Manufacturing Business in Financial Distress: The Detailed Guide to VA vs CVL

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Many manufacturing businesses reach a point where continued trading is no longer sustainable in its current form. At that stage, voluntary administration or creditors' voluntary liquidation may be the appropriate path.

This Guide provides a practical comparison of voluntary administration and creditors' voluntary liquidation, including timing, cost, director risk, and commercial outcomes.

Consultation at no cost
Company directors and advisors are welcome to call David Levi on **+61 418 602 466** for an initial consultation that will not incur a fee. Training for advisors in relation to these and other topics can also be arranged via videoconference.
Levi Consulting services all Australian States and Territories.

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1. When a Long-Standing Business Reaches the Crossroads

Many of the most complex restructuring engagements involve businesses trading for decades — sometimes 40–50 years — that can no longer arrest decline.

The drivers are usually structural rather than misconduct:

- Continuing operating losses
- Shifts in consumer behaviour
- Margin compression
- Competition from lower-cost imports
- Australian labour and compliance costs
- Inability to sell the business quietly as a going concern

At this point, directors are typically choosing between:

- Voluntary Administration (VA) under Part 5.3A of the Corporations Act 2001; or
- Creditors' Voluntary Liquidation (CVL)

Voluntary administration is generally more expensive than liquidation. However, where a Deed of Company Arrangement (DOCA) is achievable, it provides a softer, more controlled outcome for directors.

In practice, the decision is commercial. It turns on:

- Risk appetite
- Funding capacity
- Credibility of a restructuring proposal
- Advice from legal and restructuring advisors

Early assessment is critical.

2. What is Voluntary Administration?

Voluntary Administration in Australia is a formal restructuring regime introduced in 1993, governed by Part 5.3A of the *Corporations Act 2001* (Cth).

Its statutory object (s 435A) is to:

- Maximise the chances of the company or its business continuing; or
- Achieve a better return for creditors than immediate liquidation.

Commercially, voluntary administration is a circuit breaker. It:

- Transfers control from directors to an independent registered liquidator (the administrator)
- Imposes a statutory moratorium on most creditor action
- Forces a structured decision within weeks — restructure, sell, or liquidate

It is not a delay tactic. It is a structured decision-making process.

When Is Voluntary Administration Appropriate?

Voluntary administration is typically appropriate where:

- The company is insolvent or likely to become insolvent
- Creditor pressure is escalating
- There is a viable core business
- A third-party contribution or restructuring proposal is credible
- A DOCA is likely to produce a better outcome than liquidation
- Directors are concerned about an insolvent trading claim if there were a liquidation instead of a voluntary administration followed by a DOCA.

It is usually inappropriate where:

- No funding source for a DOCA exists
- No viable restructuring proposal exists
- Losses are structural and ongoing with no pathway to correction

Immediate Legal Effect: The Moratorium

Upon appointment of a voluntary administrator:

- Winding-up proceedings are stayed
- Most enforcement action is frozen
- Landlords cannot terminate solely because of administration
- Director guarantees cannot be enforced during the voluntary administration period (subject to limits)
- Secured creditors are restricted, subject to a 13-business-day decision period

For boards facing escalating pressure, this often stabilises the position immediately.

The Two Creditors' Meetings
Voluntary administration operates on a strict timetable.

First Meeting (within 8 business days)
Creditors may:
- Replace the administrator
- Appoint a committee of inspection

Second Meeting (usually within 20–25 business days)
Creditors resolve to:
- Enter a Deed of Company Arrangement (DOCA)
- Place the company into liquidation
- Return control to directors (rare)

Most substantive work — investigations, funding negotiations, business sale campaigns, and DOCA formulation — occurs between these meetings. Court extensions are common in complex matters.

In making a decision, it is valuable for decision makers to understand, in advance, the voting methodology at the First Meeting and Second Meeting.

Deed of Company Arrangement (DOCA)
A DOCA is the formal restructuring mechanism within voluntary administration. It may involve:
- Lump sum contributions from directors or third parties
- Sale of business or assets
- Debt compromise in connection with director-related liabilities
- Creditor trusts

Creditors vote as a single class; approval requires a majority in number and value. the voluntary administrator has a casting vote where there is a stalemate. If implemented successfully, the company avoids liquidation and may continue trading.

Insolvent Trading and Part 5.7B Exposure
Directors often worry about personal exposure under Part 5.7B of the Corporations Act, covering:
- Insolvent trading
- Voidable transactions

Direct liquidation usually triggers investigations. Where voluntary administration leads to a DOCA and avoids liquidation, exposure is often materially reduced. This is a key reason directors sometimes fund voluntary administration and then a DOCA — for a more predictable, controlled outcome.

It is not immunity, but it significantly alters risk.

Case Experience – When Liquidation Was the Right Call

Since the regime's introduction, we have undertaken more than 150 voluntary administrations. Many transitioned to DOCA because directors sought certainty and were prepared to fund a softer landing.

