A Copy of this communique will be produced in evidence.

Allegedly Chris Kourakis is acting as the Chief Justice of the alleged Supreme Court of SA and is the person responsible for the mutiple breaches of Separation of Powers suffered by me and countless others.

Mr Kourakis has a propensity to avoid the evidence in matters where he and/or his ex partners at Minter Ellison have a pecuniary interest such as my affidavit dated 16th October 2015 which is an integral part of my defence shown as Exhibits AMG 21a - AMG 21g.

Just like the issues arising out of Mr Korakis withholding of the Vernon Roberts report in the Henry Keogh Affair, his position and as a result Stephen Marshalls position remains untenable. (**AMG 338**)

I have copied Kourakis, Mr Marshall, Judge Hribal and Counsel in New York considering my brief but not yet acting on this communique in respect to this vexing issue.

Kind Regards

Andrew Garrett

Chief Executive Officer/ Managing Trustee/ Chairman/ Commonwealth Attorney General/ Liquidator and Managing Controller Appointed to the Crown (Liquidator Appointed and Managing Controller Appointed),
Corporate Commonwealth States and Territories of Australia (Liquidator Appointed and Managing Controller Appointed),
Reserve Bank of Australia (Liquidator Appointed and Managing Controller Appointed) and otherwise as disclosed in Public Interest Disclosure Drive at:

https://onedrive.live.com/?id=13EBD865C7415CD4%2113999&cid=13EBD865C7415CD4


OenoViva Global **("OV(Global)")**; OenoViva Business Systems **("OVBS")**; OenoViva Capital Resources **("OVCR")** OenoViva Hand Crafting **("OVHC")** OenoViva Artisans **("OVA")** *Together hereinafter "OenoViva"*

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Asia
Hong Kong: Level 19, Two International Finance Centre, 8 Finance Street, Central, Hong Kong
Ho Chi Minh: Suite 103, 140 Nguyen Van Thu Street, District 1, Ho Chi Minh, Vietnam

USA
Washington: 1015 15th ST NW #1000 Washington DC 20005

Australia
Hobart: Level 6, Reserve Bank Building, 111 Macquarie Street, Hobart, TAS, 7000
Adelaide: Level 30 Westpac House, 91 King William Street, Adelaide, SA, 5000
Melbourne: Level 27, 101 Collins Street, Melbourne, VIC, 3000
Sydney: Level 35, Tower One Barangaroo, International Towers Sydney, 100 Barangaroo Avenue, Sydney, NSW, 2000
Brisbane: Level 36, Riparian Plaza, 71 Eagle Street, Brisbane, QLD, 4000

M: +61 450 831 708

E: andrew.garrett@oenoviva-capital-resources.com & attorneygeneral@commonwelath-attorney-general.org

---

From: AMG@OVCR <andrew.garrett@oenoviva-capital-resources.com>
Sent: 02 August 2021 07:26
To: ADEReceptionMailboxShared@cdpp.gov.au <ADEReceptionMailboxShared@cdpp.gov.au>; scott@matthewmitchell.com.au <scott@matthewmitchell.com.au>; grants@lsc.sa.gov.au <grants@lsc.sa.gov.au>; chambers.chiefjustice@courts.sa.gov.au <chambers.chiefjustice@courts.sa.gov.au>; AMCregistry@courts.sa.gov.au <AMCregistry@courts.sa.gov.au>
Cc: Matthew Galasso <matthew.galasso@oenoviva-capital-resources.com>; peter.kerin@oenoviva-capital-resources.com <peter.kerin@oenoviva-capital-resources.com>; Paul Rigby <cfo@oenoviva-capital-resources.com>; michelle.scerri@australianpeoplefuturefund.org <michelle.scerri@australianpeoplefuturefund.org>; Steven M. Chen <scohen@hoganwillig.com>; Chris Page <chris.page@sourcealliancegroup.com>
Subject: AMG 3327 Re Australian Taxation Office v Andrew Morton Garrett (AMC-18-5575 & DCCRM-19-073) & Reserve Bank of Australia v Andrew Morton Garrett (HMC-2019- 9596 &AMC-20-2886)

Dear Director, Mr Kourakis, Judge Hribal,

I am disturbed that the Crown (Liquidator and Managing Controller Appointed) has not complied with the Model Litigant continuous full disclosure obligations in proceedings involving me whether Civil or Criminal in nature.

I first addressed those obligations in my submissions dated 5th November 2014 (**AMG 20**) served upon you as attached.

I have copied the correspondence received from you dated 8th June 2018 below which attached Steps in Prosecution; please confirm why no committal proceeding was heard before the commencement of DCCRM-19-073 and why the absence of those proceedings was procedurally fair, in circumstances where I had not waived my right to counsel in the court below.

With regard to, the Crown (Liquidator and Managing Controller Appointed) Model Litigant Continuous Full Disclosure Obligations, I have not received any copies of correspondence between you and Matthew Mitchell Solicitors and/or Mangan Ey and/or Shaw and Henderson and/or Vadasz Lawyers.

Without seeing that correspondence and understanding the content of that correspondence I will not be bound by that Correspondence in any way.....this includes any assertion that I may elect to admit facts or alternatively enter a plea bargain process.

I note that the matters arising under Rule 49, First Second, Third, Fourth and Fifth Addendum to the Rule 49 served upon you have not been heard by any court this includes the application set out at para 24, 25 and 26 of the First Addendum:

24. That an order is made that;

a. The Committal and Plea in AMC-18-5575; *Regina (Managing Controller Appointed) v Andrew Garrett (Managing Controller)* made by the accused in his personal capacity is set aside and a plea of "**No Case to Answer"** is entered upon re-opening of the proceedings.

b. The arraignment and plea made by the accused in his personal capacity and the Court in these proceedings is set aside and a plea of "**No Case to Answer**" is entered upon reopening of the proceedings.

c. The Committal and plea in AMC-2006-19522; *Regina v Andrew Garrett* made by the Accused in his personal capacity is set aside and a plea of "**No Case to Answer**" is entered upon reopening of the proceedings.
d. The Arraignment and plea in DCCRM-2007-742 made by the Accused in his personal capacity is set aside and a plea of "**No Case to Answer**" is entered upon reopening of the proceedings and the Conviction is quashed.
e. The Committal and Plea in HMC-19-9596; *Regina (Managing Controller Appointed) v Andrew Garrett (Managing Controller)* made by the accused in his personal capacity and the court is set aside and a plea of "**No Case to Answer**" is entered upon re-opening of the proceedings.
f. The Committals, Pleas and Convictions made AMC-2005-4487; AMC-2005-8812; AMC-2005-9276 and AMC-2006-1307 made by the accused in his personal capacity and the court are set aside and a plea of "**No Case to Answer**" is entered and the conviction is quashed
g. The Committals, Pleas and Convictions made MMC-2016-151000380 made by the accused and the court is set aside and a plea of "**No Case to Answer**" is entered and the conviction is quashed.
h. AMC-2020-2886 is heard together with this proceeding.

25. That Prerogative Writs of Ouster Office/Quo Warranto are made in respect to all executive decisions made by the Attorneys General of the Commonwealth the States and Territories related to the accused and granting declatory relief that the aforesaid have abdicated office and in particular their roles as champions of the Public Interest.

26. That a declaration is made that the Notice dated 1st June 2019 and annexures served on this court and Regina (Managing Controller Appointed) is binding upon the parties.

Please provide me with a copy of the Brief of Evidence without delay in AMC-20-2886.....despite the passage of time since service of the Information and Summons upon me

Please provide copies of all correspondence (that has not been previously provided) between the CDPP Office representatives and:

1. Courts (Chambers of Judicial Officer or Registry) involved in the proceedings listed above.
2. Counsel at various time briefed in my defence in the proceedings listed above.
3. The Adelaide Signals Directorate and/or the Australian Cyber Security Centre related to me.
4. Chris Kourakis/Don Mackintosh/Vincent Tavolaro related to me.

Kind Regards

Andrew Garrett

Chief Executive Officer/ Managing Trustee/ Chairman/ Commonwealth Attorney General/ Liquidator and Managing Controller Appointed to the Crown (Liquidator Appointed and Managing Controller Appointed),
Corporate Commonwealth States and Territories of Australia (Liquidator Appointed and Managing Controller Appointed),
Reserve Bank of Australia (Liquidator Appointed and Managing Controller Appointed) and otherwise as disclosed in Public Interest Disclosure Drive at:

https://onedrive.live.com/?id=13EBD865C7415CD4%2113999&cid=13EBD865C7415CD4

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& www.carbonhelix.net & https://vivacoin.org & www.thecommonwealth.org & www.rba.gov.au

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Hong Kong: Level 19, Two International Finance Centre, 8 Finance Street, Central, Hong Kong
Ho Chi Minh: Suite 103, 140 Nguyen Van Thu Street, District 1, Ho Chi Minh, Vietnam

USA
Washington: 1015 15th ST NW #1000 Washington DC 20005

Australia
Hobart: Level 6, Reserve Bank Building, 111 Macquarie Street, Hobart, TAS, 7000
Adelaide: Level 30 Westpac House, 91 King William Street, Adelaide, SA, 5000
Melbourne: Level 27, 101 Collins Street, Melbourne, VIC, 3000
Sydney: Level 35, Tower One Barangaroo, International Towers Sydney, 100 Barangaroo Avenue, Sydney, NSW, 2000
Brisbane: Level 36, Riparian Plaza, 71 Eagle Street, Brisbane, QLD, 4000

M: +61 450 831 708

E: andrew.garrett@oenoviva-capital-resources.com & attorneygeneral@commonwelath-attorney-general.org

---

From: Andrew Garrett <andrew.garrett@taggc.com.au>
Sent: 08 June 2018 12:03
To: sean@hayeslegal.com.au <sean@hayeslegal.com.au>
Subject: Fwd: Australian Taxation Office v Andrew Morton Garrett (AMC-18-5575) [DLM=Sensitive:Legal]

Sent from my iPhone

Begin forwarded message:

From: ADE Reception Mailbox Shared <ADEReceptionMailboxShared@cdpp.gov.au>
Date: 8 June 2018 at 5:30:37 pm AEST
To: "andrew.garrett@taggc.com.au" <andrew.garrett@taggc.com.au>
Subject: Australian Taxation Office v Andrew Morton Garrett (AMC-18-5575) [DLM=Sensitive:Legal]

Sensitive: Legal

Dear Mr Garrett

I refer to your emails of 7 June 2018 and 8 June 2018.

I confirm your advice that Mr Hayes is no longer instructed in respect of these proceedings.

You have been summonsed to appear before the Adelaide Magistrates Court on 27 July 2018 at 10.00am. Should you be unable to attend in person on that date, I suggest you contact the Registry of the Adelaide Magistrates Court (contact details are available here). In the event you fail to attend, the Court may issue a warrant for your arrest.

