



Australian Government

Office of the Registrar of Aboriginal and Torres Strait Islander Corporations

ICN 3144

NOTICE UNDER SECTION 487-10(1) OF THE CORPORATIONS (ABORIGINAL AND TORRES STRAIT ISLANDER) ACT 2006

To: Ms Ruth Shafer (aka Schafer, Schaefer and Schaeffer)
Contact Person/Public Officer
Walmbaar Aboriginal Corporation
1-6 Strattman Street
MAREEBA QLD 4880

TAKE NOTICE that under section 487-10(1) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006 (the Act)*, I, Peter Armstrong, the Delegate of the Registrar of Aboriginal and Torres Strait Islander Corporations (**the Registrar**) invite Walmbaar Aboriginal Corporation (ICN 3144) (**the Corporation**) to show cause, by close of business on Friday 25th July 2008, why I should not determine that the Corporation is to be under special administration (within the meaning of the Act).

The first part of this notice sets out the grounds that I consider may exist to require that determination. The second part of this notice explains how the *Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006 (the transitional Act)* allows me to make that determination under the Act. The third part of this notice sets out my reasons for considering that the grounds may exist.

PART 1 - GROUNDS

1. A ground that I consider may exist to require the determination arises under section 487-5(1)(b) of the Act i.e.:
 - (b) the corporation or the officers of the corporation have failed to comply with, or to ensure that the corporation complies with, one or more of the following:
 - (i) a provision of this Act;
 - (ii) an internal governance rule of the corporation;

...

I can determine that the Corporation is to be under special administration if I am satisfied that the Corporation or the officers of the Corporation have failed to comply with, or to ensure that the Corporation complies with, a provision of the Act, an item of Schedule 3 of the transitional Act, a provision of the *Aboriginal Councils and Associations Act 1976 (the old Act)*, or an internal governance rule of the Corporation, and the Corporation has, or the officers have, failed to give the Registrar a satisfactory explanation for the failure. Internal governance rules

of the Corporation can be found in the Rules and Objects of Walmbaar Aboriginal Corporation, as approved on 28 August 1998 (**the Rules**).

I refer to the suspected breaches of the Act, the transitional Act, the old Act and the Rules set out in sections 3.1, 3.2, 3.3, 3.4 and 3.5 below.

2. A further ground that I consider may exist to require the determination arises under section 487-5(1)(e) of the Act i.e.:

(e) the affairs of the corporation are being conducted in a way that is:

(i) oppressive; or

(ii) unfairly prejudiced to, or unfairly discriminatory against, a member or members of the corporation; or

(iii) contrary to the interests of the members of the corporation as a whole;

I can determine that the Corporation is to be under special administration if I am satisfied that the affairs of the Corporation are being conducted in a way that is oppressive, unfairly discriminatory against, a member or members of the corporation or contrary to the interests of the members of the Corporation as a whole.

I refer to the suspected breaches of the Act, the transitional Act, the old Act and the Rules set out in sections 3.1, 3.2, 3.3, 3.4 and 3.5 below.

3. A further ground that I consider may exist to require the determination arises under section 487-5(1)(j) of the Act i.e.:

(j) the appointment of the special administrator is otherwise required:

(i) in the interests of the members of the corporation; or

(ii) in the interests of the corporation's creditors; or

(iii) in the public interest.

I can determine that the Corporation is to be under special administration if I am satisfied that the appointment of the special administrator is otherwise required in the interests of the members of the corporation, or in the interests of the corporation's creditors, or in the public interest.

I refer to the suspected breaches of the Act, the transitional Act, the old Act and the Rules set out in sections 3.1, 3.2, 3.3, 3.4 and 3.5 below. I also refer to the findings and recommendation of the examiner in section 3.6 below.

PART 2 - THE TRANSITIONAL ACT

The Corporation was incorporated under Part IV of the *Aboriginal Councils and Associations Act 1976* as amended. It is therefore a 'transitional corporation' as defined by Schedule 3, sub item 1(1) of the transitional Act.

