



12 February 2020

Dear Member

SUBJECT Ian Stewart's Court Proceedings against SHCA/SHAL and Receiver Update

1. INTRODUCTION

- 1.1 Through the ongoing court and receivership process it is incumbent on us, as the volunteer directors of Show Horse Australasia Limited (**SHAL**) to keep you, the members of SHAL, updated.
- 1.2 Accordingly, I am writing to you to confirm that the receiver has conducted a meeting of Show Horse Council of Australasia Inc. (**SHCA**) based on his powers and understanding of the Court orders. **He declared the result of that meeting to be that the setting up of SHAL is not ratified and, in effect, that all the assets of SHAL, and all membership monies, must be transferred to SHCA.** This is disappointing for SHAL and you as members so it is important that you know the facts and know what will happen from here.
- This is incorrect. I did not declare "...that the setting up of SHAL is not ratified...". This was not voted upon nor was it required by the Court to be considered.*
- The Delegates did vote against the ratification of the transfer of SHCA's assets to SHAL and against the ratification of the Transfer Deed.*
- As a result of those two votes, the Court's Orders required SHAL to do a number of things, including transfer all funds, including membership monies paid to SHAL, to SHCA.*
- I did not make any declarations other than the results of voting as required by the Court.*
- 1.3 First, we understand that this entire draining process has been confusing and many aspects have been difficult to understand but there are a few key points to keep in mind:
- a) **SHAL, and the volunteer directors of SHAL, have only ever acted in the best interests of SHAL's members** and in the interests of ensuring the continued success of show horse business.
- My view on this is that the SHAL directors, who were also the SHCA Executive, acted solely in the interest of SHAL (an entity they 'set up') and not in the interest of SHCA (the members of which they also owed a duty of care).*
- b) **SHAL, and the volunteer directors of SHAL, have always acted in accordance with legal advice.**
- This is incorrect in that the 'legal advice' to which he refers advised that the transfer of registration may only take place with the authority of the Delegates ie based on a vote of the Council.*
- They (being the SHAL directors and SHCA Executive) did not put this to a vote of the SHCA Council.*
- c) **None of the volunteer SHAL directors earned a cent or derived any financial benefit in connection with their roles with SHAL.**

I am unable to verify this statement.

- d) **No monies have been spent by SHAL other than on the proper business of SHAL** and for the purpose of ensuring the smooth operation of show horse events. The SHAL directors have taken reasonable steps to manage various risks including obtaining appropriate insurance cover. SHAL has made a claim under its policy for the **legal costs of the proceedings. SHAL understands a substantial portion of the costs are likely to be reimbursed.**

This is incorrect. SHAL instructed Prolegis Lawyers on a number of issues between 28 August & 11 October 2019 (ie six weeks). Prolegis invoices totaled approximately \$186,000 for advice on the SHCA Constitution, the SHAL Constitution, the Transfer Deed, setting up SHAL, convening general meetings and the proceedings, detailed as follows;

Date	Description	Professional fees incl. GST	Disbursements incl. GST	Total incl. GST
15/10/2019	Supreme Court Equity Proceedings	\$78,966.80	\$16,500	\$95,466.80
11/10/2019	Supreme Court Equity Proceedings	\$33,394.90	\$37.57	\$33,432.47
14/10/2019	<ul style="list-style-type: none">• Advising on SHCA constitution• drafting Deed• drafting SHAL Constitution• advising on setting up SHAL• advising in relation to convening general meetings	\$56,703.90	\$334.65	\$57,038.55
Total		\$169,065.60	\$16,872.22	\$185,937.82

I understand the insurer will pay some \$120,000 (ie 64%).

I have requested further details from Mr Norris however have not received same.

- e) The Court empowered the receiver to convene the general meeting of members of SHCA. We can neither confirm nor unequivocally deny that the receiver has conducted a proper and valid meeting or ensured that only properly appointed Delegates / Members of Council of SHCA as at 30 June 2019 were entitled to vote at that meeting. However, as the Court empowered the receiver in relation to the meeting, SHAL must rely on the Receiver, accept the outcome and comply with the Court orders.

