonably, in asserting an entitlement to an indemnity secured by an equitable lien against the Identified SDB Goods, for the payment of his costs, expenses and remuneration relating to identifying, preserving and facilitating the return of (**Costs**) the Identified SDB Goods limited to the amount of \$350 per collection (**Base Levy**).
3. Further and alternatively, the plaintiff is justified, and is otherwise acting reasonably, in treating his costs and expenses incurred in relation to the Identified SDB Goods as a cost of the winding up of the Company.

Unidentified SDB Goods

4. The plaintiff is justified, and is otherwise acting reasonably in undertaking the following course of action in relation to the goods (**Unidentified SDB Goods**) contained in safety deposit boxes in respect of which the safety deposit box holder cannot be identified by the plaintiff from the available records of the Company (**Unidentified Boxes**):
- (a) send to all creditors and other interested parties a circular that encloses a copy these Orders (**Circular**);
  - (b) if any time until 30 September 2019 or such other date as extended by further order of this Court, a person responds to any circulars, including the Circular or any future circulars, or contacts the plaintiff or his staff and is able to produce photographic identification and documentation that enables the plaintiff, to his reasonable satisfaction, to match an Unidentified Box to that person, then the plaintiff will treat the goods in that Unidentified Box (**Subsequently Identified SDB Goods**) as the property of that person (**Subsequently Identified SDB Holder**) and will release the Subsequently Identified SDB Goods to the Subsequently Identified SDB Holder or their authorised representative by the method outlined in these directions.
  - (c) if, after 30 September 2019 or such other date as extended by further order of this Court, an Unidentified Box remains unclaimed by a customer, then the plaintiff will:
    - (i) access, and where necessary engage a locksmith to gain access to, the contents of the Unidentified Box which will be done with two of the plaintiff's staff present and recorded on video camera;
    - (ii) have his staff catalogue the contents of the Unidentified Box;
    - (iii) store the contents of the Unidentified Box at a secure premise to the plaintiff's reasonable satisfaction, but not necessarily at the Premises;
    - (iv) if the contents disclose any information that might enable the plaintiff to identify the owner, then the plaintiff will attempt to contact that person and/or make enquiries;
    - (v) if the owner can be identified to the plaintiff's reasonable satisfaction following contact or inquiries made by the plaintiff under (iv) above, then the plaintiff will treat the goods as Subsequently Identified SDB Goods; and
    - (vi) if by the 30 November 2019 or such other date as extended by further order of this Court (**Deadline**) the owner cannot be identified or, if any contact or enquiries made by the plaintiff under (iv) above do not result in any person claiming ownership of the goods, then the goods will be 'Unclaimed Goods' and the plaintiff will deal with them as set out at Order 20 below.
5. The plaintiff is justified, and is otherwise acting reasonably, in asserting an entitlement to an indemnity secured by an equitable lien against the Subsequently Identified SDB Goods, for the payment of his Costs in relation to the Identified SDB Goods calculated as the Base Levy plus any additional amount incurred for work properly done and expenses properly incurred that benefit that Subsequently

Identified SDB Holder, but any amount in excess of the Base Levy is to be set by further order of this Court.

6. Further and alternatively, that the plaintiff is justified, and is otherwise acting reasonably, in treating his Costs in relation to the Subsequently Identified SDB Goods as a cost of the winding up of the Company.

