



# Bawinanga Aboriginal Corporation

(special administrators appointed)

ICN 29

## CIRCULAR TO CREDITORS BY SPECIAL ADMINISTRATORS

12 August 2013



KordaMentha

# Contents

1	Introduction	1
2	Objectives of the special administration	2
3	Special administration matters	3
3.1	Reasons for the corporation's financial position	3
3.2	Unexpended grants	3
3.3	Priority and unsecured creditor debts	4
3.4	Trading position—special administration	4
4	Progress of the special administration	5
4.1	Operational issues	5
4.2	Governance	7
5	Proposal to creditors	8
5.1	Addressing creditor liabilities	8
6	Liquidation	9
7	Further information	9
	Debt repayment agreement	10



# 1 Introduction

Peter Lanthois and Stephen Duncan were appointed as special administrators of Bawinanga Aboriginal Corporation ('the corporation') on 31 October 2012 for a period of six months pursuant to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

Due to the complex nature of the corporation and the issues that have arisen, the period of the special administration has been extended on two occasions. At this time, the special administration is scheduled to conclude on 31 August 2013.

This report provides a comprehensive update in relation to the progress of the special administration, including the operational issues that the corporation has been facing, the financial position prior to the special administrators' appointment and a proposal to address the unsecured creditors' debts. The report also considers the alternative scenario in the event that the proposal to creditors does not receive the requisite support.

**This report includes an important offer to creditors. The proposal and estimated return to creditors is discussed on page 8. The alternative scenario (liquidation) is discussed on page 9. It is important that creditors read the proposal carefully. It is requested that creditors consider the proposal and sign and return to the special administrators' office the attached 'debt repayment agreement' within the next 14 days.**

The special administrators and the corporation appreciate the continued support provided by creditors as it has allowed the corporation to trade through the period of the special administration.



## 2 Objectives of the special administration

The objectives of the special administration are to address the underlying causes of the corporation's financial position and, if possible, return it to solvency. There are two core issues that need to be addressed in order to return the corporation to solvency:

1. confronting the accrued unexpended grant position in connection with certain government agencies as at 30 June 2012 which were in excess of \$5 million
2. determine whether it is possible to satisfy the corporation's creditors as at 31 October 2012 in part or in full.

This unexpended grant position has now, by and large, been dealt with and this financial burden has, in the main, been alleviated as the majority of the unexpended grant monies are not required to be repaid, albeit this is subject to certain conditions which the corporation intends to observe.

Courses of action have been determined for the corporation to address its liabilities to its creditors that had accrued to 31 October 2012. The corporation is now in a position to inform creditors of its intentions in this regard (outlined in detail in section 5 of this report).



# 3 Special administration matters

## 3.1 Reasons for the corporation's financial position

A review of the corporation reveals that its financial position at 31 October 2012 was caused by numerous factors:

- lack of internal controls;
- poor financial management and accountability practices
- ineffective management structure
- significant overhead costs
- poor management of grant funding, resulting in unexpended grant funds.

During the course of the special administration these factors have been addressed (for more detail see section 4 of this report).

## 3.2 Unexpended grants

The corporation's records indicate that unexpended funds outstanding at 30 June 2012 totalled \$5.2 million. The special administrators have liaised with the relevant government funding agencies in respect of this issue. In particular it was made clear to the funding agencies that returning the corporation to solvency would require their support in the form of them not asking for the unexpended funds to be repaid. In the event that this support was not forthcoming a liquidation scenario was the likely outcome.

The unexpended funds were owed to nine Commonwealth Government and Northern Territory Government departments, and related to over 20 funding agreements.

While some funding agencies advised that the programs with unexpended funds had been completed after 30 June 2012 and, as such, the outstanding funds had been spent, other funding agencies advised that the calculation of unexpended funds on their grants had been understated.

Upon receiving feedback from the government funding agencies, it was calculated that the total unexpended funds owed by the corporation as at 30 June 2012 totalled \$6,470,297.

Ongoing negotiations with the relevant funding agencies have been held in relation to the write-off of the unexpended funds. The corporation extends its appreciation and thanks to those funding agencies that have agreed to write off the unexpended position totalling \$5.4 million. Negotiations in relation to the balance of the unexpended funds are being finalised.

In some instances conditions were attached to the agreement to write off the funds by certain government funding agencies. The corporation has acknowledged and agreed to observe those conditions.



### 3.3 Priority and unsecured creditor debts

To confirm the accuracy of the corporation's records, it was requested that all known creditors of the corporation provide copies of their outstanding invoices and a summary of their outstanding debts as at 31 October 2012.

To date, the majority of creditors have sent invoices and confirmed their debts outstanding. However, despite the special administrators' request, there are some creditors who have not yet forwarded this information. Given this, any creditor who does not forward their claim to the special administrators' office within the next 14 days will be assumed to have no provable claim.

In addition to creditor claims, there is superannuation due to employees totalling \$144,748, which has priority status and will also need to be addressed.

