

31 March 2011

Australian Securities and Investments Commission
PO Box 4000
Gippsland Mail Centre VIC 3841

**Austin Australia Pty Limited
(In Liquidation)
ACN 000 363 020
("Austin")**

**LIQUIDATORS REPORT PURSUANT
TO SECTION 508(1) OF THE CORPORATIONS ACT 2001**

*For the year ended
31 January 2011*

Liquidator: Keiran Hutchison
Attachment name: Annual report
Number of pages: 6 (inclusive)
Date prepared: 31 March 2011
Lodged by: Patricia Bolger
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Chartered Accountants
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CORPORATIONS ACT

LIQUIDATORS REPORT PURSUANT TO SECTION 508(1)

**Austin Australia Pty Limited
(In Liquidation)
ACN 000 363 020
("Austin")**

1. Appointment

John Gibbons and I were appointed joint and several voluntary administrators of Austin on 31 December 2003 and were subsequently appointed Liquidators on 10 March 2004.

Pursuant to Section 508(1)(b)(ii) of the *Corporations Act 2001* ("the Act"), please find below an annual report detailing the progress of the liquidation since our previous circular to creditors dated 17 March 2010.

Please note this report has been prepared and lodged with ASIC in place of holding an Annual General Meeting ("AGM") of creditors and accordingly, an AGM will not be held this year.

2. Conduct of the winding up during the 12 months to 31 January 2011

This report will deal with the following issues:

1. Employee Issues
2. Distribution to Secured Creditor
3. Unfair Preference Proceedings
4. Litigation
5. Unsecured Creditors
6. Dividend Prospects and Finalisation of Estate
7. Ongoing Correspondence and Committee of Inspection

1. Employee Issues

There have been no further payments of employee entitlements either generally or pursuant to the General Employee Entitlements and Redundancy Scheme since our last report.

The prospects for a further distribution to employees for the balance of their outstanding entitlements will be dependent on the finalisation of recovery matters which are discussed in sections 3 and 4 of this report.

2. Distribution to Secured Creditor

As advised previously, Westpac Banking Corporation ("Westpac") holds a fixed and floating charge over all the assets and undertakings of Austin.

A distribution was made to the secured creditor in December 2007 and there has been no further distribution to the secured creditor since our last report to creditors.

As advised previously, Westpac's secured debt has not been paid out in full and as such, should a dividend in the estate become payable, Westpac would have a priority claim against recoveries in the estate for the balance of their secured claim. This priority however, ranks behind the claims of employees to the extent that funds become available from "floating charge" assets. The balance of future recoveries in the estate is likely to be from floating charge assets only. The Liquidators expect no further distribution to the secured creditor.

3. Unfair Preference Proceedings

As detailed in our previous report to creditors, we obtained litigation funding in 2004, and again in 2006, in order to commence legal proceedings to pursue creditors whom we believe have received payments which were preferential in nature.

As advised in our previous report, all matters have now been finalised with all actions resulting in settlements which provided payments to the Austin estate. We note however, that a significant amount of costs were incurred in the legal proceedings, which has negatively impacted the net result to the estate.

We advise that all settlement payments have now been received, except for one creditor who defaulted on the settlement term arrangement. We subsequently entered into an amended settlement term arrangement for the remainder of the settlement amount, however, the creditor has recently defaulted on the terms of the amended arrangement.

As noted in our last report we obtained judgment against the creditor for the unpaid portion of the settlement on 26 February 2010. We are currently holding further discussions with the creditor regarding payment of the outstanding amount, failing which we will seek to enforce the judgment. This is the only matter to be resolved to bring all preference actions to a conclusion.

4. Litigation

Subsequent to our last report, we comment on the following litigation matters:

Dispute with Litigation Funder ("Funder")

As creditors are aware, in order to continue with the company's arbitration proceedings against Auburn Council, we obtained litigation funding. In accordance with the terms of the funding, the Funder was entitled to a portion of the resolution sum (award amounts), net of funding costs and Insolvency Practitioner fees and disbursements.

As advised in our last report, whilst we consider the incurred Insolvency Practitioner fees and disbursements (primarily legal fees) to be proper and reasonable, the Funder has taken issue with the application of the resolution sum in respect of these fees and disbursements and is disputing the sum I have calculated to be the Funder's entitlement and has sought a much larger payment.