#### **Allocated storage**

7. The plaintiff is justified, and is otherwise acting reasonably in undertaking the following course of action in relation to goods located in the vaults on the Premises that the plaintiff has satisfied himself are not goods contained in the safety deposit boxes (**Unidentified Goods**):
  - (a) if any time until 30 September 2019 or such other date as extended by further order of this Court, a person responds to any circulars, including future circulars, or contacts the plaintiff or his staff and is able to produce photographic identification and documentation that enables the plaintiff, to his reasonable satisfaction, to match any Unidentified Good to that person, then the plaintiff will treat those goods (**Identified AS Goods**) as the property of that person (**Identified AS Goods Owner**) and will release the Subsequently Identified AS Goods to the Subsequently Identified AS Goods Owner or their authorised representative by the method outlined in these directions;
  - (b) if, after 30 September 2019 or such other date as extended by further order of this Court, any Unidentified Goods remain unclaimed by a customer, then the plaintiff will:
    - (i) if the Unidentified Goods are:
      - (A) a safe that is not the property of the Company, engage a locksmith to gain access to the contents of the safe; or
      - (B) wrapped, taped or otherwise secured in a way that conceals, binds or protects the goods, take steps to access the goods, which will be done with two of the plaintiff's staff present and recorded on video camera;
    - (ii) have his staff catalogue the Unidentified Goods;
    - (iii) store the contents of the Unidentified Goods in at a secure premise to the plaintiff's reasonable satisfaction but not necessarily the Premises;
    - (iv) if anything affixed to or located with the Unidentified Goods disclose any information that might enable the plaintiff to identify the owner, then the plaintiff will attempt to contact that person or make enquiries;
    - (v) if the owner can be identified to the plaintiff's reasonable satisfaction following contact or inquiries made by me under 4(c)(iv) above, then the plaintiff will treat the goods as Identified AS Goods; and

- (vi) if by the Deadline the owner cannot be identified or, if any contact or inquiries made by the plaintiff under 4(c)(iv) above do not result in any person claiming ownership of the goods, then the goods will be 'Unclaimed Goods' and the plaintiff will deal with them as set out at Order 20 below.
8. The plaintiff is justified, and is otherwise acting reasonably, in asserting an entitlement to an indemnity secured by an equitable lien against the Identified AS Goods, for the payment of his Costs in relation to the Identified AS Goods as the Base Levy plus any additional amount incurred for work properly done and expenses properly incurred that benefit that Identified AS Goods Owner, but any amount in excess of the Base Levy is to be set by further order of this Court.
9. Further and alternatively, the plaintiff is justified, and is otherwise acting reasonably, in treating his Costs in relation to the Identified AS Goods as a cost of the winding up of the Company.

### **Sales orders**

#### Completed Orders

10. The goods the subject of sale orders which are complete save that they have not yet been dispatched to, or collected by, the customer (**Completed Orders Goods**) that have been paid for in full are:
- (a) the property of the relevant customer (**Order Owner**); and
  - (b) able to be collected by the Order Owners or their authorised representative by the method outlined in these directions.
11. The plaintiff is justified, and is otherwise acting reasonably, in asserting an entitlement to an indemnity secured by an equitable lien against the Completed Orders Goods, for the payment of his Costs in relation to the Completed Orders Goods, for work properly done and expenses properly incurred that benefit that Order Owner, but any amount in excess of the Base Levy is to be set by further order of this Court.
12. Further and alternatively, the plaintiff is justified, and is otherwise acting reasonably, in treating his Costs in relation to the Completed Orders Goods as a cost of the winding up of the Company.

#### Partial Orders

13. The goods the subsequent of sales orders which are partially complete (**Partial Orders**) in that:
- (a) multiple goods have been ordered in the same sale order; and
  - (b) some, but not all, goods the subject of the sale order have been picked and placed in the order box,
- referred to as **Picked Goods**, are:
- (c) the property of the relevant customer (**PO Owners**); and

- (d) subject to payment in full of the Partial Orders by the PO Owners, able to be collected by the PO Owners or their authorised representative by the method outlined in these directions.
14. The plaintiff is justified, and is otherwise acting reasonably in undertaking the following course of action in relation to the goods the subject of a partially complete sales order (**Partial Order**) which have been picked and placed in the order box (**Picked Goods**):
- (a) issue correspondence to those customers (**PO Owners**) by email where an email address is specified in the order or, if no email address is specified, by ordinary pre-paid post, confirming that they may contact the plaintiff's staff to arrange collection of the Picked Goods and that collection must occur on or before the Deadline;
  - (b) subject to payment by the PO Owners of that amount of the Partial Orders referable to the Picked Goods, release the Picked Goods to the PO Owners or their authorised representative by the method outlined in these directions;
  - (c) if any Picked Goods remain uncollected as at the Deadline, the plaintiff will deal with them as set out at Order 20 below.
15. The plaintiff is justified, and is otherwise acting reasonably, in asserting an entitlement to an indemnity secured by an equitable lien against the Picked Goods, for the payment of his Costs in relation to the Picked Goods, for work properly done and expenses properly incurred that benefit that PO Owner, but any amount in excess of the Base Levy is to be set by further order of this Court.
16. Further and alternatively, the plaintiff is justified, and is otherwise acting reasonably, in treating his Costs in relation to the Picked Goods as a cost of the winding up of the Company.

