

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: 5437/21

Applicant:

THE PRESBYTERIAN CHURCH OF
QUEENSLAND INCORPORATED BY
LETTERS PATENT

AND

Respondent:

ATTORNEY-GENERAL FOR THE STATE OF
QUEENSLAND

ORDER

Before: Justice Ryan

Date: 12 May 2021

Initiating document: Application filed 12 May 2021

THE ORDER OF THE COURT IS THAT:

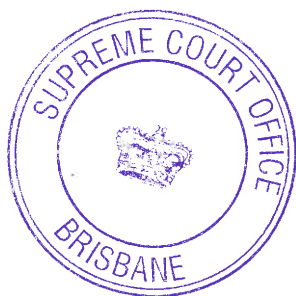
1. Pending:

- a. the determination of the relief sought in this proceeding and distribution of the surplus property and undertaking of PresCare ABN 85 338 603 114 (**PresCare**) or the Applicant; or
- b. earlier order of the Court;

Michael Andrew Owen and Philip Patrick Carter of the firm PricewaterhouseCoopers (the **Receivers**) be appointed, without provision of security, as joint and several receivers and managers to all of the assets, property and undertaking of the Applicant (in any capacity) (**Applicant's Property**), which includes all of the assets, property and undertaking of PresCare (**PresCare Property**) pursuant to s 12 of the *Civil Proceedings Act 2011* (Qld), or alternatively pursuant to the Court's inherent jurisdiction.

2. The Receivers:

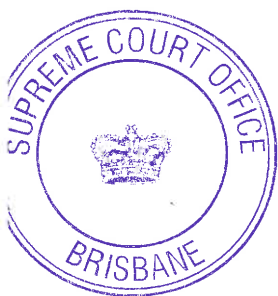
- a. be authorised to:
 - i. take possession of, preserve or maintain, insure and repair the Applicant's Property and PresCare Property;
 - ii. bring and defend and compromise all proceedings in the name of the Applicant or PresCare, other than for this proceeding;
 - iii. engage or discharge employees on behalf of the Applicant or PresCare;



ORDER
Filed on behalf of the Applicant
Form 59 Rule 661

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- iv. appoint solicitors, accountants, or other professionally qualified persons to assist the Receivers;
 - v. appoint an agent to do any business that the Receivers are unable to do, or that it is unreasonable to expect the Receivers to do, in person;
 - vi. pay the costs and expenses incurred in the ordinary course of trading the business or businesses of the Applicant, or PresCare, including all employee entitlements; .
 - vii. execute any document, or do any other act or thing in the name of and on behalf of the Applicant or PresCare;
 - viii. use a seal of the Applicant or PresCare;
 - b. be authorised to mortgage or encumber, sell or dispose of all or part of the PresCare Property;
 - c. until further order are not authorised to mortgage or encumber, sell or dispose of any part of the Applicant's Property that is not PresCare Property (**Non-PresCare Property**) other than for the purposes of sub-paragraph a. i. above;
 - d. be authorised to take possession of the books and records of the Applicant and PresCare and to allow the Applicant and its letters patent officers and other office bearers access to such books and records and to take copies of them;
 - e. with respect to the PresCare Property and without limiting the powers set out in the preceding subparagraphs, have all the powers provided by s 420(1) and s 420(2) of the *Corporations Act 2001* (Cth) (other than those powers in s 420(2)(b), (s), (t), (u) and (w)) as if references in those sections to "corporation" were references to PresCare;
 - f. take reasonable steps to gather information in relation to:
 - i. the trust or trusts on which any of the Applicant's Property is or are held;
 - ii. the assets or property out of which the Applicant may have a right of indemnity by way of exoneration for the creditors and liabilities incurred, but unpaid (if any), with respect to the undertaking of PresCare and also the Applicant;
3. Within 3 months of the date of appointment, or such other date as ordered by the Court or agreed to in writing by the Applicant, the Respondent and the Receivers, the Receivers are to provide to the Court and to the Applicant and the Respondent and other persons or entities as directed by the Court a report on:
- a. the work undertaken by the Receivers;
 - b. the assets, property and liabilities of the Applicant (howsoever held) as at the date of appointment of the Receivers and at the date of the report;
 - c. the assets and property of PresCare at the date of appointment of the Receivers and the date of the report;
 - d. any realisations of the PresCare Property by the Receivers;