However, voluntary administration is not always appropriate. In a recent engagement:

- The company was at end of life
- The only alternative was a $1 million capital injection and relocation
- Trading losses would likely continue

The directors elected creditors' voluntary liquidation.

At appointment:

- No funds were in the bank
- Employees were terminated except a small core team retained to assist
- Asset values were assessed with external advisors
- Prospects of a going concern sale were evaluated

We conducted an accelerated sale campaign, exchanged and completed contracts within three weeks, vacated the leased premises, and returned them to the landlord.

The purchaser was a competitor that sought a Sydney presence. Some former employees were offered employment.

We worked closely with the company's external accountant and legal advisors throughout, and also, engaged our own lawyers for reasons of independence.

In this case, voluntary administration would have increased cost without altering the commercial outcome.

Final Observations

Voluntary administration in Australia is a powerful restructuring tool and alternative to creditors voluntary liquidation. It can:

- Preserve enterprise value
- Improve creditor outcomes
- Provide directors with structure and protection

But it is not suitable in every case. The key question is whether a credible restructuring outcome exists — and whether the cost and risk profile justify it compared with immediate liquidation.

Early, commercial, and candid assessment is essential.

3. Voluntary Administration vs Creditors' Voluntary Liquidation

Which pathway is appropriate?

Directors frequently ask: Should we appoint a voluntary administrator or proceed directly to liquidation?
The answer depends on commercial reality — not emotion.

Voluntary Administration (VA)

Best suited where:

- Viable underlying business exists
- DOCA proposal is realistic
- Directors are prepared to fund the process including DOCA
- Sale as a going concern is achievable
- Managing insolvent trading exposure is a priority for directors

Advantages:

- Immediate moratorium on creditor action
- Structured pathway to compromise debt
- Potentially reduced Part 5.7B exposure if DOCA implemented
- Ability to preserve goodwill, contracts, layby stock, and overseas stock orders

Disadvantages:

- Higher cost
- Tight statutory timetable
- Requires funding for DOCA and credible DOCA proposal

Creditors' Voluntary Liquidation (CVL)

Best suited where:

- Business is at end of life
- No viable restructuring proposal exists
- Losses are structural
- Funding unavailable
- An orderly wind-down or asset sale is required

Advantages:

- Lower cost
- Faster implementation
- Clear and decisive process
- Ability to conduct controlled sale campaigns

Disadvantages:

- Investigation of insolvent trading and voidable transactions
- No restructuring mechanism
- Directors lose control permanently

The Real Decision

In many generational business failures, the real question is not survival, but:

- Is a restructuring outcome genuinely achievable?
- Is the additional cost of voluntary administration followed by a DOCA justified?
- Do directors want a more protective, structured pathway?

Each matter must be assessed on its own commercial facts. Early advice materially alters outcomes.

Key Questions Directors and advisors Ask About Voluntary Administration

Timing and Decision-Making

- When should directors formally appoint a voluntary administrator?
- How do we know when temporary pressure becomes insolvency risk?
- Can the business be stabilised without formal appointment?

Director Risk and Exposure

- What personal risks do directors face if trading continues?
- How does insolvent trading exposure arise under Part 5.7B?
- How is that risk paused or altered in voluntary administration compared with creditors' voluntary liquidation?
- Will past trading conduct be investigated?
- Are phoenix risk issues likely in restructuring or sale?

Commercial Leverage and Protection

- What leverage does voluntary administration create with trade suppliers, landlords, and secured creditors?
- Does the moratorium genuinely prevent enforcement action — including landlords locking the doors?
- How do hostile creditors behave in practice?
- How are director guarantees treated during administration and afterward?

Business Survival and the Circuit Breaker Effect

- Why is voluntary administration described as a circuit breaker?
- If there is a cashflow crisis but a viable core business, can restructuring restore profitability?
- What usually happens — restructure, sale, or liquidation?
- When is voluntary administration the wrong tool, and why?

Employees and Staff Concerns

- What is the likely reaction of employees?
- Are employees automatically terminated upon appointment?
- Will wages, superannuation, and leave entitlements be paid?
- Can employees transfer to a purchaser?
- How are entitlements treated in a DOCA versus liquidation?

Sale of Business and Asset Strategy

- How is the decision to sell made?
- Can the business be sold as a going concern?
- Can assets be sold free of liabilities and security interests?
- How is layby stock treated — sold, returned, or transferred?
- What about stock on order from overseas — company asset or supplier claim?
- Is a pre-packaged sale possible if the market has been tested at fair value?
- Can the business trade under licence before or after appointment — and is that advisable?

Deed of Company Arrangement (DOCA)

- How does a DOCA actually work?
- Why would creditors accept a DOCA paying, for example, less than 10 cents in the dollar?
- Is a DOCA tailored to the company's circumstances?
- Who drafts it, and how early can the likely structure be predicted?
- What is a DOCA combined with a creditors' trust, and when is that appropriate?

Government and Tax Authorities

- What is the likely attitude of the Australian Taxation Office?
- How influential is the Australian Taxation Office vote in a DOCA proposal?
- Are tax debts treated differently from trade creditors?
- Will directors become personally liable for tax debt?