### **Collection**

17. For the purposes of Orders 18 to 21 the following definitions apply:

- (a) **Identified Goods** means:
  - (i) the Identified SDB Goods;
  - (ii) any Subsequently Identified SDB Goods;
  - (iii) the Identified AS Goods;
  - (iv) the Complete Orders Goods; and
  - (v) the Picked Goods,and any or each of them as the context requires.
- (b) **Owner** means:
  - (i) the Identified SDB Holders;
  - (ii) any Subsequently Identified SDB Holders;

- (iii) the Identified AS Goods Owners;
- (iv) the Order Owners; and
- (v) the PO Owners.

and any or each of them as the context requires.

- (c) **Collection Levy** means, in relation to each of the Identified Goods, the amount (if any) that the plaintiff is justified in levying on the Owners in respect of his Costs of dealing with the Identified Goods, as set by these orders or any future order of this Court.

18. The Identified Goods shall be collected from the Premises at a time and date authorised by the plaintiff, by:

- (a) the Owner, who shows appropriate identification to the plaintiff's staff; or
- (b) the authorised representative of the Owner, who shows appropriate identification and written proof of authority (to the plaintiff's reasonable satisfaction) to the plaintiff's staff,

(the **Collecting Person**).

19. The plaintiff is justified in requesting at the time of delivery of, and prior to releasing, any Identified Goods under paragraph 18 of these directions that the Collecting Person is to provide:

- (a) a release in the form set out at Annexure "A" to these Orders duly signed by the Owner;
- (b) if applicable, payment of any outstanding rent or storage fees relating to the Identified Goods; and
- (c) if applicable, payment to the plaintiff of the relevant Collection Levy.

20. The plaintiff is justified in treating any goods of third parties in his possession that remain unclaimed as at the Deadline (**Unclaimed Goods**) as the property of the Company provided that the plaintiff has:

- (a) no later than 14 days prior to the Deadline, caused an advertisement to be published in each of The Australian (print), The West Australian (print), on the Liquidation Website and the Website advising of the intended sale of the Unclaimed Goods (without having to itemise each of the Unclaimed Goods) and have received no relevant response from any person claiming an interest in those Unclaimed Goods by the Deadline;
- (b) in relation to those Unclaimed Goods that are Identified Goods, no later than 14 days prior to the Deadline; written to the relevant owner(s) by letter by registered post (at the address recorded in the Company's records or, if none is recorded, the registered office of the owner (if the owner is a body corporate) or the address recorded with the Australian Electoral Commission (if the owner is a natural person)) and have received no relevant response by the Deadline; and

- (c) no later than 14 days prior to the Deadline, provided the WA Police with a list or catalogue of the Unclaimed Goods and the WA Police have not, by the Deadline, identified those Unclaimed Goods as having been reported as lost or stolen.
21. The plaintiff's costs of undertaking the processes authorised by these Orders that are not recouped by receipt of the Collection Levy, be paid out of the assets of the Company as an expense of the winding up.
22. The plaintiff's cost of this proceeding be paid out of the assets of the Company as an expense of the winding up.
23. There be liberty to apply, including by any person affected by these Orders on 48 hours' notice.



BY THE COURT

*W. Sanderson*  
MASTER SANDERSON

## Deed of Release and Indemnity

**Bullion Bourse Pty Ltd (ACN 140 221 067) (In Liquidation)**

and

**Neil Raymond Cribb in his capacity as liquidator of Bullion  
Bourse Pty Ltd (ACN 140 221 067) (In Liquidation)**

and

**The Customers listed in Schedule 1**

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## Deed of Release and Indemnity

Date 2019

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**Parties**                      **Bullion Bourse Pty Ltd (ACN 140 221 067) (In Liquidation)**

of c/- RSM Australia Partners, Level 32 Exchange Tower, 2 The Esplanade, Perth, Western Australia

(Company)

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**Neil Raymond Cribb in his capacity as liquidator of Bullion Bourse Pty Ltd (In liquidation) ACN 140 221 067**

of c/- RSM Australia Partners, Level 32 Exchange Tower, 2 The Esplanade, Perth, Western Australia