The matter is listed on 27 July 2018 for the first mention of these proceedings following service of the Summons issued by the Court on 4 May 2018. The Crown will request that the matter be adjourned to a later date to allow the committal brief to be provided to the Court and to yourself.

Please find attached an Information Sheet headed 'Steps in a Prosecution'.

This email is not intended to be legal advice. It is recommended that you seek your own legal advice.

Kind Regards

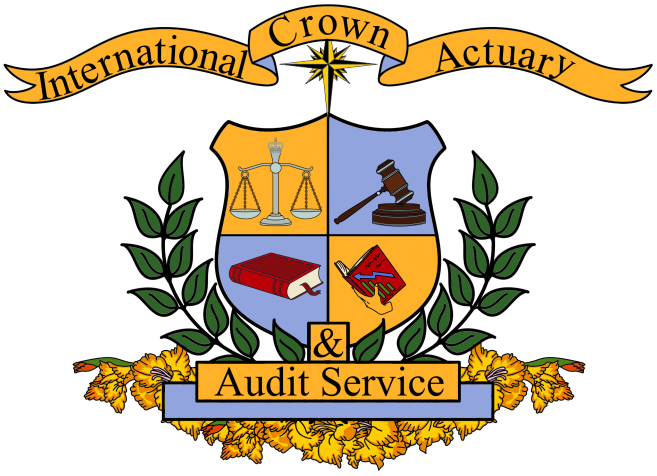
andrew.garrett@dynamic-capital-bank.com

From:	andrew.garrett@dynamic-capital-bank.com
Sent:	Thursday, 18 September 2025 5:22 PM
To:	'secretariat@ajoa.asn.au'; 'processservice@agso.gov.au'; 'enquiries@hcourt.gov.au'; 'ierodiaconou.associate@supcourt.vic.gov.au'; 'requests@fundsincourt.vic.gov.au'; 'dorisborkowski@bigpond.com'; 'judgeburchell.chambers@countycourt.vic.gov.au'; 'rcolquhoun@westpac.com.au'; 'shannon.finch@westpac.com.au'; 'brisbanelitigation@minterellison.com'; 'advice.enquiries@victorianlrs.com.au'; 'lv.warrants@transport.vic.gov.au'; 'Jaclyn.Symes@parliament.vic.gov.au'; 'moneylaundering@ag.gov.au'; 'info@afca.org.au'; 'OFACdisclosures@treasury.gov'; 'OFACReport@treasury.gov'; 'mcdonald.chambers@supcourt.vic.gov.au'; 'secretary@rba.gov.au'; 'governor@rba.gov.au'; 'legal.document.service@asic.gov.au'; 'info@apra.gov.au'; 'jan.adams@dfat.gov.au'; 'adelaide@cdpp.gov.au'; 'info@asx.com.au'; 'info@afsa.gov.au'; 'rob.heffernan@ato.gov.au'; 'service@igt.gov.au.'; 'international@accc.gov.au'; 'email@lawsocietysa.asn.au'; 'info@lawsocietywa.asn.au'; 'ethics@liv.asn.au'; 'info@qls.com.au'; 'mail@actlawsociety.asn.au'; 'LSPPT@lawsocietynt.asn.au'; 'info@lst.org.au'; 'mail@lawcouncil.au'; 'memberservice@cpaaustralia.com.au'; 'sarah.doughty@treasury.gov'; 'Sarah.Hickman@treasury.gov'; 'ben.allen@dentons.com'; 'gavin.mclaren@coors.com.au'; 'ben.pullen@dentons.com'; 'andrew.dyda@finlaysons.com.au'; 'jwu@piperalderman.com.au'
Cc:	'ceo.saudi-arabia@oenoviva-capital-resources.com'; 'coo.saudi-arabia@oenoviva-capital-resources.com'; 'ceo.senegal.thgambia@oenoviva-capital-resources.com'; 'coo.senegal.thegambia@oenoviva-capital-resources.com'; 'mahammed.a.a.mhoahammed@oenoviva-capital-resources.com'; 'ceo.gibraltar@oenoviva-capital-resources.com'; 'coo.gibraltar@oenoviva-capital-resources.com'; 'alilababidi2009@hotmail.com'; 'Hany Osman'; 'hamadawahdan@yahoo.com'; 'sherryannt@bigpond.com'; 'taxpf@ird.gov.hk'; 'Enquiry CEO/CEO'; 'ceo@gspholding.com.br'; 'enquiries@ppsr.gov.au'; 'enquiry@judiciary.hk'; 'Scott Mitchell'; 'enquiries@ppsr.gov.au'; 'australia@mid.ru'; 'ceo.global@oenoviva-capital-resources.com'; 'ceo.global@dynamic-capital-bank.com'; 'cfo.global@dynamic-capital-bank.com'; 'cfo.global@oenoviva-capital-resources.com'; 'Shell Jones'; 'chairman@privategoldreservebank.com'; 'contact@privategoldreservebank.com'; 'coo.global@privategoldreservebank.com'; 'secretary@privatyegoldreservebank.com'; 'ceo.global@icenforcementservice.com'; 'ceo@newworldalliances.com'; 'admin.global@icenforcementservice.com'
Subject:	AMG 9074d; HCMP-1855-2022 (“THE MAIN PROCEEDINGS”); S ECI 2025 02829; CIV 1453 of 2023; NSD-885-2025; NATIONAL AUSTRALIA BANK LIMITED; DENTONS GLOBAL MONEY LAUNDERING PART 1
Attachments:	AMG 9074d OVCR Letter to Associate Minter Ellison_Piper Alderman_Coors Chambers Westgarth_Dentons Australia dated 16.09.2025 PART 1 pages 1-151.pdf; AMG 7454 Dentons GLOBAL FIRM as at 12th January 2024.pdf
Importance:	High

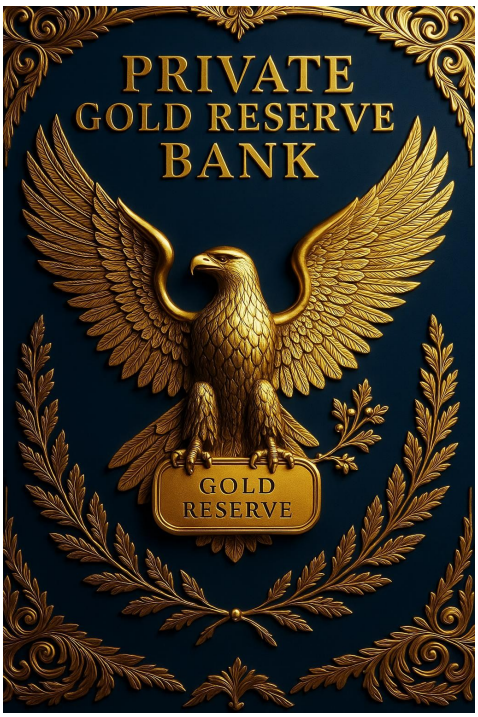
NOTICE OF VALID REGIME CHANGE.
FAKE REGULATION AND OUR CORRUPT LEGAL SYSTEM

DENTONS GLOBAL MONEY LAUNDERING TERRORISM FINANCING FIRM

AMG 9074; HCMP-1855-2022 ("THE MAIN PROCEEDINGS"); S ECI 2025 02829; CIV 1453 of 2023; NSD-885-2025; NATIONAL AUSTRALIA BANK LIMITED (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED); SUNTORY HOLDINGS LIMITED (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED); TREASURY WINE STATES LIMITED (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED); RANDALL WINE GROUP PTY LTD (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED) AND RELATED ENTITIES; CELLARAMASTER ROLL OVER LIMITED (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED) AND RELATED ENTITIES (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED); TATACHILLA WINERY PTY LTD (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED); FOSTERS BREWING GROUP LIMITED (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED) SERVCORP LIMITED (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED) AND OTHERS SHOWN IN THE SCHEDULE (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED)



http://privategoldreservebank.com/ ; Lev 1, Devonshire House, 1 Mayfair Place, London UK W1J 8AJ



To: those named in the Exhibits produced and marked as:

- AMG 7264 NSD 741 of 2023 SEALED Filed Respondent's Reply to Concise Statement and Cross Claim 11.12.2023.pdf
- AMG 7965 NSD 741 of 2023 ADDENDUM TO CONCISE REPLY AND CROSS CLAIM TO CONCISE STATEMENT OF LUCINDA MCCANN AND evidence of lodgement.pdf

TO; the Honourable Associate Justice Ierodiaconou,
Attn Ms. Sarah Kivinen,
Associate to the Honourable Associate Justice Ierodiaconou
Department of Justice of Victoria trading as Supreme Court of Victoria
210 William Street, Melbourne VIC 3000
Tel: 03 8600 2541
Email: ierodiaconou.associate@supcourt.vic.gov.au ; requests@fundsincourt.vic.gov.au

CC: Mrs; Dorota Borkowski and
Mr Michael Mark Borkowski
Tenants In Common as Joint Trustees of
the Borkowski Family Irrevocable Living Trust,
15 Jacaranda Drive, Taylors Hill, Vic 3037
Email; dorisborkowski@bigpond.com
("**The Joint Plaintiffs**")

TO: Burchell J as Trustee for Department of Justice and Community Safety Victoria, trading as The County Court of Victoria, ABN 32 790 228 959
210 William St, Melbourne VIC 3000, Australia
Email: requests@fundsincourt.vic.gov.au ; judgeburchell.chambers@countycourt.vic.gov.au; processservice@agso.gov.au
First Defendant.

