

27. Practice Direction No 3 of 2004 – Guidelines – Disclosure by Insolvency Practitioners of fees to be charged

1. The Insolvency Practitioners Association of Australia no longer publishes a Scale of Rates in respect of fees.
2. Where application is made to the Court for an order that a company be wound up or for an official liquidator to be appointed as a provisional liquidator of a company, an official liquidator must consent in writing to be appointed: see *Corporations Act 2001* (Cth) ('the Act'), subs 532(9); *Corporations Law Rules* ('the Rules') 6.1(2). Form 8 requires disclosure of the hourly rates currently (as at the signing of the "consent" charged in respect of work done as a liquidator or provisional liquidator (as the case may be) by the person signing the consent, and by that person's partners and employees who may perform work in the administration in question.
3. The provisions referred to in 2 above have no application, however, to appointments of persons as external administrators:
 - . otherwise than by the Court; or
 - . by the Court otherwise than as liquidator or as liquidator provisionally.

Moreover, even in the case of appointments as liquidators or as liquidators provisionally, the provisions referred to in 2 above do not touch on changes in the hourly rates after the signing of the Form 8 consent.
4. Various provisions of the Act empower the Court, in certain circumstances, to determine or review the remuneration of insolvency practitioners when they are filling the office of various forms of external administrator: see ss 425, 449E, 473(2), (3), (5) and (6) and 504.
5. With the exception of Form 8 where it is applicable, the provisions referred to in 2 above do not indicate a standard of disclosure of fees to be charged which the Court might regard as appropriate in any situation in which it may be relevant for the Court to take into account whether an insolvency practitioner has followed a practice of making adequate disclosure of such fees.
6. The guidelines in 7 and 8 below are intended to fill that gap. Those guidelines are not, however, intended to limit the judicial discretion available in any particular case, or to require non-observance of the guidelines to be taken into account where that would not be relevant to the exercise of a judicial discretion.

All external administrators (*including persons appointed as liquidators or as liquidators provisionally*) should, in their first report to creditors;

- . disclose the hourly rate of fees which are being charged by them and by any of their partners and employees who may work in the administration; and
 - . give their best estimate of the cost of the administration to completion or to a specified milestone identified in the report.
8. If, at any time after an external administrator has reported in accordance with 7, the hourly rates are to change, or the administrator has reason to believe that the estimate given to creditors is no longer reliable, he or she should report to creditors, disclosing the new hourly rates and giving a revised estimate.

Note: These guidelines are not intended:

- . to prevent an external administrator from charging hourly rates or revising estimates if he or she is otherwise lawfully permitted to do so; or
- . to authorise an external administrator to change hourly rates or revise estimates if he or she is not otherwise lawfully permitted to do so.

3 August 2004