I convened the meeting in accordance with the Court's Orders. My solicitor advised SHAL's solicitor of the process I intended to adopt to ensure compliance with the Court Orders. SHAL was invited to raise any objections at that time. SHAL's solicitors advised that SHAL did not propose to raise any objection to the procedure I adopted in complying with the Orders. Additionally, Mr Norris verbally advised me on the telephone on 22 January 2020 that he didn't "...think [I] had any option..." other than to proceed as detailed to the SHAL solicitor.

2. THE FACTS

2.1 These are the facts:

- a) By 2019 it had become clear that SHCA was structured such that it **did not have sufficient revenue to operate effectively** as the peak body for the show horse industry in Australia and New Zealand.
I believe this is incorrect. Substantial monies were transferred from SHCA to SHAL, without Delegates' authority, with which SHAL was purporting to do work that was already being done by SHCA.
- b) SHCA engaged not-for-profit association specialist lawyers, Prolegis Lawyers, who advised that SHCA was fundamentally broken and needed to move to a company limited by guarantee. Those who identified themselves as Delegates of the clubs voted for that to occur.
This is incorrect to my knowledge. The Delegates never voted on the above matters.
Prolegis Lawyers provided advice on a number of matters. Its advice also offered more than one course of action to remedy certain issues relating to the Constitution, one of which was to amend the Constitution, and another one of which was to incorporate a new entity and transfer the assets, with Delegate's authority, to the new entity. The Prolegis advice strongly favoured converting to a Company limited by guarantee, however, if the Members decided not to do that then at the very least the SHCA constitution would need to be redrafted. The Prolegis advice also said that SHCA would need to convene a general meeting to resolve by special resolution the transfer registration.
- c) As a result, SHAL was formed in accordance with Prolegis' advice and the assets of SHCA were to be transferred to SHAL, again on advice. SHAL offered direct memberships to individuals rather than have only clubs as members.
SHCA transferred its assets without the Delegate's authority by way of a transfer deed signed by an Executive member of SHCA and a director of SHAL (neither of whom are now on the SHCA Executive). It appears duties of persons involved may have been breached.
The Prolegis advice also said that SHCA would need to convene a general meeting to resolve by special resolution the transfer of registration.
- d) SHAL always acted in the interests of members and the show horse community and only expended funds on events and for the conduct of the show horse business.
Independent auditors, Saige, have verified SHAL's accounts. SHAL has had success in negotiating new, favourable deals for events.
I am unaware of any audit reports prepared for SHAL by Saige Accountants. Please see section 4.1(a) herein for further details on SHCA audits.
- e) Ian Stewart commenced legal proceedings against SHCA and SHAL to reverse SHAL having been set up. During the proceedings, an independent subcommittee conducted the 2019 NSW Horse of the Year (**HOTY**). The NSW HOTY recorded a loss of \$4,868.20 against an expected profit of \$35,350.
I am not aware of Mr Stewart seeking to have the incorporation of SHAL 'reversed'.

- f) Prolegis initially acted for SHCA and SHAL in the court case but their insurers appointed new lawyers, Gilchrist Connell, as the trial date approached. On advice from Gilchrist Connell in consultation with the insurers, **the Court case was settled.** *The implication of this comment is that the Court's Orders were by the consent of each party ie SHAL agreed to the Orders*
- g) Unfortunately, the settlement orders negotiated and agreed by Gilchrist Connell were not capable of having any effect and were very unclear such that further Court hearings were required. *Whilst it is unclear what is meant by the above, the final Orders were made with the consent of each party ie SHAL agreed to the Orders and were very clear in their requirements.*
- h) Eventually a receiver, Ian Purchas, was appointed. While we made attempts to restrict his bill to \$10,000.00, the orders provided for him to be able to incur up to \$45,000.00 without further approval. *This is not correct. The court approved remuneration of \$50,000 + GST with any further remuneration to be approved by the Delegates. This has been done in accordance with the Orders. Significant works have been undertaken by my office, including dealing with over 1,000 emails either received or sent. Attending to matters such as this letter from Mr Norris, and having to clarify misrepresentations & inaccuracies, adds further cost to the receivership.*
- i) While difficult questions were asked of Mr Purchas, particularly how Mr Purchas would ensure that only properly appointed Delegates be entitled to vote at the general meeting he was to convene, he did not provide answers but rather confirmations that he would exercise his powers under the orders. *This is not correct. All questions raised by SHAL's solicitors have been*
addressed.

