



**Insolvency
Practitioners
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Dr Kathleen Dermody
Committee Secretary
Economics Legislation Committee
Parliament House
Canberra ACT 2600

Our ref Ltr KDermody EC 030203

Contact Michael Dwyer, 08 8236 3165

4 February 2003

Dear Dr Dermody

Corporations Amendment – (Repayment of Directors’ Bonuses) Bill 2002

I refer to your letter of 16 December 2002 inviting written submissions on the abovementioned Bill.

The Insolvency Practitioners Association of Australia (“IPAA”) is the leading professional organisation within Australia for specialists practising in corporate and personal insolvency. Our members comprise Practising Accountants, Practising Lawyers and Insolvency Specialists employed by those lawyers and accountants. Our membership totals approximately 1,000 Australia wide. The IPAA is affiliated with INSOL International, the international organisation of the related associations.

Our members are at the forefront of investigations into insolvencies where recoveries will be sought of unreasonable payments to associated or third parties made to the detriment of employees, secured and unsecured creditors. We support the Bill to amend the Corporations Act 2001 which will supplement and strengthen the existing provisions and provide liquidators with the powers to reclaim unreasonable payments made to the directors of insolvent companies or their “close associates”.

The insertion by the Bill of a new section 588FDA will give a clear and unambiguous message to officers and management of companies and provide liquidators with the necessary legal framework within which to pursue unreasonable direct or related transactions.

However the practicalities of investigation and legal assistance in pursuing these claims will remain of concern, given the extensive litigation that will be required to recover these payments. This is of particular concern in “phoenix companies”, where inevitably, inadequate assets are available to a liquidator to ensure payment of reasonable costs and expenses.

The IPAA would be happy to provide any further assistance or comment as required. Please do not hesitate in contacting me in this regard.

Yours sincerely

Michael Dwyer
National President