



Australian Government

Australian Financial Security Authority

## NOTICE PURSUANT TO SUBSECTION 77C(1) OF THE *BANKRUPTCY ACT 1966* (Cth)

NO: NSW 191/19/2

RE: JOSHUA MCMILLAN

AKA JOSHUA LUKE MCMILLAN

Nicole Mary McMillan  
64 Jarvis Street  
THIRLMERE NSW 2572

**Joshua McMillan** ('the Debtor') became bankrupt on 17 January 2019.

**Bradley John Tonks** ('the Trustee') is the Trustee of the above administration.

I, Evelyn Barrett of Level 16, 300 La Trobe Street, Melbourne VIC 3000, as delegate of the Official Receiver in accordance with subparagraphs 77C(1)(b)(i) and (ii) of the *Bankruptcy Act 1966* (Cth) ('the Act'), require you to:

**Attend at 2:00 PM on Thursday, 29 October 2020, before me OR an officer authorised in writing, at the office of the Australian Financial Security Authority, Level 4, Darling Park 3, 201 Sussex Street, Sydney NSW 2000 to:**

- **give evidence, either orally or in writing; and**
- **produce the books specified in the schedule attached to this notice.**

You are entitled to be legally represented at the interview. Failure by you, without reasonable excuse, to attend before me, or an officer authorised by me, may render you liable to imprisonment for 6 months pursuant to section 267D of the Act, or a warrant may be issued for your arrest pursuant to section 267E of the Act.

If you are a body corporate, failure to comply without reasonable excuse may, upon conviction, render you liable to a pecuniary penalty calculated in accordance with subsection 4B(3) of the *Crimes Act 1914* (Cth).

The evidence that you give and the books that you are required to produce are required by the Trustee in the performance of his duties under the Act and will be made available to the Trustee.

Where a claim of legal professional privilege is not conceded or accepted by the Trustee, the claimant should prepare a schedule of the documents and make arrangements to secure them in a sealed container to be lodged with an agreed third party.

If you are not the person in relation to whose affairs this notice is issued, the Act also provides that you are entitled to receive an allowance in respect to each day, or part day, on which you are required to attend and a reimbursement of expenses in relation to the cost of attending the examination. See the attached list for details of your entitlements.

Subsection 81G(2) of the Act provides that a refusal or failure to provide the required information or produce any books will render the information not admissible in a 'relevant proceeding'; see subsection 81G(1). Subsection 81G(3) provides that subsection (2) will not apply where the information or book was not in your possession and where there were no reasonable steps you could take to obtain the information or books.

**NOTES:**

Copies of sections 77C, 267D and 267E of the Act are enclosed. Certain terms used in this notice are also defined in the Act:

**"Books"** is defined to include any account, deed, paper, writing or document and any record of information however compiled, recorded or stored, whether in writing, or on microfilm, by electronic process or otherwise.

DATED this 26<sup>th</sup> day of August 2020



*Evelyn Barrett*

DELEGATE OF THE OFFICIAL RECEIVER

***BANKRUPTCY ACT 1966 (CTH)***  
**SCHEDULE TO NOTICE DATED THIS 26<sup>TH</sup> DAY OF AUGUST 2020**

**BACKGROUND**

Joshua McMillan, ('the Debtor') became bankrupt on 17 January 2019.

Bradley John Tonks ('the Trustee') is the Trustee of the above administration.

The Trustee submits that:

- The Debtor and Nicole Mary McMillan ('You') were the joint proprietors of two properties located at 12 Henrietta Street, Braemar NSW 2575 (Folio 219/1223682) ('the Henrietta property') and at 50 Kamilaroi Crescent, Braemar, NSW 2575 (Folio 324/1228384) ('the Kamilaroi property').
- You are the sole Director and shareholder of Just Magic Plumbing Solutions Pty Ltd (ABN 92 611 295 455) ('the Company').

Pursuant to Section 5 of the *Bankruptcy Act 1966* (Cth) ('the Act') You and the company are associated entities of the Debtor.

The evidence and books that you are required to produce are required by the Trustee in the performance of his duties under the Act.