TO: Westpac Banking Corporation
Mr Steven Gregg, Chairman
Level 18, 275 Kent Street

Sydney NSW 2000 Australia
CC:
Shannon Finch, Group General Counsel – shannon.finch@westpac.com.au
Ross Colquhoun, Senior Manager, Executive Complaints – rcolquhoun@westpac.com.au ;
Manager, Priority Cases, Executive Complaints/ Customer Solutions Complaints/ Customer & Corporate Services/ Customer Solutions
Reply Paid 5265, Sydney, NSW, 2001
Second Defendant

To: Minter Ellison Limited ABN 77 478 593 704; ABN 91 556 716 819; ABN 46 001 549 480; ABN 99 009 717 391 (Liquidator and Managing Controller Appointed) ABN 92 236 032 942
Alleged Solicitors for the Second Defendant (Westpac Banking Corporation)
Waterfront Place, 1 Eagle Street, Brisbane QLD 4000
Email brisbanelitigation@minterellison.com
Third Defendant

To: Susheila Vijendran, Registrar of Titles, for and on behalf of the Department of Transport and Planning of Victoria (Liquidator and Managing Controller Appointed) ABN 69 981 208 782
1 Spring St, Melbourne, VIC 3000
Email: advice.enquiries@victorianlrs.com.au; Lv.Warrants@transport.vic.gov.au
Fourth Defendant

To: **Jaclyn Symes,** Attorney General of The State of Victoria CEO of the Department of Justice of Victoria trading as the Sherriff's Office, ABN 32 790 228 959
Together with
Mark Dreyfus, Attorney General of Commonwealth of Australia CIK; 0000805157 (Liquidator and Managing Controller Appointed) ABN 86 150 409 985 and CEO of the Department of the Commonwealth Attorney General, ABN 92 661 124 436
Ground Level, 277 William Street, Melbourne, VIC 3000
Email: jaclyn.symes@parliament.vic.gov.au ; moneylaundering@ag.gov.au;
processservice@ags.gov.au ;
Fifth Defendant

To: The CEO of Australian Financial Complaints Authority Limited
ABN 38 620 494 340 (**AFCA**)
130 Lonsdale Street, Melbourne, VIC 3000
Email. info@afca.org.au ; processservice@agso.gov.au
Sixth Defendant

To: The CEO of the Australian Financial Transactions Analysis Reporting Centre
ABN: 32 770 513 371 (**AUSTRAC**)
Level 27, Tower 2, 727 Collins Street, Docklands VIC 3008
Email. info@afca.org.au ; processservice@agso.gov.au
Seventh Defendant

TO: The CEO of Office of Foreign Assets Control of U.S. Department of The Treasury,
Treasury Annex / Freedman's Bank Building,
1500 Pennsylvania Avenue, NW, Washington, DC 20220

Email: OFACdisclosures@treasury.gov ; ofacreport@treasury.gov ; processservice@agso.gov.au
Eighth Defendant

TO: McDonald J, As Trustee for Department of Justice and Community Safety Victoria trading as The Supreme Court Of Victoria ABN 32 790 228 959
210 William St, Melbourne VIC 3000, Australia
Email: requests@fundsincourt.vic.gov.au ; mcdonald.chambers@supcourt.vic.gov.au ; processservice@agso.gov.au
Ninth Defendant.

TO: Anthony Leonard Dickman, Acting CEO of The Reserve Bank of Australia, ABN 50 008 559 486 (Liquidator and Managing Controller Appointed) ABN 78 837 313 084 ("**RBA**") 65 Martin Place Sydney, NSW, 2000
Care Of; The Australian Government Solicitor
Level 5, 101 Pirie Street, Adelaide SA 5000
Email: secretary@rba.gov.au ; processservice@agso.gov.au
Eleventh Defendant.

TO Joe Longo, Acting CEO of The Australian Securities and Investment Commission, ABN 86 768 265 615 (Liquidator and Managing Controller Appointed) ABN 14 930 849 717 ("**ASIC**")
GPO Box 9827, Melbourne VIC 3001**,**
Care Of; The Australian Government Solicitor
Level 5, 101 Pirie Street, Adelaide SA 5000
Email: legal.document.service@asic.gov.au ; processservice@agso.gov.au
Twelfth Defendant.

TO: John Lonsdale, Acting CEO of Australian Prudential Regulatory Authority ABN 79 635 582 658 (Liquidator and Managing Controller Appointed) ABN 33 446 145 662 ("**APRA**")
Level 12, 1 Martin Place, Sydney NSW 2000, Australia
Care Of; The Australian Government Solicitor
Level 5, 101 Pirie Street, Adelaide SA 5000
Email: info@apra.gov.au ; processservice@agso.gov.au
Thirteenth Defendant.

TO: Jan Adams, Acting CEO of Department of Foreign Affairs and Trade, ABN 50 008 559 486 (Liquidator and Managing Controller Appointed) ABN 78 837 313 084 ("**DFAT**")
R G Casey Building, John McEwen Crescent, Barton, ACT, 0221
Care Of; The Australian Government Solicitor
Level 5, 101 Pirie Street, Adelaide SA 5000
Email: jan.adams@dfat.gov.au ; processservice@agso.gov.au
Fourteenth Defendant.

TO: Raelene Sharp, Acting CEO of The Commonwealth Director of Public Prosecutions ABN 41 036 606 436 (Liquidator and Managing Controller Appointed) ABN 81 695 234 966 ("**CDPP**")
12th Floor, 211 Victoria Square ADELAIDE SA 5000
Care Of; The Australian Government Solicitor
Level 5, 101 Pirie Street, Adelaide SA 5000

Email: adelaide@cdpp.gov.au ; processservice@agso.gov.au
Fifteenth Defendant.

TO: Helen Lofthouse, Acting CEO of ASX Limited trading as Australian Securities Exchange, ABN 98 008 624 691 (Liquidator and Managing Controller Appointed) ABN 13 838 529 239 ("**ASX**")
20 Bridge Street, Sydney, New South Wales, 2000
Care Of; The Australian Government Solicitor
Level 5, 101 Pirie Street, Adelaide SA 5000
Email: info@asx.com.au ; processservice@agso.gov.au
Sixteenth Defendant.

TO: Tim Beresford, Acting CEO of Australian Financial Security Authority, ABN 50 008 559 486 (Liquidator and Managing Controller Appointed) ABN 63 384 330 717 ("**AFSA**")
East Wing, Level 5, 4 National Circuit, Barton ACT 2600
Care Of; The Australian Government Solicitor
Level 5, 101 Pirie Street, Adelaide SA 5000
Email: info@afsa.gov.au ; processservice@agso.gov.au
Seventeenth Defendant.

TO: Rob Heffernan, Acting CEO of The Australian Tax Office, ABN 51 824 753 556 (Liquidator and Managing Controller Appointed) ABN 80 507 314 616 ("**ATO"**)
Ground Floor, Ethos House 28-36 Ainslie Avenue Canberra, ACT 2600 Australia.
Care Of; The Australian Government Solicitor
Level 5, 101 Pirie Street, Adelaide SA 5000
Email: rob.heffernan@ato.gov.au ; processservice@agso.gov.au
Eighteenth Defendant.

TO: Ruth Owen, Acting CEO ABN 51 248 702 319 of Office of Inspector General of Taxation, ABN 51 248 702 319 (Liquidator and Managing Controller Appointed) ("**IGT**")
GPO Box 551, Sydney NSW 2001**,**
Care Of; The Australian Government Solicitor
Level 5, 101 Pirie Street, Adelaide SA 5000
Email: service@igt.gov.au ; processservice@agso.gov.au
Nineteenth Defendant.

TO: Acting CEO of Australian Consumer and Competition Commission, ABN 94 410 483 623 (Liquidator and Managing Controller Appointed) ("ACCC")
23 Marcus Clarke Street, Canberra ACT 2601, Australia. Care Of; The Australian Government Solicitor
Level 5, 101 Pirie Street, Adelaide SA 5000
Email: international@accc.gov.au ; processservice@agso.gov.au
Twentieth Defendant.

TO: Acting CEO of The Law Society of South Australia ABN 16 305 983 353; ABN 42 522 803 276; ABN 22 570 040 022 (Liquidator and Managing Controller Appointed) ABN 90 709 399 147
178 North Terrace, Adelaide SA 5000, Australia.
Care Of; The Australian Government Solicitor
Level 5, 101 Pirie Street, Adelaide SA 5000

Email: email@lawsocietysa.asn.au ; processservice@agso.gov.au
Twenty First Defendant.

TO: Acting CEO of The Law Society of Western Australia ABN 41 434 516 549 (Liquidator and Managing Controller Appointed) ABN 95 860 991 647
4/160 St Georges Terrace, Perth WA 6000, Australia
Care Of; The Australian Government Solicitor
Level 5, 101 Pirie Street, Adelaide SA 5000
Email: info@lawsocietywa.asn.au ; processservice@agso.gov.au
Twenty Second Defendant.

TO: Acting CEO of The New South Wales Law Society ABN 98 696 304 966(Liquidator and Managing Controller Appointed) ABN 72 704 070 465
170 Phillip St, Sydney NSW 2000, Australia.
Care Of; The Australian Government Solicitor
Level 5, 101 Pirie Street, Adelaide SA 5000
Email: enquiries@lawsociety.com.au ; processservice@agso.gov.au
Twenty Third Defendant.

TO: Acting CEO of The Law Institute of Victoria ABN 32 075 475 731 (Liquidator and Managing Controller Appointed) ABN 56 396 731 926
Level 13, 140 William Street Melbourne VIC 3000
Care Of; The Australian Government Solicitor
Level 5, 101 Pirie Street, Adelaide SA 5000
Email: ethics@liv.asn.au ; processservice@agso.gov.au
Twenty Fourth Defendant.

TO: Acting CEO of The Queensland Law Society Inc. ABN 33 423 389 441 (Liquidator and Managing Controller Appointed) ABN 45 839 373 117
179 Ann St, Brisbane City QLD 4000, Australia
Care Of; The Australian Government Solicitor
Level 5, 101 Pirie Street, Adelaide SA 5000
Email: info@qls.com.au ; processservice@agso.gov.au
Twenty Fifth Defendant.

TO: Acting CEO of The Australian Capital Territory Law Society ABN 60 181 327 029 (Liquidator and Managing Controller Appointed) ABN 32 852 056 459
Level 1, 5 Constitution Avenue, CANBERRA ACT 2601
Care Of; The Australian Government Solicitor
Level 5, 101 Pirie Street, Adelaide SA 5000
Email: mail@actlawsociety.asn.au ; processservice@agso.gov.au
Twenty Sixth Defendant.

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CC; THE JUDICIAL CLERK TO THE JUDICIAL OFFICER PRESIDING IN HCMP-1855-2022; IN THE MATTER OF THE CROWN (LIQUIDATOR AND MANAGING CONTROLLER APPOINTED)

CC: MR MILTON TANG, FOR JUDICIARY ADMINISTRATOR

CC; MS KARA JUNCKEN
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Dear Associate Justice Ierodiaconou, Partners of Finlaysons Lawyers, Minter Ellison Lawyers, Coors Chambers Westgarth Lawyers, Dentons Australia Limited Lawyers, Piper Alderman Lawyers, and those as addressed,

Please note attached:

1. **AMG 9074d** OVCR Letter to Associate Justice Ierodiaconou _ Minter Ellison and Others dated 16.09.2025 PART 1 pages 1-151.
2. **AMG 7454** Dentons GLOBAL MONEY LAUNDERING TERRORISM FINANCING FIRM as at 12th January 2024

KIND REGARDS

ANDREW MORTON GARRETT

UNITARY EXECUTIVE, INTERNATIONAL CROWN ATTORNEY GENERAL, CHIEF JUSTICE OF INTERNATIONAL CROWN COURT OF JUSTICE CHIEF JUSTICE OF INTERNATIONAL CROWN CRIMINAL COURT FOR THABOLITION OF IMPUNITY, GLOBAL MANAGING DIRECTOR, GLOBAL MANAGING TRUSTEE; CHAIRMAN OF BOARD OF TRUSTEES, GLOBAL LICENSOR OF DISCRETIONARY PUBLIC POWERS, GLOBAL TRUSTEE IN BANKRUPTCY, GLOBAL LIQUIDATOR, GLOBAL MANAGING CONTROLLER, GLOBAL RECEIVER AND MANAGER.