- e. the liabilities or claims with respect to PresCare at the date of appointment of the Receivers and the date of the report;
- f. the payment by the Receivers of costs and expenses of the operations of the Applicant and PresCare in the ordinary course or the receivership;
- g. any unpaid liabilities or claims at the date of the report with respect to:
 - i. the Applicant; and
 - ii. PresCare;
- h. the information gathered by the Receivers as to the assets or property out of which the Applicant may have a right of indemnity by way of exoneration for the creditors and liabilities incurred, but unpaid (if any), with respect to the undertaking of PresCare and also the Applicant and why such asset or property may be subject to such right of indemnity;
- i. the information gathered by the Receivers as to any trust or trusts, including the terms of each trust, on which the Applicant holds each of its assets and property and the categories thereof; and
- j. the receipts and payments:
 - i. of the receivership of the Applicant's Property;
 - ii. of the receivership of the PresCare Property;
 - iii. of the receivership of each asset, property or undertaking comprising the Non-PresCare Property; and
 - iv. that cannot be allocated to either sub-paragraphs (j)(ii) and (iii), above;
- k. the remuneration, costs and expenses of the Receivers:
 - i. of the receivership of the Applicant's Property;
 - ii. of the receivership of the PresCare Property;
 - iii. of the receivership of each asset, property or undertaking comprising the Non-PresCare Property; and
 - iv. that cannot be allocated to either sub-paragraphs (k)(ii) and (iii), above;
- l. the surplus property (after payment of all costs and expenses and remuneration set out in this order) of the Applicant and PresCare, if any; and
- m. the information gathered by the Receivers in undertaking the receivership as to whether the Applicant, its letters patent officers or other office bearers might have potentially engaged in or refrained from any conduct that might amount to negligence or any other breach of duty or law.



4. That reasonable accounting, legal and other professional costs of the Applicant of this proceeding and the letters patent officers and other office bearers in the assistance of the Receivers or the Court be paid to the Applicant from the Applicant's Property as costs of the receivership.
5. That the Receivers be remunerated on the basis of time occupied by the Receivers, their partners and staff and any employees of PricewaterhouseCoopers or in

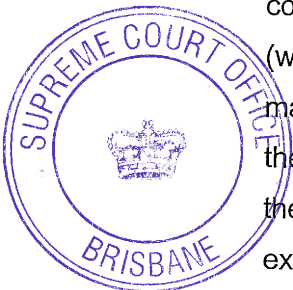
accordance with the rates set out in exhibit MAO-2 to the Affidavit of Mr Michael Andrew Owen filed herein (**Receivers' Remuneration**).

6. The Receivers' Remuneration be paid by the Receivers to themselves from the Applicant's Property and the PresCare Property and from any funds generated from the Applicant's Property and the PresCare Property, without the need for any further order of the Court or approval of any person or entity, subject to, the following:

- a. the payment of the Receivers' Remuneration shall be limited to the assets or property or fund in connection with which the particular receivership work is undertaken; and
- b. for such Receivers' Remuneration that cannot be paid pursuant to sub-paragraph a. above shall be paid from the **denominational** property of the Applicant or such other asset or property or fund as ordered by the Court.
- c. no later than 14 days before the Receivers propose to make any such payment, the Receivers must give the Applicant a statement of their proposed remuneration for the applicable period (**Proposed Remuneration**);
- d. if the Applicant objects to any part of the Proposed Remuneration, the Applicant must provide the Receivers with written notice of its objection, such notice to include the particular items to which it objects and a statement of reasons for its objection, within 14 days of receipt of the statement of Proposed Remuneration in accordance with paragraph a.;
- e. in respect of any particular items of the Proposed Remuneration to which the Applicant does not object, the Receivers may pay to themselves those items without further notice to the Applicant or any other person;
- f. if the Applicant provides written notice of its objection in accordance with paragraph d., the Receivers will not pay to themselves the particular items of the Proposed Remuneration to which the objection relates and may apply to the Court for appropriate orders in respect of those particular items.

7. Subject to sub-paragraphs a. and b. below the payment of all costs and expenses in connection with receivership of the Applicant's Property and the PresCare Property (whether present, future, contingent, actual or anticipated costs or expenses) shall be made by the Receivers from the Applicant's Property or the Prescare Property without the need for any further order of the Court or any approval of any person or entity and the Receivers shall be entitled to be indemnified out of such property for such costs and expenses, provided that the Receivers' indemnity under this paragraph:

- a. shall be limited to the assets or property or fund in connection with which the particular costs and expenses were incurred; and
- b. for those costs and expenses for which the Receivers are not indemnified pursuant to sub-paragraph a. above, shall be paid from the **denominational**



property of the Applicant or such other asset or property or fund as ordered by the Court.

8. Notwithstanding anything else in this order, the Receivers shall be under no obligation to incur any costs, expenses or liability unless they first have sufficient funds made immediately available to them to cover all such costs, expenses and liabilities.
9. That the requirements of r 270 of the UCPR be dispensed with.
10. Liberty be granted to the Applicant, the Receivers and any person affected by these orders to apply to vary these orders.
11. Liberty be granted to the Applicant to apply to the Court for orders discharging and releasing the Receivers.
12. The time for service of this application and the Originating Application be abridged.
13. The costs of the interlocutory application be reserved.
14. The hearing of the originating application and the relief sought in paragraph 13 of the interlocutory application be adjourned to a date to be fixed.

THE COURT DIRECTS THAT:

1. The applicant file the originating application, interlocutory application and supporting affidavits in the registry with the applicable filing fee by 4:00pm on 13 May 2021.

Signed:

