



Australian Warbirds Association Ltd

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Dear member,

The last annual general meeting (“AGM”) of members of Australian Warbirds Association Ltd (“AWAL”) was held on 28 November 2020.

Since then, a significant minority of members (the “requisitioning members”) have raised concerns about the election of directors during the AGM and the actions of the board since that time.

Some members may be aware of issues raised and comments made by one or other member during the election period or since then. Other members may be unaware of any of the respective claims made before or since the AGM.

This letter, and the accompanying Executive Summary and Information Memorandum, have been prepared by the board to provide a fulsome response to all the matters raised by requisitioning members, so that all members are properly informed and able to make their own assessment of the current situation.

The Information Memorandum is a lengthy document which evidences the efforts of the board to fully investigate and respond to the requisitioning members’ concerns in a properly considered manner.

I encourage you to please take the time to read this document in its entirety to fully understand the issues involved and the different perspectives held by some members about those issues.

Yours Sincerely

Stephen Robinson
President
on behalf of the board of
Australian Warbirds Association Ltd

EXECUTIVE SUMMARY

During and since the voting for directors as part of the 2020 AGM process, there have been many unfounded rumours and accusations circulating within the AWAL community about the AGM.

Allegations of voter fraud, vote tampering, illegal voter influence and invalidity of the election and AGM, among others, have been made. All the allegations that have been made to the board have been investigated and legal advice obtained. The company's CEO subsequently offered his resignation, which the board accepted and which was effective 27 January 2021. Information about the outcomes was distributed to the members in two newsletter updates on 15 and 17 December 2020.

This appears to have been an inadequate response for some of our members who subsequently presented a written notice of requisition ("requisition") demanding the board and in some cases, the company secretary take additional actions and convene additional meetings.

Some past AWAL boards have been accused of poor corporate governance and lack of transparency. In part due to those accusations and partly to respond appropriately to the requisition, the current board has engaged a corporate governance expert, Mr Mark McCoy, to help improve AWAL's board processes.

Mr. McCoy also confirmed the need for expert legal advice in relation to the requisition, so the board engaged the services of Addisons Lawyers, who are experts in corporate law.

In short succession, with Mr. McCoy's guidance, seven board meetings have been held to deal with the matters at hand.

After serious and detailed consideration, including of the legal advice obtained, the board took the view that none of the proposed resolutions in the terms framed in the requisition were either appropriate or were required to be put to members for decision at a general meeting. This was so having regard to the fact that several of the proposed resolutions were beyond the power of the members of AWAL and the balance of the proposed resolutions were framed in a way that was not legally effective.

Each of the requisitioning members were promptly informed of this outcome.

If the Board were to proceed with convening the requested meeting to address the proposed resolutions, then it would be contravening the Corporations Act 2001 and/or the Constitution of AWAL.

Members, this has been a costly exercise so far. A significant five-figure sum of AWAL's money – your money – is being spent to properly deal with these matters. It is a waste of AWAL financial and human resources if such matters are put to the board, without a proper legal basis and the board must then spend time and money dealing with them.

The current board is committed to conducting all meetings in a proper well-documented manner. A member only area of the new website will allow all members to view board meeting minutes in a timely manner. In the meantime, a read-only drop box will be created for those interested (details to be advised).

Australian Warbirds Association Ltd

INFORMATION MEMORANDUM

BACKGROUND

Pre-AGM

This commentary begins, chronologically, with AWAL having a board of directors during most of 2020 comprising the following eight elected directors and two executive directors:

Elected directors	Andrew Bishop	President
	Jethro Nelson	Vice-President
	Doug Hamilton	Treasurer
	Alex von Mengersen	Secretary
	Cameron Rolph-Smith	
	Matt Handley	
	Scott Taberner	
	Stephen Robinson	
Executive directors	Mark Awad	Chief Executive Officer
	Peter Pring-Shambler	Director Self-Administration

Each of Messrs. Bishop, Hamilton, Rolph-Smith, Taberner and Pring-Shambler have a long association with warbirds at Temora in New South Wales and/or have other shared commercial interests.

These five directors, if they ever chose to vote as a bloc, would have a power of veto and they could potentially control all decision making by the board.

The actions of these directors over a period of time led one of the other directors to describe them as the 'Temora clique', and they acknowledged during a board meeting in February 2020 that they would often discuss matters as a sub-group before those matters were put before the board as a whole.

In accordance with the AWAL constitution, the term in office of four directors was to expire at the end of the 2020 AGM, being Messrs. Hamilton, Handley, Rolph-Smith and Taberner. Each of them re-nominated for election at the AGM, as they were entitled to do under AWAL's constitution.

Messrs Hamilton and Rolph-Smith were formally nominated by Mr Bishop on 22 October 2020, while Mr Hamilton formally nominated Mr Taberner on the same date.

Three other members also nominated for election as a director of AWAL, being Messrs Charlie Camilleri (based in Bathurst), Allan Pickering (based in Sydney) and Sean Trestrail (based in Sydney).

The Doug Hamilton email

On 8 November 2020 Mr Doug Hamilton, being one of the incumbent directors seeking re-election, sent an email message to at least eight other members (the “Doug Hamilton email”), a copy of which has been provided to the board.

He recommended members vote in favour of the four incumbent directors seeking re-election (including himself) rather than any of the other three nominees.

A summary of the matters referred to in the Doug Hamilton email, and the corresponding response of the board to those matters, is set out in Attachment A.

The Cameron Rolph-Smith email

On 19 November 2020 Cameron Rolph-Smith, another one of the re-nominating directors, sent an email message to an unknown number of members in almost exactly the same wording as the Doug Hamilton email (the “Cameron Rolph-Smith email”), a copy of which has also been provided to the board.

The board’s comments in relation to the Doug Hamilton email, as set out in Attachment A, are equally applicable to the Cameron Rolph-Smith email.

Response by the former CEO to the Doug Hamilton email and the Cameron Rolph-Smith email

The former CEO became aware of the Doug Hamilton email and Cameron Rolph-Smith email and, in his own words:

‘These nearly identical missives attempted to gain support by stoking fear and anger among [AWAL’s] members through making ... unsubstantiated claims ...

I was in fact so angered by all of this that I took it upon myself to contact those I could in an effort to refute the claims made in these emails. While I regret taking this step, I saw no other way to encourage a fair election. In doing so, I did my level best to present the facts and not show a bias. I ensured members there was no threat to AWAL and our warbird movement, and accurately described the differences in philosophy that were at the heart of this year’s elections. I noted that all the candidates are presenting themselves in good faith.

I encouraged everyone I spoke with to vote, and to cast their ballot for whomever they felt best represented their values and what they wanted for the association. Some asked me who I was supporting, and I shared that with them. When someone voiced strong support for any of the candidates, I encouraged them and said, “be sure to vote!”, regardless of their alignment with my personal beliefs.

There were a few members who I felt able to speak more frankly with; those who I considered friends and old colleagues. With them, I discussed the accusations in these emails, encouraged them to seek further advice from others, and cast their ballots from there.

In my anger, I helped a member, at their request, to delete their already-cast ballot with an eye towards [the member] re-voting after they secured more information. I should not have done this and have owned it. This action is not my proudest moment. We all make mistakes from time to time and this was one I made. In the final analysis, and while I certainly regret this action, it did not affect the outcome at all.'

The former CEO did not consult the board, or any individual director, before contacting various members he knew personally to make them aware of his concerns about the matters referred to in the Doug Hamilton email and the Cameron Rolph-Smith email.

Mr Awad has stated he contacted via telephone approximately twenty five (25) members. Some of those members have provided a significantly different recollection of those discussions, including one who has documented a different record of a discussion, than the corresponding recollections expressed and documented by Mr Awad. In the context that each such discussion involved only two parties, being Mr Awad and the respective member, the result is effectively a 'he said, she said' situation.

Mr Awad acknowledges that, in one instance, he inappropriately accessed the Survey Monkey voting system and deleted the votes already cast by a member – Mr Awad is adamant that this was at the request of the member concerned, while that member has said it was at Mr Awad's suggestion that this was done. In any event, the member concerned has made clear that when he re-cast his votes, they were the same as his original votes, so this had no impact on the result of the election.

Action by the current board in relation to voting intentions

The new board promptly sought and obtained legal advice (from RMB Lawyers) in relation to the actions of each of the directors involved in sending group emails to members or calling members in relation to their voting intentions during the election process, being Messrs Hamilton, Rolph-Smith and Awad.

The legal advice was obtained by the board on 08 December 2020. Having considered this legal advice, the board is of the view that:

- the actions of Mr Hamilton and Mr Rolph-Smith in sending the relevant emails to seek votes were not in contravention of the Corporations Act 2001, the constitution of AWAL or the Code of Conduct and Ethics of AWAL;
- the phone calls by the former CEO to canvas voting intentions were not in contravention of the Corporations Act 2001, the constitution of AWAL or the AWAL Code of Conduct and Ethics;
- the alleged conduct of the former CEO in targeting his enquiries to certain persons (and the inference this was by accessing the electronic voting system to obtain this information), has not been substantiated and cannot be proved on the evidence.
- the alleged conduct of the former CEO in at least one instance providing a member an opportunity to change a vote which had already been cast has been acknowledged by the former CEO, albeit he maintains this was at the request of the respective member.

In any event, Mr Awad has since tendered his resignation to the board, which has in turn accepted his resignation, which was effective on 27 January 2021.

Election results announced during the AGM

A total of 237 votes were cast during the election of directors at the 2020 AGM, comprising 193 online votes, 5 votes cast in person and 39 by proxy.

This was the highest voting tally for many, many years, e.g., at the 2019 AGM there was a total of only 91 votes cast, comprising 72 online, 13 in person and 6 by proxy.

The results of the election, in terms of votes cast in favour of each nominee, were announced during the 2020 AGM, being:

Mr Matt Handley	167 votes
Mr Sean Trestrail	140 votes
Mr Allan Pickering	129 votes
Mr Charlie Camilleri	111 votes
Mr Doug Hamilton	108 votes
Mr Cameron Rolph-Smith	106 votes
Mr Scott Taberner	100 votes

This meant that Mr Matt Handley was re-elected to the board, while Messrs. Camilleri, Pickering and Trestrail replaced Messrs. Hamilton, Rolph-Smith and Taberner on the board of AWAL.

Post-AGM to now

Since the AGM, the new board of AWAL has had to meet seven times to address a range of governance-related issues.

The Bishop/Handley resignation letter

On 30 November 2020 Messrs. Bishop and Handley resigned from the AWAL board while expressing several matters of concern to them in a letter signed jointly by them (“the Bishop/Handley resignation letter”) to the company.

All the expressed concerns were about the previous board of which both Messrs Bishop/Handley were members. None of the expressed concerns had been raised by either of Messrs Bishop or Handley with the AWAL board prior to their respective resignations.

On 01 December 2020 Mr Handley sought to retract his resignation and he was subsequently appointed by the board to fill the casual vacancy created by his own resignation. The board also subsequently appointed Mr Owen Troy Smith to fill the casual vacancy created by the resignation of Mr Bishop.

After Mr Handley submitted his resignation and unbeknown to the board before his reappointment, he distributed the Bishop/Handley resignation letter to various members of AWAL, and to both the Civil Aviation Safety Authority (“CASA”) and AWAL’s insurers. It is the board’s view that this action could potentially damage AWAL’s relationships with each of those important stakeholders.

After Mr Handley was re-appointed to the board, the board became aware of the broader circulation of the Bishop/Handley resignation letter which in the board's opinion was a breach of the AWAL Code of Conduct and Ethics, for which the board censured Mr Handley.

Each of the concerns expressed in the Bishop/Handley letter of resignation were specifically addressed during a subsequent board meeting.

The matters of concern expressed in the Bishop/Handley resignation letter, and the corresponding comments of the AWAL board, are set out in Attachment B.

The current board, including Mr Handley, did not believe during the board meeting when all these issues were discussed that any further action needed to be taken by AWAL in respect of the concerns expressed in the Bishop/Handley resignation letter.

However, Mr Handley told a later meeting of the board that he is "of the view that the only way forward is to hold a fresh election" and that he had "not waived on [his] stance at any point."

The initial letter from LA Mayes Law Pty Ltd dated 14 December 2020

LA Mayes Law Pty Ltd wrote to AWAL on 14 December 2020 stating it represented 51 members of AWAL who were aware of the Bishop/Handley resignation letter and the allegations it contained (the "initial Mayes letter"). The letter also referred to some of the matters raised in the Bishop/Handley letter.

The initial Mayes letter requested the AWAL board convene a general meeting of members to:

- elect five directors to replace the positions of the four directors elected at the 2020 AGM and the vacancy created by the resignation of Mr Bishop (using a voting process to be overseen by a third-party scrutineer);
- stand down Mr Awad as CEO pending an investigation into the allegations about his conduct, then take action in relation to his employment contract based on legal advice; and
- immediately terminate Mr Awad's role as an Executive Director.

The specific issues referred to in the initial Mayes letter were effectively a sub-set of the concerns expressed in the Bishop/Handley resignation letter, which have been addressed by the board in Attachment A.

The board engaged RMB Lawyers to respond to the initial Mayes letter on its behalf. The board expressed its sympathy for the concerns of the relevant members and made clear that it would accommodate any proper request for a general meeting, which members were invited to lodge in accordance with section 249D of the Corporations Act 2001. The board noted that the initial Mayes letter was not appropriate for that purpose, as such a requisition must come from the individual members rather than their legal representative(s) and be constructed in a manner in compliance with the Corporations Act 2001 and AWAL's Constitution.

The requisition

On 09 January 2021, the board of AWAL received a notice via email from a member to which was attached individual copies of a requisition purportedly signed by seventy-six (76) members, requesting the board to call a meeting of members to consider nine (9) separate proposed resolutions (the "Requisition").

While there are discrepancies in respect of certain signatories to the Requisition, the board acknowledges that the balance of requisitioning members constitute at least 5% of the votes that may be cast at a general meeting.

The board has taken the matters set out in the Requisition very seriously and has sought legal advice from Addisons Lawyers and governance advice from Mr Mark McCoy to ensure it deals with these matters appropriately.

Having carefully considered this advice, the board has resolved it is not appropriate to put to members in general meeting the proposed resolutions set out in the Requisition. This is because several of the proposed resolutions are beyond the decision-making power of the members of AWAL and the balance of the proposed resolutions are framed in a way that is not legally effective. If the board were to proceed with convening the requested meeting to address the proposed resolutions, then it would potentially be contravening the Corporations Act 2001 and AWAL's Constitution.

The board nevertheless recognises that there is a significant level of disquiet among members and it has no intention of ignoring the matters raised in the Requisition.

The board, in the absence of the proposed meeting, is providing this Information Memorandum (and the covering letter from AWAL's President) to all members to inform them of the issues and circumstances involved, and the relevant background.

Further comments regarding the Requisition, including separate comments in relation to each of the proposed resolutions referred to in the Requisition, are set out in Attachment C.

The second letter from LA Mayes Law Pty Ltd dated 21 January 2021 but received on 22 January 2021

A draft response to the requisitioning members concerning the Requisition had been prepared for the board and this was to be, and was, tabled for consideration at a board meeting scheduled for 22 January 2021.

A few hours before that board meeting, a second letter was received from LA Mayes Pty Ltd dated 21 January 2021 (the "second Mayes letter") which referred to the Requisition and:

an advertisement placed by the board seeking applications for the CEO role; and
some requisitioning members were concerned about being contacted regarding the Requisition.

The second Mayes letter demanded the board cease all action to recruit a new CEO and make no further individual verbal contact with any requisitioning member regarding the Requisition.

The board's position on this is that the board has a duty and a right in the Constitution to recruit a new CEO to fill the vacancy created by the resignation of Mr Awad and it will not neglect that duty.

A very small number of requisitioning members were contacted regarding the Requisition, primarily to clarify apparent anomalies in those documents. It was through such enquiries that a false signature on one of the signed requisitions was confirmed. Such enquiries are a perfectly legitimate process to be undertaken by those who made the respective enquiries.

Integrity of the voting system

The primary concern expressed by the requisitioning members is alleged tampering with the voting in the 2020 director election process to an extent that would invalidate the election result.

