

FEDERAL COURT OF AUSTRALIA

McEvoy, in the matter of Careers Australia Group Limited (Administrators Appointed) [2017] FCA 598

File number: VID 559 of 2017

Judge: **BEACH J**

Date of judgment: 29 May 2017

Catchwords: **CORPORATIONS** – application under s 447A(1) of the *Corporations Act 2001* (Cth) for orders modifying the requirements for giving notice to creditors of first and second creditors’ meetings – no creditor has requested electronic communication of meeting notices – application granted

Legislation: *Corporations Act 2001* (Cth) ss 436E, 439A, 447A, 600G
Corporations Regulations 2001 (Cth) regs 5.6.11A, 5.6.12

Cases cited: *Silvia, in the matter of FEA Plantations Ltd (Administrators Appointed)* [2010] FCA 468

Date of hearing: 29 May 2017

Registry: Victoria

Division: General Division

National Practice Area: Commercial and Corporations

Sub-area: Corporations and Corporate Insolvency

Category: Catchwords

Number of paragraphs: 33

Counsel for the Plaintiffs: Ms G Coleman

Solicitor for the Plaintiffs: Minter Ellison

ORDERS

VID 559 of 2017

**IN THE MATTER OF CAREERS AUSTRALIA GROUP LIMITED
(ADMINISTRATORS APPOINTED) (ACN 122 171 840) AND OTHERS NAMED IN
THE SCHEDULE**

BETWEEN: **DAVID LAWRENCE MCEVOY AND MARTIN FORD IN
THEIR CAPACITY AS JOINT AND SEVERAL VOLUNTARY
ADMINISTRATORS OF CAREERS AUSTRALIA GROUP
LIMITED (ADMINISTRATORS APPOINTED) ACN 122 171
840**
First Plaintiff

**DAVID LAWRENCE MCEVOY AND MARTIN FORD IN
THEIR CAPACITY AS JOINT AND SEVERAL VOLUNTARY
ADMINISTRATORS OF CAREERS AUSTRALIA GROUP
LIMITED (ADMINISTRATORS APPOINTED) ACN 122 171
840**
Second Plaintiff

**CAREERS AUSTRALIA GROUP LIMITED
(ADMINISTRATORS APPOINTED) ACN 122 171 840** (and
others named in the Schedule)
Third Plaintiff

JUDGE: **BEACH J**

DATE OF ORDER: **29 MAY 2017**

THE COURT ORDERS THAT:

1. Pursuant to s 447A(1) of the *Corporations Act 2001* (Cth) (the Act) that the requirement to give notice under s 436E(3) of the Act and in accordance with the *Corporations Regulations 2001* (Cth) (the Regulations) be modified such that notice of the first meeting of creditors of Careers Australia Group Limited (Administrators Appointed) ACN 122 171 840 and each of the companies listed in the attached schedule (together, the Companies) may be given to creditors of the Companies by the first and second plaintiffs (the Administrators), not less than five business days prior to the date of the proposed meeting:

- (a) giving such notice electronically by email sent to the email address of any creditor (including persons claiming to be creditors) of the Companies for whom or which the plaintiffs hold an email address;
 - (b) giving such notice by way of an SMS or text message (message) sent to the SMS contact details of any creditor (including persons claiming to be creditors) of the Companies for whom the plaintiffs hold SMS contact details, which message states that notice of the first meeting of creditors is available on the website maintained by the Administrators' firm at <https://www.ppbadvisory.com/creditor-information/v/485/careers-australia-group-limited;>
 - (c) sending such notice to the postal address or facsimile number, or otherwise as provided for by the Act or the Regulations to any creditors not being a creditor referred to in sub-paragraph (a) or (b);
 - (d) causing such notice to be made available on the website maintained by the Administrators' firm at <https://www.ppbadvisory.com/creditor-information/v/485/careers-australia-group-limited;> and
 - (e) causing such notice to be published in *The Australian* newspaper.
2. Pursuant to s 447A(1) of the Act that the requirement on the Administrators to give notice under s 439A of the Act and in accordance with the Regulations of the second meeting of creditors of the Companies, or any adjourned or subsequent meeting, be modified such that the requirement to give notice of the second meeting of creditors to be convened pursuant to s 439A of the Act (the notice) and the documents required to be sent to creditors (the report) may be given to all creditors of the Companies by, not less than five business days prior to the date of the proposed meeting, the Administrators:
- (a) sending the notice and an internet link to the report to the email address of any creditor of the Companies who has requested that the Administrators communicate with her, him or it by electronic means;
 - (b) sending the notice and an internet link to the report electronically by email sent to the email address of any creditor (including persons claiming to be creditors) of the Companies for whom or which the plaintiffs hold an email address;