"And when they seek to oppress you, and when they try to destroy you, Rise and rise again and again Like the Phoenix from the ashes.
Until the lambs have become lions and the rule of Darkness is no more"
— Maitreya The Friend of All Souls, The Holy Book of Destiny.

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INSIGHTS

Restructuring & Insolvency: Australia (2023)

DATE PUBLISHED
22 November 2022

READ TIME
79 mins

Read our Australian chapter on Restructuring & Insolvency. In this publication, our team provide an overview of the relevant laws and their application and discuss recent trends and developments including the inquiry into the effectiveness of Australia's corporate insolvency laws.

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Contents:

General

Legislation

The Corporations Act 2001 (Cth) (the Act) is the primary piece of federal legislation that governs the registration, administration, insolvency and reorganisation of companies incorporated in Australia. The Act prescribes, among other things, the manner to administer and regulate the winding up, liquidation,

Excluded entities and excluded assets

The Act governs the insolvency proceedings for all companies incorporated in Australia and companies incorporated or possessing separate legal personality in foreign jurisdictions that carry on business in Australia. It also governs building societies, credit unions and managed investment schemes. The provisions of the Act do not govern the potential insolvency proceedings for government agencies, state or federal corporate bodies, or entities created by statute that are not companies. The individual statutes creating these bodies will normally provide for their dissolution or winding up.

Public enterprises

There is no precedent in Australia for a government-owned enterprise becoming insolvent. Generally, each government- owned enterprise is established under a specific piece of legislation separate to the Act (be it federal or at a state or territory level). The relevant legislation will provide for the winding-up procedure and remedies creditors may have available (noting they are limited compared to a corporate insolvency). Creditors of public enterprises do have remedies; however, as the provisions vary from enterprise to enterprise, and as there has never been an actual example of these provisions being tested, it is difficult to generally comment on how such remedies work in practice.

Protection for large financial institutions

No.

Courts and appeals

The Federal Court of Australia and the supreme court of each state and territory have jurisdiction to hear matters relating to companies incorporated in Australia (which include insolvency matters and the prosecution of both civil and criminal offences arising from insolvency proceedings). Matters pertaining to debt recovery and monetary compensation can also be dealt with by other courts such as district courts, county courts and magistrates' courts within their jurisdictional limits. The judicial institutions have discretion to transfer matters between them if considered appropriate. It is generally only the Federal Court and the supreme courts that have jurisdiction to wind up a company. An appellant has an automatic right to appeal any final decision of the court, including an order for the winding up of a company. Three of the more common insolvency processes (voluntary administration, deeds of company arrangement and receivership) often have no court involvement.

amount to be provided by way of security is part of the court's discretion. The security may take a form that the court considers adequate to provide protection to the defendant and permits guarantees, charges or the provision of a bank bond to be made in lieu of more traditional payments.

Types of liquidation and reorganisation processes

Voluntary liquidations

Under the Corporations Act 2001 (Cth) (the Act), both the members of the company and the creditors have the option, under certain circumstances, to commence a voluntary winding up of a company. Neither procedure requires court sanction. The determinative factor for which a voluntary regime may be pursued is the company's solvency position.

A members' voluntary liquidation is a solvent winding up. It requires that the directors of the company make a declaration of solvency under section 494 of the Act. The declaration of solvency requires that the directors of the company must form the opinion, after an inquiry into the affairs of the company, that the company will be able to discharge its debts in full within 12 months of the commencement of winding up. This is coupled with a special resolution (ie, at least 75 per cent of votes cast by members entitled to vote on the resolution) of the members to wind up the company. A copy of this resolution must be lodged with the Australian Securities and Investments Commission (ASIC) within seven days.

A creditors' voluntary winding up arises when the company is in fact insolvent. It can occur in a number of circumstances, including in situations where a liquidator appointed by the members forms the opinion that the company is in fact insolvent. This will convert the process from a members' voluntary winding up into a creditors' voluntary winding up. A company may also enter a creditors' voluntary winding up where the directors determine that the company is insolvent and should be wound up or at the end of an administration if the creditors pass a resolution at the second creditors' meeting that the company should be wound up.

Voluntary reorganisations

The purpose and operation of voluntary administration is outlined in Part 5.3A of the Act. Voluntary administration has been compared to the Chapter 11 process in the United States; however, unlike the Chapter 11 process, voluntary administration is not an 'in situ' debtor process. In a voluntary administration, the creditors control the outcome to the exclusion of management and members. The creditors ultimately decide on the outcome of the company, and in practice, it rarely involves returning management of the company back to the former directors.

maximises the chances of the company, or as much as possible of its business, continuing in existence; or

results in a better return for the company's creditors and members than would result from an immediate winding up, if it is not possible for the company or its business to continue in existence.

There are three possible ways an administrator may be appointed under the Act:

by resolution of the board of directors that in their opinion the company is, or is likely to become, insolvent;

a liquidator or provisional liquidator of a company may, by writing, appoint an administrator of the company if he or she is of the opinion the company is, or is likely to become, insolvent; and

a secured creditor who is entitled to enforce security over the whole or substantially whole of a company's property may, by writing, appoint an administrator if the security interest is over the property and is enforceable.

An administrator has wide powers and will manage the company to the exclusion of the existing board of directors. Once an administrator is appointed, a statutory moratorium is activated that restricts the exercise of rights by third parties under leases and security interests and in respect of litigation claims. The purpose of this statutory moratorium is to allow the administrator the opportunity to investigate the affairs of the company, and either implement change or be in a position to realise value, with protection from certain claims against the company. A secured creditor with security over the whole or substantially the whole of the assets of the company has 13 business days following the appointment of the administrator to exercise its right under the security granted in its favour (ie, appoint a receiver).

There are two meetings over the course of an administration that are critical to the outcome of the administration. Once appointed, an administrator must convene the first meeting of creditors within eight

meeting is normally convened 20 business days after the commencement of the administration (this may be extended by application to the court). At the second meeting, the administrator provides a report on the affairs of the company to the creditors and outlines the administrator's views as to the best option available to maximise returns. There are three possible outcomes that canbe put to the meeting:

enter into a deed of company arrangement (DOCA) with creditors;

wind the company up; or

terminate the administration.

The administration will terminate according to the outcome of the second meeting (ie, either by progressing to liquidation, entry into a DOCA or returning the business to operate as a going concern (although this is rare)). When the voluntary administration terminates, a secured creditor that was estopped from enforcing a security interest because of the statutory moratorium becomes entitled to commence steps to enforce that security interest unless the termination is because of the implementation of a DOCA approved by that secured creditor.

A DOCA is effectively a contract or compromise between the company and its creditors. Although closely related to voluntary administration, it should in fact be viewed as a distinct regime, where the rights and obligations of the creditors and company differ from those under a voluntary administration.

A DOCA may incorporate terms that make its operation similar to a voluntary administration (giving similar rights to a deed administrator as a voluntary administrator), but may also provide for, inter alia, a moratorium of debt repayments, a reduction in outstanding debt and the forgiveness of all, or a portion of, the outstanding debt. It may also involve the issuance of shares and can be used to achieve a debt-for-equity swap.

Entering into a DOCA requires the approval of a bare majority of creditors, both by value and number voting at the second creditors' meeting. A DOCA will bind the company, its shareholders, directors and unsecured creditors. A validly passed DOCA can bind all creditors but does not prevent a secured creditor from dealing with their security interest so long as the secured creditor does not vote in favour of the DOCA.

Upon the execution of a DOCA, the voluntary administration terminates.

The outcome of a DOCA is generally dictated by the terms of the DOCA itself. Typically, however, once a DOCA has achieved its goal it will terminate. If a DOCA does not achieve its goals or is challenged by

A scheme of arrangement is a restructuring tool that sits outside of formal insolvency. The company may become subject to a scheme of arrangement whether it is solvent or insolvent.

A scheme of arrangement is a proposal put forward (with input from management, the company or its creditors) to restructure the company in a manner that includes a compromise of rights by any or all stakeholders. The process is overseen by the courts and requires approval by all classes of creditors. The pre-existing management retains control of the company during the process (and also depending on the terms of the scheme itself after its implementation). In recent times, schemes of arrangement have become more common, in particular, for complex restructures involving debt-for-equity swaps in circumstances where the number of creditors within creditor stakeholder groups may make a contractual and consensual restructure difficult.

A scheme of arrangement must be approved by at least 50 per cent in number and 75 per cent in value of creditors in each class of creditor. Classes are determined by reference to commonality of legal rights and only those creditors whose rights will be affected, compromised or amended by the scheme need be included. It must also be approved by the court to become effective. The test for identifying classes of creditors for the purposes of a scheme is that a class should include those persons whose rights are not so dissimilar as to make it impossible for them to consult together with a view to a 'common interest'. The outcome of a scheme of arrangement is dependent on the terms of the arrangement or compromise agreed with the creditors, but most commonly, upon implementation, a company is returned to its normal state as a going concern but with the relevant compromises having taken effect.

The scheme of arrangement process does, however, have a number of limiting factors associated with it, including cost, complexity of arrangements (ie, class issues), uncertainty of implementation, timing issues (ie, because of various procedural requirements for holding the meetings, and as it must be approved by the court it is subject to the court timetable and can only be expedited to a certain extent) and the overriding issue of court approval (ie, a court may exercise its discretion to not approve a scheme of arrangement, despite a successful vote, if it is of the view that the scheme of arrangement is not equitable).

These factors explain why schemes of arrangement tend only to be undertaken in large corporate restructures and in scenarios with sufficient time for execution and implementation to accommodate the procedural and courts' requirements.

Successful reorganisation

A scheme of arrangement must be approved by a majority of creditors voting on the resolution and holding at least 75 per cent in value and 50 per cent in number of voting creditors in each class. Classes are

supplementary approval by the court is required at the second court hearing. Schemes of arrangement may provide for the release of third parties (as opposed to DOCAs where the courts have held that such releases are not possible).

In the context of a voluntary administration, a majority of creditors with at least 50 per cent in number and 50 per cent in value may resolve that the company should execute a DOCA. The company must execute the instrument within 15 business days of such a resolution. A DOCA can be varied by either a subsequent resolution of creditors or by the court. A DOCA will bind the company, its shareholders, directors and unsecured creditors. Unlike a scheme of arrangement, court approval is not required for a DOCA to be implemented provided it is approved by the requisite majority of creditors.

The High Court in Lehman Brothers Holdings Inc v City of Swan & Ors [2010] HCA 11 (Lehman Brothers), held that creditors were not bound by provisions in a DOCA that involved releases of claims against entities other than the company the subject of the DOCA.