- j) SHAL must rely on Mr Purchas, who has now estimated his costs may be in the range of \$165,000 to \$175,000, and that his time is required for a minimum of a further three weeks. Accordingly, his costs may far exceed this estimate.
- This is not correct. The further estimated time to complete the receivership is included in the abovementioned amounts however, addressing matters such as this letter were not anticipated and as such will likely add further costs.*
- My time costs have been incurred (and are estimated to be incurred) over an estimated 12 week period. The \$186,000 paid by SHAL to Prolegis was incurred over a six week period and paid from funds which were the property of SHCA.*
- k) SHAL must comply with the Court's orders and transfer its assets and funds to SHCA but issues remain regarding SHAL satisfying its debts.
- SHAL's debts are a matter for SHAL, not SHCA. SHCA members should not have to pay debts incurred by SHAL (SHAL was initially seeking payment of approximately \$55,000). This has been put to SHAL with a suggested way to deal with these matters. A commercial resolution to the dispute without the need to return to court will be achieved shortly..*
- l) At this stage SHAL has no knowledge of whether the fundamental, terminal problems with SHCA have been addressed and SHAL has no understanding of how or if they can effectively be addressed.
- Two members of the SHAL board (T Norris & S Elliott) are also SHCA Delegates and as such, have the opportunity to attend SHCA Council meetings. Mr Elliott did not personally attend the 30 January 2020 meeting, and neither of Messrs Norris and Elliott attended an SHCA Council meeting held on 11 February 2020. They have as much opportunity to address any SHCA matters as any other Delegate, however did not avail themselves of the opportunity to attend the 11 February meeting.*
- m) SHAL's lawyers brought the matter before Court on 7 February 2020 to address issues concerning the payment of SHAL's current and future debts and the question of Mr Purchas' fees, which are more than 17 times higher than SHAL understood they would be when the original court orders were made such that they threaten the continuation of the show horse business and potentially returns of SHAL membership fees.
- This is not correct. I am not aware of the amount SHAL "...understood [the receivership costs] would be...", but when I was asked to give an estimate I advised I was unable to do so as I had not been briefed on the matter nor did I have any understanding of the issues which needed to be addressed. Whatever amount SHAL understood the costs would be appears to have been a gross underestimation.*
- The comment about "...threatening the continuity of show horse business..." has no foundation and is particularly unnecessary & unhelpful. I can only assume it has been made to further unsettle members.*
- n) The Court agreed with SHAL that it was necessary for the receiver to act reasonably and for SHAL to be able to retain enough money to pay its debts, so an initial amount of \$35,000 will be provisionally kept by SHAL (although based on further correspondence the receiver appears to hold a different view as to what this involves). The Court has fixed a further hearing on 28 February 2020 to address SHAL's financial requirements and potentially Mr Purchas' fees.

These comments are not correct. The Court suggested that both parties act reasonably in an effort to settle the matter without further court involvement. I remain firmly of the view that SHCA is not responsible for SHAL's debts other than as agreed. We have suggested a workable settlement and expect the matter will be resolved shortly without the need to return to court. On 11 February 2020 SHCA voted to approve my remuneration as required by the Court's Orders.

3. WHAT HAPPENS NEXT

3.1 Pursuant to the Orders, following SHAL's transfer of its assets (including membership monies) to SHCA on 10 February 2020, the Orders suggest that the following process should take place:

- a) SHCA request your consent to be a member of SHCA.
- b) If you do not give your consent to being a member of SHCA, your membership fee should be returned to you.

Not all assets were returned on 10 February 2020. With my agreement some funds were 'quarantined' whilst we negotiated on SHAL costs to be paid.

3.2 If you have already formed a view about your intentions with regard to your membership of SHCA, and you wish to obtain a refund of your SHAL membership fee, we recommend that you contact the Receiver or SHCA with your request.

4. FURTHER EXPLANATION

SHCA – Legal, Governance & Financial Issues

4.1 In 2019, it became apparent that there were serious legal, governance, and financial issues affecting SHCA, some of which are set out below.

