

Newsletter

ISSUE 3, JANUARY 2021



**DERBARL
YERRIGAN**
HEALTH SERVICE

(under special administration)

Dear members and other interested people

Our names are Jack James and Paula Smith and we are from Rodgers Reidy in Perth. On 6 November 2020, the Registrar of Indigenous Corporations appointed us special administrators of Derbarl Yerrigan Health Service Aboriginal Corporation (DYHSAC).

During the special administration, we will keep you informed of progress through regular newsletters and information meetings.

All newsletters and meeting notices will be available on the public Register of Indigenous Corporations at **oric.gov.au**—use the ‘find a corporation’ tool, enter ‘Derbarl’ and follow the link to ‘documents’.

Progress of special administration

We are now well advanced in stage 2 of the special administration, which is aiming to restore good operational order:

- | | | |
|---|-----------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 1 | Take control of the assets, including bank accounts; build a complete picture of issues and challenges; and establish a clear plan of action. | COMPLETE |
| 2 | Restore good operational order. | IN PROGRESS |
| 3 | Prepare the corporation for return to members control. | |

Extension of special administration

The special administration is due to end on 5 February 2021. The Registrar will extend that to 26 February 2021 in order for us to finalise changes to the rule book and appointing the new board of directors. Both matters are discussed further below.

Information meeting

We will hold our third information meeting as follows:

Date: Tuesday 9 February 2021

Time: 5.30 pm (WST)

Place: The RISE
28 Eighth Avenue
Maylands WA 6051

Information meetings are open to all members and other interested people to attend, except for media. They provide the opportunity to hear from the special administrators about work being done and allow people to ask questions.

At this information meeting, we invite members' feedback on the proposed changes to the rule book – discussed further below.

SEE THE ATTACHED MEETING NOTICE.

Annual general meeting

We will hold the annual general meeting for 2020 as follows:

Date: Thursday 25 February 2021

Time: 5.30 pm (WST)

Place: The RISE
28 Eighth Avenue
Maylands WA 6051

SEE THE ATTACHED MEETING NOTICE.

Money story

A summary of DYHSAC's recent financial information is set out below.

	30 Jun 2019 (audited)	30 Jun 2020 (audited)	31 Dec 2020 (unaudited)
Current assets	4,237,715	5,475,089	9,171,347
Non-current assets	2,209,169	3,448,315	3,402,480
Total assets	6,446,884	8,923,404	12,573,827
Current liabilities	2,292,633	3,963,338	7,015,261
Non-current liabilities	246,077	811,137	1,024,007
Total liabilities	2,538,710	4,774,475	8,039,268
Equity	3,908,174	4,148,929	4,534,559
	30 Jun 2019 (audited)	30 Jun 2020 (audited)	31 Dec 2020 (unaudited)
Grant income	11,850,552	12,193,064	6,384,466
Health income	3,836,078	4,054,838	2,071,517
Other income	541,465	168,309	198,695
Total income	16,228,095	16,416,211	8,654,678
Administration & property expenses	2,613,197	2,152,344	1,042,931
Repairs & maintenance	140,076	197,181	130,618
Program supplies	450,438	544,272	221,033
Depreciation	356,943	649,913	196,225
Motor vehicle expenses	128,454	107,476	59,552
Staff training	145,289	171,506	65,565
Staff expenses	12,332,402	12,352,765	6,552,124
Total expenses	16,166,798	16,175,456	8,268,048
Surplus	61,297	240,755	386,630

We make the following comments about DYHSAC's money story:

- The corporation's profit & loss for the period ended 30 November 2020 records a net surplus of \$386,630.
- Adjustments have been made to correctly reflect the level of unexpended grants at the end of December 2020.
- The corporation has net assets of \$4,534,559 and a current ratio of 1.31. Current ratio is current assets divided by current liabilities; anything above 1 means DYHSAC has sufficient assets to pay its liabilities.

As such, DYHSAC is in a good financial position.

COVID-19 CAUTION

On 31 January 2021, the WA Government announced that effective from 6pm (WST) Sunday, 31 January 2021 until 6pm (WST) Friday, 5 February 2021, the Perth metropolitan area and the Peel and South West regions will enter a 5-day lockdown, based on health advice.

These measures were implemented due to a fast evolving situation in Western Australia with a positive COVID-19 case detected in a hotel quarantine worker.