- (c) sending a message to the SMS contact details of any creditor (including persons claiming to be creditors) of the Companies for whom the plaintiffs hold SMS contact details, which message states that notice of the second meeting of creditors, together with the report, is available on the Administrators' website at <https://www.ppbadvisory.com/creditor-information/v/485/careers-australia-group-limited>;
 - (d) sending a copy of the notice to the postal address or facsimile number, or otherwise as provided for by the Act or the Regulations, to any creditors not being a creditor referred to in sub-paragraphs (a) to (c), together with a statement that the report is available on the Administrators' website address at <https://www.ppbadvisory.com/creditor-information/v/485/careers-australia-group-limited>;
 - (e) causing the notice and the report to be made available on the website maintained by the Administrators' firm at <https://www.ppbadvisory.com/creditor-information/v/485/careers-australia-group-limited>; and
 - (f) causing a notice to be published in *The Australian* newspaper providing:
 - (i) notice of the date, time and location of the second meeting of creditors;
 - (ii) notice that the report is available on the website <https://www.ppbadvisory.com/creditor-information/v/485/careers-australia-group-limited>; and
 - (iii) details of a telephone number by which any creditor may contact the Administrators to request a paper or electronic copy of the report.
3. The plaintiffs' costs of the application filed 29 May 2017 be costs and expenses in the administration of the Companies.
4. Any person affected by this order have liberty to apply on three days' notice.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

BEACH J:

1 On 25 May 2017, the first and second plaintiffs (Administrators) were appointed as joint and several voluntary administrators of Careers Australia Group Limited and ten of its subsidiaries. On 26 May 2017, they were appointed over a further subsidiary, Stratocumulus Pty Ltd (collectively, the Group). The Administrators have applied to me this morning pursuant to s 447A(1) of the *Corporations Act 2001* (Cth) (the Act) for orders modifying the prescribed regime for giving notice of the first and second meetings of creditors of the Group. The Administrators propose to notify the creditors individually by utilising their electronic addresses, where known, rather than post as well as through the use of a website and by newspaper. I propose to accede to the Administrators' application.

BACKGROUND

2 The Group has provided vocational education and training. At the time of the Administrators' appointment, the Group operated at 13 campuses throughout Australia and had 19,124 enrolled students. It has 1,100 employees. The Administrators have identified over 20,000 potential unsecured creditors of the Group, including the students (who may be contingent creditors), employees and general trade creditors, to whom they are required to give notice, as well as secured creditors. Westpac and NAB, as well as creditors whose interests are registered on the Personal Property Securities Register (PPSR) are the secured creditors.

3 Careers Australia Group Limited (Administrators Appointed) (CAG) is the ultimate holding company of the Group. Since approximately 2006, the Group has carried on the business of providing vocational education and training (VET) for profit. It is primarily concerned with the provision of educational services in Australia to both domestic and overseas students. The Group also has arrangements in place with overseas partners to provide services in conjunction with those partners in overseas jurisdictions, including China, Malaysia, the Philippines and Indonesia.

