

# Sheridans' View

## No April Fool – Directors' increased liability for superannuation

The government is getting particularly tough with directors on compliance with the superannuation guarantee system.

The *Treasury Laws Amendment (2018 Measures No. 4) Bill 2018* received Royal Assent on 1 March 2019 and came into effect on 1 April 2019. The Commissioner's enhanced powers under the Bill apply to all outstanding SGC liabilities that became payable from 1 July 2018.

The Bill enhances the Commissioner's powers in two principal ways:

- (1) *Penalties & directions* – the Commissioner can now pursue criminal penalties for serious contraventions of employer superannuation guarantee obligations, including potential jail time. Previously, the law only allowed the Commissioner to collect financial penalties. The Commissioner now also has the power to direct an employer to undertake a specified course of education.
- (2) *Compliance measures to enhance the director penalty notice ("DPN") regime* – Previously, a limitation of the DPN regime for unpaid PAYG and SGC debts was that a director could avoid personal liability by taking certain action before the penalty was "locked down".

The opportunity for the director penalties to be remitted existed if the PAYG and superannuation liabilities had at least been reported within three months of their due date, even though not paid.

The new law eliminates the three months from due date rule for superannuation reporting only. The superannuation amounts must be reported by their due date (i.e. 28 days after a quarter end), and not the former three months from the due date, for the director to have any opportunity to remit the penalty.

The three months from due date rule continues to apply to PAYG.

## Credit crunch for small business

Small businesses are being caught in the fall-out from the banking royal commission that has resulted in more onerous checks and conditions on borrowers.

In particular, for business borrowers using equity in residential property for borrowing, loan-to-value ratios have typically narrowed from 70% to 50%, and some brokers report 40% ratios.

This issue of a credit squeeze by financiers is exacerbated by falling house prices in a number of capital cities, resulting in dire consequences for small businesses struggling to expand, hire new staff and purchase essential equipment.

From March 2019, ING began disallowing borrowers from using their homes as security for business loans. The office of the Small Business Ombudsman estimates that approximately eight in ten small business owners have loans or lines of credit secured against their homes.

Many brokers and accountants are now reporting that it is exceedingly difficult, if not impossible, for small businesses to get a loan, with the critical difficulty being the issue of serviceability.



## FOREWORD

*"People often say that motivation doesn't last. Well, neither does bathing – that's why we recommend it daily."*

Zig Ziglar

*"Someday is not a day of the week."*

Denise Brennan-Nelson

*"Without hustle, talent will only carry you so far."*

Gary Vaynerchuk

*"Energy and persistence conquer all things."*

Benjamin Franklin

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## One-year bankruptcies – Dead as a Dodo

The Bill to effect the proposal to change the minimum bankruptcy term from three years to one year was not passed by the Senate before Malcolm Turnbull was ousted as Prime Minister and the subsequent calling of a Federal Election.

Given that the proposal for one-year bankruptcies was a Turnbull Government-inspired move, that was controversial and, at the least, not highly popular, it appears that the moment has passed. It was generally expected that one-year bankruptcies might affect the proliferation of Debt Agreements.

## Debt Agreement reforms start

*“... the most significant reform of the debt agreement system in a decade... Debt agreement administrators deal with some of the most vulnerable people in our community, and the Bill professionalises the industry to reflect its important function.”*

Attorney-General, Christian Porter.

On 19 September 2018 the Senate passed the *Bankruptcy Amendment (Debt Agreement Reform) Bill 2018*: See Sheridans' View Issue 43 for the details, available for download via [sheridansac.com.au/newsletters](http://sheridansac.com.au/newsletters).

Now on 27 June 2019 the Bill will finally commence.

## Recent Assignments

- **Liquidation of:**
  - A former legal company reinstated by a contingent creditor for the purpose of commencing legal proceedings against the company
  - A website design and online marketing company
- **Personal insolvency administrations, including individuals involved with:**
  - Design and manufacture of outdoor kitchens
  - Transportation and logistics
  - Earthworks and excavation work
  - Business & IT consulting
- **Informal insolvency advice to various businesses, including those involved in furniture design and manufacture, fast-food retailing, consulting to the mining industry, property development and construction**
- **Litigation support including:**
  - Expert solvency analysis report for a Liquidator
  - Expert report regarding a loss of profits claim resulting from the termination of a contract
  - Review and comments on a Single Expert report for the Family Court
  - Assistance with strategy and minor investigations regarding a Family Court matter

*“ Formula for success: rise early, work hard, strike oil.” J. Paul Getty*

## DID YOU KNOW? Stonehenge



At a 1915 auction, the millionaire Cecil Chubb on a whim bought Stonehenge for his wife, but she hated it because she had sent him to buy a set of dining chairs.

Three years later, Chubb gifted Stonehenge to the U.K. nation subject to several conditions, including that the entrance fee never cost more than a shilling and the locals could always have free access. Local residents are still entitled to free admission; currently the fee is £19.50 for everyone else.



## EDITORIAL

## Eat the Frog (Do the worst task first)

*“Eat a live frog first thing in the morning and nothing worse will happen to you the rest of the day.” Mark Twain*

**Your frog is your worst task: your most important task that you are most likely to procrastinate on and have little motivation to tackle.**

The task gets left to the end of the day, when you then realise there is no more, or not enough, time so it is put on the list for the next day. The undone task starts to cause additional pressure and stress, and has a negative impact on your productivity.

The longer you stare at the frog, the harder it is to eat it. The longer you wait, the more willpower you will need.

**Eat the Frog means:** just do it.

And do it first thing in the morning, before you do anything else or have to think about it too much. Tackle the task first thing with a clearer mind and while your willpower is at its strongest. This optimal setting is actually the best time to work on things you don't want to do. Imagine the sense of accomplishment this will produce and the positive momentum it creates for the rest of the day.

**Be productive:** don't confuse activity with efficiency.

Before you leave the office tonight, choose your frog and set yourself up to eat your frog tomorrow morning. Develop this planning and prioritising habit.

And what if you have two frogs to eat? Eat the biggest and ugliest one first.

## CONTACTS



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