As such, the ability to hold the information meeting and the 2020 AGM is subject to the lockdown being lifted and any other measures/restrictions the WA Government may put in place at the end of the current lockdown.

The special administrators are closely monitoring the evolving COVID-19 situation in the lead-up to each of these meetings. The health of members and other stakeholders is of paramount importance.

The special administrators encourage members to monitor the DYHSAC website and social media channels for any updates in relation to the meetings that may be provided.

Operational matters

DYHSAC is continuing to operate as usual.

During our appointment, we have met regularly with the funding agencies to discuss the ongoing operations of DYHSAC. These meetings have been constructive, and we are pleased to advise that DYHSAC has the ongoing support of its funding bodies.

We continue to work with the CEO, Tracey Brand, and the executive management group to review various aspects of DYHSAC operations.

Rule book review

As previously advised, the advisory group has discussed the rule book and proposed changes. As a result, we have submitted the proposed revision to ORIC for review and comment.

A summary of the proposed changes is attached. A full copy of the draft rule book will be available shortly on the ORIC website. Alternatively, please contact us and we can provide you with a copy.

At our third information meeting on Tuesday 9 February 2021—see the attached notice. we will seek feedback from members on the proposed changes to the rule book.

If you are unable to attend, please send us your comments—our contact details are below.

New board of directors

An important step in the final stage of the special administration is the appointment of a new board. The draft rule book provides that the board can have a maximum of 7 directors comprising:

- up to 5 member directors and
- up to 2 independent specialist directors

(A person is 'independent' if they are a non-member and have no financial or familial interests in the corporation.) The new board will take over control of the corporation immediately once the special administration ends.

Member directors

For members who would like to nominate themselves as a director, a nomination form is attached. Please complete this and return it to us by 12 February 2021.

Independent specialist directors

We are working with the Forum for Directors of Indigenous Organisations (FIDIO) to identify people for the role of independent specialist directors.

The closing date for expressions of interest is 1 February 2021. We will discuss the shortlisted applications with the advisory group in order that a decision can be made on who to appoint.

What happens next?

Our next steps will include the following (amongst other things):

- continue discussions with funders and other stakeholders in respect to ongoing operations at DYHSAC
- continue with our review of operational matters
- coordinate feedback on the proposed changes to the rule book
- prepare to appoint a new board
- hold the 2020 AGM.

More information

The Registrar has a fact sheet, *Special Administrations: what members and directors need to know*. You can find this and other fact sheets on corporate governance on the ORIC website: oric.gov.au

SPECIAL ADMINISTRATORS

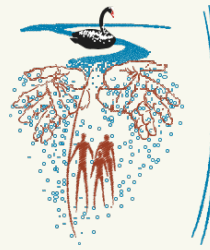


Jack James



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**DERBARL
YERRIGAN**
HEALTH SERVICE

(under special administration)

Notice of information meeting

Members and other interested people

On 6 November 2020, the Registrar of Indigenous Corporations appointed us as the special administrators of Derbarl Yerrigan Health Service.

We are holding our second information meeting about the special administration and invite all members of the corporation and interested parties to come. For privacy reasons, no media will attend.

Details of the meeting are as follows:

Date: Tuesday 9 February 2021

Time: 5.30 pm (WST)

**Place: The RISE
28 Eighth Avenue
Maylands WA 6051**

This is your opportunity to discuss the special administration and your corporation's future. Please come along.

Light refreshments will be served.

Agenda

1. Update on the special administration
2. Rule book feedback
3. Next steps in the special administration
4. Questions

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More information

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Nomination & consent to become a director



You must complete all parts of this form and return it to the corporation *before appointment*.

PART A—PERSONAL DETAILS

I, _____ (full name of person)
of _____ (residential address—
not a postal address)

phone _____
email _____
date of birth _____
place of birth _____

nominate myself and, if appointed, consent to become a director of the corporation.

PART B—DISCLOSURE OF INTERESTS

I offer the following as standing notice under rule 6.16 and CATSI Act sections 268-1 and 268-10 regarding directors' duty to disclose material personal interests that might conflict with the interests of the corporation.

I have these interests in contracts or proposed contracts of the corporation:

I have these associations with other corporations or businesses:

(Please state the name of the entity and your role in it, eg member, partner, owner, officer, shareholder.)