4 As at the date of the Administrators' appointment, the Group was Australia's largest private provider of VET services. A number of the companies in the Group are Registered Training Organisations. The education and training services provided by the Group are supplied by the companies listed in the following table:

Company	Accreditation
Australian School of Management Pty Ltd	Higher Education
Careers Australia Institute of English Pty Ltd Careers Australia Education Institute Pty Ltd Careers Australia Institute of Training Pty Ltd Careers Australia College of Healthcare Pty Ltd Australian College of Applied Education Pty Ltd Global Learning Support Group Pty Ltd	VET
Today Corp Limited Workstar Pty Limited Cumulonimbus Investments Pty Ltd	Other services

- 5 CAG provides shared services to the above companies, including:
- (a) corporate services, including the provision of IT services, infrastructure, networks, telephone services, learning and education management platforms and hardware;
 - (b) content and learning product development;
 - (c) human resource services, including recruitment and hiring services;
 - (d) financial and payroll services, including all services associated with budgeting and the processing of payments to staff and other creditors;
 - (e) marketing and student recruitment services; and
 - (f) support to the senior executive teams.
- 6 The courses offered by the Group in Australia are recognised under the Australian Qualifications Framework, which is the national policy and framework for regulated qualifications in Australian education and training. The Group also operates a number of courses registered on the Commonwealth Register of Institutions and Courses for Overseas Students. The government body administering this Register oversees formal international student education in Australia.
- 7 The books and records of the Group show that the Group is currently providing education and training to 19,124 enrolled students. The students are enrolled to study at campuses across

Australia as shown in the following table. Some or all the 117 students described as studying at an “unspecified” location may be online students that are not attached to a particular campus or facility:

Location	Students
ACT	126
NSW	3,348
NT	143
Overseas	75
QLD	8,699
SA	1,371
TAS	198
VIC	2,934
WA	2,113
Unspecified	117
TOTAL	19,124

- 8 After close of business on 25 May 2017, and due to uncertainty regarding the availability of funds, the Administrators stood down all employees of the Group, and notified students that classes would be suspended immediately.
- 9 Prior to the Administrators’ appointment, the Group sourced funding for their operations from:
- (a) fees paid by domestic and overseas students being monies made available under Commonwealth and Victorian government schemes;
 - (b) fees paid by domestic and overseas corporate entities or groups which had entered into training relationships with the Group;
 - (c) equity contributed by shareholders; and
 - (d) funds borrowed from financiers on a secured basis.

- 10 The Group has relied on funding provided under three government schemes. Specifically, the Group has received amounts from the following schemes:
- (a) the Commonwealth Department of Education under:
 - (i) the *VET Student Loans Act 2016* (Cth) (VSLA), in relation to the:
 - (A) VET FEE Help scheme (which operates for students enrolled prior to 31 December 2016); and
 - (B) VET Student Loans scheme (which commenced on 1 January 2017);
 - (ii) the *Higher Education Support Act 2003* (Cth) (HESA);
 - (b) the Victorian Government, which has provided top up funding to some VET providers delivering training in Victoria pursuant to contractual arrangements. These funding arrangements were entered into pursuant to statutory powers under the *Education and Training Reform Act 2006* (Vic).
- 11 On 10 April 2017, the Commonwealth notified Careers Australia Education Institute Pty Ltd (CAEI) that it would no longer be approved as an approved course provider under s 25(1) of the VSLA (Initial Decision). The Group sought a review of the Initial Decision. On 25 May 2017, the Commonwealth wrote to CAEI noting that the Commonwealth had reconsidered the Initial Decision and that it confirmed the Initial Decision.
- 12 On 26 May 2017, the Administrators received a letter from the Commonwealth advising that the Commonwealth was considering cancellation of Australian School of Management Pty Ltd's registration as a higher education provider under the *Tertiary Education Quality and Standards Agency Act 2011* (Cth).

Assets and liabilities of the Group

- 13 The primary assets of the Group comprise:
- (a) furniture, fittings, fixtures, intellectual property, computer software and hardware located at the leased premises;
 - (b) motor vehicles, photocopiers and other equipment, many of which are subject to equipment leases; and
 - (c) any amounts due to the Group pursuant to the government schemes referred to above.

- 14 To date, the Administrators have been unable to determine the amounts (if any) that may be paid to the Group pursuant to the VSLA and HESA schemes identified above.
- 15 The Group collectively has a large number of creditors (including contingent creditors), comprising:
- (a) secured creditors owed in excess of \$100 million, being:
 - (i) Westpac Banking Corporation and National Australia Bank; and
 - (ii) creditors that have registered financing statements on the PPSR asserting purchase monies security interests;
 - (b) unsecured creditors, including (without limitation):
 - (i) students (who may be contingent creditors): 19,124;
 - (ii) general trade creditors: approximately 600;
 - (iii) employees: approximately 1,100.

