

Sheridans' View



Insolvency Law Reform Act 2016

It's here, sort of.

In Issue 35 (June 2016) we reported that the Insolvency Law Reform Act 2016 ("ILRA") had received Royal Assent in February 2016, with the Government envisaging a long lead time to prepare for the implementation of the Act, including the drafting of detailed rules for the new system by way of Insolvency Practice Rules.

The framework of the new legislation has now been constructed (with a few ongoing amendments), and the legislation has a split commencement with sections of the legislation effective from 1 March 2017, and the remainder deferred to 1 September 2017.

The new legislation consists of:

- ILRA 2016 (which creates the Insolvency Practice Schedule (Corporations) ["Schedule 2" of the Corp Act] and Insolvency Practice Schedule (Bankruptcy), Corp Act/other legislative changes and transitional provisions).
- Insolvency Practice Rules (Corporations) 2016 and Insolvency Practice Rules (Bankruptcy) 2016.
- Corporations and Other Legislation Amendment (Insolvency Law Reform) Regulation 2016.
- Corporation Fees (Amendment) Regulation 2016.

The changes effective from 1 March 2017 largely relate to the registration and discipline of insolvency practitioners, the right to assign actions, removal of the designation 'Official Liquidator', definition of relation back, lodgement of DIRRIs and amendments affecting VAs and DOCAs.

The changes effective from 1 September 2017 are more extensive and generally relate to the conduct of administrations and estates.

Insolvency practitioners and lawyers are now busy learning how to navigate the new framework and apply the legislation, ensuring they understand changes to procedure and practice in each key appointment phase.

A First

In a first for her, Jennifer Low of Sheridans was very recently appointed Receiver and Manager of a company she was already Liquidator of.

What?

The impetus for the appointment was the recent trend of decisions in NSW and Victoria regarding the liquidation of corporate trustees and the resulting doubt over the extent of the Liquidator's and corporate trustee's rights over the assets of the trust.

In her recent court application, Jennifer sought to be appointed Receiver and Manager of the assets and undertaking of the relevant trust and to have the power to realise the trust assets.

To our knowledge, this was also the first of this type of application and appointment in WA resulting from the recent kerfuffle regarding a bare trustee's powers and the company's rights to sell the assets held on trust.



FOREWORD

What can you control?

"Life is 10% what happens to me and 90% how I react to it."
Charles Swindoll

"Whether you think you can or you think you can't, you're right."
Henry Ford

"Do or do not. There is no try."
Yoda

"I am not a product of my circumstances. I am a product of my decisions."
Stephen Covey

"Control your own destiny or someone else will."
Jack Welch

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New AFSA YouTube videos

AFSA continues to release new videos regarding the Personal Property Securities Register (PPSR):

- (i) "Bob gets a loan" provides an overview of key PPSR terms and concepts through a story of Bob purchasing a second-hand car.
- (ii) "Check before you buy" describes the PPSR and what it can be used for.

AFSA has also re-released five of its most popular videos in languages other than English. The videos, covering a range of topics on personal insolvency and the personal property securities system, are now available in Arabic, Farsi, Korean, Vietnamese, Cantonese and Mandarin. You can view the videos on AFSA's YouTube channel: click on the YouTube icon at the bottom of the AFSA website homepage (www.afsa.gov.au).

FAQ

How can I confirm if someone is bankrupt?

The National Personal Insolvency Index (NPII) is a public and permanent register of personal insolvency proceedings in Australia. The NPII provides information regarding the insolvency status of individuals. Anyone can search for a name on the NPII for a fee.

