

# Sheridans' View



## Innovative insolvency law changes

As part of the National Innovation and Science Agenda, the Australian Government has proposed reforms to insolvency laws designed to encourage innovation and entrepreneurial behaviour, while still protecting creditors.

The Government's National Innovation Statement which outlines the proposed reforms was issued on 7 December 2015, the same day that the Productivity Commission's Inquiry report into Business Set-up, Transfer and Closure was also released.

The PC's report is a companion piece to the Government's proposed reforms, although at this stage only 3 of the 15 recommendations in the PC report for insolvency reforms are mentioned in the Innovation Statement.

### Reducing personal insolvency to one year

This proposal is to reduce the current default bankruptcy period from three years to one year.

In particular, the proposal is that where no offence has occurred, a bankrupt is automatically discharged and restrictions relating to overseas travel, holding an office under the Corporations Act 2001 (Cth), employment within certain professions and access to personal finance are lifted after one year.

The purpose of this reform is to encourage a vibrant start-up economy, move away from blaming entrepreneurs as failures and reducing the stigma attached to personal insolvency.

The reforms provide a process for longer periods of bankruptcy where fraud or misconduct is involved.

### Safe harbour for directors during restructuring

The Innovation Statement proposes a safe harbour defence for directors from personal liability for insolvent trading if they appoint a restructuring adviser to develop a turnaround plan for the company.

The directors would need to act according to the advice of the restructuring advisor and the safe harbour would continue only for so long as there were reasonable prospects of saving the business.

This reform is aimed at encouraging businesses to take healthy risks but with expert advice.

### Nullifying ipso facto contract clauses

This third proposal is to make 'ipso facto' clauses, which allow contracts to be terminated solely because of an insolvency event, unenforceable if a company is undertaking a restructure.

The purpose of this reform is to allow a better opportunity for businesses to trade through financially challenging periods without key contracts being terminated.

Generally the proposed reforms have been positively received, particularly as major reform of Australia's insolvency regime has not occurred for over 20 years.

It is expected that the Government will release a proposal paper in the first half of 2016, with legislation to be introduced and passed in mid-2017.



## FOREWORD

*"I think it is possible for ordinary people to choose to be extraordinary."*

Elon Musk

*"The way to gain a good reputation, is to endeavour to be what you desire to appear."*

Socrates

*"The people who are playing it totally safe are never going to have either the fun or the reward of the people who decide to take some risk, stick out, do it differently."*

John Akers

*"Only those who dare to fail greatly can ever achieve greatly."*

Robert F. Kennedy

*"Leap and the net will appear."*

Proverb

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## Corporate insolvencies

ASIC's quarterly insolvency statistics for the September 2015 quarter show a national increase for all external administrations of 8% compared to the June 2015 quarter, and a 20% increase on the September 2014 quarter.

Interestingly, the detail shows that court liquidations (up 54%) and voluntary administrations (up 12%) rose nationally compared to the June 2015 quarter while creditor voluntary liquidations and receiverships fell overall (down 16% and 6% respectively).

Court liquidations were up 74% compared to the September 2014 quarter. We speculate as to whether this significant increase is due to the increased debt recovery activity by the ATO.

## Frequently Asked Questions

**In a liquidation, does the ATO get paid before other creditors?**

No. The ATO's priority in respect of unremitted PAYG (and certain other taxes) was abolished in 1993 and the ATO now ranks equally with other unsecured creditors (over 20 years later some people are still unaware of this change).

However, the ATO is in a better recovery position in corporate and personal matters compared to other unsecured creditors because of the ATO's legislative power regarding, among other things, director penalty notices ("DPNs"), statutory garnishees, PAYG withholding and SGC estimates, departure prohibition orders (preventing a tax debtor from leaving the country) and notices to provide information.

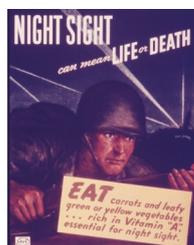
## Recent Assignments

- **Liquidation of a livestock transport company.**
- **Personal insolvency administrations, including those involved with:**
  - Tree lopping
  - Graphic design
  - Property investment
  - Trucking
  - Agricultural contracting
- **Informal insolvency advice to various businesses, including those involved in hospitality, retail, construction trades and backpackers' accommodation.**
- **Litigation support, including:**
  - Assistance with quantification of a damages claim regarding a limousine hire business
  - Valuation of a water management business
  - Assistance with quantifying the husband's income for a Family Court matter
  - Investigations and sundry advice regarding various Family Court matters
  - Assistance with the quantification of the parties' asset pool in Family Court matters

**"Time is what we want most, but what we use worst."**

William Penn

## DID YOU KNOW?



In WWII the U.K. Ministry of Information, in a subterfuge campaign, reinforced and popularised the myth that eating carrots can help you see in the dark. The purpose of the campaign was to hide the development of new, secret radar technology, critical to the Allied victory, which helped the RAF pinpoint enemy bombers at night before they reached the English Channel. But in order to keep the new technology a secret, the Ministry said carrots were behind the pilots' success.



## EDITORIAL

# Being remarkable Building your own brand

**Stuck in survival mode rather than thriving?  
Want to grow your business, or just be noticed?  
You may feel you are noticed but is that enough?**

**Maybe you want to be remarkable, something or someone that is remarked upon or talked about.**

Being remarkable takes verve, confidence, application and resilience. It involves building your brand, being bold, risk-taking and constant evolution.

Start with considering all the positive attributes that you believe you possess, that your enterprise or products possess, and the qualities that set you apart.

Then find the words that best describe what you aim to achieve. Don't use generic words, focus on the words that are uniquely you.

Then apply your values to how you act and promote yourself in every single way: how you appear, what you do, how you communicate, what your product or service is, and critically, how you think.

**Think about it, then do something.**

Be bold, take risks; remarkability lies in the edges. In the early '90's, fashion brand French Connection was being slaughtered by an influx of cheap competitors. It couldn't beat their low prices and, worse, it had lost its youthful edge and looked increasingly old-fashioned. One night, its creative director spotted a fax from the Hong Kong branch (FCHK) to the UK branch (FCUK).

FCUK. Within weeks those four letters appeared on every new item of clothing, in every shop window and on every ad. Fuddy-duddies were outraged, but cash registers chimed and the brand regained its youthful appeal.

Work hard (no short cuts, no deviations) and make continual efforts to constantly reinvest and reinvent. Commitment with no procrastination. Work with good people or associate with other strong brands. Notice and learn from other remarkable people or businesses.

And lastly, confront and overcome your fears: fear of failure - or even success, offending others or looking foolish. You cannot be creative, bold, incisive or decisive from a place of fear.

## CONTACTS



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