### 3.4 Trading position—special administration

During the course of the special administration, the trading position has been stabilised and fiscal discipline has been restored. While the restructuring effort is ongoing, it is believed that the corporation's trading position is stable and it is well placed to go forward should it return to solvency.



# 4 Progress of the special administration

## 4.1 Operational issues

### 4.1.1 Chief executive officer and chief financial officer

Mr Peter Anderson, who was the strongest candidate in the recruitment process, has recently been appointed as the corporation's new chief executive officer (CEO). Mr Anderson has significant relevant experience and the requisite skills to continue the reform and restructure of the corporation. Mr Anderson commenced in the role on 15 July 2013.

Ms Helen Day has been appointed as the corporation's chief financial officer (CFO). Ms Day commenced in this role on 22 May 2013 and is now implementing a comprehensive set of policies and procedures, both financial and non-financial, across the organisation.

### 4.1.2 Finance and administration function

At the time of the special administrators' appointment on 31 October 2012, the corporation's finance and administration function in the Darwin office was a fundamental weakness of its operation. Information flow was inefficient and, as a consequence, the financial reports generated were unreliable and untimely. This was the product of a lack of support from the corporation as a whole. It was also due to a lack of leadership of the finance and administration team, which was further complicated by a poorly managed implementation of, and migration to, a new accounting package, MYOB Exo. In addition, the supermarket, workshop and art centre business units operated separate management information systems and managed their respective financial affairs independently.

During the course of the special administration measures were put in place to strengthen the finance and administration function, including the following:

- personnel changes
- implementation of key internal controls
- implementation of a process to ensure the timely provision of information from business managers
- implementation of a process to ensure timely issue of all invoices to customers/clients
- review of the implementation of MYOB Exo and its appropriateness for the corporation.

The corporation has since abandoned MYOB Exo and has reverted to the former accounting software information system.



### 4.1.3 Overhead expenses

The corporation has significant overhead expenses, which include areas such as IT, payroll, insurance, asset leasing and telecommunications. In many instances, these overhead costs are not fully covered by grant funding and have therefore placed a strain on the corporation's working capital position. As part of the special administration, these overhead costs have been critically analysed to determine where costs are in excess of the corporation's requirements and current level of funding. Action has been taken to reduce these overhead costs to a more manageable level.

### 4.1.4 Management of grant funding

The corporation receives in excess of \$15 million in funding from various government agencies per annum. At the time of the special administrators' appointment, the corporation's management of its grant funding was poor. There were fundamental areas of weakness in the manner in which the corporation managed and operated grants.

Financial control measures were introduced during the special administration to ensure that the grant funds received were quarantined and drawn upon appropriately. In addition, a dedicated position was created within the organisation with the sole function of managing the grants, the corporation's compliance and new funding applications.

During the course of the special administration, the corporation has continued to receive the support of the majority of funding agencies. This continued support and release of monies to the corporation has enabled it to carry on providing services to the community, homelands and members. At the same time it has allowed for issues confronting the corporation to be worked through. The corporation very much appreciates the support it has received from the funding agencies.

### 4.1.5 Remote Jobs Communities Program (RJCP)

Prior to the special administration, the corporation operated Job Services Australia (JSA) and a Community Development Employment Projects (CDEP) program. These programs provided employment and training to over 500 participants until they were concluded on 30 June 2013 and replaced by RJCP.

Early in the special administration, the corporation prepared and submitted a tender to be an RJCP provider. Specifically, the tender sought to receive funding of approximately \$30 million over five years.

In May 2013, the Department of Education, Employment and Workplace Relations advised that the corporation's tender was successful. Had the corporation not been successful, it would have lost a substantial income stream and its ongoing viability would have been severely undermined. Both JSA and CDEP funding streams have been important pillars to the corporation's income base.

Consequently, the awarding of the RJCP contract to the corporation has provided it with a certain income stream going forward.

The migration from JSA and CDEP to RJCP has been managed. This includes establishing an organisational structure and providing staff training so that the corporation was well prepared for operating in the new environment. It was considered important to maximise the income generating opportunities that the RJCP offers.





## 4.2 Governance

In the near future, nominations will be called for the composition of the new board of directors. The board structure will consist of at least six directors (maximum of 12), two of which will be independent directors who have already been identified.

A finance committee will also be established to report to the CEO and the board, comprising the CFO, an independent director and one other.

As stated above, the corporation lacked a cohesive set of internal controls as well as an up-to-date policy and procedures manual for its staff. To rectify this, the new CFO is managing the implementation of a robust set of policies and procedures encompassing internal controls. The manual is presently in draft and is being reviewed by the CEO.

With the assistance of the Office of the Registrar of Indigenous Corporations, the corporation's rule book has been strengthened and updated.



# 5 Proposal to creditors

## 5.1 Addressing creditor liabilities

In order to return to solvency the corporation must reach agreement with creditors about their outstanding debts as at 31 October 2012. In the event that the corporation cannot reach an agreement the corporation will not return to solvency.

A proposal to creditors to compromise their debts has been formulated. While the special administration process within the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* does not provide the legal framework to accommodate such a proposal, the intention is to propose an arrangement with the corporation's creditors, which, if successful, will ensure that the corporation is returned to solvency.

