

# Sheridans' View

## Insolvency Law Reform Act 2016

The Insolvency Law Reform Act 2016 received Royal Assent on 29 February 2016 and comprises reforms to amend and streamline the Bankruptcy Act 1966, the Corporations Act 2001 (Cth) and the Australian Securities and Investments Commission Act 2001.

A key aim of the Act is to restore confidence in the insolvency profession by raising the standards of professionalism and competence of practitioners, and identifying and removing 'bad apples' from the profession more swiftly.

The Act aims to:

- remove unnecessary costs and increase efficiency in insolvency administrations.
- enhance communication and transparency between stakeholders.
- promote market competition on price and quality.
- improve overall confidence in the professionalism and competence of insolvency practitioners.
- align the registration and disciplinary frameworks that apply to registered liquidators and registered trustees.
- align a range of specific rules relating to the handling of personal bankruptcies and corporate external administrations.

The Government envisages that there will be a long lead time to prepare for the implementation of the Act (which will include drafting detailed rules for the new system by way of Insolvency Practice Rules). Although the effective date of the new legislation is not yet known, many are predicting a commencement date of 1 July 2017.

## Debt Management Firms

With purportedly 32% of households financially stressed, the growing market for debt management firms is significant.

Following an in-depth investigation, on 21 January 2016 ASIC released a research report, *Paying to get out of debt or clear your record: the promise of debt management firms (REP 465)*. Debt management firms can generally be categorised into four groups: credit repair, debt negotiators, debt agreement brokers and personal budgeting services.

The ASIC report concluded that fees and costs of debt management firms were "opaque", making it difficult for consumers to determine if the service was worth their money. It also found fees were "front loaded", or payable before services, increasing the consumer's commitment and, at worst, leaving the customer worse off.

ASIC also noted that some sales techniques used created a high-pressure sales environment, little information was given about important risks and some firms had a poor understanding of the relevant law. As ASIC points out, "there is no uniform regulatory framework for debt management firms and barriers to entry are low or non-existent."

ASIC's Deputy Chairman Peter Kell warned "The promise is always more prominent than the price. It is hard to find information about fees and they tend to be high, front loaded, and not refunded if the promise isn't delivered." Gerard Brody, chief executive of the Consumer Action Law Centre, said the ASIC report highlighted the serious gaps that were letting "debt vultures" work in a regulatory void.



## FOREWORD

*"Never make predictions, especially about the future."*  
Casey Stengel

*"I figure lots of predictions is best. People will forget the ones I get wrong and marvel over the rest."*  
Alan Cox

*"Let there be a special place in Hell for pundits who make predictions."*  
Rick Perlstein

*"Prediction is very difficult, especially if it's about the future."*  
Niels Bohr (Nobel laureate)

*"Those who have knowledge, don't predict. Those who predict, don't have knowledge."*  
Lao Tzu [6th Century Chinese Philosopher]

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# Sheridans' View

## AFSA's new "tip-off" form

AFSA has recently developed a formal process to receive and investigate "tip-offs", which will be handled by the Regulation and Enforcement team within AFSA.

A "tip-off" is a piece of information, whether or not given discreetly or confidentially, that is important in AFSA's role in administering the personal insolvency system and the operation of the PPSR. Tip-offs can be made anonymously if you do not wish to provide your name and contact details. An online form to submit tip-offs has been developed. See the new section regarding tip-offs on AFSA's website.

Separately, ASIC has published a new Information Sheet (INFO 208) which explains who to contact if you are concerned that a company, company directors or other company officers may have breached a law that ASIC does not enforce. See ASIC's website.

## Frequently Asked Questions

**Do you have to be 18 years old to become bankrupt?  
Can a minor declare bankruptcy?**

Although uncommon, it can and does happen that a minor becomes bankrupt. The Bankruptcy Act does not specify a minimum age for a person to become bankrupt, enter into a debt agreement or personal insolvency agreement.

However, also relevant is the legal capacity of someone to contract with another person. The law governing legal capacity to contract with another person on the basis of age varies according to the jurisdiction. While both the common law and statute operate to restrict the capacity of minors to contract, there will be circumstances when a contract to repay a debt made by a minor will be binding from the outset.

Between 2008 and 2014, six people who were aged 17 years became bankrupt. No one under the age of 17 has become bankrupt since 2008.

## Recent Assignments

- Liquidation of a property investment company.
- Personal insolvency administrations, including those involved with:
  - A restaurant.
  - Valve supply and repair.
  - Quality assurance and inspection of industrial, commercial and domestic coatings.
- Informal insolvency advice to various businesses, including those involved in hospitality, retail and construction trades.
- Litigation support, including:
  - Valuation of an accounting practice.
  - Investigations and sundry advice regarding various Family Court matters.
  - Assistance with the quantification of the parties' asset pool in Family Court matters.

**"The best way to predict the future is to create it."**

Peter Drucker



Did you know that a third of all dog owners have admitted to talking to their dog over the telephone, often leaving them messages on the answering machine. Your dog is as smart as a two-year-old toddler and your one-year-old pup is as physically mature as a 15-year-old human. Your dog's sense of smell is 1,000 to 10 million times better than yours and dogs can hear sounds four times farther away than humans. And your dog can smell your feelings.



## EDITORIAL

# The Folly of Predictions

*People love to predict the future; people are not very good at predicting the future.*

A prediction is a statement about an uncertain event. Outside the context of science, the term is usually used to refer to an informed guess or opinion, often, but not always, based on experience or knowledge.

Scientific hypothesis and prediction is usually more rigorous but predictions in other areas, for example finance, business, sports and politics are notoriously inaccurate and often completely and hilariously wrong. With evolving technology being hard to understand, making predictions about future trends in the tech business is especially risky.

- 1883: "X-rays will prove to be a hoax."  
Lord Kelvin, President of the Royal Society.
- 1903: "The horse is here to stay but the automobile is only a novelty – a fad." The President of the Michigan Savings Bank advising Henry Ford's lawyer not to invest in the Ford Motor Company.
- 1943: "I think there is a world market for maybe five computers."  
Thomas Watson, Chairman of IBM.
- 1946: "Television won't be able to hold on to any market it captures after the first six months. People will soon get tired of staring at a plywood box every night." Darryl Zanuck, 20th Century Fox Studio executive.
- 1977: "There is no reason for any individual to have a computer in his home." Ken Olsen, Founder of Digital Equipment Corp in a speech to the World Future Society.
- 1996: "Apple is a chaotic mess without a strategic vision and certainly no future." Time Magazine.
- 2004: "Two years from now, spam will be solved."  
Bill Gates at the World Economic Forum.
- 2006: "Everyone's always asking me when Apple will come out with a cell phone. My answer is, 'Probably never'."  
David Pogue, New York Times journalist.
- 2007: "There's no chance that the iPhone is going to get any significant market share. No chance."  
Steve Ballmer, Microsoft CEO.

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