Control and Practical Realities

- If directors lose control in voluntary administration or creditors voluntary liquidation, what does that mean practically?
- How involved can directors remain during the process?
- What happens to the company's credit profile, and does it affect directors personally?

Strategic Comparison

- In a generational business failure, is voluntary administration justified, or is liquidation more commercially rational?
- Does funding voluntary administration materially improve certainty and reduce risk?

Appendix 1

Side by side comparison - voluntary administration versus creditors' voluntary liquidation

Feature/Consideration	Voluntary Administration (VA)	Creditors' Voluntary Liquidation (CVL)
Purpose / Objective	Corporate rescue process; maximise chances of continuing business, restructure debts, or achieve better creditor outcomes than immediate liquidation.	Winding up of the company; realise assets and distribute proceeds to creditors. No rescue objective.
Legislation	Governed by Part 5.3A of the Corporations Act 2001.	Governed by Part 5.5 of the Corporations Act 2001.
Initiation	Appointed by directors, a secured creditor, or a liquidator. Court involvement rare.	Appointed by directors; Court involvement rare unless disputes arise.
Moratorium / Creditor Protection	Automatic moratorium on creditor enforcement; prevents winding up, seizure of property, and termination of contracts due to insolvency.	No moratorium. Creditors may enforce rights immediately.
Director Control	Directors temporarily lose control; administrators take over, but directors often consulted.	Directors lose control immediately; liquidator manages all company affairs.
Risk to Directors	Insolvent trading risk paused. Assuming a DOCA is achievable, Part 5.7B exposure can be mitigated.	Insolvent trading exposure continues; directors may be investigated for pre-liquidation conduct. Directors may have statutory defences.
Employees / Staff	Staff may be retained during administration or alternatively staff employment may be terminated; wages, superannuation, and entitlements addressed by administrator. Employees may transfer in sale of business. in a Deed of Company Arrangement, employees should receive no less that they would receive in a liquidation scenario. In a liquidation scenario, employees may have a claim under FEG Scheme.	Employees may be terminated; entitlements paid as part of statutory priority via FEG Scheme if funds are not otherwise available; ongoing employment not guaranteed.
Business Continuation	Business may continue trading under administrator; potential for sale as a going concern or restructure via DOCA.	Business usually ceased immediately. Sale as a going concern possible or forced sale or auction sale on-site or in-rooms.
Asset Management	Administrator can sell assets, continue operations, or restructure stock, including layby stock and overseas stock orders, subject to creditor and court approvals.	Liquidator realises assets for cash distribution; layby and overseas stock treated according to ownership and priority rules.
Cost / Fees	Higher upfront cost in administration, professional fees, and potential funding requirements for DOCA proposal.	Typically lower cost; liquidator fees charged against company assets.
Outcome Certainty	Flexible outcomes: restructure via DOCA, sale of business, or eventual liquidation. Provides softer landing for directors.	Clear outcome: liquidation and winding up. Creditors' claims finalised according to statutory priorities.

Appendix 1

Feature/Consideration	Voluntary Administration (VA)	Creditors' Voluntary Liquidation (CVL)
Creditor Involvement	Creditors vote on DOCA at second meeting; may approve restructuring even with partial recovery.	Creditors vote to accept liquidator, receive distribution according to priority; no restructuring.
Strategic Use Cases	Generational or viable businesses with cashflow issues; where rescue, restructure, or sale may maximise value.	Businesses at end-of-life, no realistic prospect of recovery, or where directors prefer immediate exit.
Timing / Process	First creditors' meeting ~8 business days; second meeting ~20–25 business days; court extensions possible for complex cases.	Liquidation completed in line with statutory requirements; distribution follows asset realisation, typically slower for large estates.
Internal/ External Communication	Administrator manages communications with creditors, staff, and stakeholders; directors may advise and assist.	Liquidator communicates primarily with creditors; directors' role limited.

Observations From Practice

VA provides certainty for directors where creditors are likely to approve a DOCA. It is often preferred when the business has viable operations or goodwill to preserve.

CVL is suitable where the business is unviable, funding for a DOCA is unavailable, or directors wish to exit entirely.

The choice between VA and CVL depends on risk appetite, cost, and legal advice.

Appendix 2

We have undertaken more than 150 voluntary administrations - some listed below. Many transitioned to Deed of Company Arrangement including Creditors' Trust for some.

Name	ACN	Type of Job	Industry
13 ENJNS Pty Ltd	089 201 089	VA + DOCA	Services - Recruitment
3D Metalforge Limited (Administrators appointed)	644 780 281	DOCA + CT	ASX listed entity
A C N 091 236 761 Pty Ltd formerly Video Australasia Pty Ltd	091 236 761	VA + CVL	Services - equipment hire
A C N 145 022 439 Pty Ltd	145 022 439	VA + DOCA	Retail
Abbey Equipment Pty Limited	065 321 548	VA + CVL	Transport -Special Purpose Applications
Abbotsford Home and Building Supplies Pty Limited	108 015 854	VA + CVL	Wholesale + Retail - Hardware
Abicolor (Australia) Pty Limited	001 622 395	VA + CVL	Engineering - calibration & colour matching equipment
ACN 001 268 999 Pty Limited formerly Hoschke Partners Pty Limited	001 268 999	VA + CVL	Building + Construction
ACN 085 357 517 Pty Ltd	085 357 517	VA	Building + construction - Residential high-rise developments
ACN 098 953 336 Pty Ltd (formerly Dakota Drum Company (NSW) Pty Limited)	098 953 336	VA + CVL	Manufacturing - Bins & Drums
ACN 100 862 762 Pty Ltd (formerly Dakota Fabrication Industries Pty Limited)	100 862 762	VA + CVL	Manufacturing - Bins & Drums
ACN 105 936 829 Pty Limited (formerly Umetrade Australia Pty Limited)	105 936 829	VA	Services - online auctions
ACN 145 020 300 Pty Limited	145 020 300	VA + DOCA	Retail
ACN 145 020 346 Pty Limited	145 020 346	VA + DOCA	Retail
ACN 145 020 462 Pty Limited	145 020 346	VA + DOCA	Retail
ACN 145 022 873 Pty Limited	145 022 873	VA + DOCA	Retail
ACN 619 122 600 Pty Ltd	619 122 600	VA+DOCA	Building & construction - labour hire
ACN 632 867 817 Pty Ltd	632 867 817	VA + CVL	Services - labour hire
ACN 632 868 163 Pty Ltd	632 868 163	VA + CVL	Services - labour hire

Appendix 2

Name	ACN	Type of Job	Industry
ACN 632 869 928 Pty Ltd	632 869 928	VA + CVL	Services - labour hire
ACN 105 612 897 Pty Ltd	105 612 897	VA + DOCA	Manufacturing
Allied Coal Pty Limited	089 367 859	VA + DOCA	Mining
Amaze Technologies Pty Limited	075 832 281	VA + CVL	Information + Technology
Andavess Systems Pty Limited	002 257 481	VA + CVL	Engineering - Industrial and protective coatings
Annandale Printing Pty Limitred	072 144 248	VA + CVL	Manufacturing - Pre and post press print production
Auburn United Formwork Pty Limited	002 187 162	VA + CVL	Building + Construction - Formwork
Aura Commercial Interiors Pty Limited	059 235 719	VA	Building + Construction -Walls and ceilings
Auslink Communications Pty Limited	007 048 938	VA + DOCA	Information Technology - Internet Service Provider (ISP)
Australian Cartridge Resellers Pty Ltd	092 769 358	VA + CVL	Wholesale + Retail - Toner Cartridges
Australian Engineering Network Pty Limited	001 588 674	VA + CVL	Engineering - mechanical
B&B Holdings Pty Limited		VA + CVL	Services - building
Bareena Services Pty Limited	105 077 914	VA + CVL	Tourism + Hospitality - restaurant
BGC Kayda Pty Limited	000 049 838	VA + CVL	Engineering - Blasting + Protective coatings
BGC Marine Service (NSW) Pty Limited	000 059 370	VA + CVL	Engineering - Blasting + Protective coatings
Boulevard Corporation Pty Limited	086 396 456	VA	Wholesale & Retail - Clothing
CanCan Lingerie Group Pty Ltd	001 263 994	VA + DOCA	Retail - Wholesale - Clothing
Cashfast Pty Limited	051 793 232	VA + CVL	Wholesale + Retail - Commercial shelving
CD Oz Pty Limited	068 540 429	VA + CVL	Manufacturing - Electronic media
CEE t/as Electricity Wizard Pty Ltd	601 581 748	VA + CVL + Receivership	Services - electricity reseller
Corliso Pty Limited		VA	Retail - shoes
Corporate Host Pty Limited	073 915 214	VA + CVL	Tourism + Hospitality - Promotions

Appendix 2

Name	ACN	Type of Job	Industry
Cotec Contractors Pty Limited	050 211 268	VA + CVL	Building + Construction - Concreting and formwork
Dakota Holdings (NSW) Pty Limited	105 667 187	VA + CVL	Manufacturing - Bins & Drums
DC Naylor Pty Ltd	000 225 169	VA + CVL	Services - investment
Deadly Pty Limited	132 024 205	VA + DOCA	Services - Media + events management
Doclocker Worldwide Limited	000 716 772	VA + DOCA	IT - software
Duffield Engineering Pty Limited	000 324 621	VA + DOCA	Engineering - Hydraulic hose
E-Gistics Services Pty Limited	093 312 102	VA	Services - Logistics
Epsilon (1993) Pty Limited	062 332 129	VA	Information Technology - UPS systems
Equmen Pty Ltd	129 797 315	PL + VA + DOCA	Wholesale + Retail - online global distributor of underwear
Esen Productions Pty Limited	089 006 324	VA	Manufacturing - Furniture
Esen Sales Pty Limited	089 006 262	VA	Manufacturing - Furniture
Europe's Trade Enterprises Pty Ltd	119 542 880	VA + DOCA	Hospitality - café/restaurant
Excellerator Genetics Pty Ltd	000 046 711	VA + DOCA	Agriculture
Exling Pty Limited	003 153 008	VA	Engineering - Clothing + Textiles
Eyah.com Pty Limited	088 461 321	VA	Information Technology - ISP
Eyegazmic Solutions Pty Limited	081 834 853	VA + DOCA	Services - graphic design
Ezyco Pty Limited t/as Cabbage Tree Hotel	074 103 692	CVL + CVL	Tourism + Hospitality - hotel
Fable Collective Pty Ltd	149 354 905	VA + CVL	Manufacturing and distribution - shoes
FFAS Pty Ltd	137 808 836	VA + DOCA	
Fine Foods International Pty Limited (Admin Apptd)	056 949 707	VA + CVL	Wholesale + Retail - food import