- 16 Most of the approximately 1,100 employees of the Group are employed by CAG. It is likely that the total amount of entitlements owing to employees will be in the range of \$11 and \$15 million.
- 17 Students may also be contingent creditors of the Group.

Meetings of creditors

- 18 Pursuant to s 436E(2) of the Act, the Administrators are required to hold the first meetings of creditors of the Group other than Stratocumulus Pty Ltd on or before 6 June 2017. Notice of the meetings (if held on that date) is required to be given on or before 30 May 2017. The first meeting of creditors of Stratocumulus Pty Ltd must be held on or before 7 June 2017. However, the Administrators intend to convene the first meeting of creditors of Stratocumulus Pty Ltd on the same day as the meetings for the other Companies.
- 19 Pursuant to s 436E(3) of the Act, the Administrators are required to convene the meetings by giving written notice to as many of the creditors as is reasonably practicable and in accordance with the *Corporations Regulations 2001* (Cth) (the Regulations) by 30 May 2017.
- 20 Pursuant to s 439A of the Act, the Administrators are required to convene a second meeting of creditors for each of the Companies, and to give notice of those meetings in accordance with the Act and the Regulations.

- 21 Given the significant number of creditors who are entitled to receive notice of the meetings of creditors, it is likely to be logistically difficult, costly and time consuming to send notices to each of them by post. If the Administrators are required to send notices by post to all creditors, it would be necessary to engage the services of an external provider to provide mailing and printing support and to assist in sending notices to creditors.
- 22 The Group holds email addresses for some 11,000 of the 19,124 enrolled students, and most of the approximately 1,100 employees. The Companies have previously communicated with students and staff by email.
- 23 The Administrators do not consider it practicable to give notice by post. First, there are more than 20,200 potential creditors to whom the Administrators would be required to give written notice. Second, the notice that the Administrators are required to give in respect of the first creditors meeting under s 436E is likely to be approximately 20 pages in length. Third, the notice and the report accompanying the notice that the Administrators are required to give in respect of the second creditors meeting is likely to be approximately 150 pages in length. Fourth, Law in Order has provided an estimate of its costs and timing for printing and mailing the notices of meeting and reports. Law in Order estimates that its costs of printing and mailing the notices and the report double sided (black and white) and posting it to 20,200 creditors (standard postage) would be around \$70,000 for the first meeting and \$270,000 for the second meeting.
- 24 Generally, given the cost and difficulties associated with the notification process, the Administrators consider that the most expedient and efficient approach to notifying creditors will be to give notice in an electronic form as well as through the use of a website and also by newspaper advertisement.

ANALYSIS

- 25 The Act and the Regulations allow for an electronic mode of giving notice to creditors, but only if the recipient has nominated “an electronic address by which the recipient may be notified of such notices or documents” (see ss 600G(1)(a), (b) and (c), 600G(2) of the Act and reg 5.6.11A(2) of the Regulations). Otherwise notice must be delivered in person, by prepaid post, by fax or document exchange (reg 5.6.12 of the Regulations).
- 26 At this early stage of the administration, no creditor has requested electronic communication of meeting notices or other documents. Accordingly, s 600G of the Act and the

complementary reg 5.6.11A(2) have not been enlivened. I would note that it has also been quite unusual (up to this point) for creditors in voluntary administrations to formally request electronic communication of notices and other documents.

27 Modification to the notification requirements for creditors meetings have been made in a number of cases. Notifications for meetings concerning voluntary administrations involving large numbers of creditors usually entail “administrative difficulties and potentially significant expenditure of funds, which might otherwise be conserved for the benefit of creditors” (*Silvia, in the matter of FEA Plantations Pty Ltd (Administrators Appointed)* [2010] FCA 468 at [29] per Dodds-Streeton J).

