

30 November 2018

The Western Australian Club (Inc.)  
ABN 57 785 072 589 (In Liquidation)  
("the Club")

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STATUTORY REPORT TO CREDITORS

Incorporated Association	
Name	The Western Australian Club (Inc.) (In Liquidation)
ABN	52 785 072 589
Year of incorporation	1893
Date of Liquidation	31 August 2018
Executive Committees' names	Shelley Crowley ( <b>President</b> ), Bronwyn Grant ( <b>Vice President</b> ) Frank Alderton ( <b>Treasurer</b> ), Rob Von Perch ( <b>Secretary</b> )
Member Base	Approximately 475 members
Principal place of business	Level 11, 12 St Georges Terrace, Perth WA 6000
Liquidators' Details	
Name	Daniel Woodhouse and Ian Francis
Contact	Damon Brankstone
Contact phone number	+61 8 9321 8533
Contact email	<a href="mailto:damon.brankstone@fticonsulting.com">damon.brankstone@fticonsulting.com</a>

## 1 Executive Summary

Description	Findings	Section of Report
Background of the Club	The Club traded as a member only establishment from the leased premises located at Level 11, 12 St Georges Terrace, Perth (" <b>Current Premises</b> "). Members were provided access to the bar and restaurant located in the Current Premises, as well as entitlements to an extensive list of reciprocal clubs.	2.1
Reasons for Failure	The Club's failure is attributed to a: <ul style="list-style-type: none"> <li>▪ History of substantial trading losses: particularly between 2009 to 2016, where losses totaled \$4.1m;</li> <li>▪ Declining membership base from 2011 to 2018; and</li> <li>▪ Declining membership fee revenue.</li> </ul>	2.2
Administrators' trading	The Administrators traded the Club's business in order to preserve value whilst exploring all restructuring options available to the Club. Unfortunately, no viable restructuring option was forthcoming and the Club's operations were closed on 29 August 2018.	2.3
Assets and Liabilities	Details of the remaining assets and liabilities in the liquidation is provided in Section 2.4.	2.4
Investigations undertaken to date	The Liquidators have identified potential unfair preference payments totaling approximately \$36,125. The Liquidators will shortly issue a demand for the payments. No additional voidable transactions have been identified that would provide a return to creditors.	3
Likelihood of dividend	A distribution to any class of creditors is <b>unlikely</b> .	4
Receipts and Payments	Receipts and Payments for the Liquidation at 28 November 2018	5

I refer to the following:

- Ian Francis and my appointment as Voluntary Administrators of the Club on 27 July 2018 (“**Administrators**”);
- The Administrators Report to Creditors dated 24 August 2018 (“**Administrators’ Report**”); and
- Our appointment as Liquidators of the Club on 31 August 2018.

The purpose of this report is to:

- Provide you with an update on the progress of the liquidation; and
- Advise you of the likelihood of a dividend being paid in the liquidation.

## **2 UPDATE ON THE PROGRESS OF THE LIQUIDATION**

I provide an update on the progress of the liquidation as follows:

### **2.1 Background of the Club**

The Club was incorporated in 1895 in the state of Western Australia. The Club was run by a Committee who were elected by the Club’s members. The Committee’s roles were voluntary, and no payment was received for their service.

The Club’s principal place of business was at Level 11, 12 St Georges Terrace, Perth WA 6000. The Club’s membership was, historically, aimed at local business leaders. However, over a number of years had been losing its membership base.

The Club operated a full bar and restaurant open to men and women for the primary purpose of providing exclusive interaction, enjoyment and comfort of members and their guests.

At the date of the Administrators’ appointment, the Club had approximately 475 members and employed seven (7) casual staff and four (4) full time staff.

### **2.2 Reasons for Failure**

The Club previously owned and operated the premises at 101 St Georges Terrace, Perth WA 6000 (“**Former Premises**”). In December 2017, the Club entered into a sale and lease back agreement and remained at the former premises until 22 December 2014.

After costs, the Club received \$4.1m from the sale of the Former Premises. However, these funds were absorbed by trading losses between 2009 and 2016. The trading losses arose due to a steady decline in membership, with membership declining from approximately 1300 in 2011 to 475 at appointment.

In December 2014, the Club entered into a lease to occupy the Current Premises. As part of the lease agreement, the club received a rent free period to September 2015, at which point rent became payable.

