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EDITORIAL 193

ARTICLES

Insolvent trading in Australia: The case for advance relief – *Karen Petch*

In the wake of the global financial crisis renewed debate has emerged over whether Australian insolvent trading laws adequately balance the need to protect creditors with offering sufficient certainty to directors such that the director can act confidently when leading an informal workout outside of external administration. This article considers the pressing need to change the Australian insolvent trading framework to encourage directors to undertake well-advised informal corporate rescue and why prospective relief from insolvent trading for directors may produce better outcomes than the current model for companies, stakeholders and the Australian business community. This article explores prospective relief solutions that have been adopted internationally and makes recommendations for how Australia could draw on international approaches and domestic policy to implement an Australian Securities and Investments Commission administered Insolvent Trading No Action letter as a prospective relief tool. 197

Directors' fear of derivative liability and occupational health and safety laws – *Mark Byrne*

The question of when directors should bear personal liability for their role in the conduct of a corporation has always been controversial. Significantly, however, it is now clear that directors themselves perceive that this risk of personal liability is having a profound negative effect on both their desire to act in the role and the performance of their companies. While the risk takes various forms, directors have identified that they are most fearful of derivative liability such as is present in occupational health and safety laws. The purpose of this article is to review this particular area of concern and evaluate this perception against prosecutions and an analysis of the relevant cases. 213

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