

VIEU Submission to Senate Inquiry into Liquidators and Administrators

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Introduction

VIEU covers all employees in independent schools and private education providers in Victoria. This submission is from the perspective of employees as creditors after VIEU has been involved in representing teachers and administrative staff who have lost their jobs on the recent collapses of several private colleges catering to international students in Melbourne. VIEU members in all cases have not only lost their jobs but have so far lost all their entitlements including Employer Superannuation, accrued Annual Leave and Long Service Leave and have received no redundancy pay. In each administration members have raised serious questions about the conduct of the administrators - the fees they charge, the lack of choice in administrators, poor communication to creditors and issues with the interaction between administrators and the operation of the GEERS scheme, (established to protect employee entitlements.)

Case 1

VIEU became involved in representing members at an international college after the college was already subject to a Deed of Company Arrangement (DOCA). The administrators had recommended employees vote to accept the DOCA on the basis that they would be better off – getting only 5 cents in the dollar of their entitlements. In fact they would have been better off voting to liquidate the company and access the GEERS scheme. Two years later employees have not seen 1 cent of this money – it was only an estimate is the response – the administrators extracted further fees to oversee the DOCA and manage the process. Administrators must be legally obliged to inform employee creditors what they stand to lose if they accept a DOCA as an alternative to liquidation.

The company then operated for another 18 months under the DOCA and has now been subject to a second administration and liquidation. Approximately 40 employees hired during the operation of the DOCA were not informed about the administration or the DOCA – despite the requirement on administrators that they ensure this happen. This requirement needs to be enforceable. The company failed to pay any Employer Superannuation for the last year of the operation of the DOCA and the administrator advised VIEU at the time that they had no role in ensuring the company was meeting its obligations in this regard. During the operation of a DOCA administrators must take a role in ensuring a company meets its legal obligations to employees.

At the first creditors meeting (of the second administration) the administrator informed employees that the governments GEERS scheme would apply to them and would protect their entitlements. In fact the GEERS scheme does not apply in circumstances where a DOCA has been in place during the last 12 months.

Employees GEERS applications have all failed whilst the administrator is paid the fee to collect and submit them. We believe employees can lodge their own forms with assistance from DEWR - they do not realise it is costing them significant amounts of money to

receive assistance from the administrator. With Administrators being paid by the government for collecting and submitting GEERS forms you would expect they have read the GEERS Operational Arrangements and can give accurate advice about GEERS. Our VIEU is that administrators only be confirming that no funds or insufficient funds are available to pay employee entitlements on liquidation. Administrators are using GEERS as a way to reassure employees they will get their entitlements – when often they won't. Administrators receive the fee from the government for GEERS work – but also list the time spent assisting employees (at \$350 an hour in this case) as part of their fees!

In this case the fees charged by the Administrator have absorbed all the remaining assets of the company for a second time around. Employees are understandingly outraged that they were misled about GEERS, that they have lost all their 9% Super for the last year of their employment and all their accrued leave. Administrators must advise creditors of the complaints process in relation to an administration. The complaints process to ASIC is slow – two members who have now complained to ASIC have yet to receive a response – this function must be resourced adequately.

Case 2

Another College with campuses in a three states collapsed with student creditors numbering in the thousands and staff of many hundred employees. The first creditors meeting at a very large venue in Melbourne with a video link to Sydney was a complete debacle. At the time the meeting formally got underway there were still over 200 creditors queuing to get in to the building. So the register of creditors – who can vote – was not completed by the start of the meeting. Despite the College running English language courses and having hundreds of students with poor English there were no interpreters available.

The Administrator started the meeting with no introduction except in the formal business language of the administration. Most of the creditors, including VIEU representatives could not understand what he was saying and many creditors did not even realize the meeting had started. In this circumstance creditors can not actually exercise some power in appointing a different administrator or even understand the process. The first creditors meeting should be an information only meeting. There should be effective rules governing the operation of meetings held at multiple locations to ensure effective communication.

A plain English explanation of the process of administration including creditors rights and complaint processes should be delivered at the start of every process and should be included in the first mail out to creditors.

Case 3

This was a straight forward administration where a small College had little in the way of funds or assets and employees made up the bulk of creditors. As there was likely to be only around \$20,000 in assets and there would be some difficulty recovering debts of over \$100,000. We asked at the first creditors meeting how much the administrators fees were likely to be. The estimate given for fees was \$50,000.

The actual administrators fees have now turned out to be \$103,000 – absorbing all available money from both assets and recoverable debts – employees again get nothing.

I notice in the table of fees the “manager” who did most of the recorded hours of work in the administration - administration work, phone calls, organising creditors meetings, sending standard letters etc is being billed at \$350 an hour. This is equivalent to an annual salary of \$692,930.00. The partner in the firm charged \$550 per hour for his time. Since every overhead such as copying, travel, secretarial support is charged as a separate item these hourly rates are beyond belief. Administrators charge what they can get away with

and creditors have no choice but to accept the charges. Hourly rates need to be set by a regulator or effective competition needs to be put in place.

A system where creditors can get quotes after a first information only creditors meeting could be put in place. The system of accrediting and registering administrators needs to be opened up to more scrutiny, to more competition and to larger numbers of practitioners.

In all three College collapses VIEU has been involved with employees make up the majority of creditors yet they don't believe the administrator is working for them – quite the opposite. There is no opportunity for creditors to replace an administrator – or in practice a real opportunity to appoint a different administrator at the start of the process. This creates a situation with no effective competition and no market pressure on fees. The choice of administrators is made by directors so there is no motivation for administrators to get a reputation for acting genuinely in the interest of creditors. Giving creditors a choice and a practical simple way to exercise that choice will put downward pressure on fees and pressure administrators to genuinely put the concerns of creditors first.

Our apologies for this submission being late and in brief summary form as we've only just become aware of the Senate Inquiry.

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