The Club was able to operate on a rent free basis. However, the declining membership base meant that revenue was insufficient to pay any lease obligations or outgoings. The landlord extended the rent relief period from September 2015 to 30 June 2017 and provided a forbearance on outstanding lease payments to June 2018. However, the landlord was not prepared to extend the rent relief any further and issued a demand for all outstanding rent and out goings on 21 June 2018. Accordingly, the Executive Committee appointed the Administrators. Please refer to the Administrators Report for further reasons for the Club's failure.

### 2.3 Administrators' actions on appointment and Trading

The Administrators immediately undertook an urgent review of the Club's operations. It was determined that the Club could trade. However, to do so, the Administrators required funds from members to support the operations. In this regard, members donated \$10,000 to assist with operational losses whilst options for a restructure were assessed.

Various restructure options explored include, but not limited to:

- i. membership donations to recapitalise the Club's operations; and
- ii. a third party being engaged to operate the Club's restaurant and bar under licence.

Unfortunately, no viable plan for a restructure was received, and in conjunction with negative cash contributions from the Club's operations, the decision to cease trading the Club's operations was made on 29 August 2018.

The Administrators traded the Club at a small loss, inclusive of the member donations, of \$3,934, as detailed below.

**Table 1: Trading Position**

	(\$) (GST Inclusive)
<b>Revenue</b>	
Bar & Restaurant Revenue	24,421
Function and Event Receipts	24,826
GST Payable	(4,477)
<b>Total Receipts</b>	<b>44,770</b>
<b>Expenses</b>	
Wages & Salaries	(39,402)
Superannuation Liability	(4,700)
Trade Supplier - COGS (Food and Drink)	(13,161)
Subscriptions	(723)
Bank Fees	(318)
GST Receivable	630
<b>Total Expenses</b>	<b>(57,460)</b>
<b>Trading Position</b>	<b>(13,934)</b>
Members Donations	10,000
<b>Net Position</b>	<b>(3,934)</b>

Importantly, the donations of \$10,000 received from members was vital to the Administrators' ability to trade. Had the donations not have received, the Club's operations would have been closed almost immediately, significantly impacting the ability for any restructure options being formulated and assessed.

## 2.4 Remaining Assets and Liabilities

The assets and liabilities of the Club at the date of the appointment of the Administrators was provided in the Administrators' Report. The assets and liabilities as at the date of liquidation are as follows:

<b>Assets and Liabilities</b>		
	<b>Notes</b>	<b>(\$) Incl GST</b>
<b>Remaining Assets</b>		
Cash Transferred from Administrator	1	56,164
Debtors - Membership Fees	2	8,890
Equipment, Stock and Other Assets	3	20,372
<b>Total Assets</b>		<b>85,426</b>
<b>Creditors</b>		
Employees	4	(69,743)
Secured Creditors	5	-
Unsecured Creditors	6	(882,552)
<b>Total Creditors</b>		<b>(952,295)</b>
<b>Deficiency</b>		<b>(866,869)</b>

### 2.4.1 Notes

#### 1. Cash at Bank

Cash funds of \$56,164 were transferred from the Administrators.

#### 2. Debtors – Membership Fees

Invoices have been previously issued for August member fees. There is approximately \$8,890 in unpaid fees. The liquidator is pursuing the payment of these fees.

#### 3. Equipment, Stock and Other Assets

After the ceasing of the Club's operations, the Liquidators commissioned a proposal from Pickles Auctions for the orderly sale of the Club's remaining equipment, stock and other assets ("**Assets**") at the Current Premises.

Given liquor licence restrictions and sentimental value of some of the Club's assets, a silent auction, exclusive to members of the Club, was conducted at the Current Premises. The auction was conducted over seven (7) days with three (3) viewing times available for members. The auction returned \$20,371.93 (Including GST), or \$17,031.02 net of auction costs (including GST).

The balance of the assets have no commercial or sentimental value. Accordingly, the Liquidators intend disclaiming any interest in the remaining assets.

#### 4. Employees (Priority Creditors)

The Club's operations were closed and employees terminated on 29 August 2018.

The Liquidators referred employees to the Fair Entitlements Guarantee Scheme ("FEG") administered by the Federal Government in order to lodge a claim for their outstanding entitlements.

The Liquidators have verified employees' outstanding entitlements for the FEG, as follows:

Employee Entitlements	
	(\$)
Unpaid Wages	17,385
Annual Leave	16,343
Long Service Leave	10,351
Payment In Lieu of Notice	6,247
<b>Total FEG Entitlement Estimate</b>	<b>50,326</b>
Outstanding Superannuation	19,417
<b>Total Employee Claims</b>	<b>69,743</b>

The Liquidators will continue to assist FEG and employees with their claims.

