

Australian Credit Forum

Registered Office 1st Floor 303 Pitt Street Sydney N S W 2000

Please address all correspondence to:
Attention M J Connelly
Australian Credit Forum
C/- Bayer Australia Limited
P O Box 903 Pymble N S W 2073

6 December, 1999

Mr David Kerr
IPAA Best Practice Guidelines Project
C/- Lord & Brown
Private Box N613
Grosvenor Place PO
SYDNEY NSW 1220

Dear Mr Kerr,

SUBJECT: IPAA DISCUSSION PAPER -
PROPOSED INSOLVENCY PRACTICE STATEMENT
REPORTS BY ADMINISTRATORS PURSUANT TO SECTION 439A(4)

I write to you on behalf of The Australian Credit Forum. This Forum represents a broad range of professional people who are involved in day to day Credit Management This Forum has among its members General Managers, National & State Credit Managers, Solicitors, Reporting Agencies, Debt Collecting Companies, Accountants and other people from related areas. We have been in existence for in excess of 25 years, with experience to match. We have over the years made submissions to State & Federal bodies. We also take this opportunity to enclose a copy of our latest membership listing.

When we became aware of your discussion paper we formed a sub-committee specifically to review the discussion paper, as it is our belief that a statement of best practice should be made by users rather than the professional body that provide the services. Without being disrespectful to the reputation of the IPAA, credit providers should provide the initial requirements on reports and then the IPAA then check the feasibility in providing the requested information. This way there can be no comments from the sceptics regarding the introduction of reports that may be deemed required for self-interest. With that objective in mind we have reviewed the contents and come up with some alternative ideas for consideration by your group.

We understand that these changes will not affect the Corporations Law, but set out to provide more qualified data to creditors to enable them to make an informed decision as to the company's future.

The proposed listing is what we as credit providers seek to be the minimum requirements. We feel that the current law that simply says "that an Administrator should report on the business, property, affairs and financial circumstances" is far too vague in its statement and potentially interpretation. That is why we compliment the IPAA in preparing the discussion paper and seeking views from those affected.

The suggested minimum requirements that we as creditors would expect to receive at the second meeting of a creditor are listed hereunder: -

1. The report showing corporate details of shareholders and officers and details of registered charges. 23
2. Such details as above should include any changes within a two-year period before hand. 23
3. All related parties must be clearly identified at that point in time and a statement on their claims if any? 23
4. The date the previous financial statements were prepared prior to the Administrator's appointment "and enclose a copy". 24
5. A summary of the company's historical financial results and comment on maintenance of records under S286 of the Corporations Law. 24
6. Disclose any winding up applications filed against the company prior to the appointment of the Administrator in relation to the company and any associated company.

Telephone 02 9391 6030 Facsimile 02 9391 6217 e-mail mike.connelly.mc@bayer-ag.de or mikecon@bigpond.com

7. An explanation provided by the directors as to why the company is undergoing its current difficulties, and an opinion expressed by the Administrator on the failure.
8. The personal financial position of a company director who intends to maintain an interest in the company subject to a DCA. This should include a personal asset and liability statement prepared by each of the directors and submitted at request to the creditors at the second meeting.
9. Any and all publicly available information on the subject company. Creditors should be immediately advised in the report of any failure by a director to provide information. Whilst we appreciate the Administrators constantly may request certain data, we think the report should contain such details as "requested A&L statement from the directors on 5 June, 12 June, 25 June not provided". This sort of statement appearing in the creditor's report prior to the second meeting will allow the creditors to make a commercial judgement on just how cooperative the directors may have been to the Administrator.
10. A listing of creditors, such creditors to be aged, so that we can ascertain whether the problem is one that has occurred within recent months, or perhaps has been on-going for many, many months prior to the appointment. Again, this aspect appears not to be covered by general administrator's report.
11. Details to creditors in relation to any related entities and amounts and ageing of debts.
12. The estimated return to creditors and the likely timing, if a DCA is accepted.
13. Details or disclosure of any potential unfair preferences or uncommercial transactions, and an opinion by the Administrator in respect of directors trading whilst insolvent.
14. The Administrator's report to disclose the estimated return to creditors and timing liquidation occurs.
15. A summary on the financial projections on which the Administrator has relied upon, and an opinion on the validity of the assumptions relied.
16. The Administrator should also openly seek from creditors in this report any information or any financial data that may have been disclosed to creditors either by the company, related parties, associated companies or its directors. This provides a means of assessing whether the creditors had been provided with current/accurate information at the time of opening account and furthermore, may provide the Administrator/ or potential Liquidator of the company any incomplete, inaccurate and untrue information being provided to the company's creditors. Creditors again in the report should be encouraged to provide details of any personal guarantees held, any securities in relation to related parties etc.
17. The Administrator should disclose an estimate of likely cost and seek from the creditors consent.

Long term it is our belief that creditors would prefer to be given the right information at a reasonable cost and would in the majority of cases be prepared to extend the period of investigation to allow a more in depth report to be provided by Deed Administrators. Unfortunately some of the major members of the IPAA are seen by creditors to continue to defer and delay such things, for the simple benefit of reward!!

Another major aspect of discussion was in respect of the Canadian model that provides two divisions that are based on dollar value of liability. Following our review it has been suggested that the bench mark may in fact be the current definition of small proprietary companies and large proprietary companies. As an example; any small proprietary company that had total liabilities under \$200,000, would be the subject of a very standard report by the Administrator, obviously to avoid the cost.

The scenario therefore could be as follows:-

- Small proprietary company – total liability under \$200,000
A standard report covering all the main aspects, but without going into detail.
- Small proprietary company – total liability exceeding \$200,000
An extensive report and set requirement placed on the Administrator in relation to the details of the report, and
- A large proprietary company and or public company, obviously allow for an extension of time to enable a more involved report because of the value of unsecured creditors.

Again, one must remember when we are looking at the Canadian model, that this model is currently approved by them as legislation and is currently the law. The IPAA Discussion Paper by-passes the law in that it is simply seeking best practises for its members.

We look forward to your views on our submission in due course.

Yours sincerely,
Australian Credit Forum

Mike Connelly

M J Connelly
Chairman

Telephone 02 9391 6030 Facsimile 02 9391 6217 e-mail mike.connelly.mc@bayer-ag.de or mikecon@bigpond.com

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LORD & BROWN
Chartered Accountants



6 December, 1999

Mr M J Connelly
Australian Credit Forum
Bayer Australia Limited
P O Box 903
PYMBLE NSW 2073

FILE COPY

Dear Mr Connelly

**RE: SUBMISSION IN RESPONSE TO PROPOSED INSOLVENCY
PRACTICE STATEMENT, DISCUSSION PAPER.**

I acknowledge receipt of Australian Credit Forum's response dated 6 December 1999, to the discussion paper. The Forum's comments and opinions will be given consideration during the formulation of the draft standard during the first quarter of next year. Thank you for taking the time to read the discussion paper and provide me with your comments and suggestions in respect of its recommendations.

Yours faithfully

David J Kerr

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Level 8 1 York Street Sydney NSW 2000
Private Box N613 Grosvenor Place Post Office Sydney NSW 1220
Tel: (02) 9251 6700 Fax: (02) 9251 6744
Email: general@lord-brown.com.au