**INFORMATION AND BOOKS TO BE PRODUCED:**

1. In relation to the Company you are required to provide books in your possession, including but not limited to:
  - a) For the financial years ended 30 June 2014 to 30 June 2019:
    - i. Financial Statements (including Balance Sheets and Profit and Loss statements);
    - ii. Tax Returns;
    - iii. Depreciation schedule; and
    - iv. Payslips and PAYG summary to all employees.
  - b) For the period 1 July 2014 to the date of this Notice:
    - i. General Journals;
    - ii. General Ledger; and
    - iii. Bank statements for all accounts.

- c) Employment contracts for all current and former employees of the company;
  - d) All credit application forms completed by the company for its top five (5) suppliers; and
  - e) For the period 1 November 2017 to the date of this Notice, provide documents in relation to your day to day running of the business, including but not limited to:
    - i. Correspondence with suppliers (including emails, file notes of conversations; and
    - ii. Itemised mobile phone bills evidencing phone calls).
2. In relation to the Kamilaroi Property, you are required to provide all books in your possession, including but not limited to:
- a) Purchase contract;
  - b) Settlement Statement for the purchase;
  - c) Documents evidencing source of funds for the purchase including but not limited to bank statements;
  - d) Bank statements to confirm the source of the deposit funds;
  - e) Copy of any Building Contracts;
  - f) Settlement statement for the sale; and
  - g) Bank statements evidencing how the sale proceeds were disbursed.
3. In relation to the Henrietta Property, you are required to provide all books in your possession, including but not limited to:
- a) Purchase contract;
  - b) Settlement statement for the purchase;
  - c) Documents evidencing the source of funds for the purchase including but not limited to bank statements;
  - d) Bank statements to confirm the source of the deposit funds;
  - e) Settlement statement for the sale; and

- f) Bank statements evidencing how the sale proceeds were disbursed.
4. In relation to your personal financial position, you are required to provide books in your possession, including but not limited to:
- a) Personal tax returns for the financial years ending 30 June 2013 to 30 June 2019;
  - b) Bank statements for all accounts held solely or jointly from 1 July 2017 to the date of this Notice;
  - c) Rental agreement for the property you and the debtor are currently renting; and
  - d) Details of your personal assets and liabilities as at the date of this Notice.
5. In relation to all loans held by you with the ANZ; including loans; 012-209 67765-0101 & 012-559 6782-55242, you are required to provide all books in your possession, including but not limited to:
- a) A copy of the loan account statements from the commencement of the loan to the date of this notice; and
  - b) A copy of the loan application forms submitted for the loans and any refinance or renewal of the facility.

**If you are unable to attend the examination and/or provide the books as required by this notice, pursuant to paragraph 77C(1)(a) of the Act you are to advise me by the due date the reason/s why you cannot comply.**



*Evelyn Barrett*  
DELEGATE OF THE OFFICIAL RECEIVER  
Telephone: 03 8631 4888  
Email: or.notices@afsa.gov.au

## **ALLOWANCES AND EXPENSES**

Sections 77D and 77E of the Act provide that, where a person is required to attend before the Official Receiver, he or she is entitled to receive a daily allowance and be reimbursed for reasonable expenses incurred for transport, meals and accommodation in connection with their attendance.

A person who is or has been a bankrupt is not entitled to be paid an allowance, or reimbursed any expenses, in respect of their attendance to give evidence or produce books relating to his or her bankruptcy.

A person is not entitled to be reimbursed any expenses unless the person produces to the Official Receiver sufficient documentary evidence to establish that the person incurred those expenses.

### **Allowance in respect of attendance**

The recipient of this notice is entitled to be paid an allowance in respect of each day or part of a day on which they attend. This allowance is currently calculated at \$21 per day.

### **Advance of expenses**

You are also entitled to claim an advance in relation to the travel expenses incurred in relation to your attendance.

The current amounts used to determine the amount of the advance are:

	<b>Accommodation</b>	<b>Breakfast</b>	<b>Lunch</b>	<b>Dinner</b>
<b>Adelaide</b>	\$133	\$23.65	\$26.55	\$45.60
<b>Brisbane</b>	\$165	\$23.65	\$26.55	\$45.60
<b>Canberra</b>	\$156	\$23.65	\$26.55	\$45.60
<b>Darwin</b>	\$162	\$23.65	\$26.55	\$45.60
<b>Hobart</b>	\$125	\$23.65	\$26.55	\$45.60
<b>Melbourne</b>	\$162	\$23.65	\$26.55	\$45.60
<b>Perth</b>	\$170	\$23.65	\$26.55	\$45.60
<b>Sydney</b>	\$163	\$23.65	\$26.55	\$45.60

### **Travel by aircraft**

If it is necessary for you to travel by aircraft the advance is \$22 and the ordinary one-way economy class airfare from the airport nearest your principal place of residence to the airport nearest to the place at which you are required to attend.