Appendix 2

Name	ACN	Type of Job	Industry
Fitzroy Holdings Pty Limited	000 071 367	VA + CVL	Investment +Restructure
Gavin Jones Communications Pty Limited.	082 228 680	VA + DOCA	Services - Public relations + events
Global One Mobile Entertainment Pty Ltd	090 119 430	VA + CVL	Services - technology
Graphic Arts Corporation Pty Limited	000 109 044	VA + CVL	Services - print - flexible pre press
Graphic Arts Packaging Pty Limited	003 229 267	VA + CVL	Services - print - flexible pre press
Hallshine Pty Limited	083 170 905	VA + CVL	Retail - Wholesale - Fruit + Vegetables
HealthyFeast Pty Ltd	122 202 582	VA + CVL	Manufacturing - Food
Hide & Skin (Australia) Pty Ltd	052 300 268	VA + DOCA	Wholesale + Retail - hide & skins
HPM Technologies (Holdings) Pty Limited	076 747 807	VA	Information Technology
HPM Technologies Pty Limited	085 338 754	VA	Information Technology
Icon Hotels and Resorts Pty Ltd t/as Paradise Bay Resort	091 276 327	VA + CVL	Tourism + Hospitality
Ilfracombe Investments Pty Limited	000 058 686	VA + CVL	Investment + Restructure - MVL
IMO Controls Pty Limited	059 726 475	VA	Manufacture - Electrical components
Impelus Apac Pty Ltd	154 497 800	VA + CVL	Services - technology
Impelus Limited	089 805 416	VA + DOCA + CT	Services technology. ASX listed
Independent Equities Holdings Pty Ltd	088 283 809	VA + CVL	Services - equities research
Inverell Foundry (Australia) Pty Limited		VA + CVL	Engineering - Foundry
Jeffries Industries Limited	000 091 305	VA + DOCA	Engineering - Steel fabrication ASX listed
Jenlist Pty Ltd	003 619 789	VA + CVL	Retail + wholesale distribution
JIL Assets Pty Limited		VA + CVL	Engineering - Blasting + Protective coatings
Jobs Technical Pty Ltd	154 620 176	VA + CVL	Services - Recruitment
Karandonis Shoes (Aust) Pty Limited	003 883 190	VA + DOCA	Manufacture - shoes
Lift Trac Pty Limited	051 457 133	VA + CVL	Wholesale + Retail - industrial machinery

Appendix 2

Name	ACN	Type of Job	Industry
Metroland Australia Limited	009 138 149	VA + DOCA + CT	Services - property. ASX listed
Mini Minors Pty Limited	065 684 317	VA + DOCA	Wholesale + Retail - children's clothing
Monroe & Wood Pty Limited		VA + CVL	Services - Security
Montague World Travel Pty Limited	002 502 963	VA + CVL	Tourism + Hospitality - travel
Murray Lithographics Pty Limited	001 403 569	VA + CVL	Engineering - offset press + printing
Ostrack Pty Limited	001 498 424	VA + CVL	Services - Dental Services
OurWorld Global Network Pty Limited	076 222 690	VA + CVL	Information Technology - Global internet service provider
Plumb Rule Pty Limited	050 618 516	VA + CVL	Wholesale + Retail - plumbing supplies
PNA Developments Pty Ltd	125 874 320	VA + DOCA	Building + Construction
Propeller Reconditioners Pty Limited	002 780 314	VA + CVL	Services - marine
Property Services Training Company Limited		VA + CVL	Services - property
Rintex Pty Limited	003 347 608	VA + CVL	Building + Construction - residential building and subdivision
Rio Dorado Limited	148 175 991	VA	Metal Ore Mining Company
Robert Blyton Sales Pty Limited	002 561 579	VA + CVL	Wholesale + Retail - hardware
Setromp Pty Limited	060 423 387	VA + CVL	Manufacture - furniture
Shalimar Motor Supplies (NSW) Pty Limited	058 361 103	VA + CVL	Wholesale + Retail - motor vehicle spares
Shalimar Motor Supplies Pty Limited	000 156 721	VA + CVL	Wholesale + Retail - motor vehicle spares
Sich Pty Limited formerly trading as Forty Winks Erina and Forty Winks Tuggerah	069 484 439	VA + CVL	Wholesale + Retail - bedding franchise
South American Iron & Steel Ltd	060 319 119	VA + CVL	Mining
Spacescapes Distributors Pty Limited	054 708 477	VA + DOCA	Wholesale + Retail - toner cartridges
Specialised Bulk Haulage Pty Limited	001 733 624	VA + CVL	Services - Transport

