

# Sheridans' View

## Mental health training for insolvency professionals

**Insolvency, and looming insolvency, is extremely stressful.**

It is not uncommon for those facing the prospect of insolvency to experience varying degrees of mental health issues as a result. And, less common but not rare, mental health issues can lead to insolvency.

Therefore, the principal Australian insolvency bodies (ARITA, AFSA and ASIC), in conjunction with Mental Health First Aid Australia, have developed a mental health training program for insolvency practitioners that will be rolled out in 2019. The program aims to better equip practitioners engaging with people experiencing financial distress.

Mr Hamish McCormick, Chief Executive of AFSA, has stated with regard to the training:  
*"We deal with ordinary, everyday Australians often at the most difficult point in their lives. There is a strong link between debt and mental illness and we hope that by providing access to specialist mental health training and resources, we can build the capability of insolvency practitioners in all aspects of their important work."*

### ASIC impersonators with banking scam

**Around Christmas 2018, ASIC issued a warning to the public to be wary of scammers claiming to be from ASIC in connection with Luxembourg Offshore Banking, also known as LUXOSB Limited.**

Luxembourg Offshore Banking, or LUXOSB Limited, claim to offer an investment program called ExpertKonek, through an online trading platform relating to stocks, foreign exchange, cryptocurrencies and indices markets.

Customers are asked to provide proof of ID such as photocopies of a passport and proof of address (e.g. utility bill) to activate a personal 'trading account'.

The fraudsters maintain that withdrawals are being processed or withheld by ASIC.

ASIC advises that the activities of Luxembourg Offshore Banking and LUXOSB Limited are scams. These entities are based overseas (despite claiming to be associated with a company in Australia), are not regulated by ASIC and are not licensed or authorised in Australia to provide financial services.

### Credit card crackdown in 2019

**The Australian government has introduced four reforms designed to protect consumers and promote responsible credit card lending;** the first reform was implemented on 1 July 2018 and the remaining three came into effect on 1 January 2019.

The four reforms are:

**1. Ban on credit card limit increase invitations.** This includes all forms of communication (including email, phone and in-branch).

**2. Stricter credit limit assessments.** An application for a credit card or a credit card limit increase must be assessed on the applicant's ability to repay the entire credit limit within a three year period.

**3. Online credit card cancellations.** Issuers must now take reasonable steps to help meet the customer's request. Contrary suggestions to customers may no longer be offered.

**4. Ban on backdated interest charges.** Interest cannot be retroactively charged.

These reforms to promote responsible lending will make it easier for some people to cancel credit cards, but make it harder for others to access higher credit limits.



## FOREWORD

*"Isn't it nice to think that tomorrow is a new day with no mistakes in it yet?"*  
LM Montgomery

*"Be willing to be a beginner every single morning."*  
Meister Eckhart

*"I hope you realise that every day is a fresh start for you. That every sunrise is a new chapter in your life waiting to be written."*  
Juansen Dizon

*"I discovered that a fresh start is a process. A fresh start is a journey – a journey that requires a plan."*  
Vivian Jokotade

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## Rash and hazardous gambling

AFSA has recently updated its practice statement (IGPS 6) explaining how AFSA makes a decision whether or not to refer for prosecution a possible offence under Section 271 of the Bankruptcy Act 1966.

Section 271 relates to rash and hazardous gambling leading to insolvency. This section makes it an offence for a person who has become bankrupt to have gambled, or speculated, in a rash and hazardous manner and as a result materially contributed to, or increased the extent of, his or her insolvency.

The offence is punishable, on conviction, by imprisonment for a period not exceeding one year.

The AFSA guidelines in the practice statement state:

- AFSA will not refer a case for prosecution where it appears that the debtor could be classified as having been a 'problem gambler' and had not engaged in any associated criminal activity to finance their gambling habit.
- AFSA will consider referring a case for prosecution only where it involves:
  - Clear criminality.
  - Complex offences.
  - Ongoing allegations of repeat offending subsequent to the bankrupt's being provided with an official caution by AFSA.

The practice statement notes that AFSA's policy reflects the principle that the public interest is not generally served by prosecuting minor incursions or by prosecuting persons who are suffering from a particular vulnerability or disadvantage.

## Recent Assignments

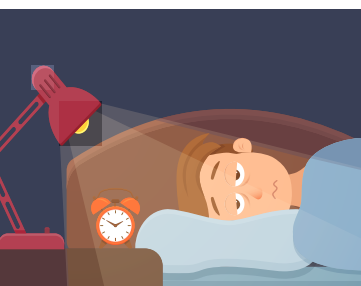
- Liquidation of a restaurateur and an office fitout and installation company.
- Voluntary administration of a company providing web development, digital marketing and brand services.
- Informal insolvency advice to sundry individuals involved with a café/food delivery business, matrimonial separation and property investment, and to various businesses, including a tree arborist and others involved in retail, property investment, the supply of workshop equipment, dental services and a licensed tavern.
- Litigation support, including:
  - Fraud report regarding a purported fraud alleged to have been perpetrated by a former employee.
  - Providing financial advice and analysis for a Supreme Court action regarding oppression with a resulting claim for loss and damage.
  - Expert reports regarding two Supreme Court claims for loss of profits.
  - Quantification of a significant asset pool for a Family Court matter.
  - Sundry advice regarding various Family Court matters.

**"Perfection is not attainable, but if we chase perfection we can catch excellence."**

Vince Lombardi

## DID YOU KNOW?

You can get Placebo Sleep



It turns out that if you *think* that you got a good night's sleep, your mind acts as if in fact you did, according to researchers at Colorado College, who demonstrated that the placebo effect can extend to sleep.

The research found that people did better on cognitive tests after being told (following bogus testing) that they got a high proportion of REM sleep (a good thing), even if they didn't. The hypothesis is that mindset can influence cognitive states and function.



## EDITORIAL

# New Year's resolutions

**A tradition, when a person resolves to change undesired behaviour, accomplish a goal or otherwise improve their life.**

Babylonians made promises to their gods at the start of each year that they would return borrowed objects and pay their debts. Knights in the Medieval era took the "peacock vow" at the end of the Christmas season each year to re-affirm their commitment to chivalry.

### Why do we like them?

Most of us like the idea, every now and again, of starting afresh, reinventing ourselves or just doing a little better in some facet of our lives. Infused with a surge of optimism for a new year, and encouraged perhaps by a Christmas toddy or two, we lurch towards New Year resolutions.

And what sort of resolutions do we make? The list is endless and varied. To improve our physical or mental well-being, to be more charitable, to improve our finances, career or education, and the old standard "to enjoy life more". Basically, to stop doing something or start doing something.

But old habits die hard, especially bad habits.

A 2007 study from the University of Bristol involving 3,000 people showed that 88% of those who set New Year resolutions fail, despite the fact that 52% of the participants were confident of success at the start.

### Why are we so bad at resolutions?

Much has been written and said about the fizzling novelty and ultimate failure of most resolutions, New Year's or otherwise. However, in a more positive vein, may I offer my dilettante suggestions for increasing your chances of achieving your New Year resolutions:

- Set realistic and meaningful goals (and not too many at one time).
- Envisage a specific goal, with a specific plan, rather than a generalised, bland goal.
- Work towards the goal incrementally.
- Set targets, keep track of progress and be truthful.
- Give rewards for progress.
- Imagine being successful and the benefits that will come from that success.
- Don't procrastinate or find excuses.
- Adapt and build on your specific action plan.
- Ask for support.
- Forgive setbacks. Perfection is unattainable.

## CONTACTS



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