The Federal Government will have a statutory and equitable right of subrogation in the liquidation for amounts advanced to employees. Accordingly, the payment of employee entitlements through FEG does not discharge the priority claim.

FEG does not pay outstanding superannuation for terminated employees, estimated to be \$19,417. The payment of outstanding superannuation will, therefore, be dependent on whether sufficient realisations are recovered in the liquidation. At this time, a dividend to priority creditors is unlikely.

#### 5. Secured Creditor

Suncorp Metway Advances Corporation Pty Ltd ("**Suncorp**") held a chattel mortgage over the Club's kitchen equipment. The Liquidators commissioned a valuation from Pickles Auctions which determined that there was no equity in the equipment, after discharging the amounts owed under the chattel mortgage.

Accordingly, the Liquidators issued a disclaimer of onerous property in respect to the equipment.

Additionally, Liquid Mix (WA) Pty Ltd ("**Liquid Mix**"), held a Purchase Money Security Interest registered against the Club. Liquid Mix were owed \$3,251.12 at the date of the

Administrators' appointment and collected stock to the cost value of \$1,037.53, in respect to their security.

Suncorp and Liquid Mix will be able to claim for any shortfall in their debt, after assets subject to their security are realised, as an unsecured claim.

## 6. Unsecured Creditors

The Club's records show there are approximately 50 unsecured creditors with claims totalling \$882,552.

The Liquidators are aware that a number of members have claims against the Club for pre-paid membership fees and unused minimum monthly spend entitlements, which are yet to be formally received and quantified.

The unsecured creditor claims are an estimate only and subject to formal adjudication. A distribution to unsecured creditors is unlikely.

## 2.5 Dealing with the Club's Historical Assets

Given the Club's historical significance, the Liquidators contacted and met with members of the J.S Battye Library of Western Australia History ("**State Library**") to seek their interest in preserving historical items of the Club.

### 2.5.1 Attendance at Premises

We met with a representative of the State Library at the Current Premises to inspect the Club's historical assets held on site. The representative advised that the majority of items on site not suitable for the State Library, and those few items that were of potential interest required additional certification documentation before it could be accepted.

Given the initial limited interest, and further documentation required to make a donation, the Liquidators determined it appropriate to offer the items to members via silent auction, after which, the successful bidding member could, at their liberty, make a donation to a historical institution of their choosing.

### 2.5.2 Storage Unit

The Club maintained a storage unit ("**Unit**") at Perth National Storage. We inspected the Unit and collected items identified as having historical value. Again, a representative from the State Library was invited to view the items and identify those of interest to the State Library. We intend to donate those items to the State Library shortly.

### 2.5.3 Time Capsule

The Club held a time capsule which was sealed in 1993 and due to be opened at the Club's 125 anniversary this year. As the Club entered voluntary administration before the relevant date, the time capsule remained unopened.

The Liquidators requested the State Library be present when the Time Capsule was opened in order to ensure that all historical items were maintained and preserved by a qualified third party in an independent manner.

The State Library identified items of interest to them, and we intend on donating those items to the State Library shortly.

## 2.6 Conduct of the Liquidation

In addition to the above, the Liquidators have attended to the following matters in the liquidation:

- Attended to all necessary statutory lodgements, reporting, accounting and administrative matters;
- Issued correspondence for payment of outstanding debts owed to the Club and receipted funds regarding same;
- Discharged the trading liabilities relating to the Administrators' trading;
- Facilitated the orderly wind down and sale of the Club's remaining assets;
- Conducted investigations into the affairs of the Club concerning possible recoveries from voidable transactions;
- Liaised with the Department of Jobs and Small Business regarding outstanding employee entitlements submitted to FEG, and verified those amounts;
- Attended to external enquiries concerning the status of the liquidation; and
- Prepared the statutory report to creditors.

## 3 INVESTIGATIONS AND RECOVERY ACTIONS

The Liquidators are required to investigate and specify whether there may be any voidable transactions in respect of which money, property or other benefits may be recoverable by the Liquidators.

I set out below details of our investigations and our findings:

### 3.1 Findings and possible recoveries

The Liquidators' investigations have revealed:

- *Unfair Preference Payments*

The Club made payments of approximately \$36,125 that are considered potentially unfair preference payments pursuant to Section 588FA of the Corporations Act 2001 ("**Act**"). The Liquidators are finalising their claim and will issue a demand shortly.

