



6 February 2010

Australian Institute of Credit Management

Submission in response to ASIC Consultation Paper 124

Duty to prevent insolvent trading: Guide for directors

The Australian Institute of Credit Management (AICM) strongly supports the direction and intent of the ASIC Consultation Paper 124.

AICM believes that this Consultation Paper should be issued as a Regulatory Guide as it would serve a number of objectives.

Firstly it would provide a straightforward guide for directors so that they would be aware of their responsibilities. The proposed plain language document would be very informative for directors of small to medium sized enterprises whom, as the Consultation Paper correctly identifies, are often less aware of mechanisms to prevent insolvent trading.

Further the Consultation Paper would in AICM's view have a much wider audience.

AICM anticipates that such a regulatory guide would have application to accounting professionals who need to monitor and explain the concept of insolvent trading to their clients.

As well AICM believes that many credit professionals would find such a regulatory guide informative as it serves to clarify in simple terms what is construed to be insolvent trading. AICM would (subject to permission) incorporate such a regulatory guide in the teaching and learning resources utilised in AICM's qualification based training programs.

Indeed it is conceivable that a resource such as that proposed in the Consultation Paper would have application by other educational institutions.

There is however one aspect of the Consultation Paper which AICM believes could be enhanced.

Throughout the Consultation Paper there are a number of useful examples, yet the examples only refer to the need for a director to monitor the financial affairs of a company from the perspective that creditors are being paid on time.

It is AICM's recommendation that there should also be reference for the director to ensure that a company's debtors are meeting their financial obligations to the company.

This critical process

- enables effective cashflow management
- avoids unrealistic assumptions about an organisations financial well being and
- ultimately will directly contribute to a company's success and longevity

It would appear to be a relatively straightforward process to include in the examples cited in the Consultation Paper the need to ensure that company directors also peruse reports relating to outstanding accounts/debtors.

As well it would in AICM's view, be useful to include a brief series of points concerning how a director may address a situation when the company may be experiencing difficulties in meeting their obligations to creditors.

The membership of AICM consistently report that it is preferable that a company negotiates with a creditor rather than deal with the alternative of ultimately not being paid at all.

Unfortunately this strategy is not recognised by many directors who fail to understand that engaging with stakeholders early and honestly will usually be in the company's best interests.

Thus AICM would commend ASIC's initiative in developing this Consultation Paper.