### 5.1.1 Funds to address creditors' claims

While the corporation's trading is returning to viability, it is unable to generate sufficient funds from trading activities to satisfy outstanding debts over time. It is proposed that funds to negotiate an agreement with creditors be generated partly from the corporation's own working capital resources together with the sale and/or refinancing of various assets and business divisions.

While the terms and conditions of the sale/refinancing of assets are still being finalised, the proposal for the negotiated settlement of creditors' claims based on the finalisation of those negotiations can now be submitted to creditors for their consideration.

Following the stabilisation and restructuring steps implemented to date the corporation is in a position to contribute an amount from its own cash resources towards the repayment of outstanding creditors' debts. This contribution, together with a loan to be secured against the supermarket assets of the corporation, will enable it to pay a return to creditors on their debts in the vicinity of 70 cents in the dollar, subject to the final adjudication of creditors' claims.

### 5.1.2 Estimated return to creditors and timeframe for payments

It is estimated creditors would receive a return in the vicinity of 70 cents in the dollar on their outstanding debts. The special administrators expect that payment to creditors would occur within 120 days from creditors' acceptance of this proposal.

This outcome compares favourably with a liquidation scenario (discussed in section 6). In a liquidation scenario it is estimated that creditors would receive a nil return.

The special administrators reiterate that payments would be subject to creditors having provided them with the documentation to prove their debts, as requested in their previous circulars. If creditors do not provide documentation to support their claim within the next 14 days, it will be presumed that they do not have a claim against the corporation and will be excluded from the distribution.

Attached to this report is a 'debt repayment agreement' form for creditors to sign and return to the special administrators' office within 14 days.



## 6 Liquidation

Should the funding proposals to address creditor debts be rejected by the members and traditional owners or by the creditors, the corporation will not return to solvency and, in all likelihood, would need to be placed into liquidation.

Liquidation would be a complex and challenging scenario due to the nature of the corporation. Inevitably, the corporation's activities would be wound down and its operations would cease.

In addition, employees may take the decision to leave immediately, which would complicate the efforts to secure and realise the corporation's assets and, ultimately, this would have a negative impact on the realisation values. All employees of the corporation would be terminated and, under the terms of the corporation's Enterprise Bargaining Agreement, this would result in the crystallisation of redundancy entitlements. Should the terminations occur immediately, it would also mean time in lieu of notice entitlements. These entitlements would be significant.

Creditors should note that under the provisions of the *Corporations (Aboriginal and Torres Strait Islanders) Act 2006*, employee entitlements would rank in priority to unsecured creditor claims. This means that employees would need to be paid out their termination entitlements in full, as well as any outstanding wages, superannuation, annual leave and long-service leave entitlements, before any funds were paid to unsecured creditors.

Dealing with the corporation's affairs in a liquidation scenario would require significant time and resources of the appointed liquidators, and payment of these costs of the liquidation rank ahead of employee claims.

It should be noted that it was a condition of certain government funding agencies in writing off their unexpended grants that the corporation would not be placed into liquidation. If, however, the corporation is placed into liquidation, these government funding agencies would be entitled to claim for their unexpended grants, which would rank equally with the claims of the unsecured creditors.

The unexpended funds which have been written off on the condition of the corporation not being placed into liquidation total over \$5.3 million. It is expected that no funds would be available to creditors in a liquidation scenario.

## 7 Further information

After considering the contents of this report please sign and return the attached 'debt repayment agreement' form within 14 days. If you have any queries, please contact Nick Gyss or Callum Rosenzweig of the special administrators' office on (08) 8212 6322.

PETER LANTHIOS AND STEPHEN DUNCAN  
Special administrators



# Debt repayment agreement



## 1. The debt amount

To: The special administrators of Bawinanga Aboriginal Corporation (special administrators appointed)

This is to state that the corporation was on 31 October 2012, and still is, justly and truly indebted:

to: \_\_\_\_\_ (name of creditor)

of: \_\_\_\_\_ (address of creditor)

\_\_\_\_\_

for: \_\_\_\_\_ (GST inclusive) (amount owed to creditor)

dollars cents

\_\_\_\_\_ (GST amount)

dollars cents

Particulars of the debt are:

Date <i>(insert date when debt arose)</i>	
Consideration <i>(state how the debt arose and attach supporting invoices and statements of account)</i>	
Amount (\$) <i>(insert GST inclusive amount)</i>	
Remarks <i>(include details of voucher substantiating payment if not already forwarded)</i>	

## 2. The agreement to a negotiated settlement of the outstanding amount

*(Insert name of creditor).....*

agree to accept in full and final satisfaction of the above outstanding debt a payment representing 70 cents in the dollar of the amount. It is acknowledged that in accepting 70 cents in the dollar on the amount I/we will have no further claim against the corporation for the balance of the debt.

Date \_\_\_\_\_ Name \_\_\_\_\_

Signature \_\_\_\_\_ Address \_\_\_\_\_

\_\_\_\_\_

Phone \_\_\_\_\_