Since the IM was first issued on 29 January 2021, further information has come to the attention of the board in that regard.

The underlying data in the voting system records the date and time each voting member started and stopped using the system to record their votes and the IP [internet protocol] address used by the respective voting member to cast their votes.

A review of the underlying data found that:

- the time taken by each member to lodge their votes was a matter of minutes (or, in some cases, less than one minute); and
- every voting member, as would be expected, cast their votes via a different IP address (with the exception of three members of the same family for whom the respective IP address, unsurprisingly, was the same for each of them).

This indicates that it is highly likely that the 2020 director election result accurately reflects the wishes of the members at that time.

Conclusions

The board is of the view that:

- the result of the 2020 election of directors is valid;
- inappropriate actions during the tenure of the previous board have been appropriately dealt with by the current board;
- improvements in governance are in process;
- improved electoral processes are being actioned;
- updating of the constitution is advised and will be addressed later during 2021; and
- transparency is improving with board minutes being uploaded to the members' area of the AWAL's new website.

Going forward

The board hopes the transparency, breadth and depth of its responses in this Information Memorandum to all of the concerns which have been expressed to it, have adequately addressed those concerns for the benefit of both the requisitioning members and all other members.

The board will continue to fulfil its responsibilities notwithstanding the time and cost involved in addressing the concerns expressed by the requisitioning members.

The costs to-date, including legal costs (RMB Lawyers, Somerville Laundry Lomax, and Addisons) and governance assistance costs (McCoy & Associates Pty Limited), incurred by AWAL in dealing with those expressed concerns have been significant .

While those monies could have been used in other ways to pursue the objects of AWAL, it has been necessary to properly deal with these matters.

Any further attempts to pursue those matters will only add to the costs of AWAL, through the current board, responding with proper care and diligence as part of its governance, without any prospect of real benefit to AWAL and its members.

Members will have the opportunity to vote again for director appointments during the 2021 AGM later this year, and the board will ensure that the election process at that time will be conducted solely through a third party scrutineer service.

ATTACHMENT A

MATTERS REFERRED TO IN THE DOUG HAMILTON EMAIL AND THE RESPONSE OF THE AWAL BOARD TO THEM

The matters referred to in the Doug Hamilton email are, using his own words, set out below (and highlighted in 'red' for ease of reference). While Mr Hamilton is entitled to his point of view, so is the AWAL board so also below is the specific position of the AWAL board on each of those matters.

In his email message, Mr Hamilton referred to:

there has been a trend to want to expand the Association by including more aircraft that are, in my opinion, nothing to do with Warbirds and military aviation history

[there was no mention of either who was promoting this supposed trend or which additional aircraft types Mr Hamilton considered inappropriate]

There are some members who want to see AWAL grow by building its appeal among the broader aviation community, and some other members who view AWAL as only the domain of self-defined 'true warbird enthusiasts'.

The current membership of AWAL is ageing and if it does not broaden its appeal by fostering a welcoming environment then AWAL will suffer in the long term. No one is born a 'true warbird enthusiast', rather they are introduced to warbirds and their passion for the aircraft grows over time. 'New warbird enthusiasts' are just as 'true' and relevant and important as AWAL members as any 'traditional warbird enthusiast'.

No one is trying to introduce aircraft types which do not belong in the Limited category, and AWAL is in any event restricted from doing so both by legislation and its Exposition and Self-Administration Manual ("ESAM"), which was recently amended to include a unanimously-supported clarification of the definitions around what aircraft are eligible for a Limited Certificate of Airworthiness ("C of A") to be issued by AWAL.

my fear is that getting 'bigger' exposes us to more risk of mishaps which by nature could see more rules/restrictions imposed on us

[no data regarding comparative historic rates of mishaps by aircraft type was provided by Mr Hamilton to substantiate this assertion]

if we add more members who are not in my mind real warbird enthusiasts then that waters down what we are about

[who is or is not a member of AWAL is not a matter of personal preference for Mr Hamilton or any other individual member to decide];

AWAL adventure flights in particular are an area of concern ... we are seeing however that privilege being stretched to include some aircraft that are not truly ex-military aircraft ... It is being used as a pseudo-charter as an easy way to get around the requirements to have an AOC [?] and maintain the aircraft to a higher standard that goes with that.

Adventure flights start and stop at the same location, while charter flights are from one location to another location, so it is difficult to understand how Mr Hamilton thinks one is a substitute for the other.

In any event, the appropriate course of action would have been to raise the issue with boardroom colleagues so that the then board could either have the former CEO or the DSA (or anyone else involved) explain to the board's satisfaction what they were doing or for the board to take appropriate alternative action in relation to such executives, rather than Mr Hamilton communicate such concerns to a select group of members (who, unlike the board, did not have the authority to do anything about it).

AWAL has a thorough process for evaluating and approving adventure flight operations. AWAL do not permit non-eligible aircraft types through, even though some apply from time to time.

While the original intent may have been for adventure flight operations to merely offset some of the costs of owning a warbird, some members have and do run adventure flights as a primary business. This has been the case since the beginning of adventure flight operations and is nothing new.

Adventure flight operations are fully vetted and have an impeccable safety record that far outshines the rest of the warbird fleet.

Adventure flight operations are wholly consistent with AWAL's mission of 'Preserve, Share, Fly' and consistent with AWAL's objects as set out in its constitution.