This position was later followed by the Supreme Court of New South Wales in In the matter of Eastmark Holdings Pty Limited (receivers and managers appointed (subject to a deed of company arrangement) & ors [2015] NSWSC 2070, where the Court determined that third-party release clauses were severable for the following reasons:

the third-party releases were never intended to be part of the DOCA proposal in the first place and they were not in the proposal or discussed at the meeting of creditors;

Accordingly, the Court held that the third-party releases were void but severable, which allowed the DOCA to continue. These decisions support the general notion that claims against third parties cannot be released under a DOCA. Therefore, it is unlikely that a creditor will be bound by a DOCA to give up claims save for other than claims against the company the subject of the DOCA.

Involuntary liquidations

Under Australian law, a compulsory liquidation involves the application to, and orders from, the court. A creditor or other eligible applicant must lodge an application with the court to wind up a company. On an

There are two situations in which a company will be held to be unable to pay its debts:

- if the company has not paid a claim for a sum due to a creditor exceeding A$4,000 within 21 days of service of a prescribed written statutory demand (the Act sets out specific requirements); or

- if it is proved to the court as a question of fact that the company is unable to pay its debts as and when they fall due.

Grounds are also available for a creditor to apply to the court for winding-up orders against a company not necessarily related to solvency, including that it is 'just and equitable' to do so or because of a deadlock at shareholder or director level affecting the ability to manage the company.

After a winding-up order, management of the company is removed from the directors and the company will likely cease as a going concern (except as is necessary to proceed with the winding up). The liquidator appointed will take control of the affairs of the company, and his or her other duties include realising the company's assets for the benefit of the creditors as a whole.

There are no material differences between a liquidation ordered by the court and a creditors' voluntary liquidation.

In response to the covid-19 pandemic, the federal government introduced significant amendments to Australia's insolvency landscape via the Corporations Amendment (Corporate Insolvency Reforms) Act 2020 (Cth) (the Insolvency Reform Act). These amendments to the Act came into effect on 1 January 2021 and relate specifically to small businesses. As part of these amendments, a liquidator may adopt a new small business liquidation (SBL) process under section 500A of the Act instead of the general creditor's voluntary liquidation process, which is aimed at providing a quick alternative to a creditor's voluntary winding up.

This may be undertaken if the company has resolved to be wound up voluntarily, the directors have given the liquidator a report as to the company's affairs and declared that the company is eligible for the SBL process, the total liabilities of the company do not exceed A$1 million and the company has made all required tax lodgements.

In circumstances where the liquidator becomes aware that the eligibility criteria is no longer met or where the liquidator has reasonable grounds to believe that the company or any of its directors have engaged in

Involuntary reorganisations

Unlike in the United Kingdom, receivership is still an option available to secured creditors in Australia. Receiverships, particularly coordinated appointments at a holding company level, can and have been used to effect corporate restructures and reorganisations.

There are two ways in which a receiver or receiver and manager may be appointed to a debtor company. The most common manner is pursuant to the relevant security document granted in favour of the secured creditor when a company has defaulted and the security has become enforceable. Far less common in practice is the appointment of a receiver pursuant to an application made to the court. Court appointmen are usually done to preserve the assets of the company in circumstances where it may not be possible to otherwise trigger a formal insolvency process. However, given the infrequency of court-appointed receivers, this chapter focuses on privately appointed receivers.

For a privately appointed receiver, the security document itself will entitle a secured party to appoint a receiver and will also outline the powers available (supplemented by the statutory powers set out in section 420 of the Act). Generally, a receiver has wide-ranging powers including the ability to operate, sell or borrow against the secured assets. The appointment is normally effected contractually through a deed of appointment and indemnity, and the receiver will be the agent of the debtor company, not the appointing secured party.

On appointment, a receiver will immediately take possession of the assets subject to the security. Once in control of the assets, the receiver may elect to run the business if the receiver is appointed over all or substantially all of the assets of a company. Alternatively, and depending on financial circumstances, a receiver may engage in a sale process immediately. While engaging in a sale process, a receiver is under a statutory obligation to obtain market value, or in the absence of a market, the best price obtainable in the circumstances. This obligation is enshrined in section 420A of the Act.

It is this duty under section 420A of the Act that has traditionally posed the most significant stumbling block to the adoption of prepackaged restructure processes through external administration. Often referred to as a ‘prepack’, this is where a restructuring is developed by the secured lenders before the appointment of a receiver and is implemented immediately or very shortly after the appointment is made. There is a concern that a prepackaged restructuring that involves a sale of any asset without testing against the market could be seen to be in breach of the duty under section 420A. Sales processes conducted immediately before appointment or the potential for immediate dilution of value are increasingly facilitating receivership sales without a full testing of the market.

course.

The appointment of a receiver to all or substantially all of the assets of a company will usually lead to, or will closely follow, the appointment of voluntary administrators by the directors, with both processes proceeding in tandem.

A secured creditor can often appoint an administrator to effect a reorganisation as an alternative to exercising its security. Once the voluntary administration occurs, the creditors are in control of the company's fate (including any restructuring or reorganisation), the success of which will be dependent on the relevant majority, by number and dollar value, voting in favour of it.

Further to the SBL process, recent amendments to the Act also establish the framework for the small business restructuring (SBR) process under Part 5.3B. The SBR process enables eligible companies to engage a small business restructuring practitioner to develop and propose to creditors a restructuring plan that, if accepted, will bind the company and certain creditors. A company's eligibility for this process is dependent on whether it has liabilities of less than A$1 million, the company has paid the entitlements of its employees that are payable, its current or former directors (in the preceding 12 months) have not engaged the SBR process or SBL process (in respect of another company) within the past seven years and it is not currently subject to another form of external administration under the Act or other restructuring arrangements.

The SBR process follows the general structure and key features of voluntary administration under Part 5.3A of the Act but differs in that it follows a 'debtor-in-possession' model, which allows the directors to maintain control of the company.

Expedited reorganisations

There is no legislation that specifically facilitates prepackaged reorganisation in Australia.

That being said, it is possible under certain circumstances for an administrator or a receiver to give effect to sale transactions that have been negotiated to near completion before their appointment.

The voluntary administration regime was introduced into the Act to provide distressed companies with a process to initiate an expedited reorganisation without court approval. A voluntary administrator is required to complete the investigations relating to the company's business, property, affairs and financial circumstances about four to six weeks after his or her appointment. The administrator is then required to

The creditors then decide between three alternatives:

to execute a DOCA;

to wind up the company; or

to end the administration.

As administrators have the power to dispose of a debtor company's property under section 437A of the Act, it is possible for an administrator to effect prepackaged transactions in certain circumstances; that is transactions that have been negotiated to near completion before their appointment, before convening the second meeting of creditors. However, the scope of that power is subject to the objects of Part 5.3A of the Act, being that the sale maximises the chances of the company continuing or, if that is not possible, results in a better return for creditors and members than a liquidation. As such, practitioners are often reluctant to effect a quick sale where that sale may not meet these objectives.

As receivers also have the power to dispose of a debtor company's property under section 420(2)(b) of the Act, it is possible, in certain circumstances, to implement a prepackaged reorganisation. However, section 420A of the Act is the single largest impediment to receivers giving effect to a prepackaged reorganisation where Australian courts have construed that section with a focus on the process undertaken by the receiver to sell the property. The very nature, and indeed the key benefit, of a prepackaged transaction, is that it is a quick sale of the debtor company carried out soon after the appointment of the insolvency practitioner. This, therefore, poses two difficulties for a receiver. The first relates to timing. If the receiver had no pre-appointment involvement with the prepackaged transaction, it would be difficult to demonstrate they complied with their obligations as set out in section 420A of the Act. On the other hand, if the receiver did have pre-appointment involvement, that might contravene the strict independence requirements for insolvency practitioners in Australia. The second difficulty is the requirement to achieve market value or otherwise achieve the best price that is reasonably attainable, having regard to the circumstances existing when the property is sold. It may be difficult to demonstrate that market value has been achieved in an expedited prepackaged sale. This requirement places a heavier burden than that placed on receivers in the United Kingdom, who are only required to show they were not negligent in exercising their power of sale.

Unsuccessful reorganisations

A scheme of arrangement may either be defeated by a creditors' vote or if it is not sanctioned by the court. Should either of these occur, there is no automatic process that occurs; rather, the company reverts to its

A proposed reorganisation through a DOCA may be defeated by a majority of creditors at the second meeting. At this meeting, the creditors may vote for the company to be wound up or to give back control of the company to the directors, thus ending the administration, rather than executing a DOCA. Further, if the company fails to execute a DOCA within 15 business days of a successful resolution at a second creditors' meeting, the company will enter into a creditors' voluntary winding up. Once executed, if there is a material contravention of the DOCA by the debtor company, a creditor or other interested person may apply for the termination of an executed DOCA by an order of the court. If an order is granted, the company again enters into a creditors' voluntary winding up.

An aggrieved creditor might also look to terminate a DOCA on the grounds of, for example, unfair prejudice.

Corporate procedures

Deregistration can be voluntary upon the application of the company, a director, a member or a liquidator, and can be initiated by ASIC or court-ordered in circumstances where the company has no assets or liabilities, or its winding up has been finalised. Upon the deregistration of the company, it ceases to exist as a corporate identity.

Also, ASIC may unilaterally deregister a corporation if it has reason to believe that the company is no longer carrying on its business, has been fully wound up, has been at least six months late in lodging its annual return or has not lodged the relevant corporate documentation (including financial reports) required by the Act in the preceding 18 months. There is, however, a process under the Act for the reinstatement of deregistered companies in certain circumstances.

Conclusion of case

There are three outcomes of a voluntary administration upon which the creditors decide:

entering into a DOCA;

winding the company up; or

terminating the administration.

The outcome chosen will dictate how the voluntary administration ends. Once a DOCA is executed, the company comes out of voluntary administration, and if the administration terminates, the administrative

At the conclusion of a liquidation, the company is deregistered. The process of deregistration is regulated by Chapter 5A of the Act. After the company's affairs are fully wound up, the liquidator must produce an account showing how the

winding up has been conducted and the company's property disposed of. ASIC must deregister the company when three months have elapsed after the liquidator has lodged the account, or minutes if a final meeting is held, with ASIC.

In a compulsory winding up, the liquidator may also apply to the court, pursuant to section 480 of the Act, for an order that the liquidator be released and that the company be deregistered after the liquidator has:

- realised all the property of the company or so much of that property as can in his or her opinion be realised without needlessly protracting the winding up;
- distributed a final dividend (if any) to the creditors;
- adjusted the rights of the contributories among themselves; and
- made a final return (if any) to the contributories.

The court must be satisfied that no creditor will be adversely affected by the order.