I hold these positions where duties or interests might conflict with my duties as a director:

I set out below any other material personal interest relevant to the affairs of the corporation:

PART C—RELEVANT EXPERIENCE AND/OR QUALIFICATIONS

(Provide details of relevant experience/qualifications for the role of director)

PART D—ACKNOWLEDGMENTS & SIGNATURE

I **acknowledge** I am automatically disqualified (under sections 279-5 and 279-10 of the CATSI Act) from managing corporations if I:

- have been convicted of an offence under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* that is punishable by imprisonment for more than 12 months
- have been convicted of an offence involving dishonesty that is punishable by imprisonment for at least three months
- have been convicted of an offence against the law of a foreign country that is punishable by imprisonment for more than 12 months
- am an undischarged bankrupt
- have signed a personal insolvency agreement and have not kept to the agreement
- have been disqualified under the *Corporations Act 2001* from managing corporations,

I **acknowledge** that my appointment as a director is subject to the rules of the corporation and the CATSI Act.

I **confirm** that I am eligible to be appointed as director according to the following rules:

Rule 6.4—member directors must:

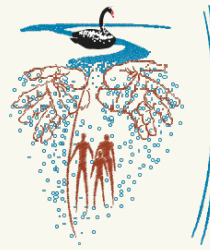
- **be a member** of the corporation
- **have demonstrated knowledge and experience** in health, finance, governance, law and/or another area relevant to the objectives of the corporation
- within two months of appointment, **provide a police certificate** attesting they have committed no criminal offences in the last 10 years
- within one month of appointment, **sign the confidentiality deed and code of conduct**
- **have completed governance training** or do so within six months of their appointment
- (until the AGM in 2026) **not have been a director** or a member of the management committee—when the organisation was registered as an association under the *Associations Incorporation Act 2015* (WA)—at any time before 6 November 2020

Rule 6.7—independent specialist directors must:

- **not be a member** of the corporation
- **be at least 25** years old
- **live in the region** of Noongar country
- **not be employed by the corporation** or any of its subsidiaries, and was not in the last 2 years
- **not have been paid by the corporation** in the last year
- **have demonstrated skills** in finance, governance, law or health
- **provide a police certificate** attesting they have committed no criminal offences in the last 10 years
- **sign the confidentiality deed and code of conduct**
- **have completed governance training** or do so within six months of their appointment
- **have demonstrated understanding of Aboriginal culture**, or complete board-endorsed cultural training within 6 months of their appointment

Signature of nominee: _____

Date: _____



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HEALTH SERVICE

(under special administration)

Notice of annual general meeting

Members

You are invited to the annual general meeting for 2020:

Date: Thursday 25 February 2021

Time: 5.30 pm (WST)

**Place: The RISE
28 Eighth Avenue
Maylands WA 6051**

Light refreshments will be served.

Agenda

1. **Opening** of meeting and formalities
2. Report by **special administrators**
3. Report by **chief executive officer**
4. Presentation of audited **financial statements** for the year ended 30 June 2020
5. Appointment of **directors**
6. Appointment and remuneration of **auditor**
7. **Questions**

In accordance with the rule book, no proxies are allowed.

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Summary of proposed changes to the rule book



Area of change	Proposed change	Rule
Membership—eligibility	<p>There will only be one class of members. Previously there were voting and non-voting members. Now there will only be voting members.</p> <p>To be eligible, a member must:</p> <ul style="list-style-type: none"> • be at least 18 years old • be an Aboriginal person • abide by the rule book, the CATSI Act and the code of conduct • act in the best interests of the corporation • not be a body corporate, company or any entity other than a person • not be an employee of the corporation, or have been an employee of the corporation in the 2 years prior to applying for membership • reside in traditional Noongar country • state his or her reasons for wishing to become a member • complete and submit the application for membership form. 	3.1
General meetings at members' request	The number of members required to ask the directors to call a general meeting is 10% of the membership.	4.3
Members' resolutions	The number of members required to propose a resolution by giving notice of it to the corporation is 10% of the membership.	4.6
Quorum	The number of members required to make a quorum is 10% of the membership.	4.7
Information meetings and newsletters	<p>To ensure that members and others are provided with regular and timely information on the operations of the corporation, the chief executive officer (CEO) will conduct information meetings for members, stakeholders and other interested parties at least once every 3 months.</p> <p>Information meetings are informal meetings. No resolutions can be proposed or passed at information meetings. No fees or reimbursements are to be paid to members who attend the information meetings.</p> <p>At least 14 days' notice must be given for an information meeting. Notices of information meetings must be given to each member individually, by:</p> <ul style="list-style-type: none"> • post to their address in the register of members and • email (if an email address has been recorded for the member) <p>In addition, the corporation will share the notice on its website and social media channels.</p> <p>The corporation will also issue a newsletter to members at least once every 3 months. This will be done by:</p> <ul style="list-style-type: none"> • post to their address as recorded in the register of members and • email (if an email address has been recorded for the member). <p>In addition, the corporation will share the newsletter on its website and social media channels.</p>	5
Directors—board composition	<p>The board composition will be:</p> <ul style="list-style-type: none"> • up to 5 member directors—from 5 different families • 1 or 2 independent specialist directors—appointed by the member directors 	6.2