(Liquidator)

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**Each person listed in Schedule 1**

(Customers)

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- Recitals**
- A. The Liquidator was appointed as liquidator of the Company on the Appointment Date.
  - B. Prior to the Appointment Date, the Customers entered into an agreement with the Company to store the Goods **#[in the Box / on the Premises]#**.
  - C. The Liquidator accepts that the Customers are the owners of the Goods and are entitled to retrieve the Goods.
  - D. The Customers have requested that the Liquidator allow them access to the **#[Box / Premises]#** for the purpose of retrieving the Goods.
  - E. The Liquidator has agreed to provide the Customers with access to the **#[Box / Premises]#** and to allow the Customers to retrieve the Goods on the terms and conditions outlined in this Deed.
- 

This Deed witnesses that in consideration of, among other things, the mutual promises

contained in this Deed the parties agree as follows:

## 1. Definitions and interpretation clauses

### 1.1 Definitions

In this Deed:

**Appointment** means the Liquidator's appointment as liquidator of the Company.

**Appointment Date** means 2 July 2019.

**Box** means the safety deposit box bearing number **#[box number]#**.

**Business Day** means a day on which banks are open for business in Perth excluding a Saturday, Sunday or public holiday in that city.

**Claims** includes an allegation, claim, notice, demand, action, proceeding, litigation, investigation, judgment, damage, Loss, cost, expense or Liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Deed.

**Company** means Bullion Bourse Pty Ltd (In Liquidation) ACN 140 221 067.

**Cost Recovery Fee [if applicable]** means the sum of **#[insert amount]#**.

**Deed** means this deed.

**Effective Time** means the date on which the last Party to execute this Deed, executes this Deed.

**Goods** **#[Select applicable]#**

means the goods contained in the Box at the time it is opened in accordance with this Deed.

means **#[insert description of goods where not safety deposit**

**box goods]#.**

<b>Government Agency</b>	means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity: it includes any self-regulatory organisation established under statute and any stock exchange.
<b>Liability</b>	means any liability or obligation (whether actual, contingent or prospective), including for any Loss irrespective of when the acts, events or things giving rise to the liability occurred.
<b>Liquidator's Costs</b>	means the Liquidator's remuneration and fees in connection with the Appointment and all costs, expenses, taxes, actions, demands suits, proceedings, debts, Claims, Losses, damages or other Liabilities (whether present or future, certain or contingent, ascertained or sounding only in damages) arising out of, during the course of, in connection with or incidental to the Appointment.
<b>Loss</b>	means all damage, loss, cost, Claim, Liability or expense (including legal costs and expenses of whatsoever nature or description).
<b>Missing Goods [if applicable - safety deposit boxes]</b>	means any goods that the Customers allege were stored, or were provided to the Company to be stored, in the Boxes but which are not Goods.
<b>Order [if applicable]</b>	means sales order number #[insert number]# dated #[insert date where known]#.
<b>Premises</b>	means 180 Wright Street, Cloverdale, Western Australia.
<b>Storage Agreements [if applicable]</b>	means the storage agreements between the Customers and the Company, copies of which are annexed to this Deed at Schedule 2.

## 1.2 Interpretation

In this Deed unless a contrary intention is expressed:

- (a) headings and italicised, highlighted or bold type do not affect the interpretation of this deed;

- (b) the singular includes the plural and the plural includes the singular;
- (c) a gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (e) a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or association, trust, corporation or other body corporate and any Government Agency (whether or not having a separate legal personality);
- (f) a reference to any thing (including any right) includes a part of that thing, but nothing in this clause 1.1(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Deed and a reference to this Deed includes any clause, annexure, exhibit and schedule;
- (h) a reference to a document (including this Deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to any document includes that party's successors and permitted assigns;
- (j) a reference to an agreement other than this Deed includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (k) a reference to a document includes any agreement or contract in writing, or any certificate, notice, deed, instrument or other document of any kind;
- (l) a provision of this Deed may not be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Deed or the preparation or proposal of that provision;
- (m) a reference to a body, other than a party to this Deed (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (n) a reference to a day is to the period of time commencing at midnight and ending 24 hours later;
- (o) if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day;
- (p) if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5:00 pm on that day, it is taken to have occurred or been done on the next day; and

- (q) a reference to '\$', 'A\$', 'AUD', 'dollars' or 'Dollars' is a reference to the lawful currency of the Commonwealth of Australia.

