

Parliamentary Joint Committee on
Corporations and Financial Services

Inquiry into
Australia's Insolvency Laws

Submission No. 26A

Submittor: Law Council of Australia
Ms Kate Mellick
Secretariat
GPO Box 1989
CANBERRA ACT 2601

Telephone: 02 6246 3788

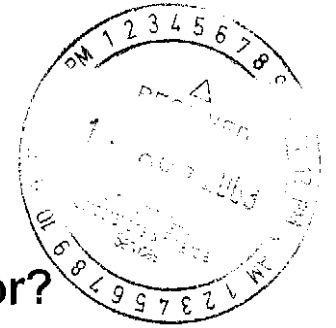
Facsimile: 6248 0639

EMAIL: kate.mellick@lawcouncil.asn.au

Attachments?



Law Council
OF AUSTRALIA



What really is the role of a liquidator?

An Activities and Skills Matrix for Liquidators

The Law Council of Australia believes existing requirements for registration of corporate insolvency practitioners are anti-competitive and should be amended. The requirements focus exclusively on accounting qualifications and effectively act as a barrier to registration of appropriately qualified lawyers – the consequence being that consumers are denied the benefits of competition between qualified professionals in the marketplace.

The argument that assessment on the merits of qualifications, skills and expertise isn't new. In 1992, the Trade Practices Commission stated that "the role of an insolvency practitioner in Australia today is only indirectly linked to the accountancy profession". It concluded that "the fact that some accounting skills (although often not necessarily of a high order) will be essential in any administration does not necessarily justify confining registration to a narrow group of professions". The Australian Law Commission's 1988 "Harmer Report" and the Working Party on the Review of the Regulation of Corporate Insolvency Practitioners also came to the same conclusion. The following demonstrates the veracity of the concern that existing registration requirements are unjustifiably restrictive.

Role of Liquidator	Specifically Legal Skills	Specifically Accounting Skills	Combined Legal and Accounting
Assessing financial viability and profitability of a business		✓	
Day to day management on an interim basis*			
Finalising company accounts		✓	
Selling assets in whole or part - may involve discovering and seizing assets	✓		
Liaising with directors and management to finalise and update the company's financial record			✓
Identifying possible breaches of the Corporations Act by directors/officers			✓
Dealing with any contracts that the company has on foot, and to make a decision on whether they should, or should not, continue			✓
Negotiating with company employees	✓		
Obtaining a report as to the affairs of the directors			✓
Filing all necessary reports with ASIC, including possible breaches of the Corporations Act	✓		
Assessing creditors claims, including claims concerning retention of the title (<i>Romalpa</i>) clauses	✓		
Assessing and pursuing any claims the company may have	✓		
Assessing whether there should be court examinations of directors	✓		
Dealing with secured creditors, and the validity of securities	✓		
Dealing with the priority of claims	✓		
Calling of and chairing creditors' meetings			✓
Applying to the court for directions	✓		

*This function is not specifically either legal or accounting but is generally carried out by existing management or outsourced.

GPO Box 1989, Canberra,
ACT 2601, DX 5719 Canberra

Telephone +61 2 6246 3788
Facsimile +61 2 6248 0639

19 Torrens St Braddon ACT 2612
www.lawcouncil.asn.au