Here [sic] are an unusually high number of new nominations for this election that has followed some robust discussions at board level regarding the future direction of AWAL. The board members below [being the re-nominating directors] have voted to keep AWAL for Warbirds only. There has never been any resolution for board members to vote on to the effect that 'AWAL be for Warbirds only', though that is axiomatic, i.e., stating the obvious. The other nominees are unknown to me.

There was not an 'unusually high number of new nominations' for directors last year. Each election cycle there are typically between five and eight nominees – last year there were seven nominees.

It is open to individual members to form their own view as to what, if any, merit there is in any of the concerns of Mr Hamilton expressed in the Doug Hamilton email (and similarly in respect of the almost identical concerns expressed by Mr Rolph-Smith in the Cameron Rolph-Smith email).

ATTACHMENT B

MATTERS OF CONCERN EXPRESSED IN THE BISHOP/HANDLEY RESIGNATION LETTER AND THE RESPONSE OF THE AWAL BOARD TO THEM

The matters of concern expressed in the Bishop/Handley resignation letter are, using their own words, set out below (and highlighted in 'red' for ease of reference).

As a general comment, the matters of concern expressed relate to the previous board, not the current board of AWAL, as the Bishop/Handley resignation letter was sent two days after the AGM was held, which was before the new board could hold its first meeting. This was acknowledged by Mr Handley during a subsequent board meeting.

Mr Handley also acknowledged that as well as not having expressed any of these concerns to the AWAL board prior to signing the letter, he also did not invoke the mediation clause in AWAL's constitution (designed to address any matters of dispute he and/or Mr Bishop may have had with the board) as he was not aware of that clause until it was brought to his attention during a recent board meeting.

While Messrs Bishop and Handley are entitled to their points of view, so is the AWAL board so also below is the specific position of the AWAL board (including Mr Handley) on each of those expressed concerns.

The governance of the company is not transparent to all members.

This is a vague statement, particularly as it was made only two days after a general meeting, which is the only part of any company's governance in which the members participate.

When this statement was discussed during a board meeting in January 2021 it seemed to the board that Mr Handley was unable to clarify what was meant by this statement from his point of view.

The board has not at this stage sought a view from Mr Bishop on this point.

In the absence of any substance to this assertion, the board is unable to provide a more meaningful response.

The most recent election for board members was not fairly conducted -

- certain office bearers of the company with privileged access to member lists and the progress of voting lobbied members to vote in particular ways using that privileged information;
- the lobbying seems to have been highly selective, targeting those who had not voted;
- false information was used in that lobbying.

Mr Handley, when referring to this issue during a recent board meeting, said that for his part, the reference to ‘certain office bearers’ was to the former CEO only and did not include a reference to either Mr Hamilton or Mr Rolph-Smith.

Mr Handley said he and Mr Bishop presumed, rather than knew or could demonstrate, that Mr Awad had contacted some AWAL members by inappropriately accessing the voting records of members. The board has not discussed this matter with Mr Bishop directly.

Mr Awad has acknowledged he contacted some members who were familiar to him (and for whom their respective contact telephone numbers were recorded in his own phone, rather than him inappropriately accessing their voting record within the election system) and he was unaware of whether the respective members had already voted or not. Mr Awad denies any inappropriate behaviour on his behalf.

Mr Handley clarified that the assertion by him and Mr Bishop that ‘false information’ was used applied only to what they described as lobbying by Mr Awad rather than the actions of Messrs Hamilton and Rolph-Smith, despite neither of Messrs Bishop nor Handley ~~having~~ ~~being~~ a first-hand evidence of any of Mr Awad’s conduct during the election in this regard.

In particular, Mr Handley was unable to identify, during a board meeting, any examples of information which he and Mr Bishop regarded as ‘false information’ provided by Mr Awad to the members he contacted.

Subsequently Mr Handley made the board aware of an email message he’d received from one of the requisitioning members on 02 December 2020 and forwarded to another board member on 03 December 2020. The email message from the requisitioning member asserted that:

‘[The former CEO] rang me on 09 November 2020. ... I cannot recall the exact words used but I was left with definite impression that yourself, Doug Hamilton, Andy Bishop and Cameron Rolph-Smith ... considered that Nanchangs and Yaks should not be in AWAL. ... I rang you that evening to see if that was correct ... but you were unavailable. On the following morning I spoke with [another director] about my concerns about being lobbied with false information.’

The nature of Mr Awad’s conduct during the election process has already been discussed above.

Despite temporary legislation which permitted electronic attendance and participation at [the] most recent Annual General Meeting and members being asked to register to so attend, this facility was not available with the result that several members who had registered, and were ready and waiting to do so, were excluded from the meeting.

The AGM was convened by the previous board, not the current board, of AWAL.

Members wanting to attend the meeting were able to do so, albeit they were required to register their interest in doing so to ensure the number of members attending would not breach the COVID restrictions applicable to the respective hotel venue at that time.

Only 18 members chose to register to attend the face-to-face meeting and ultimately only ten members actually attended, so no member was denied the opportunity to attend the meeting.

With the intention of trying to enable more members to 'attend' the meeting online, attempts were made to establish a Zoom capability for members only days before the meeting. A newsletter was sent via email to all members on 25 November 2020 to invite them to register for a Zoom connection to the AGM if they wished to do so.

Members were asked to register if they wished to obtain the intended Zoom access as it was appropriate to obtain members consent to do so. Only three members chose to register for Zoom access to the AGM.