### **Travel by motor vehicle**

If you are travelling by private motor vehicle, the advance is \$22.

### **Other means of travel**

If you will be travelling otherwise than by aircraft or private motor vehicle, the advance is \$11.

### **Claiming a reimbursement or an advance**

If you wish to claim reimbursement for expenses incurred or an advance in relation to anticipated expenses please contact the Official Receiver Notices Team on 02 8233 7846 or via email at [or.notices@afsa.gov.au](mailto:or.notices@afsa.gov.au).

## **BANKRUPTCY ACT 1966 – RELEVANT PROVISIONS**

### **Section 77C – Power of Official Receiver to obtain information and evidence**

- (1) *The Official Receiver may, by written notice given to a person, require the person to do one or more of the following:*
- (a) *give the Official Receiver information the Official Receiver requires for the purposes of the performance of the functions of the Official Receiver or a trustee under this Act;*
  - (b) *attend before the Official Receiver, or an officer authorised in writing by the Official Receiver to exercise powers under this paragraph, and do one or both of the following:*
    - (i) *give evidence relating to any matters connected with the performance of the functions of the Official Receiver or a trustee under this Act;*
    - (ii) *produce all books in the person's possession relating to any matters connected with the performance of the functions of the Official Receiver or a trustee under this Act.*
  - (c) *produce all books in the person's possession relating to any matters connected with the performance of the functions of the Official Receiver or a trustee under this Act.*

*It does not matter whether or not the person is a bankrupt or is employed in or in connection with a Department, or an authority, of the Commonwealth or of a State or Territory.*

- (2) *The Official Receiver or authorised officer may require the information or evidence to be given on oath, and either orally or in writing, and for that purpose may administer an oath.*
- (3) *Notes taken down and signed by a person who attends before the Official Receiver or an authorised officer under paragraph (1)(b), and the transcript of the evidence given by the person at the attendance:*
- (a) *may be used in evidence in any proceeding under this Act whether or not the person is a party to the proceeding; and*
  - (b) *may be inspected:*
    - (i) *by the person, without fee; and*
    - (ii) *if the notes and evidence relate to matters concerning the bankruptcy of the person or of another person--by the trustee and a person who states in writing that he or she is a creditor, without fee; and*
    - (iii) *by any other person on payment of the fee determined by the Minister by legislative instrument.*

### **Section 267D – Failure of person to attend**

- (1) *A person who is required by a notice under subsection 77C(1) to attend before the Official Receiver or an authorised officer and to whom an advance is offered in accordance with subsection 77E(1) must not:*
- (a) *fail to attend as required by the notice; or*

- (b) *fail to appear and report from day to day, unless excused or released from further attendance by the Official Receiver or authorised officer, as the case may be.*

*Penalty: Imprisonment for 6 months.*

- (2) *Subsection (1) does not apply if the person has a reasonable excuse.*  
*Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the Criminal Code).*

**Section 267E – Arrest of person failing to attend before Official Receiver or authorised officer**

- (1) *Subject to subsection (2), if a person who is required by a notice under subsection 77C(1) to attend before the Official Receiver or an authorised officer:*
  - (a) *fails to attend as required by the notice; or*
  - (b) *fails to appear and report from day to day, as required by the Official Receiver or authorised officer;**the Registrar, on proof by affidavit of the service of the notice, may issue a warrant for the arrest of the person.*
- (2) *The Registrar must not issue a warrant under subsection (1) for the arrest of a person unless the Registrar is satisfied, on proof by affidavit, that the person was offered an advance in accordance with subsection 77E(1).*
- (3) *A warrant issued under subsection (1) authorises the arrest of the person and his or her being brought before the Registrar, and his or her detention in custody until he or she is released by order of the Registrar.*
- (4) *A warrant issued under subsection (1) may be executed by a constable, and a constable executing the warrant has the power to break in and enter any premises for the purpose of executing the warrant.*
- (5) *The Registrar may order a person arrested under this section to pay the costs of the arrest.*
- (6) *The arrest of a person under this section does not relieve the person from any liability incurred because of his or her failure to attend before the Official Receiver or authorised officer.*