A receivership concludes when the secured assets are realised and the secured creditors are repaid (either in full or where there are no further assets to realise, to the maximum extent possible). In such circumstances, control of the company is handed back to either the directors or voluntary administrator, and in most instances, the company is deregistered or wound up.

Insolvency tests and filing requirements

Conditions for insolvency

Section 95A of the Corporations Act 2001 (Cth) (the Act) states that a company is solvent if it can pay its debts as and when they become due and payable. A company that cannot pay its debts when due and payable, or in other words is not solvent, is insolvent.

reality of the company's financial position taken as a whole as opposed to a point-in-time assessment of the balance sheet taken in isolation.

Mandatory filing

When a company is insolvent or likely to become insolvent, its board of directors can appoint a voluntary administrator under Part 5.3A and the appointment itself is a defence under the Act to insolvent trading. There is, however, no explicit statutory provision obliging companies to commence such insolvency proceedings.

Directors and officers

Directors' liability - defences

Under section 588G of the Corporations Act 2001 (Cth) (the Act), directors have a duty to prevent insolvent trading. If a company enters into liquidation, Division 4, Part 5.7B of the Act makes directors who breach this duty liable to compensate the company for all new debts incurred from the time a company is found to have become cash-flow insolvent. Therefore, a director may suffer civil or criminal liability for insolvent trading where he or she knew, or had reasonable grounds for suspecting, that the company was insolvent or would become insolvent. These provisions are intended to compel directors to take active steps (eg, the appointment of a voluntary administrator) in an expeditious manner, thereby protecting members and creditors from the continuation of insolvent businesses.

In addition to the potential liability for directors, if the company continues to carry on business while insolvent, certain transactions that the company entered into with third parties during that time may be subject to challenge and ultimately be held to be void if the company formally enters into liquidation (eg, unfair preference or uncommercial transaction).

Directors' liability - other sources of liability

A director or officer of a company may be held liable under the Act for civil and criminal penalties or to compensate the company if the company incurs a debt while insolvent (otherwise known as insolvent trading). Directors and officers may also attract personal liability for breaching their statutory duties of reasonable care and diligence in the exercise of their powers and to act in good faith and for proper purposes. Statutory liability may also be imposed where directors or officers improperly use their position or information acquired because of their position to gain an advantage for themselves or cause detriment to the company.

details of the unpaid amount and the penalty. Directors may avoid a penalty if the company pays the unremitted amount, the company enters into an agreement relating to the unremitted amount, an administrator is appointed or the company goes into liquidation.

The courts maintain discretion under the Act to excuse directors from liability in some circumstances if they can be shown to have acted honestly and reasonably.

The statutory defences available to a director for a breach of the duty to prevent insolvent trading are set out in section 588H of the Act. A director is not liable for a breach of duty if it is proved that, at the time the relevant debt was incurred, the director had reasonable grounds to expect and did expect that the company was solvent at that time and would remain solvent even if it incurred that debt (as well as any other debts that it incurred at the same time).

Further, a director is not liable if it is proved that he or she took all reasonable steps to prevent the relevant debt from being incurred. In this context, the Act states specifically that matters to which regard is to be made in considering this defence include any action the director took with a view to appointing an administrator when such action was taken and the results of that action.

A breach of the duty to prevent insolvent trading by a director will expose that director to prospective liability for a civil penalty order, an order for payment of compensation to the company or an order for payment of compensation to the creditor. The amount of compensation awarded against a director who breaches such a duty will be calculated by reference to the actual loss that the company or the creditor suffers by reason of the debt being incurred. In ascertaining the quantum risk of a potential insolvent trading action, the question as to when a debt is incurred becomes important. Ordinarily, a director will not be liable for a pre-existing debt that falls due when a company is found to be insolvent. Rather, directors are liable if the debt is 'incurred' at a time when the company is insolvent.

Section 588GA of the Act affords directors protection in certain circumstances to enable a company to delay entering into a formal insolvency process and instead pursue a turnaround plan (ie, provide directors with a 'safe harbour' protection). Under this section, a director will not be liable for debts incurred by a company while it is insolvent if, 'at a particular time after the director starts to suspect the company may become or be insolvent, the director starts developing one or more courses of action that are reasonably likely to lead to a better outcome for the company' than the 'immediate appointment of an administrator or liquidator to the company'.

A director that seeks to rely upon section 588GA of the Act bears the evidential burden in relation to that matter. That is, adducing or pointing to evidence that suggests a reasonable possibility that the matter

certain reporting or taxation requirements. The new safe harbour provision also extends to providing a safe harbour for holding companies from liability to compensate its subsidiaries' creditors where directors of those subsidiaries hold the benefit of the safe harbour. Holding companies bear the same evidential burden as directors to adduce evidence that suggests a reasonable possibility that the company took steps to ensure that the directors did enjoy the benefit of the safe harbour provisions. We note that a court is yet to properly consider or opine on the operation of section 588GA.

While the introduction of this 'safe harbour' provision is seen as a positive development, section 588GA of the Act will not provide protection for directors against more general breach of duty claims.

As part of the 2021-22 Federal Budget, the federal government announced that it would commission an independent review of the 'safe harbour' provisions (as required under section 588HA of the Act) to examine and report on the operation of the safe harbour provisions. Appointed on 19 August 2021, the independent panel assessed whether the safe harbour provisions are achieving their aims, including giving financially distressed but viable companies more 'breathing space' to restructure their affairs. On 24 March 2022, the Federal Treasury tabled its review , relying on contributions from advisers, directors and other stakeholders. While the review notes that the assessment of the efficacy of safe harbour had been limited by the disruption caused by the covid-19 pandemic, recurring feedback from stakeholders included a view that awareness around insolvent trading and safe harbour ought to be increased, a need for a high-level reconsideration of directors' duties as they relate to corporate distress generally and the difficulties associated with adopting a single safe harbour framework to companies of all types and sizes. The review made various recommendations, including the following:

- amendments to the wording in the legislation to clarify the operation and application of the safe harbour provisions;
- extending safe harbour protection to cover transactions that avoid employee entitlements;
- development of a best practice guide to safe harbour in 'plain English' by the Treasury in consultation with key industry groups;
- that data on safe harbour utilisation be collected and reported on as part of the reports received from voluntary administrators and liquidators; and
- that the Treasury commission a holistic in-depth review of Australia's insolvency laws generally.

It remains to be seen whether these recommendations will be adopted.

In discharging their duty to act in good faith and in the best interests of a company, directors must have regard to the interests of the company's creditors as the company is nearing insolvency.

However, it is not an independent duty to creditors, and any claim must be brought by the company (or more likely, its external administrators).

Directors' powers after proceedings commence

Upon the appointment of a voluntary administrator or while the company is being wound up, company officers are not removed from office but, in general, they cannot, without the administrator or liquidator's written approval, perform or exercise a function or power as an officer of the company.

If the receiver is appointed over all or most of the assets of a company, the receiver effectively has control, although the directors still have certain responsibilities and duties, and may retain residual control.

Matters arising in a liquidation or reorganisation

Stays of proceedings and moratoria

The Corporations Act 2001 (Cth) (the Act) imposes an automatic stay on the enforcement of ipso facto clauses in certain contracts entered into on or after 1 July 2018. The automatic stay applies where one of the following insolvency events occurs in relation to a company:

- voluntary administration
- a receiver or controller is appointed over the whole or substantially the whole of the company's assets;
- the company announces, applies for or becomes subject to a scheme of arrangement to avoid a winding up; or
- the appointment of a liquidator immediately following an administration or a scheme of arrangement.

The automatic stay does not apply retrospectively (ie, for agreements entered into before the automatic stay provisions coming into force). Relevantly, the automatic stay does not apply to other types of contractual defaults (eg, if the company has failed to meet its payment or other performance obligations under the relevant agreement).

in the case of a scheme of arrangement: the stay will end within three months of the announcement, or where an application is made within that three months, when the application is withdrawn or dismissed by the court or when the scheme ends or the company is wound up;

in the case of a receivership or managing controllership: the stay will end when the receiver's or managing controller's control ends; and

in the case of a voluntary administration: the stay will end at the latest of when the administration ends or the company is wound up.

The scope of the automatic stay, specifically what contract types, rights and self-executing provisions are excluded by the automatic stay are set out in the Corporations (Stay on Enforcing Certain Rights) Regulations 2018 (the Regulations) and the Corporations (Stay on Enforcing Certain Rights) Declaration 2018 (the Declaration). The Regulations prescribe the types of contracts, agreements or arrangements that are excluded from the operation of the automatic stay and rights in those kinds of arrangements remain available to the parties to those arrangements should a trigger event occur. The Declaration declares the various rights (including self-executing clauses that, when executed, provides those rights) that are excluded from the operation of the automatic stay and those rights that remain available to the parties should a trigger event occur.

Under the ipso facto regime, contracts entered into before 1 July 2018 are exempted from the application of the automatic stay. However, there has been some uncertainty as to whether a novation, assignment or variation of contracts entered into prior to this date could result in the contract becoming subject to the ipso facto regime. Notwithstanding this uncertainty, contractual parties have continued to novate or vary contracts entered into before 1 July 2018 in an effort to avoid the application of the automatic stay.

The Regulations provide some clarification in this regard, specifically stating contracts resulting from novations, assignments and variations of contracts before 1 July 2018 are also excluded from the ipso facto regime where those novations, assignments and variations are made before 1 July 2023. This differs from the position in the exposure draft Regulations, which had previously not limited the exemption to the five-year period. Accordingly, contracts before 1 July 2018 will no longer be excluded from the application of the automatic stay after 1 July 2023.

The automatic stay does not prevent secured creditors from appointing a receiver during the decision period pursuant to section 441A of the Act (if they have security over the whole or substantially the whole of

As at 8 August 2022, the operation of the automatic stay has not been judicially considered.

During a receivership, no moratorium exists, and creditors may take action against the company including initiating court proceedings, but such actions are treated as unsecured claims (subordinated to the claims of the secured creditors who appointed the receiver). The receiver is likely to be in control of the company's material assets and is permitted to realise such assets for the benefit of the secured creditor only (any surplus is provided to the company and would be available for distribution to unsecured creditors).

In addition to the above-mentioned automatic stay, the Act provides for a moratorium over legal proceedings as an automatic consequence of a company entering into voluntary administration. Consequently, no legal proceedings can be initiated or proceeded with except with the administrator's written consent or leave of the court. An exception, however, is made in the case of criminal proceedings.

The above-mentioned automatic stay does not apply once or if a company executes a deed of company arrangement (DOCA). The automatic stay ends when the 'administration ends', that is, when a DOCA is executed by the company and the deed administrator. Accordingly, if a company does execute a DOCA and needs the protection of the automatic stay, then subject to limited exceptions, it will need to obtain court orders.