Area of change	Proposed change	Rule
Member directors—eligibility	<p>Member directors must:</p> <ul style="list-style-type: none"> • be a member of the corporation • have consented in writing to be appointed as a director of the corporation in the form set out at Schedule 3 of the rule book • have demonstrated knowledge and experience in health, finance, governance, law and/or another area that is relevant to the objectives of the corporation as set out in rule 2 • within two months of appointment, obtain a national police certificate—and if a national police certificate is not provided within two months of appointment or it records a criminal offence within the last 10 years, the member director's appointment is terminated immediately • within one month of appointment, sign the director's confidentiality deed—and if a signed directors' confidentiality deed is not provided within one month of appointment the member director's appointment is terminated immediately • within one month of appointment, sign the directors code of conduct—and if a signed directors' code of conduct is not provided within one month of appointment the member director's appointment is terminated immediately • have completed suitable governance training either before their appointment or within six months of it. <p>A person is ineligible to become a director if they:</p> <ul style="list-style-type: none"> • have been disqualified from managing corporations • have been convicted of a criminal offence in the last 10 years or has at any time been sentenced to imprisonment of more than 12 months • are an employee or have been within the 2 years prior to their appointment • (until the AGM for the financial year ending 30 June 2026) have been, before 6 November 2020, a director of the corporation or a member of the management committee while the corporation was registered under the <i>WA Associations Incorporation Act 2015</i>. <p>Only one person from each family may be appointed or hold office as a member director at any one time. For the purposes of this rule book, family means any living person related in any of the following ways: grandfather or grandmother; father or mother; husband, wife or defacto; son or daughter; sister or brother; stepbrother or stepsister; stepson or stepdaughter; grandchild or step-grandchild; uncle or aunt; niece, nephew or cousin.</p>	6.4
Election of member directors	<p>No later than 15 September in each year, the CEO will notify all members of the member director positions that will become vacant at the upcoming AGM, and provide a copy of the form for members to nominate and consent to become a director.</p> <p>Notice of the election is to be given by:</p> <ul style="list-style-type: none"> • posting to their address as recorded in the register of members • email (if an email address has been registered for the member) <p>In addition, the corporation is to give notice of the election by:</p> <ul style="list-style-type: none"> • advertising the notice in the <i>West Australian</i> newspaper • posting the notice on the corporation's website and • sharing the notice through the corporation's social media channels. 	6.6

Area of change	Proposed change	Rule
Election of member directors (continued)	<p>Any member wishing to nominate for election as a member director at the AGM must complete the form to nominate as and consent to become a director, and pass it to the corporation no later than 15 October.</p> <p>When notice of the AGM is given to members, it will include a copy of each nomination for a directorship.</p> <p>A member who nominates for election as a member director must attend the AGM in person, and if they do not, their nomination will be treated as withdrawn.</p> <p>The procedure for voting will be as follows:</p> <ul style="list-style-type: none"> • The chairperson will announce each nominee in alphabetical order, and each nominee will be given an opportunity to address the meeting. • Each member has one vote only. • For each nominee, the chairperson will ask for members to raise their hand if they wish to vote for that nominee. • The secretary will count the show of hands and declare the number of votes for each nominee. • Nominees receiving the greatest number of votes will be elected as directors, subject to the requirements that: <ul style="list-style-type: none"> • no more than one person from a single family may be appointed • the maximum number of member directors is 5 • a poll can be demanded in accordance with rule 4.11. 	6.6
Independent directors—eligibility	<p>The directors may appoint up to 2 independent specialist directors for a term of up to 2 years.</p> <p>To be eligible for an independent specialist directorship, a person must:</p> <ul style="list-style-type: none"> • not be a member of the corporation or have any financial or familial interests in it • be at least 25 years old • be an Australian resident and live somewhere in traditional Noongar country • not be or have been in the last 2 years an employee of the corporation or any subsidiary of the corporation • not have worked for or been paid by the corporation for services for the last year • be independent and have demonstrated skills and experience in financial management, corporate governance, accounting, law or the health sector • give their written consent to become a director before being appointed • provide a national police certificate prior to appointment that does not record a criminal offence within the last 10 years • sign the confidentiality deed and code of conduct • have completed suitable governance training either before their appointment or within 6 months of it • have demonstrated understanding of Aboriginal culture or complete a cultural awareness training (as endorsed by the corporation) within 6 months of their appointment. 	6.7