- (a) In 2013, SHCA's auditor had advised that the Council's financial practices were unsustainable and potentially in breach of its financial reporting obligations. This advice had never been acted upon or their recommendations implemented.

I am not aware of such an audit opinion, and indeed, the only Audit Report I have seen (30 June 2018) was unqualified. The independent auditor noted in the "Independent Auditor's Report to Members" the following;

"In our opinion, the accompanying financial report presents fairly, in all material aspect, the financial position of the association as at 30 June 2018 and [of] its financial performance...

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion."

- (b) The Council was operating at a very small gross profit. As at 30 June 2018, SHCA's gross profit was \$4,449.52, despite earning approximately \$467,182 in revenue from the Grand National Saddle Horse and Rider Championships (the Grand National) alone.
- (c) There were significant financial irregularities in how the Council received money and made payments, and irregularities in the payroll system of the office of the Council.
- (d) The Constitution and its voting structure produced Delegates to Council in a manner that was non-representative and inconsistent.
- (e) There were reports from SHCA Members of bullying and Delegates not representing or acting in Member interests.

SHCA – Legal Advice

4.2 To find a way to fix these issues, on 2 July 2019 Prolegis Lawyers were appointed to conduct a legal compliance review of SHCA to determine whether its Constitution was compliant with the *Associations Incorporation Act 2009* (NSW). Prolegis' advised SHCA as follows:

- (a) On 11 July 2019 – that the constitution and rules of SHCA were defective and deficient and recommended SHCA adopt a new structure and constitution which included SHCA change registration to a company limited by guarantee, with individual members.
- (b) On 22 July 2019 – that transferring SHCA to a company limited by guarantee had a number of advantages and was an appropriate option for SHCA.
- (c) On 6 September 2019 that:
- Ø SHCA was fundamentally broken and in breach of the Act.
 - Ø Delegates put up to Council have not been legally appointed at both the affiliate level and SHCA level.
 - Ø SHCA could not amend the rules or hold an AGM, as SHCA had no quorum.
 - Ø Only the Executive Committee members were legally able to run the association.
 - Ø The Executive Committee should create SHAL to move from a non-compliant, not fit-for-purpose organisation to be a contemporary organisation to assume the role of SHCA which is no longer able to function.

My view is that the above appears to be an accurate, albeit very brief, summary of the Prolegis advices of some 30 pages. I make no comment on the legal accuracy of the advices. However, it would logically follow that if the Executive Committee did not have the authority to amend the SHCA Constitution and Rules to allow a quorum to be achieved at meetings, then they also did not have the authority to enter into the Transfer Deed. The Executive Committee could have used their statutory authority to amend the SHCA Constitution and Rules to achieve a quorum and then held a meeting to vote on the new structure and transfer of assets. They did not do that.

SHAL

- 4.3 Prolegis drafted the Transfer Deed and SHAL Constitution to ensure SHAL would be legally compliant, representative, transparent, democratic, and accountable to members. Following Prolegis' advice, SHAL was incorporated on 5 September 2019 and SHCA and SHAL executed the Transfer Deed on 7 September 2019.

Prolegis expressly advised SHCA to call a general meeting to approve by special resolution the transfer of registration, adopt the name and new constitution. This did not occur.

I have not seen any advice that said the Executive Committee could transfer registration without a special resolution.

- 4.4 SHAL also paid significant expenses for the benefit of SHCA, such as insurance and the costs of putting on events such as the HOTY. On the other hand, SHAL had minimal operating expenses. For example, SHAL paid \$92,116.07 for an SHCA subcommittee to conduct the 2019 NSW HOTY. Against an expected profit of \$35,350, the 2019 NSW HOTY recorded a loss of \$4,868.20.

Court Proceedings

- 4.6 On 12 September 2019, Ian Stewart sued SHCA and SHAL (Proceedings). Ian Stewart sought orders reversing the effect of the incorporation of SHAL, including the return of assets from SHAL to SHCA, regardless of the Prolegis advice of SHCA's non-compliance. *Based on my understanding this is not correct. Mr Stewart commenced proceeding essentially to have the SHCA assets returned to SHCA.*

- 4.7 On legal advice from insurer appointed lawyers, Gilchrist Connell, SHAL was compelled to settle the Proceedings on Ian Stewart's terms which (once the orders were fixed after over a month of further court hearings) involved appointing Ian Purchas as a receiver of SHCA.