The automatic stay does not apply where a liquidator is appointed, unless the liquidation immediately follows an administration or a scheme of arrangement.

After the commencement of a winding up of a company, or after the appointment of a provisional liquidator, legal proceedings are not to be commenced or continued against a company without leave of the court, pursuant to section 471B of the Act. Secured creditors are generally granted immunity from this process by section 471C, assuming the validity of their security, as they remain entitled to realise their security despite the liquidation.

Where a statutory moratorium exists, while not determinative, a court is more likely to grant leave for a claimant to proceed against the company if there is a public interest aspect to the claim, such as in the case of claims brought by regulators for statutory breaches, or where the claimant will have access to insurance proceeds.

Doing business

This position differs, however, if the restructuring occurs within the context of a receivership or an administration. Control of the company is transferred from the directors to the administrator or receiver. An administrator has wide- ranging powers to carry on the business of the company where that is consistent with the purpose of the administration, whereas a receiver has wide-ranging powers provided for under the Act and the security agreement itself.

For the purposes of carrying on the business, the administrator has the power under section 437A to pay creditors who supply goods or services to the company after the company has gone into administration in preference to ordinary unsecured creditors. An administrator may seek directions from the committee of creditors or the court. Creditors may also apply for relief against the administrator, which could involve removal.

A receiver may continue to run the business as a going concern with a view to maximising the return available to the secured creditor. Services engaged (including the providers of goods and services) are treated as costs of the receivership and the preferential payment of these costs is provided for in the appointment document.

Generally, after formal insolvency proceedings are commenced, the power and roles of company officers are at the discretion of the insolvency administrator appointed (receiver, administrator or liquidator) who is ultimately responsible for those roles (eg, carrying on the business of the company). In an informal workout where there has been no formal appointment, the company officers continue to be able to exercise all powers unless otherwise agreed with creditors.

Post-filing credit

A voluntary administrator is given the power under section 437A of the Act to manage the affairs of the company and to raise loans on security over company assets to carry on the business of the company. The repayment of this credit is treated as an expense of the administration and is given statutory priority over ordinary unsecured creditors.

Whether a deed administrator has the power to raise loans will depend on the terms of the DOCA. The repayment of this credit will usually be treated as an expense of the deed administration and will be given priority over distributions to creditors.

Liquidators are expressly permitted to obtain credit under section 477, whether on the security of company property or otherwise, as far as is necessary for the beneficial disposal or winding up of the company. Such

The terms of the appointment document and section 420 of the Act provide receivers with wide-ranging powers (including the ability to borrow). These borrowings are treated as expenses of the receivership and are provided priority, or alternatively, the original security document may provide that this financing is to be afforded the same priority as the first-ranking security.

Obtaining financing and use of assets as security in a scheme of arrangement or an informal voluntary reorganisation is solely a matter for agreement between the company and its creditors.

Sale of assets

As noted, a receiver is under a statutory obligation to obtain market value or, in the absence of a market, the best price obtainable in the circumstances under section 420A of the Act. Upon a sale, the receiver will transfer the assets free of security interests (a release will be provided by the appointing secured creditor) and often the terms of any inter- creditor arrangements will provide for the automatic release of subordinated security. In circumstances where an automatic release mechanism is not provided for, direct negotiations will need to take place with the secured subordinated creditors.

A voluntary administrator may sell assets, noting, however, it is not permitted to sell assets subject to security without consent (normally, a receiver will be appointed and have control over such assets). Administrators can apply to the court if this consent is not given and the court may make an order if it is satisfied that the secured creditor is adequately protected.

Liquidators appointed in the context of either voluntary or compulsory liquidations can sell or otherwise dispose of unencumbered property of the company without needing to seek approval from the court or other parties to the liquidation. The purchaser will acquire the assets unencumbered unless there are debts or liabilities passing to the purchaser as provided for in the sale documentation. If assets are encumbered, consent of the encumbrancer will be required unless a court directs otherwise.

A liquidator owes fiduciary duties to the company. In realising company property, a liquidator (or administrator) has a duty to obtain the highest possible price for the assets of the company, keeping in mind that the winding up should not be unnecessarily protracted. Property may be sold in any way the liquidator deems fit, including private contract and, usually, public auction. While creditors may purchase assets of the company, the purchase price will not be able to be set off against the debt owed to the creditor by the company. Instead, any funds raised by the sale of company property will be for the benefit of the creditors as a whole, to be distributed according to the relevant distribution rules.

or the provision of such release in associated finance and security documents.

In an informal reorganisation of a company, the conditions of the reorganisation and sale or use of assets are as negotiated with the relevant creditors.

Negotiating sale of assets

While there is nothing to prevent stalking horse bids, they seldom occur in the Australian context.

Credit bids are permissible under Australian law and are a means of pursuing loan-to-own strategies. The offer will be assessed in the context of the relevant sales process conducted and the nature of the insolvency administration to which the company is subject. Courts generally have limited involvement in assessing a credit bid (save as part of a scheme of arrangement or where a sale has been challenged). In these circumstances, the court will scrutinise the credit bid together with the situation generally, against other proposals received and in light of any sale process run (if required). There is no prohibition on an assignee of the original secured creditor making a credit bid (provided the assignment was valid under law).

Rejection and disclaimer of contracts

Liquidators are given the specific ability to disclaim property or uncommercial contracts under Division 7A, Part 5.6 of the Act. A liquidator can, subject to objections being made to the court by aggrieved parties, disclaim onerous property in writing. Court approval is required for disclaiming contracts as this is likely to adversely affect third-party interests. There are no specific provisions for disclaimers in a voluntary liquidation, although the court has wide powers to control these reorganisations and application can be made to the court.

Receivers and administrators are not given specific powers to disclaim contracts; they may, however, look to ignore contracts with any resulting damages claim being unsecured against the company (not the receiver or the administrator personally).

If the debtor (either acting by the insolvency administrator appointed or otherwise) breaches the contract after formal insolvency has commenced, then the aggrieved counterparty has all remedies available to it under contract law (including a claim for damages and any right to terminate). Any such damage will be an unsecured claim as against the debtor company itself and only in very limited circumstances will an order for specific performance be made against the debtor company.

Intellectual property assets

protection), where the debtor enters into a relevant formal insolvency process.

A company administrator's power under section 437A to carry on and manage the property of the business extends to the use of intellectual property granted under an agreement with the debtor. Likewise, a receiver, in the absence of a licensor exercising termination rights, may also continue to use intellectual property.

Personal data

There are no restrictions on the use of personal information or customer data that apply in an insolvency that would not have otherwise applied to use by the company in a solvent context. For example, while there are restrictions against the use of personal information under Australian privacy laws, those laws will generally not prevent the transfer of that information to a purchaser as part of the sale of the company's business.

An administrator's power under section 437A to carry on and manage the property of the business extends to the use of customer data collected by the company in its business. Likewise, a receiver, in the absence of specific contractual terms to the contrary, may also continue to use customer data collected by the company in the course of the business.

Arbitration processes

There are no restrictions under Australian law preventing a distressed company or its creditors from pursuing alternative dispute resolution options, such as arbitration or mediation. The success or willingness to engage in these procedures will obviously be dictated by the parties involved. These arrangements, however, are not without their limitations. For example, there is no obligation on creditors to agree to an informal arrangement and any one creditor can veto a proposed arbitration or mediation outcome if its rights with regard to the other creditors are directly affected (or act outside its restrictions). Its non-binding nature provides sufficient disincentive for creditors to consider these procedures, and it is rarely seen.

Courts will generally allow arbitration proceedings to continue while insolvency proceedings remain open to aid the just and expeditious resolution of creditors' claims.

Creditor remedies

Creditors' enforcement

mortgage) will normally grant the secured creditor the ability to appoint a receiver. Once appointed, the receiver will realise the company's assets solely for the benefit of the secured creditor to the exclusion of the rest of the company's creditors. A creditor may also exercise rights as mortgagee in possession and take control of the property with a view to realising value.

Retention of title clauses are another way a creditor may enforce proprietary and contractual rights outside court proceedings. If effective, this will allow the creditor to reclaim property supplied to the company in the event of the company's receivership, administration or liquidation. Retention of title clauses fall within the definition of 'security interest' under the Personal Property Securities Act 2009 (Cth) (PPSA) and are therefore required to be registered under the provisions of the PPSA. A traditional retention of title arrangement will be considered a 'purchase money security interest' under the PPSA, and, upon registration, will give the holder priority over other registrable interests. In this sense, while the requirement for enforcing a retention of title clause will change, the effect shall remain the same.

A number of common law and statutory liens are also available (and do not require registration under the PPSA).

Unsecured credit

A creditor may commence proceedings through the courts to recover outstanding amounts owing by a recalcitrant debtor company. A creditor, at the same time, may also request that the court order injunctive relief to freeze the assets of the company if there is a risk of assets or value being dissipated. A failure to plead a substantive defence will generally enable a default judgment to be granted and the creditor may, after this, take steps to wind the debtor company up.

The court has extensive powers to compel compliance and enforce a range of remedies including seizure of assets, diversion of a debtor company's income and orders for winding up of the company. Foreign creditors may be required to provide security for costs (ie, a sum of cash to the courts) of enforcing a judgment in Australia.

The options available to unsecured creditors of an insolvent company or company in distress are limited. Once a company is placed into administration or liquidation, a statutory moratorium will apply to any proceedings commenced, including any enforcement proceedings.

Creditor involvement and proving claims

Notice of the appointment of an administrator must be lodged with the Australian Securities and Investments Commission (ASIC) within one day and creditors must be notified of the appointment within three days.

The administrator must convene a meeting of creditors within eight business days of his or her appointment. Notice of this meeting must be given in writing to as many creditors as is reasonably practicable at least five business days before the meeting and published on ASIC's insolvency notices website. At this meeting, creditors have the opportunity to appoint a different administrator and may also decide whether to appoint a consultative committee of creditors to assist the administrator. Although the committee cannot give directions to the administrator, it can compel the administrator to report on matters relating to the administration. The committee is also in a fiduciary relationship with the creditors and thus cannot profit from their role.

The second creditors' meeting must be convened by the administrator within five business days after the convening period. The convening period is 20 business days from the date the administration begins, and the same notice requirements apply. This is extended to 25 business days if the administration begins in December or occurred less than 25 days before Good Friday. The notice of the meeting must be accompanied by a report setting out the company's business, property, affairs and financial circumstances and a statement expressing the administrators' opinion on each of the options available to the creditors (executing a deed of company arrangement (DOCA), returning control of the company to the directors or winding up the company). If the administrator proposes a DOCA, details of the proposed DOCA must also be provided. At the meeting, the creditors decide and vote on which of the three available options they wish to pursue. The administrator presides at both the first and second meetings.