## 2. Acknowledgements and warranties

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### 2.1 Warranties

Each of the Customers warrants in favour of the Company and the Liquidator that:

- (a) they beneficially own, or are entitled to exclusive possession of, the Goods; and
- (b) ~~the Customers holds a key to the Box.~~

### 2.2 Acknowledgements

Each of the Customers acknowledges and agrees that:

- (a) without limiting clause 6.1, they have no Claim against the Liquidator in relation to the Goods, any Missing Goods, the Storage Agreements, the Order or the Appointment;
- (b) the Liquidator has not accessed the Box to verify the Goods or their condition;
- (c) the Customers bear the risk in the Goods and the Missing Goods; and
- (d) the Liquidator has no Liability in respect of the Goods or their condition, any Missing Goods, the Storage Agreements, the Order or the Appointment.

## 3. Authority to collect ~~the Goods~~

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Each of the Customers hereby absolutely and irrevocably:

- (a) authorise ~~the Customer~~ to collect the Goods on their behalf in accordance with this Deed; and
- (b) authorise and direct the Liquidator to allow ~~the Customer~~ to collect the Goods on their behalf in accordance with this Deed.

## 4. Access to the Boxes and retrieval of the Goods

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- (a) On or before collection, the Customers must pay to the Liquidator (without set-off, counterclaim or deduction):

- (i) all outstanding rent, storage fees and other amounts payable by the Customers to the Company under the **#[SSafety Deposit Box/Storage Agreement / Order]#**; and
  - (ii) the Cost Recovery Fee. **#[If applicable]#**
- (b) Subject to:
- (i) the Customers complying with their obligations pursuant to clause 4(a); and
  - (ii) **#[authorised person / the customers]#** complying with his obligations pursuant to clause 4(c),
- the Liquidator must, allow **#[authorised person / customers]#** access to the **#[Boxes at the / the]#** Premises and permit **#[authorised person / customers]#** to take possession of the Goods, provided that **#[authorised person]#** provides adequate photo identification at the time for the purpose of verifying **#[his/her]#** identity.
- (c) Immediately upon taking delivery of the Goods, **#[authorised person / the customers]#** must provide the Liquidator with an acknowledgement in writing (in terms acceptable to the Liquidator in his discretion) that **#[he / she / they]#** has taken delivery of the Goods.

## 5. No representations, warranties or undertaking

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Each of the Customers acknowledge and agree that, save as expressly set out in this Deed, they have not relied on any representation, warranty or undertaking of any kind made by or on behalf of the Company, the Liquidator or any of their respective employees, advisers and agents.

## 6. Indemnity and release

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### 6.1 Release

Upon execution of this Deed by each Customer, each Customer absolutely and irrevocably releases, waives and forever discharges the Liquidator and any of his partners, employees, officers, advisers and agents and RSM Australia Pty Ltd from any and all Claims which the Customers have or, but for the execution of this Deed, may have against the Liquidator and any of his partners, employees, officers, advisers and agents and RSM Australia Pty Ltd arising from or otherwise relating to or connected in any way with any of the following, whether occurring before, on or after the Effective Time:

- (a) the Goods;
- (b) any Missing Goods;

- (c) the Storage Agreements; #[if applicable]#
- (d) the Order; #[if applicable]#
- (e) the collection of the Goods by #[authorised person]# in accordance with this Deed;
- (f) this Deed; and
- (g) the Appointment.

## 6.2 Bar

The Liquidator and any of his partners, employees, officers, advisers and agents may plead this Deed as a bar to any Claims made or actual proceedings commenced by a Customer (or anybody claiming through them or any of them) against the Liquidator or any of his employees, officers, advisers and agents.

## 6.3 Indemnity

Each Customer each hereby agrees to indemnify and keep indemnified at all times the Liquidator against:

- (a) any and all Loss, Liability or Claim of or against the Liquidator to the extent that such Loss, Liability or Claim arises from, or is connected with any breach of any of the warranties made by any Customer (including, without limitation, those at clauses 2.1 or the breach of any other provision of this Deed;
- (b) any and all Loss, Liability or Claim of or against the Liquidator arising from, or connected with, any of the warranties in clause 2.1 not being true and correct; and
- (c) any and all Loss, Liability or Claim of or against the Liquidator arising from, or connected with, the collection of the Goods by Dr Cohen in accordance with this Deed.