Mr Bishop, as the then-Chairman, agreed to manage the Zoom process but did not bring a laptop to the meeting to facilitate this. A laptop was borrowed from the hotel venue and attempts were made, using the appropriate password but nevertheless unsuccessfully, for the three registered members to connect to the meeting using Zoom.

A Zoom connection could not be achieved within the 15-minute time limit available for a delayed start of the AGM under AWAL's constitution, so Mr Bishop rightly decided to proceed with the meeting despite the three members who had registered for Zoom access being unable to connect.

A later attempt to enable the three members involved to connect during the middle of the meeting was, unfortunately, also unsuccessful for technological reasons which remain unclear.

It is puzzling that Mr Bishop, through the Bishop/Handley resignation letter, has resigned complaining about these aspects of the AGM when he was responsible for it as Chairman of the meeting, particularly as he made no attempt to contact the Company Secretary about the preparations or logistics of the AGM at any time between 08 October 2020 and 23 November 2020.

It is also puzzling that Mr Handley, as a director at that time with some responsibility for the meeting too, chose to complain about it afterward through the Bishop/Handley resignation letter while playing little if any active role as a director in contributing to or overseeing the preparations for the AGM. Perhaps this can be explained by the fact that Mr Handley was one of the three members who had registered to connect to the meeting via Zoom.

So, Mr Bishop and Mr Handley each resigned in part it seems because of their shared concern that Mr Bishop, as Chairman of the AGM, proceeded with conducting the AGM despite Mr Handley and two other members not being able to connect to the meeting by Zoom.

It is difficult for the board to take any of the expressed concerns of either of these two gentlemen at face value in these circumstances.

None of the four re-nominating directors took any meaningful interest in the preparations for the AGM until after nominations for the director roles closed.

From that time onwards, which was after both the Doug Hamilton email and the Cameron Rolph-Smith email had been circulated, each of the re-nominating directors (particularly Messrs Bishop, Rolph-Smith and Taberner) were persistently focused on seeking attempts to delay or cancel the AGM or to justify doing so, rather than on ensuring the AGM would proceed smoothly despite the impact of COVID-related restrictions.

Also, neither Messrs Cameron Rolph-Smith, Scott Taberner nor Peter Pring-Shambler attended the AGM in person or registered to connect to the meeting via Zoom to at least attempt to, or appear to, make themselves accountable as directors to the members.

Notification and associated documents for the AGM were not presented to members in a logical fashion. Instead of one circular email to all eligible members providing a notice of meeting, an agenda, the minutes of the previous AGM, a proxy form and the required statutory reports, these documents were spread over the News & Events tag on the AWAL website and Despatches from the CEO. The reports from the President, the CEO, the Director of Self-Administration and the Safety Officer, to be considered at the AGM were not provided to members.

The board sought and obtained prior legal advice regarding how the 2020 AGM should be conducted in order to ensure its compliance with regulatory guidelines on virtual meetings, having regard to COVID-19 related restrictions from Somerville Laundry Lomax. Having considered this advice, the board decided to proceed in accordance with the notice of meeting, i.e., by holding a physical meeting without any Zoom involvement and with prior voting via Survey Monkey or by proxy.

The notice of meeting (including the agenda) for the AGM was published through a newsletter issued to all members via their respective email addresses on 17 October 2020 in accordance with the notice requirements under the Corporations Act 2001.

A call for nominations from members interested in being elected as a director of AWAL was also made within the same newsletter in accordance with the requisite timetable specified in the AWAL constitution.

A separate newsletter was forwarded to members on 17 November informing them that the voting period had commenced and would close at 5pm AEDT on 24 November 2020. This message included a 'link' to the Survey Monkey system for members to cast their votes.

The fact that this was sent as a separate message was neither illogical nor inappropriate but, in fact, necessary because the voting 'link' can only be provided after the period allowed for members to nominate for a position as a director has expired under the timetable set out in the AWAL constitution.

Each of these notifications were communicated to members during 2020 in exactly the same way they had been communicated to members (under the previous board) during prior years.

There have, in pre-COVID times, been separate written or verbal reports from the President and others provided to members, but there is no requirement (in either the Corporations Act 2001 or the constitution of AWAL) for any such reports to be provided for or during a general meeting, whether in writing or verbally, from:

- the President;
- the ~~former~~ CEO; or
- the Director Self-Administration and the Safety Officer.

Also, while it has historically been AWAL's practice to seek confirmation of the minutes of the previous general meeting as an agenda item, there is no legal requirement to do this. It is sufficient to simply have the respective general meeting minutes made available during the next general meeting for any member present to review them, if they wish. The minutes of the 2019 AWAL annual general meeting were made available on the company's website for any interested member to review.

The only statutory report required to be provided to the members is the financial statements of the company together with a Directors' Report. These were both made available to the members on the company's website, albeit there was no separate message sent to members to alert them to when these documents had been uploaded to the website, which is the same practice as had applied during previous years (and about which neither of Messrs Bishop nor Handley ever made any complaint during those years).

The financial statements for both 2019 and 2020 show the total revenue of AWAL was in excess of \$250,000 each year. Accordingly, AWAL has not been a 'small company limited by guarantee' for several years (under section 45B of the Corporations Act 2001).

As a consequence, under section 301 of the Corporations Act 2001, AWAL is required to have its financial statements reviewed or audited. It is a contravention of the Act not to have the financial statements for the last two (or more) years audited (or at least reviewed) by an appropriately qualified auditor applying Australian Auditing Standards.

The current board of AWAL intends to have its 2021 financial statements appropriately reviewed or audited.

