

## With great power comes great responsibility...

**The recent case of *Gadsden v MacKinnon (Liquidator)*, in the matter of *Allibi Pty Ltd (in liq)* [2023] FCA 647 is an unequivocal endorsement of the proposition that serious allegations and claims by a liquidator with no proper foundation, or evidence to justify the claims, may be seen as an abuse of process.**

Liquidators are often hamstrung in their investigations, being strangers to the company's affairs and working with incomplete and unreliable information, coupled with unwilling and unco-operative directors. Yet they are charged with identifying recovery actions, for the benefit of creditors, in a timely manner.

Balanced against this imperative to act, and to act with due speed, liquidators, as officers of the court, are not "excused from compliance with rules applicable to all officers of the court, including rules and standards that govern the threat, initiation and conduct of legal proceedings. And it does not mean... that they can act oppressively or harshly, by seeking to exert pressure, with the spectre of legal costs, or causing undue embarrassment and the like..."

In recognition of the unenviable position liquidators often find themselves in, they have been conferred with special powers, including the ability to summons directors to give evidence.

The making of serious but purely speculative allegations or ambit claims in the hope of getting to the bargaining table is not justifiable or appropriate for a liquidator.

In this recent case, such action was seen as sufficient cause for the removal, and replacement, of the liquidators concerned.



## FOREWORD

"You don't get results by focusing on results. You get results by focusing on the actions that produce results."

**Mike Hawkins**

"The key to realising a dream is to focus not on success but significance."

**Oprah Winfrey**

"You only have to do a very few things right in your life so long as you don't do too many things wrong."

**Warren Buffett**

"Focus is a matter of deciding what things you're not going to do."

**John Carmack**

"You will never reach your destination if you stop and throw stones at every dog that barks."

**Winston Churchill**

## Discounting of future debts in a liquidation

**This issue does not arise often in liquidations because at the date of liquidation, it is usual that almost all, if not all, creditors' debts are already overdue and payable, or will be very shortly after the date of liquidation.**

But in the event that credit has been obtained by the company on extended terms, the discounting of the future debt could be relevant.

If a debt existed at the date of liquidation (i.e. the relevant date) but was not due for payment until some considerable time after the date of liquidation, then the amount the debt is admitted for is discounted by 8% p.a. from the due date back to the date of the declaration of the dividend.

Relevant legislation: S553(1) of the Corporations Act 2001 – Provable debts/S554B – Discounting of debts payable after relevant date/Reg. 5.6.44 of the Corporations Regulations 2001 – Debt discount rate.

## ATO late lodgment amnesty

**Announced on 9 May 2023 and available for businesses with less than \$10 million annual turnover at the time the original lodgment was due.**

The amnesty automatically remits any failure to lodge (FTL) penalties for outstanding income tax returns, BAS or FBT returns that were due between 1 December 2019 and 28 February 2022.

The amnesty is available from 1 June 2023 to 31 December 2023.

It should be noted that the amnesty does not cover every potential penalty applied to overdue obligations, including director penalty notices.

The ATO Assistant Commissioner Emma Tobias has urged small businesses to take advantage of the amnesty to get back on track with their tax obligations if they have fallen behind.

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## Report card on insolvency system

The Parliamentary Joint Committee on Corporations and Financial Services, due to report in May 2023, reported in July 2023 on its bipartisan review of the state of corporate insolvency law in Australia.

The Committee concluded that corporate insolvency law in Australia is "overly complex, difficult to access, and creates unnecessary cost and confusion for both debtors and creditors", and made 28 recommendations for corporate insolvency law reform.

The Committee has proposed a comprehensive and independent review of insolvency law (both corporate and personal insolvency) in Australia to address many of its recommendations, plus it identified certain urgent reforms that it considered should be implemented in the short-term, independently of the review.

ARITA has welcomed the Committee's recommendations, in particular the need for a 'root and branch' review of insolvency law "to create a more simple, efficient and effective regime to foster better outcomes for companies in financial distress". We await the government's response to the Committee's report as to which recommendations will be implemented, and when.

## Our Solutions

### FINANCIAL DIFFICULTIES & INSOLVENCY

**We provide help and support for companies and individuals under financial strain.** We are specialists in corporate and personal insolvency services, financial and strategic advice and support, and turnaround and restructuring advice.

#### Recent work:

- Informal assessments of current financial difficulties, including an assessment of options and explanation of implications.
- Negotiating the resolution of a number of voidable transaction claims.
- Negotiating the settlement of a significant judgment on behalf of the debtor.
- New personal insolvency administrations including a pole dancing instructor, café owner and purchasing officer.



### LITIGATION SUPPORT

**Litigation support and forensic services can take many forms and we tailor our approach to the individual requirements of each assignment.**

#### Recent work:

- Review of expert valuation reports regarding a manufacturer of bakery products and a licenced café and bar.
- Expert assessment of a loss of profits claim involving a Black Hawk helicopter.
- Valuation of a scuba diving business.
- Single expert investigation regarding the use of business funds.
- Expert assessment of a loss of profits claim involving a backpackers hostel.
- Valuation of a periodontics practice.

## DID YOU KNOW?

Barbie took \$1 billion globally in 17 days, beating the previous record holder, Harry Potter and the Deathly Hallows – Part 2 (19 days in 2011). Barbie is packed with hidden movie easter eggs; look out for:

- Growing Up Skipper doll (whose chest grew when you rotated her arm) and Sugar Daddy Ken, both controversial and discontinued.
- The Wizard of Oz film references.
- Bratz doll reference (high school girls).
- Homage to Kubrick's 2001: A Space Odyssey.
- Odometer in Barbie's car: 030959; launch date of the first Barbie.



## EDITORIAL

# Focus on the step in front of you, not the whole staircase

**This quote is often attributed to Martin Luther King, Jr., referencing a speech he made in New York City in 1962. King was referring to the first step in faith, and being a religious man, therefore a faith in God, but the quote equally applies to all kinds of faith, and the staircase is a flexible metaphor.**



The path to achievement is not always simple and straightforward, it can be, and often is, obscure. The complete staircase may be out of sight with only part of the staircase visible. And trying to concentrate on or envisage the entire staircase can be overwhelming, making us lose confidence and creating fear.

The faith required is that if one takes the first step, the rest of the staircase is there to get you to your destination.

Ensuring the first step is in the right direction is important but failing to start before knowing everything, or learning a little more, may mean you'll never be able to start. You need to have belief in the parts of the process you know you can control.

We usually can't draw blueprints for the entire staircase we are supposed to climb. We often want a certain outcome but don't know the path to get there; use your faith to get started, believe in your ability to climb, and don't lose momentum; keep moving.

And stay focused. For any goal, the hackneyed phrase is "The hardest part is getting started." But for long-term goals or projects, it is equally difficult to get to completion. Staying focused is critical, and tough with the inevitable distractions.

And finally, while goals are important for setting a direction, committing to a process, a system or way of being is what makes the difference and makes progress in the long term.

Matildas midfielder Tameka Yallop: "I think we have to maintain focus all the way through, no matter the result, or the performance..."

**"Breathe, darling.  
This is just a chapter. It's not your whole story."**

**S.C. Lourie**

## CONTACTS



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