Schedule 3, item 71 of the transitional Act provides as follows:

Section 487-5 of the new Act applies in relation to a transitional corporation

as if:

- (a) the reference in subparagraph (1)(b)(i) of that section to the new Act included a reference to this Schedule; and
- (b) the reference in subparagraph (1)(b)(ii) of that section to an internal governance rule of the corporation included a reference to the corporation's Rules;

...

Schedule 3, sub item 1(2)(f) of the transitional Act provides that the reference in section 487-5(1)(b)(i) to a failure to comply with the new Act is taken to include a reference to a failure to comply with the old Act.

Furthermore, Schedule 3, sub item 6(1) of the transitional Act provides that, for the purposes of applying a provision of the new Act or this Schedule to a transitional corporation after commencement, a reference in that provision to circumstances of a particular kind in relation to the corporation includes a reference to circumstances of that kind existing before commencement.

PART 3 – REASONS FOR CONSIDERING THAT GROUNDS MAY EXIST

In May 2008, an examination of the operating and financial affairs of the Corporation was conducted by TNR Financial Services Pty Ltd (**the examiner**). The examiner produced a written report dated 29 May 2008 making certain findings in relation to the Corporation. From these findings several suspected breaches of the Act, the transitional Act, the old Act and the Corporation's Rules have been identified. These suspected breaches are particularised in sections 3.1 to 3.5 below.

SECTION 3.1 MEMBERSHIP

3.1.1 Rules 11(1) and 11(5)

Pursuant to these rules, membership of the Corporation is open to adult Aboriginal persons who are DINGAAL People and who apply in writing to the Committee.

Under the rules of the Corporation, the DINGAAL People are defined (in rule 2) as meaning "... all persons born of a DINGAAL father, or Aboriginal children adopted by a DINGAAL father. A "DINGAAL father" is a male person of patrilineal descent of the Baru, Yoren or Charlie families".

The examiner discussed the lineage of the DINGAAL People with Dr Fiona Powell, an anthropologist, who assisted the Federal Court with a native title claim under Federal Court determination QG174 of 1997 in the case of *Deeral v Charlie*. Dr Powell confirmed that only the three families abovementioned are properly and legitimately "Dingaal" by birthright and that the Brim family (the relevance of whom is explained below) are in no way related or connected in any way with Dingaal People. She advised the examiner that in her painstaking research, which was relied upon by the Federal Court, she accessed documents and records from Government and Church archives, going back over a century. Such records could not have been accessed by Ms Ruth Shafer (the addressee of this notice) who she accuses of creating mischief with a view possibly to accessing a benefit not otherwise legitimately available.

The examiner determined that unbeknown to the Yoren and Baru families, Ms Shafer set up Birri (Bididi) Baru Aboriginal Corporation, appointed herself as its Contact Person, expelled all Yorens and Barus from membership of the Corporation and admitted them to membership of Birri (Bididi) Aboriginal Corporation. The examiner found that, subsequently, the depleted membership of the Corporation was supplemented by the admission to membership of the Brim family members.

The examiner also noted that Ms Shafer and Mr Gordon Charlie (a Corporation elder) appear to be going to great lengths to justify the purpose of this transaction, citing, as she did when the examiner visited her, that the anthropologist, Dr Powell, had made a grave error in determining clan histories. However, Brim family elder Willie Brim disputes Ms Shafer's assertions and is concerned that clan members have been misled into joining a corporation with which they have no legitimate connection.

**3.1.2 Act, section 180-1(1)
 old Act, section 58(1)
 Rule 11(1)**

Obligation

Under these sections and rule, a register of members is to be kept. It must show the name and address of every member of the Corporation, and the date upon which each member joined the Corporation. Section 58(1) also requires the register to show the date upon which any member ceased to be a member of the Corporation.

Suspected breaches

The examiner was provided with a "register of members" in the form of a listing containing the names of some alleged 171 "members". Some 72 names were however those of minors and therefore illegible to be Corporation members pursuant to rule 11(1). Further, the listing did not disclose the date on which members joined the Corporation nor the date upon which any member ceased to be a member. The listing also contains the names of Brim family members in circumstances where, because of what is stated in 3.1.1. above, such persons are ineligible to be members of the Corporation.

The examiner concluded that the Corporation does not maintain a register of members.