It is open to individual members to form their own view as to what, if any, merit there is in any of the expressed concerns of Messrs Bishop and Handley in the Bishop/Handley resignation letter.

ATTACHMENT C

THE REQUISITION, INCLUDING THE PROPOSED RESOLUTIONS PUT FORWARD IN IT, AND COMMENTS IN RELATION TO THEM

There is an overarching requirement, under section 249Q of the Corporations Act 2001, that a “meeting of the company’s members must be held for a proper purpose”.

The content of the Requisition, including the nine proposed resolutions put forward in it, is summarised below (and highlighted in ‘red’ for ease of reference). The board notes that it has obtained external legal advice in respect of the matters referred to in the Requisition.

Also below are comments from the AWAL board in relation to each of these matters.

The underlying rationale for the requisitioning members signing and forwarding the Requisition was expressed by them to be:

“The requisitioning members are satisfied that the election of the directors and the Annual General Meeting (AGM) held on 30 November 2020 were seriously undermined by several significant events including the:

- failure to give all members the opportunity to attend the AGM and be heard;
- failure to ensure all members were properly notified of the directors election and the AGM, thereby excluding those members participation;
- failure to connect the members to the AGM by ZOOM as promised, and
- alleged irregular interference in the election process by the CEO.

Due to the way these matters took place and have since been managed by the board, the requisitioning members have lost confidence in the CEO, Mr Mark Awad and the current directors.”

The board rejects this interpretation of the circumstances involved.

The comments made in the first three dot points of the requisitioning members’ rationale, as shown above, have effectively been addressed by the board’s comments included in Attachment B in relation to the last of the concerns expressed in the Bishop/Handley resignation letter.

In particular, the board is of the view that the AGM arrangements were acceptable for the purposes of conducting such a meeting during COVID-related restrictions as permitted by an ASIC Determination.

The fourth and final dot point of the requisitioning members’ rationale, as shown above, has effectively been addressed by the board’s comments under the heading “Response by the former CEO to the Doug Hamilton email and the Cameron Rolph-Smith email” above.

The requisitioning members went on, in the Requisition, to conclude that:

“The requisitioning members are satisfied that the existing CEO and the board have:

- not valued nor responded appropriately to members concerns;
- not properly nor promptly investigated, reviewed and reported on the actions of the CEO;
- not responded appropriately to the actions of the CEO;
- acted in a way which is not reflective of the desired culture of AWAL, and
- made significant decisions which could adversely impact on the reputation and operations of AWAL.”

The reference here is to the entire board, including Mr Pring-Shambler, yet the proposed resolutions put forward by the requisitioning members to deal with these expressed concerns specifically exclude Mr Pring-Shambler being removed from the board alongside all other current directors.

The requisitioning members did not explain why they proposed that Mr Pring-Shambler be singled out for retention on the board to the exclusion of all other current directors, despite their concerns being expressed to relate to all the directors.

The current board has valued and responded appropriately to all the concerns expressed by the requisitioning members, evidenced by it:

- obtaining appropriate legal advice as promptly as 08 December 2020 (from RMB Lawyers) in response to concerns expressed in the Bishop/Handley resignation letter dated 30 November 2020;
- appointing Mr Handley to fill the casual vacancy on the board arising from his own resignation, albeit without at that time being aware that he had circulated the Bishop/Handley resignation letter to CASA and other outside parties (for which he was censured by the board under the AWAL Code of Conduct);
- arranging a discussion by the board of each of the concerns expressed in the Bishop/Handley letter, which was at Mr Pickering’s initiative rather than Mr Handley’s initiative, with a view to addressing any substantive matters arising from such expressed concerns, albeit there were none;
- obtaining further legal advice and responding as expeditiously as possible to each of the initial Mayes letter and the requisition and the second Mayes letter including through the preparation and dissemination, as expeditiously as possible, of this Information Memorandum to make all members aware of all the expressed concerns of the requisitioning members and the board’s responses to every such expressed concern.

Unfortunately, the requisitioning members have failed, on several occasions, to put their case forward in a manner consistent with the legal requirements and in a manner which would enable the board to respond in a way more closely aligned to their expressed desires.

The board has properly and promptly investigated, reviewed and reported on the actions of the former CEO, including via several newsletters and within this Information Memorandum.

Investigations commenced as soon as the board became aware of such concerns, through the Bishop/Handley resignation letter, and culminated in the resignation of the former CEO being offered by him, and accepted by the board, as early as 10 December 2020. The review of his conduct has included obtaining appropriate legal and governance advice.

The board believes its response to the actions of the former CEO was appropriate in the circumstances, as explained in the section above headed 'Action by the current board in relation to voting intentions'.

The board believes it has acted in a way that is reflective of the desired culture of AWAL, as expressed through its Code of Conduct and Ethics, in the orderly yet expeditious manner in which it has addressed the concerns expressed by the significant minority of members comprising the requisitioning members.

The requisitioning members have not identified what 'significant decisions' it considers the current board has made which 'could adversely impact on the reputation and operations of AWAL'. As a result, the board is unable to meaningfully respond to that assertion.

Time of Proposed Meeting

The requisition purported to require the proposed meeting to be held by a time nominated by the requisitioning members.

In rejecting this proposal, the board has had regard to the fact that, while Section 249D of the Corporations Act 2001 allows members to require the board to convene a general meeting in certain circumstances, it does not allow the requisitioning members to determine the time of the general meeting. The timing of such a meeting is the prerogative of the board to determine.

Place of meeting

The requisition also purported to require the proposed meeting be held in a location nominated by the requisitioning members.