- 4.8 Attempts were made by SHAL to manage the high cost of a receivership, including suggesting that SHCA could hold a simple and democratic vote of all members of SHCA by email. Efforts were also made to try to ensure SHAL's membership monies be repaid to its members if the assets of SHAL were to be returned to SHCA but ultimately these member repayments were left up to SHCA under the Court Orders.

This is not correct. The SHCA Constitution does not allow it to "...hold a simple and democratic vote of all members of SHCA by email." It is up to the SHAL members to consent or otherwise to their membership being transferred to SHCA.

5. THE RECEIVER

- 5.1 On 30 January 2020, the receiver convened the general meeting of SHCA, held a vote and a new Executive Committee of SHCA was, he said, appointed. SHAL must rely on the receiver's confirmation that he conducted a proper and valid meeting and ensured that only properly

appointed Delegates / Members of Council of SHCA as at 30 June 2019 were entitled to vote at that meeting, because the Court made orders empowering and directing him to do so. *These issue were dealt with in accordance with the Court's Orders, and indeed, an Executive Committee was appointed, as stipulated in the Orders.*
I note the directors of SHAL have not identified any specific breach of the Court Orders or the Constitution.

- 5.2 As at 7 February 2020, Mr Purchas estimated that his costs will be in the range of \$165,000 - \$175,000 however this is an estimate and Mr Purchas has indicated that his time will be required for a minimum of a further three weeks, and accordingly his costs may far exceed this estimate.

I have addressed this at point 2.1(m) herein. My remuneration has been addressed as required by the Court.

- 5.3 **The outcome of Mr Stewart's court proceedings and the receivership is extremely disappointing.** While it is essential that a line be drawn under this matter, it is clear that the show horse community now faces a very difficult and up-hill battle to operate a legally compliant and commercially effective organisation while SHCA, as it currently exists, has the reins.

Whilst I understand the outcome of the proceedings and the receivership maybe disappointing to Mr Norris, a vote was held in accordance with the Consent Orders and the Constitution and the due process and result must be respected.

I believe the Executive and the Delegates will drive the organisation forward and deal with any anomalies appropriately and responsibly.

- 5.4 **SHAL has some final minimal operating expenses, including accounting fees and BAS tax obligations.** The Court Orders require that SHAL transfer all of its assets to SHCA. **The receiver refused to assist or to indemnify SHAL** with regard to those expenses or allow SHAL to retain funds to meet them. **The position that the receiver has adopted has required SHAL to go back to the Court for further guidance on 7 February 2020. The Court agreed that it was necessary for the receiver to act reasonably, and for SHAL to be able to have enough money to pay its debts** (although this is still being disputed by the receiver). If the receiver continues to adopt this approach, it will be necessary for this issue to be determined by the Court on 28 February 2020.

SHAL requested payment of various expenses (totaling \$55,000) including its winding up costs. As noted above, I do not believe SHCA should be responsible for SHAL's debts, particularly in the situation where, as a result of the 30 January meeting, those debts should not have been incurred.

In an effort to preserve assets I refused to indemnify SHAL and I am sure SHCA Affiliate members would expect that course of action.

SHAL was not "...required to go back to Court..." , that was a decision made by SHAL in an effort to have SHAL's expenses paid by SHCA, notwithstanding the Consent Orders.

As noted previously, the Court expressed the view that both parties should act reasonably in an effort to settle the issues. As such, a reasonable offer was made to SHAL and same is close to being finalised.

6. Conclusion

- 6.1 I have really appreciated all of the emails, messages and calls of support over the past few months and I wish everyone the best of luck in showing their horses.

Kind regards,

Tony Norris

Tony Norris

Tony Norris

Interim Chair of Trustees, SHAL

I am not aware of a trust arrangement involved in the operation of SHAL. The ASIC search indicates that Mr Norris is a director of SHAL, along with Steven Elliot & Sarah McKenzie.