Recent Assignments

- **Liquidation of:**
 - A contract labour company
 - A grain merchant and transporter
 - A scaffolding company
 - A shoe repair products wholesale supplier
 - A construction company
 - A flooring company
- **Continuing liquidations involving:**
 - Pursuit of a preference recovery claim
 - Instigation of legal proceedings to pursue significant debt
 - Negotiations regarding the sale of business assets
- **Personal insolvency administrations, including those involved with:**
 - Migration services
 - The provision of legal services
 - Ceiling fixing
 - Processing of hardwood floors
- **Informal insolvency advice to various businesses, including those involved in property investment, hospitality and construction.**
- **Litigation support, including:**
 - Valuation of a vacuum excavation business
 - Investigations and sundry advice regarding various Family Court matters

"The best way to not feel hopeless is to get up and do something. Don't wait for good things to happen to you. If you go out and make some good things happen, you will fill the world with hope, you will fill yourself with hope."

Barack Obama

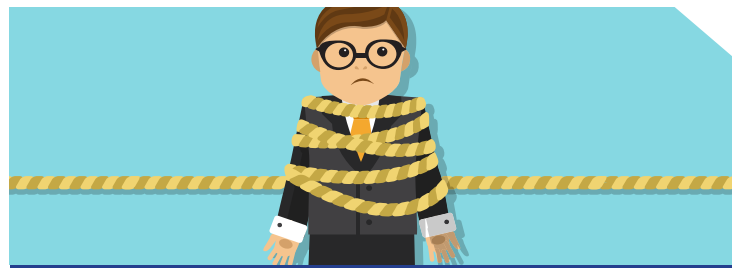
DID YOU KNOW?



Coca-Cola was originally marketed for white Americans, while Pepsi was marketed for African-Americans.

Coke marketed mainly to the white middle class, with promotional material appearing in segregated locations that served both races, but rarely in those that catered to African-Americans alone. Pepsi hired a "negro markets" department, black sales representatives, black fashion models in their ads and Duke Ellington as a spokesman.

Over the decades, both brands have sought to dispel the perception that either appealed to a specific race by expanding their marketing and launching multiple campaigns.



EDITORIAL

Helped, or hamstrung?

The rise of Debt Agreements

Debt agreements are at an all-time high, reaching record highs in the March quarter 2017 in Western Australia, Victoria, Queensland and South Australia.

At the same time, we have seen the burgeoning of debt management businesses, with their heavy and sustained advertising and promotion on day-time and late-night television, and through prominent websites and internet advertising.

"Make a quick phone call to get debt free, so you can get on with living a stress-free life."

The record high level of debt agreements and the proliferation of debt management businesses is obviously not unrelated. Debt agreements are being strongly promoted and recommended by these debt management businesses and there is considerable concern about this development.

The disquiet in the insolvency industry and with consumer and community advisors, and regulators, concerns the apparently indiscriminate and sometimes ill-advised use of the debt agreement. Debt agreements are being promoted as an alternative to bankruptcy and often extremely optimistic views are promoted to vulnerable people in financial distress about what can be achieved through a debt agreement.

What is generally left unsaid is that practically speaking the consequences of entering a debt agreement can be very similar to bankruptcy. As a result, while debt agreements can suit some people, they are not appropriate for others, and bankruptcy may indeed be the better option. But why this proliferation of advisors and surge in debt agreements? Obviously a contributing factor was the earlier economic downturn in the eastern states, which has more recently been followed in Western Australia with the downturn in the state's vital resources sector.

But there has been a second important contributing factor: the steady and relatively dramatic increase in the eligibility threshold limits for debt agreements. Debt agreements, which are regulated by the Bankruptcy Act, were introduced in 1996. Since 1996, the eligibility threshold limits have increased by 111%. In the same period (1996 to 2017) the consumer price index (CPI) has increased by 67%. Debt agreements' eligibility threshold limits have outstripped, or increased faster than, the CPI increase. The clear consequence is that more people in financial difficulty are eligible for debt agreements.

For debt management businesses it has produced a bigger, more lucrative market of potential clients in financial distress, a market that is generally less sophisticated and knowledgeable than the business community, and which is therefore more malleable and susceptible to manipulation.

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