**3.1.3 Act, section 180-10(1)
 old Act, section 58(1)**

Obligation

Under section 58(1) the register of members must show the date upon which each member ceased to be a member of the Corporation. Under section 180-10(1) a register of former members is to be set up and maintained showing the date when an individual stopped being a member.

Suspected breaches

Contrary to these sections, the listing provided to the examiner does not show the date upon which each former member ceased to be a member of the Corporation.

Since 1 July 2007 the Corporation has not maintained a register of members that shows when persons ceased to be members of the Corporation.

SECTION 3.2 GENERAL MEETINGS

3.2.1 *Rule 20(2)* *transitional Act, Schedule 3, item 46(2)*

Obligation

Under this item, the Corporation's directors must call and conduct an annual general meeting in accordance with the Corporation's constitution before 31 December 2007.

Under this rule, annual general meetings for prior years must be held within three months after each 30 June.

Suspected breach

At the time of writing the examiner's report, the annual general meeting for the 2006-07 year had not been held. Moreover, the examiner concluded that the Corporation has not held a valid annual general meeting since its incorporation on 28 August 1998.

SECTION 3.3 GOVERNING COMMITTEE / DIRECTORS

3.3.1 *Act, Division 265* *old Act, section 49C* *Rule 14*

Obligation

Under this division of the Act, a director of Aboriginal and Torres Strait Islander corporation:

- must exercise his or her powers and discharge his or her duties with the required degree of care and diligence;
- must exercise his or her powers and discharge his or her duties in good faith in the best interests of the corporation, and for a proper purpose;
- must not improperly use his or her position to gain an advantage for himself or herself or someone else, or cause detriment to the corporation;
- must not improperly use the information to gain an advantage for himself or herself or someone else, or cause detriment to the corporation.

Under this section of the old Act the Governing Committee must act honestly and diligently in exercising its powers and performing its functions and duties.

Under this rule, members of the Committee have a duty to act in that position with honesty, diligence and reasonable care, and must not make improper use of information or opportunities received through their position.

Suspected breach

The suspected breaches of the Act, the transitional Act, the old Act and the Rules set out in sections 3.1 and 3.2 and the matters set out in section 3.4 of this notice indicate a lack of diligence and care on the part of the Committee. The examiner concluded that members of the Committee have not acted with the requisite degree of care and diligence by reason of, inter alia, permitting the control and affairs of the Corporation to be effectively assumed by a non-member, Ms Ruth Shafer. The examiner noted that Ms Shafer refused to hand over to the examiner the Corporation's books and records (which are kept at her residence.

Under rule 20(7), the place, date and hour of every general meeting is to be determined by the Committee. In the present instance, the Committee takes no step in the convening of general meetings and any such meetings are convened by Ms Shafer who is neither a director nor member of the Corporation.

An annual general meeting was purportedly held on 30 June 2006 however no quorum was present and, as a result, no valid motions were passed.

SECTION 3.4 GOVERNING COMMITTEE / DIRECTORS' MEETINGS

3.4.1 Rule 12(2)

Obligation

Under this rule, the office bearers shall be elected at each annual general meeting.

Suspected breach

No office bearers have ever been elected as no valid annual general meeting has ever been held. This has the effect of creating breaches of other rules, such as, for example, rule 12(7) which requires the Committee to meet at least once every three months, rule 26(1) which requires the Committee to maintain control over the assets of the Corporation and its incurring of liabilities, and so on.

SECTION 3.5 FINANCIAL AFFAIRS OF THE CORPORATION

3.5.1 Act, sections 322-10(1) and 322-20(2) old Act, section 59(1) Rule 26(1)

Obligation

Under these sections of the Act an Aboriginal and Torres Strait Islander corporation must keep written financial records that correctly record and explain its transactions and financial position and performance, and would enable true and fair financial reports to be prepared and audited. The records must be kept at the Corporation's document access address.

Under this section of the old Act, the Governing Committee shall cause to be kept proper records of the transactions and affairs of the Corporation and shall do all things necessary to ensure that all payments out of the moneys of the Corporation are correctly made and properly authorized and that adequate control is maintained over the assets of, or in the custody of, the Association and over the incurring of liabilities by the Corporation.