- *Insolvent Trading*

Based on our investigations, the Club appears to have been insolvent from 1 July 2017 when the rent relief period came to an end. The Executive Committee may have a defence to insolvent trading, if it was reasonably believed that the rent relief period had been extended.

The Liquidators are of the understanding the Landlord provided an informal forbearance for the FY2018 period, whilst reserving its rights to enforce in respect to the rental arrears.

If valid, the quantum of an insolvent trading claim is estimated at \$185,000. Given the anticipated costs and risks associated with pursuing an insolvent trading claim, the Liquidators are considering whether there are sufficient funds to pursue a claim, and if it is commercial to do so. Although, at this stage, this appears unlikely.

- *Breaches of Corporations Act*

We do not consider the Executive Committee has breached any sections of the Act, other than those already identified.

#### 4 LIKELIHOOD OF A DIVIDEND

The estimated return to creditors is as follows:

<b>Estimated Return to Creditors as at 28 November 2018</b>		
	<b>Liquidation</b>	<b>(Inc. GST)</b>
	<b>Low (\$)</b>	<b>High (\$)</b>
<b>Assets</b>		
Cash	58,458	58,458
Debtors	-	8,890
<b>Voidable Transactions</b>		
Unfair Preference Payment	-	36,125
<b>Total Recoveries</b>	<b>58,458</b>	<b>103,473</b>
<b>Professional Fees and Disbursements</b>		
Remaining Voluntary Administration Fees	(32,242)	(32,242)
Liquidators Fees (Remaining Fee Cap)	(20,000)	(20,000)
Liquidators Fees (Above Fee Cap)	(60,000)	(45,000)
Other Costs	(2,500)	(1,500)
Total Professional Fees and Costs	(114,742)	(98,742)
<b>Net Funds Available for Priority Creditors</b>	<b>(56,284)</b>	<b>4,731</b>
Priority Creditor Balance	50,326	50,326
<b>Estimated Cents in the \$ Return to Priority</b>	<b>Nil</b>	<b>7.00</b>

As detailed above, a dividend to priority creditors of between 0 to 7 cents of the total amount claimed will only be possible if all assets are recovered in full.

We consider it unlikely unsecured creditors will receive a distribution in the liquidation.

## 5 RECEIPTS AND PAYMENTS

Since our appointment as liquidators, we have incurred the following receipts and payments:

<b>Statement of Receipts and Payments for the Liquidation period</b>	
<b>As at 28 November 2018</b>	<b>Amount (\$)(inc GST)</b>
<b>Receipts</b>	
Transfer from Administrator	84,894.35
Net Proceeds from Auction	17,031.02
Member Donations	10,000.00
Bar, Restaurant and Functions Receipts	4,632.55
Membership Fees	949.60
Telstra Refund	264.17
<b>Total Receipts</b>	<b>117,771.69</b>
<b>Payments</b>	
Administrator Fees & Disbursements	(25,000.00)
Employee Wages, Entitlements and Superannuation (Trading)	(8,249.55)
Trade Suppliers & Subscription Fees	(8,325.06)
GST and PAYG Paid	(11,078.00)
Insurance	(2,842.77)
Legal Fees	(3,438.52)
Ticket Refunds	(314.22)
Bank Charges	(66.00)
<b>Total Payments</b>	<b>(59,314.12)</b>
<b>Cash at bank held by Liquidator (28.11.2018)</b>	<b>58,457.57</b>

## 6 WAY FORWARD

The following actions are required to proceed with the Liquidation:

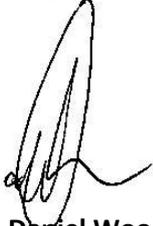
- Complete my investigations into the Club's affairs;
- Pursue the claim for unfair preference payments;
- Assist FEG and employees with their claims for outstanding employee entitlements;
- Attend to a priority creditor dividend (if applicable); and
- Any other matters relevant to the liquidation.

I may write to you again with further information on the progress of the liquidation. I expect to have completed this liquidation within 6 months from the date of this report.

You can access information which may assist you on the following websites:

- ARITA at [www.arita.com.au/creditors](http://www.arita.com.au/creditors)
- ASIC at [www.asic.gov.au](http://www.asic.gov.au) (search for “insolvency information sheets”).

Please contact Damon Brankstone on 08 9321 8533, if you require any further information.



**Daniel Woodhouse**  
**Joint and Several Liquidator**

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Damon Brankstone  
(08) 9321 8533  
Damon.Brankstone@fticonsulting.com

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