## 6.4 Continuing obligation

The release and indemnities in clauses 6.1 and 6.3 respectively are continuing obligations, separate and independent from the other obligations set out in this Deed and survive termination of this Deed.

## 6.5 Indemnities survive retirement of Liquidator

The parties acknowledge and agree that the indemnities given by each Customer to the Liquidator in this Deed are continuing obligations and are not revoked, affected, compromised or prejudiced by the retirement of the Liquidator as liquidator of the Company.

## 7. No waiver

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### 7.1 No waiver

The failure of a party at any time to require performance of any obligation under this Deed is not a waiver of that Party's right:

- (a) to claim damages for breach of that obligation;
- (b) to enforce any indemnity that they take the benefit of under this Deed; and
- (c) at any other time to require performance of that or any other obligation under this Deed,

unless written notice to that effect is given in accordance with this Deed.

### 7.2 Waiver

Waiver of any provision of or right under this Deed:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

## 8. Joint and several obligations

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### 8.1 Parties jointly and severally bound

Any provision in this Deed which binds more than one party binds all of those parties jointly and each of them individually.

### 8.2 Separate obligations

Each obligation imposed on a party by this Deed in favour of another is a separate obligation.

## 9. Costs

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Each party to this Deed must bear and pay its own legal costs and expenses in relation to the negotiation, preparation and execution of, and the satisfaction of the conditions precedent under, this Deed.

## 10. Counterparts

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### 10.1 Parts

This Deed may be executed in counterparts by the respective parties, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same deed. This Deed shall take effect immediately upon it having been executed (whether together or by execution of different counterparts) by all of the parties.

### 10.2 Facsimile and PDF copies

An executed facsimile or PDF copy of this Deed is acceptable as an original.

## 11. Confidentiality

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The parties undertake that they will not disclose the contents of this Deed or any information relating to it to any third party, unless the disclosure is:

- (a) for the purposes of enforcing this Deed;
- (b) with the written consent of the other parties;
- (c) to the Party's professional advisers; or
- (d) required by law.

## 12. Severability

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Part or all of any provision of this Deed that is illegal or unenforceable may be severed from this Deed and the remaining provisions of this Deed will continue in force.

## 13. Entire agreement

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This Deed constitutes the entire agreement between the parties with respect to the subject matter of this Deed and contains all of the representations, warranties, covenants and agreements of the parties in relation to the subject matter of this Deed.

## 14. Time of the essence

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Time is of the essence in this Deed in relation to any obligation to pay money or in relation to any obligation to satisfy conditions precedent.

## 15. Variation

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A variation of any term of this Deed will be of no force or effect unless it is in writing and signed by each of the parties.

## 16. Jurisdiction

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This Deed shall be governed by and construed in accordance with the laws of Western Australia and the parties submit themselves to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia.

## 17. Further assurances

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Each party must promptly execute all documents and do all things necessary or desirable to give full effect to the arrangements set out in this Deed.

Schedule 1 Customers

	Customer Name	Addresses
1.	#[Name]#	#[Address]#
2.	#[Name]#	#[Address]#
3.	#[Add further rows if required]#	#[Address]#

DRAFT

Executed as a deed.

Executed by Bullion Bourse Pty Ltd (ACN  
140 221 067) (In Liquidation) by its  
liquidator:

\_\_\_\_\_  
Signature of Neil Raymond Cribb, liquidator  
of Bullion Bourse Pty Ltd (ACN 140 221  
067) (In Liquidation)

Signed, sealed and delivered by Neil  
Raymond Cribb in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of Neil Raymond Cribb

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Address of witness (print)

Signed, sealed and delivered by #[Insert  
name of signatory]# in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of #[Insert name of signatory]#

\_\_\_\_\_  
Full name of witness (print)

\_\_\_\_\_  
Address of witness (print)

Schedule 2 – Safety Deposit Box/Storage Agreement / Order

I certify that the preceding paragraph(s) comprise the reasons for decision of the Supreme Court of Western Australia.

DG  
Associate to Master Sanderson

19 AUGUST 2019

DRAFT