The disputed amount is substantial to the estate. Accordingly, we sought legal advice from Senior Counsel that addressed the application of the resolution sum and corresponded with the Funder on a number of occasions in order to commercially resolve the impasse between our respective positions.

These efforts to settle the dispute were unsuccessful and as the nature of the dispute appears to be of the interpretation of the funding agreement(s), we commenced proceedings in order to obtain directions/a declaration from the Court in relation to the distribution of the resolution sum.

A hearing was held on 9 August 2010, following which judgement was handed down on by Justice White on 23 August 2010, with directions in relation to the calculation of the Funder's entitlement. While the application of the judgement slightly increased the amount we had previously calculated as Funder's entitlement, the revised figure remained considerably lower than that which the Funder had anticipated. Consequently, the Funder did not agree with our application of the judgement.

In a further attempt to resolve the dispute, a mediation was held with the Funder in early November 2010, however we were unable to resolve the impasse at this time.

Since the mediation, we have been corresponding directly with the Funder in an effort to commercially resolve the dispute outside of the Court. In this regard a settlement with the Funder has finally been reached and a Deed of Settlement ("the Deed") has been entered into. The terms of the Deed are confidential.

We advise that significant costs have been incurred to resolve this issue which has impacted on the funds available for distribution to creditors. However, we note that the negative impact on funds would have been greater, had we accepted the Funder's original position.

Potential Litigation

On 21 May 2010, we were served with a subpoena to produce documents in relation to building work carried out by Austin for a specific project, prior to and during the liquidation. We have provided the relevant documents to our lawyers for review, however, the subpoena has now been stood over.

It should be noted that while Austin is not currently a party to this litigation, there is a possibility that Austin could be drawn into the proceedings which may delay the finalisation of the estate.

5. Unsecured Creditors

Unsecured creditor claims in the estate currently total approximately \$23 million, however we anticipate that this figure will increase if creditors were required to submit Formal Proofs of Debt.

We will not be calling for Proofs of Debt as we do not anticipate a dividend to ordinary unsecured creditors.

6. Dividend Prospects and Finalisation of Estate

The positive outcome from the recovery actions detailed in sections 3 and 4 above, does now enable a further distribution to priority unsecured creditors such as employees and GEERS. There will be no distribution to the secured creditor nor to ordinary unsecured creditors.

The ultimate costs of the Liquidation, including legal costs associated with the preference proceedings and in resolving the dispute with the litigation funder have impacted the distribution. However, if these actions had not been taken and if these costs had not been incurred, there would be no distribution to priority creditors.

Our estimate of the final dividend is between 10 to 20 cents in the dollar for priority creditors.

Further to our previous report, we reiterate our disappointment that the finalisation of the estate has been delayed however, now that the dispute with the Litigation Funder has been resolved we will now move to a declaration of a dividend to priority creditors within the next few months.

7. Ongoing Correspondence and Committee of Inspection

Circulars to creditors will be provided as and when matters of significance arise.

We expect to be in a position to communicate further on finalisation of the estate and the dividend to priority creditors during the course of the next few months.

3. Liquidator's Acts and Dealings for the 12 months to 31 January 2011

We enclose our receipts and payments for the period 1 February 2010 to 31 January 2011.

4. Queries

If you have any questions in relation to the above, please contact Ms Julia Holmes on (02) 8295 6086.

Dated this 31st day of March 2011.



Keiran Hutchison
Joint & Several Liquidator
Austin Australia Pty Limited
(In Liquidation)

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Austin Australia Pty Limited (in liquidation)
Receipts and Payments
For the Period 1 February 2010 to 31 January 2011

	\$
Opening Balance	974,351.57
Receipts	
Interest Received	22,629.53
Input Tax Creditors	184,954.37
Miscellaneous Income	1,317.44
Litigation Recoveries	8,000.00
Trust Account Refund	1,832.46
Total Receipts	218,733.80
Payments	
Appointee Remuneration	130,278.59
Appointee Costs	-
Bank Charges	400.30
BAS Rounding	1.37
Legal Costs	253,472.18
Less: Discount on Legal Costs	(10,323.40)
Premium paid to Litigation Funder	21,000.00
Total Payments	394,829.04
Cash at Bank as at 31 January 2011	798,256.33