Under this rule proper accounts and records must be kept of the transactions and affairs of the Corporation.

Suspected breaches

The examiner could not determine if proper or any financial records, including financial records required by the Corporation's constitution, have been kept as Ms Schafer would not provide the examiner with access to various books and records she kept at her residence.

SECTION 3.6 FINDINGS AND RECOMMENDATION OF THE EXAMINER

In the examination report dated 29 May 2008, the examiner made the following findings and recommendations.

The examiner has a number of concerns with respect to the current management and operation of the Corporation.

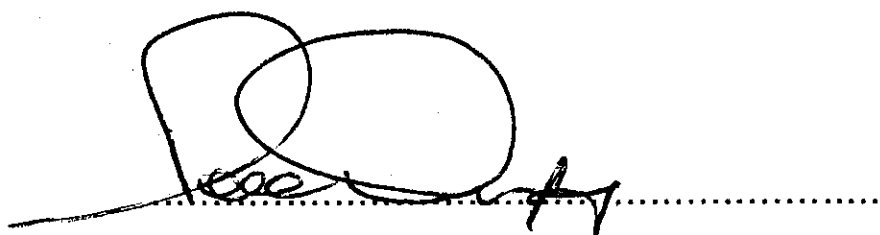
In particular the examiner perceives the Corporation to be controlled by Ms Shafer (and to a lesser extent by Mr Gordon Charlie), with the members of the Corporation being denied a say in the proper functioning of the Corporation.

The examiner found evidence of membership application forms being forged (as advised by elder Willie Brim) as part of an effort to include the Brim clan as part of the DINGAAL People so as to deny the Yoren and Baru family members their full entitlement to mining royalties which may flow to the Corporation.

The examiner noted petitions signed by 26 Dinggaal people exhorting the Registrar to appoint an administrator as a matter of urgency.

The examiner observed generally a lack of overall transparency in appropriate standards of governance and recommended the appointment of a special administrator to take control of the affairs of the Corporation, to re-establish a proper membership base, to revise the Corporation's rules in accordance with current legislation and to hold elections for a representative board of directors to be appointed.

DATED this 9th day of July 2008.



Peter Armstrong



Delegate of the Registrar of Aboriginal and Torres Strait Islander Corporations

**Walmbaar Aboriginal Corporation RNTBC
(Special Administrators Appointed)**

**Minutes of a Special General Meeting held at the Hope Vale Health Clinic,
Hopevale on Monday 27 April 2009 at 12:30pm**

**Members in attendance
(in person)** Refer attached attendance list

**Members in attendance
(by telephone)** Refer attached attendance list

**Other persons in
attendance (in person)** Gerry Mier, Joint Special Administrator
Edan Clark, Minutes Secretary

Opening Gerry Mier, the Joint Special Administrator, introduced himself and paid his respects to Dhubbi Warra Elders, past and present, on whose land this meeting is being held.

Gerry explained that Gordon Charlie was attending the meeting by telephone. He welcomed Gordon and read/tabled two facsimiles that Gordon had sent (both dated 26 April 2009) to be read at the meeting. Copies of both are *attached*.

Ruth Schaeffer interjected, demanding that Gordon speak with the Charlie family before the meeting progresses. Gerry said that only Gordon could address the meeting as a member and that Ruth was not permitted to speak unless invited to do so by the majority of members. Gerry then asked the meeting if they were happy for Gordon to talk to people from the Charlie family. A brief discussion was held between Gertie Deeral, her sons and Gordon, after which the meeting resumed.

Gerry confirmed that under the current rules of the Corporation a quorum of members was present and that no proxies had been received, either at the KPMG office in Cairns or at the Hope Vale Health Clinic. An apology was received by Johnny Charlie who was in hospital in Cooktown.

Gerry also explained that no new members could be admitted after the meeting had been called which was on 17 April 2009. He said he will give consideration to the new membership applications that he has received today.