Area of change	Proposed change	Rule
How to appoint independent directors	<p>Independent directors must be recruited for their merit. In making their selection, the board of member directors must be guided by a suitably qualified and experienced party. For example, the board could use ORIC Recruitment Assistance—oric.gov.au/ora.</p> <p>Member directors will devise a set of criteria they will by which they will assess the merit of each candidate. Anyone deemed ineligible according to rule 6.7 will be excluded.</p> <p>Potential candidates will provide written evidence of their qualifications, experience and suitability, name at least two people willing to provide a reference and participate in an interview by the board of directors</p> <p>Member directors will consider all the available information about each candidate and assess them in accordance with the selection criteria.</p> <p>Given the costs of holding directors' meetings, preference will be given to Perth-based independent specialist directors.</p>	6.8
Member directors—term of appointment	<p>Member directors are appointed at the AGM on rotation for a term of 3 years.</p> <p>Member directors who are eligible under rule 6.4 are eligible to be re-elected.</p> <p>To implement the rotational system:</p> <ul style="list-style-type: none"> • member directors appointed during the special administration that began on 6 November 2020 will be appointed until the 2024 AGM—however half of them must agree to stand down (with the option to nominate for re-election) at the 2023 AGM • before the 2023 AGM, the directors will decide by resolution at a directors' meeting which member directors will stand down at that AGM and which directors will continue until their term expires at the 2024 AGM • from 2023 onward, the term of all member directorships will be 3 years. <p>In 2022 and every third year after that, no elections will occur. In 2 of every 3 years half the directorships will become vacant.</p> <p>In accordance with section 246-25(4) of the CATSI Act, if at any time there are no member directors holding office, the most recent former member directors will continue to hold office until the members appoint new member directors or reappoint the existing member directors by resolution at a general meeting.</p>	6.9.1
Independent specialist directors—term of appointment	<p>Independent specialist directors are appointed for the term specified in writing by the directors in their appointment. The term cannot exceed 2 years, but independent directors may be reappointed.</p>	6.9.2
Reporting to the board	<p>The CEO must provide reports to each director at least a week before each directors' meeting. Such reports should be on a 'balanced scorecard' approach that measures the corporation's performance against its strategic plan, budgets and other performance measures. Such reports should provide the directors with information about the quality and level of service delivery.</p>	6.14.3
Remuneration of directors	<p>The directors may be paid remuneration by way of fees for attendance at directors meetings and other meetings in respect to corporation business.</p> <p>Proposed fees (as per the remuneration policy):</p> <ul style="list-style-type: none"> • chairperson \$10,000 per annum—must be a member director • deputy chair: \$7800 per annum—must be a member director • other directors: \$6000 per annum <p>plus travel, accommodation (if any).</p>	

Area of change	Proposed change	Rule
Quorum for directors' meetings	<p>The quorum for directors meetings is:</p> <ul style="list-style-type: none"> • a majority of member directors and • at least one independent specialist director 	6.21
Chairing directors' meetings	<p>The board must elect a member director to be chairperson. The board may determine the period for which that director is to be chairperson.</p> <p>The board must elect a member director to be deputy chairperson. The board may determine the period for which that director is to be deputy chairperson</p> <p>Directors' meetings are chaired by the chairperson. If the chairperson is absent or unwilling or unable to act, the meeting is chaired by the deputy chairperson.</p> <p>If both the chairperson and the deputy chairperson are absent or unwilling or unable to act, the directors present shall appoint a member director to chair the meeting.</p>	6.22
Annual reporting	<p>Each year, the corporation must disclose in its directors' report the:</p> <ul style="list-style-type: none"> • number of board meetings held • number of board meetings attended by each director who held office during the year • remuneration and allowances paid to each director who held office during the year 	10