Appendix 2

Name	ACN	Type of Job	Industry
Spray Alive Irrigation Systems Pty Limited	003 180 603	VA + CVL	Wholesale + Retail - irrigation
Swann Hospitality Pty Limited	96 605 048	VA + CVL	Tourism + Hospitality - labour hire
Telher Pty Limited	003 700 883	VA + DOCA	Building + Construction - Builders
The Fitout Firm Pty Limited	094 731 987	VA + CVL	Building + Construction - Commercial fitouts
The Stonemakers Pty Ltd	003 232 719	VA + DOCA	Building + construction - stonemasonary
Together Victory Pty Limited	062 471 550	VA + DOCA	Tourism + Hospitality - golf
V-Kal Pty Limited	058 244 081	VA + CVL	Wholesale + Retail - liquor, newsagency, post office
Venroy Holdings Pty Ltd	613 311 318	VA + DOCA	Retail - clothing
Vibe Australia Pty Ltd	078 632 541	VA + DOCA	Services - Media + events management
VOS Group Pty Ltd	088 607 210	VA + DOCA	Engineering - Civil engineering consultants
Wilshire Printing (Aust) Pty Limited	051 041 797	VA + CVL	Manufacturing - printing
Wix & Wax Pty Ltd	111 513 734	VA + CVL	Retail - homewares and furniture (beach theme)
Woodrule Pty Limited	003 879 196	VA + DOCA	Wholesale + retail - Furniture
Z & G Properties Pty Limited	003 818 335	VA	Services - Labour hire

Appendix 3

Our competitive edge
Strategy
Commercial
Triage thinking
Experience
Outcome focused
Communication with all stakeholders throughout

Appendix 4

For lawyers, advisors and others, this is a high-level synopsis.

Overview

Voluntary administration is a corporate rescue process under Australia's Part 5.3A of the Corporations Act 2001. The primary aim is to maximise the chances of the company's continuation through debt restructuring or, if unfeasible, to achieve a better outcome for creditors than would be possible in a liquidation. This process provides a temporary shield from creditor actions, giving the company time to formulate a plan to either recover or conclude its affairs in an orderly fashion.

Legislation

Part 5.3A of the Corporations Act for voluntary administrations states:

CORPORATIONS ACT 2001 – SECT 435A

Object of Part

The object of this Part, and Schedule 2 to the extent that it relates to this Part, is to provide for the business, property and affairs of an insolvent company to be administered in a way that:

(a) maximises the chances of the company, or as much as possible of its business, continuing in existence; or

(b) if it is not possible for the company or its business to continue in existence–results in a better return for the company's creditors and members than would result from an immediate winding up of the company.

Commencement of Administration

A company's voluntary administration begins on the date an administrator is appointed. This appointment can be made by a written instrument and may be initiated by:

- The company's board: If the board resolves that the company is insolvent, or is likely to become insolvent (unable to pay its debts as they come due), it may appoint a voluntary administrator. This is the most common route (Corporations Act 2001, Section 436A(1));
- A liquidator or provisional liquidator: If the liquidator believes the company is, or is likely to become, insolvent, they may also initiate administration (Section 436B);
- A secured creditor: A secured creditor with an enforceable security interest over all or substantially all of the company's assets can appoint a voluntary administrator (Section 436C).

Notably, the court does not have a general power to appoint voluntary administrators at the request of creditors or other parties.

Role and Authority of the Administrator

The voluntary administrator assumes control over the company's business, property, and affairs, with extensive powers, including the authority to continue, cease, or dispose of the business or any of its assets. Acting as the company's agent, the voluntary administrator can perform any function or exercise any power that the company or its officers would otherwise hold if not for the administration.

If a committee of inspection (a creditors' committee) is appointed at the first creditors' meeting, it can consult with the voluntary administrator on various matters. Once a voluntary administrator is appointed, this appointment is final, though creditors may vote to remove the voluntary administrator at the first creditors' meeting, or the court may do so if it would benefit the administration's progress.

Court involvement in an administration is generally limited, but parties may apply to the court during the voluntary administration, and the court retains broad authority to issue orders related to the process. Only registered liquidators may serve as voluntary administrators, and they are subject to regulation and oversight by ASIC.

Key Stages in the Administration Process
Voluntary administration consists of two key phases, each marked by a creditors' meeting.

(1) The First Creditors' Meeting:
At this initial meeting, creditors decide on two key matters:

1. Whether to replace the voluntary administrator.
2. Whether to establish a committee of inspection (a group representing creditors' interests) and, if so, to appoint its members.