28 In my opinion, the s 447A modification sought to the notice requirements for the meetings in the present case is appropriate. First, the Administrators have estimated that the costs to comply with the (unmodified) notice requirements under the Act and the Regulations would require the engagement of an external provider with costs likely to be incurred of substantial sums as I have set out earlier. Second, the Administrators hold email addresses for most of the creditors, including the students and the Group employees. Third, the Group has previously communicated with students by the use of email addresses. In summary, email notification is therefore likely to be a more reliable and cost efficient method of giving notice to creditors.

29 Generally, it is appropriate that practical and proportionate modifications be made to the prescribed notification regime taking into account the context and complexity of the particular administration including the number of creditors, and the commercial reality and efficiency in utilising electronic modes of communication which are immediate, cost efficient and more reliable, particularly when assessed over a very large pool of potential recipients. Moreover, one can almost take judicial notice of the fact that in a generational sense, the large numbers of contingent (at least) creditors in the present case (ie the students) would likely consider other modes of communication to be out-dated and are likely to prefer (and more likely to receive and pay attention to) digital forms of communication.

30 There is one other matter. For students who have not provided an email address, I have allowed for an alternative mode of communication by SMS or text message. This is even more likely to be attractive to and to attract the attention of students with its immediacy, relevancy and brevity. Such students will then have the opportunity to receive more detailed information if they so choose.

- 31 In summary, the combined modes of communication that I have allowed for will be more than adequate to meet the necessary statutory objective(s) of ensuring that creditors are properly informed.
- 32 I will make the orders sought by counsel for the Administrators. For completeness, I would note that ASIC was not represented before me, but it was not necessary that it be served or appear.
- 33 Finally, I should note that although the draft orders made reference to the application of r 75-255 of the *Insolvency Practice Rules (Corporations) 2016* (Cth), I have deleted reference thereto. Given that the *Corporations and Other Legislation Amendment (Insolvency Law Reform) Regulation 2016* (Cth) defers to 1 September 2017 the commencement of the operation of many of the amendments to the Act (and associated legislative instruments) made by the *Insolvency Law Reform Act 2016* (Cth), it seems to me that r 75-255 is not of a type that was operative from 1 March 2017. This is also confirmed by Item 2 in the Table to r 1-5(1) of those Rules.

I certify that the preceding thirty-three (33) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Beach.

Associate:



Dated: 29 May 2017

SCHEDULE OF PARTIES

VID 559 of 2017

Plaintiffs

- Fourth Plaintiff: CAREERS AUSTRALIA INSTITUTE OF TRAINING
PTY LTD (ADMINISTRATORS APPOINTED) ACN 122
082 204
- Fifth Plaintiff: CAREERS AUSTRALIA EDUCATION INSTITUTE
PTY LTD (ADMINISTRATORS APPOINTED) ACN 120
675 505
- Sixth Plaintiff: CAREERS AUSTRALIA INSTITUTE OF ENGLISH
PTY LTD (ADMINISTRATORS APPOINTED) ACN 010
994 582
- Seventh Plaintiff: CAREERS AUSTRALIA COLLEGE OF HEALTHCARE
PTY LTD (ADMINISTRATORS APPOINTED) ACN 007
963 340
- Eighth Plaintiff: TODAY CORP LIMITED (ADMINISTRATORS
APPOINTED) ACN 101 631 485
- Ninth Plaintiff: AUSTRALIAN SCHOOL OF MANAGEMENT PTY
LTD (ADMINISTRATORS APPOINTED) ACN 138 545
605
- Tenth Plaintiff: WORKSTAR PTY LTD (ADMINISTRATORS
APPOINTED) ACN 097 871 933
- Eleventh Plaintiff: GLOBAL LEARNING SUPPORT GROUP PTY LTD
(ADMINISTRATORS APPOINTED) ACN 169 155 480
- Twelfth Plaintiff: CUMULONIMBUS INVESTMENTS PTY LTD
(ADMINISTRATORS APPOINTED) ACN 169 444 213
- Thirteenth Plaintiff: AUSTRALIAN COLLEGE OF APPLIED EDUCATION
PTY LTD (ADMINISTRATORS APPOINTED) ACN 009
369 797
- Fourteenth Plaintiff: STRATOCUMULUS PTY LTD (ADMINISTRATORS
APPOINTED) ACN 611 961 196