

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



Dickerson, in the matter of Disability Services Australia Limited (administrators appointed) (No 2) [2021] FCA 1133

Federal Court of Australia, Yates J, 17 September 2021

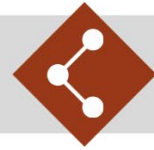
An application by administrators of disability service providers to extend time for second creditors meeting to allow time for sale of the companies.

Key words: Insolvency, Australia, Disability, Administration, Extension of Time, Second Creditors Meeting

1. In [Dickerson, in the matter of Disability Services Australia Limited \(Administrators Appointed\)](#) [2021] FCA 1077 the administrators were previously granted urgent orders about the first meeting of creditors.
2. The administrators of three companies Disability Services Australia Ltd (administrators appointed) (DSA), Macquarie Employment Training Services Ltd (administrators appointed) (Macquarie), and the fourth plaintiff, DSA Mentoring Services Ltd (administrators appointed) (Mentoring) sought orders to extend the period for convening the second meeting of creditors for each company to 90 days.
3. The administrators gave evidence that they had commenced an expressions of interest (EOI) process for the recapitalisation or transfer of all or part(s) of the companies' business by share sale, deed of company arrangement (DOCA), or transfer of assets. There had been significant interest from providers in the disabilities sector to acquire the whole of the business.
4. The administrators estimated that in a period of 8-10 weeks an unconditional offer could be received and prepared for consideration at the second creditor's meeting. The EOI process could be complicated by the requirements of the NDIA and the NDIS Quality and Safeguards Commission and the sensitivity of, and complex supports for, participants.
5. The administrators argued for the extension because:
 - a) It allowed time for an orderly process which would lead to a better outcome for all stakeholders.
 - b) If not granted there was a risk that the companies would proceed directly to liquidation.
 - c) The administrators were not in a position to prepare a report to creditors until the EOI process was complete.
 - d) The administrators were not aware of any material disadvantage that would be suffered by any stakeholder.
 - e) The administrators believed that the extension was in the best interests of the creditors.

6. The Court granted the extension as it was satisfied that a properly conducted EOI process was necessary in order to achieve the best outcome for the companies' creditors and 90 days was appropriate in all the circumstances.

IMPLICATIONS



It can be appreciated that the continued delivery of services for participants is a significant social welfare issue when a 'market provision' model is in operation. As we remarked in the previous case, such instances are only likely to become more common in the future, so that governments need to turn their attention to ensuring that there is an appropriate legal scaffolding in place for nonprofit community service insolvencies.

VIEW THE CASE



This case may be viewed at <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2021/1133.html>

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