This meeting must be held within 8 business days from the start of the voluntary administration, unless the voluntary administrator applies for and receives a court extension.

(2) The Second Creditors' Meeting:
This meeting determines the company's future, with three possible outcomes:

- The company enters a Deed of Company Arrangement (DOCA) to restructure its debts.
- The company is placed into liquidation.
- The company is returned to the directors' control, which is rare.

The second meeting is typically scheduled within 5 business days before or after the end of the "convening period." Ordinarily, the convening period lasts 20 business days from the start of administration (or 25 business days if the appointment occurs near Christmas or Good Friday). In complex or larger cases, administrators often request court extensions for the second meeting providing additional time to explore restructuring or sale options.

Most administrative work happens between the two meetings. During this period, the voluntary administrator conducts investigations, manages the business, prepares or evaluates DOCA proposals if relevant, and formulates strategies for asset sales or business reorganisation. This intensive phase is essential for developing viable options for the company's future.

Moratorium: Legal Protections
The voluntary administration process grants a financially distressed company a period of breathing space to decide its future path. During this period, an automatic stay is in place, which prevents:

- The company from being wound up.
- Secured creditors from enforcing their security interests.
- Lessors or third parties from reclaiming leased or third-party-owned property except perishable items.
- New or ongoing court and enforcement actions against the company or its property.
- Enforcement of guarantees provided by the company's directors or their spouses or relatives.

There are some exceptions to these restrictions. Creditors may seek court permission or the administrator's consent to proceed with specific actions. Additionally, certain secured creditors who had initiated enforcement before the voluntary administration may continue, and secured creditors holding security over most or all of the company's assets can take enforcement action (such as appointing a receiver) within the "decision period," which lasts 13 business days from the date the voluntary administrator is appointed.

Ipso facto stay: Protection Against Contractual Termination Rights

To improve the chances that a company in voluntary administration can continue trading and recover, certain contractual rights (including termination rights) cannot be exercised solely because the company has entered voluntary administration, unless the voluntary administrator consents or the court permits it. Specifically, parties are barred from enforcing contractual rights based on:

- The company entering voluntary administration.
- The company's financial condition.
- Any prescribed reason (none have been specified to date).
- Any reason essentially similar to the above.

The ipso facto stay only applies to contracts entered into on or after 1 July 2018.

There are some exceptions for specific types of contracts and rights.

Business Operations

During administration, the voluntary administrator has authority to manage the company's business, including continuing operations, incurring debts, and selling goods and services in the normal course, as long as these actions are authorised by the voluntary administrator. Alternatively the voluntary administrator can close or sell the business.

The voluntary administrator is personally responsible for debts incurred while fulfilling his or her duties, specifically for: (i) services provided, (ii) goods purchased, (iii) property leased, rented, used, or occupied, and (iv) repayment of borrowed funds, including associated costs and interest. Additionally, the voluntary administrator is liable for rent or other amounts under existing leases, starting 5 business days into the administration period, as long as the company continues to use the leased property.

To cover debts or liabilities incurred, the voluntary administrator is entitled to an indemnity from the company's property, which is secured by a lien. This lien has priority over unsecured creditors but typically ranks behind secured creditors, except in cases where the security is circulating in nature.

New Funding Options

The voluntary administrator has the authority to raise funds on the company's behalf and is personally liable for any debts incurred, with a right to indemnification from the company's assets.

In practice, if additional funding is needed for instance, to continue operations, the voluntary administrator typically first approaches an existing secured creditor, especially one holding security over most or all of the company's assets. If this creditor declines, the voluntary administrator may seek funds from other sources, such as a rescue financier. However, such external funding is usually only obtained with priority or super-secured status – that is, the new lender's security takes precedence over existing secured debts - which generally requires consent from the current secured creditor.

While no court orders are legally required to obtain such funding, administrators commonly apply to the court beforehand to limit personal liability. Similarly, lenders may request a court order to validate the security granted by the company for the new loan.

Business and Asset Sales

The voluntary administrator is empowered to sell the company's business and assets, directly overseeing or authorising the sale.

However, if property is subject to a security interest or owned or leased by a third party, the voluntary administrator can only proceed with the sale if one of the following conditions is met: (i) the sale occurs in the ordinary course of the company's business, (ii) written consent is obtained from the secured party, owner, or lessor, or (iii) court approval is granted. When making a sale, the voluntary administrator must act reasonably, exercising sound business and commercial judgment.

For assets covered by a valid security interest, any net proceeds from the sale must first be used to pay the secured debts. Buyers acquire these assets free from any previous claims or security interests.

A Pathway to Restructuring

Before the second creditors' meeting, any party can propose a DOCA to restructure the company's debts and operations. A DOCA is a flexible restructuring tool that establishes a binding agreement between the company and its creditors, detailing how to address outstanding debts after the administration period.