Similarly to the above, the board has had regard to the fact that Corporations Act 2001 does not allow requisitioning members (or the members in general meeting) to determine the location for a meeting of members. Determination of the location of a general meeting is the prerogative of the board.

Proposed resolution 1

The first resolution proposed by the requisitioning members was:

A vote of no confidence in Mr Mark Awad as CEO and Executive Director' of AWAL.

The board notes that neither the constitution of AWAL nor the Corporations Act 2001 gives members the right in general meeting to determine matters in relation to the former CEO of AWAL. This right is exclusively reserved to the board of directors of AWAL. In any event, Mr Awad is no longer CEO and Executive Director of AWAL.

Proposed resolution 2

The second resolution proposed by the requisitioning members was:

The DSA, Mr Peter Pring-Shambler, be appointed as an interim CEO.

As with proposed resolution 1, the board notes that members have no authority to make decisions about the appointment of a CEO.

Proposed resolution 3

The third resolution proposed by the requisitioning members was:

A vote of no confidence in the existing directors of the board, excluding the DSA Peter Pring-Shambler.

Having carefully considered its legal advice, the board is of the view that members do not have any right in general meeting to make resolutions of this nature. As such, the board is unable to put forth this proposed resolution to the members in general meeting.

Further, the board notes its concerns regarding the background to this proposed resolution and in particular the fact that the proposed resolution purported to exclude Mr Pring-Shambler in this manner, given that:

- decisions are made by the directors of AWAL collectively; and
- individual members have no 'visibility' of the actions of an individual director in the boardroom.

The Requisition did not refer to the basis on which Mr Pring-Shambler was singled out by the requisitioning members to remain on the board to the exclusion of all other directors.

Proposed resolution 4

The fourth resolution proposed by the requisitioning members was:

That, notwithstanding that a director's term may not have ended, all the existing directors (excluding the DSA Mr Peter Pring-Shambler), be removed as directors of the company at the conclusion of a further Special General Meeting (referred to in [proposed resolution] 6) at which a new board of directors will be elected.

The board understands that section 203D of the Corporations Act 2001 provides AWAL's members with the right to remove directors but that a strict process must be followed to exercise this right. The board is of the view that that process has not been followed here and that the form of the Requisition was not sufficient to initiate the removal of directors under section 203D.

Proposed resolution 5

The fifth resolution proposed by the requisitioning members was:

That the company secretary call and convene a new election of directors to replace the existing directors (excluding the DSA).

The election process is to be, as far as possible, conducted in accordance with the Australian Securities and Investments Commission (ASIC) guidelines on conducting an effective virtual or hybrid general meeting, with the process and the vote to be overseen by an independent 3rd party (scrutineer).

The board understands that members have limited legal rights to require the directors or any other person, to act in a particular way. Such rights do not extend to passing resolutions that require the company secretary to call a new election of directors in this manner. Accordingly, the board considers that proposed resolution 5 is also not required to be put to members.

Proposed resolution 6

The sixth resolution proposed by the requisitioning members was:

That the company secretary call and convene a Special General Meeting on or before 15 April 2021 for the members to elect directors to replace the existing directors (excluding the DSA).

Having considered advice from its lawyers, the board is of the view that the board of AWAL has been properly constituted so that there is no requirement for the company secretary to seek nominations for new directors.

Proposed resolution 7

The seventh resolution proposed by the requisitioning members was:

That the company secretary provide proper notice to the members detailing the following:

- a. The date of the election,
- b. The candidates' names,
- c. How the company intends to comply with ASIC's guidelines on conducting an effective virtual or hybrid general meeting,
- d. The processes available for members to vote, and
- e. The 3rd party scrutineer appointed.

For reasons similar to those set out above, the board considers that it is not necessary to put proposed resolution 7 to members in general meeting. This is so on the basis that the members do not have the right under the constitution of AWAL or the Corporations Act 2001 to consider or pass proposed resolution 7.

Proposed resolution 8

The eighth resolution proposed by the requisitioning members was:

That the newly elected board of directors appoint a new CEO.

The board refers to its rationale in respect of proposed resolution 1 and notes that neither the AWAL constitution nor the Corporations Act 2001 give the members the right in general meeting to determine matters in relation to the CEO of AWAL. This is the right of the AWAL directors only. Accordingly, the board considers that it is under no obligation to put proposed resolution 8 to members in general meeting.

In any event, the board has already advertised the CEO role and has a process in place to review candidates and appoint a suitable replacement within an orderly time frame.

Proposed resolution 9

The ninth resolution proposed by the requisitioning members was:

That the newly elected board of directors implement a 3rd party investigation into the election process leading to the AGM on 30 November 2020 and the appropriateness of the conduct of the CEO in that process.

The board notes that a company's members have no authority to put forward advisory resolutions which are not grounded in powers granted by statute or the company's constitution. There are no specific provisions under the constitution of AWAL or the Corporations Act 2001 that provide members with the authority to consider or pass the proposed resolution 9.

Overall

After serious and detailed consideration, including of the legal advice obtained, the board took the view that none of the proposed resolutions in the terms framed in the requisition were either appropriate or were required to be put to members for decision at a general meeting.

This was so having regard to the fact that several of the proposed resolutions were beyond the power of the members of AWAL and the balance of the proposed resolutions were framed in a way that was not legally effective.

If the Board were to proceed with convening the requested meeting to address the proposed resolutions, then it would be contravening the Corporations Act 2001 and/or the Constitution of AWAL.