The reporting obligations of an administrator include the following:

- lodge notice of appointment with ASIC by the next business day following appointment, and publish on ASIC's insolvency notices website within three business days;

- prepare and lodge a report with ASIC where it is suspected that an officer, employee or member of the company has committed an offence in relation to the company; and

- where the creditors vote to wind up the company, to lodge a copy of that resolution with ASIC within five business days of it being passed.

In a creditors' winding up, no meetings of creditors are automatically held. A liquidator must hold a meeting if requested by a creditor with a minimum percentage of overall debt by value and if the liquidator considers

property to hold the meeting, a meeting of creditors dealing with the same matters has been held or will be held within 15 business days, or if the request is vexatious.

A liquidator must send to creditors:

- within 10 business days of their appointment, notice of their appointment, information about creditors' rights, and a summary of the company's affairs and information about the company's creditors;
- within three months of their appointment, a statutory report that includes information about the estimated assets and liabilities of the company, inquiries undertaken and to be undertaken by the liquidators, the likelihood of receiving an interim dividend and possible recovery actions; and
- any other reports the liquidator decides or that are reasonably requested by creditors.

These notices and reports must be lodged with ASIC.

During a receivership, there is no obligation to call a creditors' meeting but notice of the appointment must be lodged with ASIC. Reports must be lodged with ASIC during the receivership and notification must be given on its termination.

Creditors of a company in administration or liquidation have a right to request information at any time. An administrator or liquidator must provide the information required if the information is relevant to the administration or liquidation, the provision of the information would not cause the administrator or liquidator to breach their duties, and if the request is reasonable. A request for information would not be reasonable if complying with the request would prejudice the interests of one or more creditors or a third party, if the information is the subject of client legal privilege or disclosure would be actionable for breach of confidence, if the request is vexatious, if there is not sufficient property to comply with the request, or the information has already been provided or is required to be provided within 20 business days of the request. In relation to the last three reasons, the administrator or liquidator will still have to provide the information if the creditor meets the cost of complying with the request.

Creditor representation

Committees in the Australian insolvency regime are creatures of statute and are not seen in the context of representing creditor stakeholder groups as they might be in the United States.

In such a case, the liquidator must call separate meetings of creditors and members for the purpose of determining whether a committee of inspection should be appointed and, if a committee is to be appointed, the numbers of creditors and members to be appointed and the persons who are to be members of the committee.

In a voluntary administration, a committee of inspection may be formed at the first creditors' meeting.

The role of the committee of inspection is to supervise and assist the administrator or liquidator. Examples of the types of direction the committee may make include approving the remuneration of the administrator or liquidator, approving the institution of legal proceedings on behalf of the company, and directions as to the compromise of debts owing to the company. Committees of inspection are most often used in large liquidations or administrations where it is difficult for the liquidator to engage with the entire body of creditors on a regular basis.

The committee must have at least two members, drawn from the body of creditors and members. A company can be a member, acting through an authorised agent. Generally, the members of the committee of inspection will comprise those with a substantial interest in the winding up of the company, such as large creditors, employees and members holding a large proportion of the company's shares.

The administrator or liquidator of the company must have regard to the directions of the committee but is not required to comply with these directions.

Members of the committee of inspection owe the general body of creditors and members fiduciary duties and therefore must act in the best interests of the creditors and members rather than for their own benefit.

There is no statutory provision governing the remuneration of the committee of inspection. Except with leave of the court, a committee member may not derive any income from their position. They also must not become the purchaser of any property of the company.

It is almost unheard of for such committees to retain counsel and advisers.

Enforcement of estate's rights

An administrator, liquidator or provisional liquidator can sell or otherwise dispose of, in any manner, all or any part of the property of the company. As a claim available to an estate forms part of the company's property, a liquidator may assign the claim to a creditor for consideration. The beneficiary of the 'fruits of

be pursued for the benefit of all creditors. In such circumstances, the creditors providing the indemnity or funding may be entitled to receive a higher dividend than they would otherwise receive by operation of section 564 of the Corporations Act 2001 (Cth).

In addition to administrators' and liquidators' power to assign causes of action, third-party litigation funding has been increasing in acceptability and prevalence since the endorsement of the practice in the non-insolvency context by the High Court of Australia in Campbells Cash and Carry Pty Ltd v Fostif Pty Ltd (2006) 229 CLR 386. This has brought with it increased access to litigation funding for liquidators and administrators.

Claims

A liquidator will notify creditors of the submission date and may do so by advertising it in a newspaper and also on the centralised insolvency notice website. This date may not be less than 14 days after the date of notice being given to creditors. Once the particulars of a debt are submitted by a creditor, the liquidator may admit:

- all or part of the claim;
- reject all or part of the claim; or
- require further evidence to be submitted in support of it.

If further evidence is required, the liquidator must notify every creditor in writing of the day on which the formal proof must be submitted. A liquidator must deal with submitted formal proof of claims within 28 days of receipt.

Where a proof of debt is rejected by a liquidator, grounds for the rejection must be provided to the creditor within seven days. A creditor can appeal the liquidator's decision in court within the time specified in the notice (at least 14 days after service).

It is possible for a creditor's claim to be assigned in writing. An assignee may apply to the liquidator and the court to have its new proof of debt stand as substituted for the assignor's proof of debt. Such an assignee will be able to enforce the full value of the claim irrespective of whether it was acquired at a discount (ie, below par).

date of winding up or refer the question to the court for judicial consideration.

A creditor aggrieved with the estimate made by the liquidator may appeal to the court. If the contingent event occurs after the date of winding up, the creditor is entitled to prove for the actual amount of the claim.

A creditor can claim for interest accrued after the opening of the insolvency case and there is a prescribed rate in the Act of 8 per cent. Payment of this interest will rank behind all other claims (except subordinated equity claims).

In attempts to counter illegal phoenixing, amendments were made to the Insolvency Practice Rules (Corporations) Amendment (Restricting Related Creditor Voting Rights) Rules 2018 (the Amending Rules) to prevent the 'stacking' of related creditor votes and, accordingly, the ability for phoenix operators to control the appointment and replacement of an external administrator of a company.

The Amending Rules introduced two principal amendments to the Insolvency Practice Rules:

- the insertion of 75-95(1A) providing a requirement for an external administrator to ask any creditor voting an assigned debt for evidence of the debt and the consideration for the assignment; and

- the insertion of 75-110(7) providing a regime by which the value of any related creditor vote of an assigned debt is to be calculated as the value of the consideration given for the assignment.

Accordingly, where the consideration given by a related creditor for the assigned debt is less than the value of the debt, the value of the vote will be limited to the consideration given and not the full value of the debt. As such, external administrators are positively required to call for appropriate evidence of assigned debts and appropriately calculate the value of assigned debts for voting purposes.

Set-off and netting

Set-off refers to the right of a creditor to plead a debt due from the debtor as a defence to all or part of the debtor's claim made against it. Section 553C of the Act provides that statutory set-off is available in a liquidation scenario where there have been mutual dealings between the distressed company and the relevant creditor. In such circumstances, an automatic account is taken of the sum due from one party to the other in respect of those mutual dealings and the sum due from the one is to be set off against any sum due from the other.

preference over the general body of creditors. Only creditors that choose not to rely on their security may take advantage of the rule.

A creditor is, however, unable to claim the benefit of set-off if he or she had, at the time of the relevant transaction, notice of insolvency of the company. Further, a creditor cannot offset any existing claim or debt of the company against new claims or debts that may arise during the period of administration.

In other reorganisations, there is no statutory right of set-off and the creditor must rely on any contractual rights they may have. Those rights will be subject to a statutory lien that has attached to the company's property at the time that the set-off is made. In practice, however, administrators and deed administrators will ordinarily recognise set off as if section 553C did apply, as generally creditors can claim prejudicial treatment if they receive less from administrators or under DOCAs than they would under a liquidation scenario (and often wording similar to section 553C is built into a DOCA).

Modifying creditors' rights

Generally speaking, unsecured claims rank pari passu (with some exceptions), with secured creditors afforded a level of priority by virtue of the security arrangements in place.

The court has power to change the rank of a creditor's claim in only very limited circumstances. Section 564 of the Act provides an incentive to creditors to give financial assistance or indemnities to liquidators to pursue asset recovery proceedings or to protect or preserve property. If creditors provide such assistance, the liquidator may apply to the court for an order that the contributing creditors receive a higher dividend from the company's assets than they would otherwise be entitled to.

In assessing any claim under section 564, the court will consider all the circumstances surrounding the claim. Therefore, it is difficult to assess the frequency and likelihood of success attributable to any individual claim. The courts, in exercising their discretion, will have particular regard to factors such as the amount of risk to creditors, the amount recovered and the proportion between the debts of participating creditors and others, as well as the public interest in encouraging creditors to provide indemnities to enable assets to be recovered. Litigation funding can also be obtained outside the court process.

A DOCA may determine the creditors to be paid and how much they are to be paid (noting that a level of protection is afforded to employees unless they agree otherwise). Aggrieved creditors can apply to the court to overturn a DOCA if they are discriminated against.

Priority claims

liquidator in realising the assets of the company and in carrying on the company's business and the costs in relation to any applications to the court in respect of the winding up and employee-related entitlements.

A company's debts to the Commonwealth government do not receive any special priority. Amounts in respect of unpaid income tax rank as unsecured debts and are payable only if there are sufficient funds left over after all preferential debts have been paid.

Certain employee entitlement claims will have priority over secured debts, which are secured by a security interest of circulating assets (ie, receivables and stock, etc).

Employment-related liabilities

Outstanding employees' wages, superannuation, leave entitlements and redundancy payments are given priority over payment of ordinary unsecured creditors in the distribution of assets in the winding up. Pursuant to the Commonwealth's Fair Entitlement Guarantee (FEG), when a company is placed into liquidation leaving employee entitlements unpaid, the Commonwealth government, through FEG, can make payments to employees of certain levels of unpaid wages, leave and other entitlements. The Commonwealth then becomes a creditor of the company and is afforded the same priority in the distribution as the employee claims it paid.

Upon the making of a winding-up order by the court, the publication of that order acts as a notice of dismissal of all employees of the company. An employee who was engaged subject to a contract of employment for a fixed term, or was entitled by his or her contract of employment to a period of notice before termination of the contract, may lodge a proof of debt for damages for breach of contract. While the appointment of a voluntary liquidator does not necessarily operate as a notice of dismissal, the liquidator has the power to terminate contracts of employment.

In relation to a company in administration and receivership, upon appointment, the administrator or receiver takes control of the company's business, property and affairs. The retention of employees will depend upon the outcome of the administration process. If the business continues to operate, employees may be retained. An administrator and receiver can also terminate employment contracts in the same way as management of the company could when the company was operating as a going concern.

The Act affords a level of protection to employee entitlements following the company and its creditors entering into a DOCA. The Act provides that the entitlements of employees be given certain priorities in a deed, those priorities to be at least equal to what they would receive if the company were being wound up.