A DOCA can include various arrangements such as rescheduling debt repayments, extending payment terms, converting debt to equity, selling some or all assets, distributing funds to creditors, or establishing a creditors' trust. Proposals often come from directors, shareholders, or potential buyers of the company's business or assets. The main requirement for a DOCA is that it offers creditors a better outcome than liquidation. It may treat different classes of creditors differently if there is a valid business rationale for doing so.

A DOCA does not, however, interfere with the rights of secured creditors to enforce their security interests or prevent property owners or lessors from exercising their rights—unless they voted for the DOCA or a court orders otherwise.

The voluntary administrator reviews DOCA proposals and issues a report to creditors, recommending whether entering the DOCA would serve their best interests. Creditors vote on the DOCA at the second meeting, with approval requiring a majority in both value and number of those present including proxies.

If approved, the DOCA must be finalised and signed within 15 business days following the second meeting, unless the court grants an extension. It must include key provisions, such as the administrator's powers, termination conditions, and the formation of a committee of inspection. If the DOCA is not approved, the company typically enters liquidation, and the voluntary administrator generally becomes the liquidator.

Upon signing the DOCA, the voluntary administrator becomes the deed administrator unless creditors appoint someone else by vote. The DOCA then binds the company, its officers, shareholders, deed administrator, and all creditors (subject to certain rights of secured creditors and lessors as mentioned).

Depending on the DOCA's terms, control of the company may either remain with the deed administrators or return to the directors. Recent practice has seen DOCAs paired with creditors' trust deeds, allowing funds or assets to be held in trust for distribution. This setup can expedite the return of the company to normal operations, while the trust handles payments to creditors independently.

Set off

Entering administration does not automatically trigger a set-off requirement. However, set-off rights fall under the types of contractual rights that are exempt from the ipso facto stay. This means the stay does not restrict a counterparty's contractual right to offset amounts the company owes them against amounts they owe the company.

Effect on stakeholders

Upon the appointment of a voluntary administrator, the powers of directors and officers are put on hold. Employees remain employed unless their positions are terminated by the voluntary administrator. Additionally, members are generally prohibited from transferring their shares in a company under administration, with some exceptions. Voluntary administration does not automatically terminate the company's contracts.

End of procedure

A voluntary administration generally concludes after the second meeting of creditors, during which they decide whether the company should: (i) enter into a DOCA; (ii) go into liquidation; or (iii) return to the directors' control which is uncommon.

Once a DOCA is terminated, the company is no longer bound by its provisions. Termination usually occurs due to specific conditions outlined in the DOCA. However, under certain circumstances, a company may continue to be subject to a DOCA if it is ordered by the court, approved by the creditors' resolution, or through a notice issued by the deed administrators.

Support from Levi Consulting

As always, we remain available for discussion virtually or face-to-face. Reach out to David Levi at +61 418 602 466 for a confidential conversation about your unique circumstances.

	Option	When is it suitable?
1	Informal Workout	Whenever informal solutions with creditors are feasible.
2	Members' Voluntary Liquidation, alternatively, corporate simplification	Solvent deregistration of a company that had trading activity.
3	Voluntary Deregistration	Solvent deregistration of a company with no or limited trading activity (e.g. a holding company or dormant company).
4	Voluntary Administration	Key mechanism for businesses in financial distress to explore restructuring or sale options while under the protection of a moratorium.
5	Safe Harbour	A support tool for enabling directors of a distressed company to continue to trade while working on an informal workout or planning for a formal solvency.
6	Deed of Company Arrangement (DOCA) following Voluntary Administration	A flexible, formal insolvency restructuring tool. It follows a Voluntary Administration. Widely suitable for restructuring debts.
7	Creditors' Scheme of Arrangement	Another flexible formal insolvency restructuring tool - more cumbersome to implement than a DOCA, but with the advantage of being able to bind secured creditors. Ideally suited to financial restructuring of large/complex debt stacks.
8	Small Business Restructuring Plan	For small and micro businesses (less than $1,000,000 in total debts) - a quick and straightforward alternative to a DOCA.
9	Creditors' Voluntary Liquidation	Best suited to a terminal liquidation of a failed/insolvent company - where an attempt at restructuring through administration and DOCA would be unlikely to work.
10	Court Liquidation	Effective in instances of shareholder/management failure (e.g. in a failed or dysfunctional joint venture). Also commonly used by creditors to attempt to force an involuntary liquidation on a debtor company that has failed to pay its debts.
11	Receivership	A receiver is appointed by the court or alternatively by a secured creditor to take control of all or part of the assets and business of a company or partnership. Court-appointed receivers are common for partnership disputes.
12	Section 66G	When co-owners are in a dispute over jointly owned property the court can appoint trustees using s 66G of the *Conveyancing Act 1919* (NSW) to sell the property and distribute the proceeds.

Consultation at no cost

Company directors and advisors are welcome to call David Levi on **+61 418 602 466** for an initial consultation that will not incur a fee. Training for advisors in relation to these and other topics can also be arranged via videoconference.
Levi Consulting services all Australian States and Territories.