Preliminary discussions Gerry apologised for the very late start to the meeting. He explained that Reverend Peter Olney, acting on behalf of Gordon Charlie, had asked the Federal Court in Melbourne to issue an injunction to stop this meeting (and the AGM that will follow) from going ahead. The Federal Court decided that the meetings were valid and should be held.

Gerry said that quite a number of people (possibly between 10-20 people) who had arrived for the meeting between 10:30am and 11:00am had left before the meeting finally got started.

Gerry then explained the reasons for the appointment of Special Administrators, the role of the Special Administrators in resolving membership issues, and in doing up other paperwork to make the Corporation compliant with the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

Confirmation of register of members

Gerry read the names of all people who have been confirmed as the only valid members of the Corporation by him under section 499-5(3)(b) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*. The meeting confirmed that the register of members was correct (Gordon Charlie objected).

New rule book

Gerry explained the entire contents of the proposed new rule book. All members present confirmed that they had received a copy of the draft new rule book that has been prepared by ORIC and amended to include suggestions made by the Walmbaar Advisory Group at a meeting held on 14 April 2009. Members discussed various rules as Gerry explained the draft rule book. It was agreed that the draft rule book, as circulated to members, be amended to reflect the following changes:

- Rule 8.2(2) – the majority of directors to live in Hope Vale (not all of them).
- Rule 8 – the role, appointment and removal of executive directors inserted.

In response to a suggestion that the board should comprise an equal number of representatives from the three traditional families, members said that they were all Dinggaal and, apart from having one member from each family on the executive, the board should comprise a group of members who are able to best represent the interests of the Dinggaal people. Calls were made for all three families to work together to achieve the best results for the Corporation and its members (everyone agreed except for Gordon Charlie).

Gerry explained to members that Gordon Charlie had put forward a draft rule book prepared by his friend, Reverend Peter Olney. This rule book was not recommended by the Advisory Group because it only recognised the Charlie and Brim families as Dinggaal and it focussed all of the power with one person (Gordon Charlie). Members agreed (except for Gordon Charlie).

Discussion was held as to what could be done if a member was causing problems within the Corporation. Gerry said that, under Rule 5.7 of the new rules, a member can be expelled by a special majority at a general meeting if they misbehave.

Gordon Charlie addressed the meeting and said that only the Charlie people were true Dinggaal and that the Yoren and Baru families should be part of the Birri (Bididi) Baru Aboriginal Corporation. Phillip Baru attempted to speak to Gordon and said that members and senior Elders would like to meet with Gordon to resolve their differences. A number of members gathered around

the speaker phone to talk with Gordon. Ruth Schaeffer continually interrupted the conversation which broke down as a consequence.

Gerry then called the meeting to order and asked if everyone was happy with and understood the proposed new rules.

It was moved by Pauline Yoren and seconded by Elaine McGreen, that the whole of the current constitution of the Corporation be repealed and that the proposed rule book attached to the notice of the Special General Meeting (as amended above) be adopted as the constitution of the Corporation. All in favour, excepting Gordon Charlie who was against.

Gerry suggested that the rules be reviewed each year to see if they are working and, if not, to put through further changes.

Gerry then advised the meeting that the 75% majority required to change the rules under old Rule 21(1) had not been achieved. He said, however, that the intent of the members present was clear and that only one member (Gordon Charlie) had objected to the new rule book. Gerry said that he would therefore use his powers as Special Administrator under section 499-5(3)(a) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* and, subject to approval of the new rule book by ORIC, he would adopt the rules approved at this meeting as the official new rule book of the Corporation.

Closure

There being no further business the meeting closed at 1:35pm.



Joint Special Administrator

Footnote

Gerry Mier telephoned Peter Armstrong, the approved delegate of the Registrar at 1:37pm and received approval to adopt the new rule book that had been approved by members at the Special General Meeting and formally adopted by the Special Administrator under section 499-5(3)(a) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

Name	Signature	Contact details (optional)
✓	[Redacted]	DINGAAL
✓	[Redacted]	
✓	[Redacted]	
⊙	[Redacted]	DINGAAL
✓	[Redacted]	[Redacted]
	[Redacted]	4865
✓	indicates membership confirmed	
⊙	indicates observer (new membership)	
	applicant has been budgeted 2014/09	

