

ASX Announcement

AUSTRALIAN CAREERS NETWORK LIMITED ACN 168 592 434

22 November 2016

Australian Careers Network Limited (Subject to Deed of Company Arrangement) (ASX:ACO) – DOCA update

Australian Careers Network Limited (Subject to Deed of Company Arrangement) and associated entities provide the following update in relation to the progress of the Deed of Company Arrangement executed on 24 May 2016.

1 Reconciliation of VET FEE-HELP entitlements

The Deed Administrators are currently seeking to recover the primary asset of the Group, being the entitlement of Phoenix Institute of Australia Pty Ltd (Subject to Deed of Company Arrangement) (**Phoenix**) to amounts of VET FEE-HELP assistance under Schedule 1A to the *Higher Education Support Act 2003* (Cth) (**HESA**).

Phoenix's claim against the Commonwealth Department of Education and Training in respect of these entitlements is for approximately \$253 million (being a total claim of approximately \$360 million less payments of \$106,667,172 which were received by Phoenix in 2015 pursuant to an advance payment determination under clause 61 of Schedule 1A to the HESA).

In February 2016 (before the Deed Administrators' appointment), the Department notified Phoenix that it would be the subject of an audit of the enrolment of the students enrolled in a course of study during 2015. That audit was subsequently extended to cover the enrolment of the students enrolled in a course of study during 2016. Since their appointment the Deed Administrators have responded to a number of requests for information made by the Department and its appointed auditors and, in doing so, have produced tens of thousands of student records and other documents to the auditors.

On 11 October 2016, Phoenix received a document entitled 'Notice of Proposed Reconciliation of Payments to a Provider' from the Department (**Notice**), which set out the Department's 'preliminary findings' following its 'preliminary reconciliation' of amounts owing to Phoenix under Schedule 1A to the HESA. The Notice states that '*on the basis of the material currently available, the Department considers that Phoenix's entitlement to VET FEE-HELP for 2015 and 2016 is \$9,219,140*'. As that amount is less than the \$106,667,172 which was paid to Phoenix in 2015 pursuant to the advance payment

determination, the Notice concludes that Phoenix is not entitled to any further amounts of VEE FEE-HELP and that there has been a substantial overpayment to Phoenix.

The Deed Administrators do not agree with the views expressed by the Department in the Notice. Having taken legal advice, on 7 November 2016 the Deed Administrators sent a detailed letter to the Department setting out their view that the Department's 'preliminary reconciliation' of Phoenix's entitlements is in error because the Department has:

- erroneously construed relevant provisions of Schedule 1A to the HESA which concern Phoenix's entitlement to VET FEE-HELP;
- taken into account irrelevant considerations in undertaking its 'preliminary reconciliation' of Phoenix's entitlements relating to the extent of participation and engagement by Phoenix's enrolled students in the courses in which they were enrolled; and
- failed to take into account relevant considerations, being whether each of Phoenix's enrolled students has satisfied the objective criteria prescribed by clause 43 of Schedule 1A to the HESA which governs their entitlement to VET FEE-HELP assistance.

The Deed Administrators provided detailed reasons for these views in the letter, and stated that if the Department proceeds to make a final decision on Phoenix's entitlements to VET FEE-HELP assistance under Schedule 1A to the HESA premised on the errors identified in the letter, that final determination will similarly be in error.

The Deed Administrators now await the Department's final reconciliation of Phoenix's entitlement to VET FEE-HELP assistance under Schedule 1A to the HESA. The Department has not to date provided an indication of the likely timing of that final reconciliation.

If the Deed Administrators form the view that the Department's final reconciliation is in error, they may make an application to the Federal Court of Australia for review of the Department's conduct, and / or pursue other remedies against the Department.

2 ACCC proceeding

As mentioned in the Voluntary Administrators' report to creditors dated 26 April 2016 (which was announced on the ASX on 26 April 2016), in November 2015 the Australian Competition and Consumer Commission (**ACCC**) and the Commonwealth of Australia commenced a proceeding in the Federal Court against Phoenix and CTI Training Pty Ltd (Subject to Deed of Company Arrangement) (**CTI**) alleging contraventions of the Australian Consumer Law in connection with the supply, or marketing of the supply, of vocational education courses. The relief sought in the proceeding includes orders that

enrolment contracts between Phoenix and its students be declared void, and that the Commonwealth's liability to pay any amounts of VET FEE-HELP assistance to Phoenix in respect of its enrolled students be annulled.

By operation of the *Corporations Act 2001* and the Deed of Company Arrangement, the proceeding was stayed on the appointment of voluntary administrators to Phoenix and CTI and remained stayed following the execution of the Deed of Company Arrangement.

On 29 August 2016, the ACCC and the Commonwealth applied to the Federal Court for leave to proceed against Phoenix and CTI, which would have the effect of lifting the stay. The ACCC and the Commonwealth argued that: (i) they were not creditors of Phoenix and CTI and therefore were not bound by the Deed of Company Arrangement; and (b) if they were creditors, leave should nonetheless be granted.

Phoenix and CTI opposed the application on the basis that the ACCC and the Commonwealth were creditors and bound by the Deed of Company Arrangement, and that leave should not be granted because the Deed Administrators should not be required to expend creditors' funds on defending the proceeding in circumstances where they are subject to a parallel duplicative process concerning the Commonwealth's obligation to pay amounts of VET FEE-HELP (being the Department of Education and Training's reconciliation of Phoenix's entitlements described in item 1 above) and the outcome of that parallel process may mean that the proceeding is redundant.

The application for leave to proceed was heard by the Honourable Justice Perry on 7 October 2016, and her Honour delivered judgment on 21 October 2016. Her Honour found in favour of Phoenix and CTI on the question of whether the ACCC and the Commonwealth were creditors, but exercised her discretion to order that the ACCC and the Commonwealth have leave to proceed against Phoenix and CTI.

The Deed Administrators remain of the view that creditors' funds should not be expended on the ACCC proceeding until such time as the parallel process being undertaken by the Department of Education and Training has been completed. To that end, and having taken legal advice on her Honour's decision, they have filed an application for leave to appeal the decision and for a stay of the proceeding pending the determination of the appeal.

Phoenix's application for leave to appeal will be heard by the Full Court of the Federal Court on 15 February 2017.

3 Victorian Department of Education and Training claims

The Deed Administrators have been investigating and pursuing the entitlements of entities in the ACN group under VET Funding Agreements with the Victorian Department of Education.

Consider This Training Pty Ltd (Subject to Deed of Company Arrangement) has commenced a proceeding in the Supreme Court of Victoria claiming that the Department wrongfully terminated its VET Funding Agreement and seeking damages. A directions hearing in that proceeding is scheduled for 16 December 2016. The Deed Administrators will be conferring with the Department before that hearing about whether any issues in dispute can be resolved by agreement and whether the scope of any remaining issues in dispute can be narrowed (among other matters).

The Deed Administrators propose to provide a further update to creditors and the ASX once the Department's final reconciliation of Phoenix's entitlement to VET FEE-HELP assistance under Schedule 1A to the HESA is made available to them. They will also inform creditors of any significant developments in the legal proceedings referred to above.

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