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EDITORIAL 3

ARTICLES

Receivership and the Personal Property Securities Act 2009 (Cth): Why distinctions remain relevant – *Amanda-Jayne Bull*

The *Personal Property Securities Act 2009* (Cth) (PPSA) commenced in Australia on 30 January 2012. Although the PPSA simplifies the archaic regime that existed before its commencement in relation to the creation and taking of security interests the same cannot be said of the PPSA enforcement provisions (Ch 4). One of the main areas of divergence can be found in s 116 of the PPSA. Section 116 draws a distinction between receivers appointed to property of a corporation (to which Ch 4 does not apply) from receivers appointed to non-corporate property (to which Ch 4 does apply). This article will discuss the history behind the drafting of s 116, compare the receivership provisions contained in the equivalent Canadian and New Zealand legislation, discuss the practical implications that arise for receivers and managers from the distinction drawn by s 116 and conclude with some thoughts on how and why the distinction should be removed from the PPSA. 5

The nature of corporate insolvency practitioner liens – *Brad Strahorn*

The lien arising in favour of insolvency practitioners remains one of the most productive liens of modern times. Despite their limited use in England, in Australia, some variation of the lien operates regularly in almost every form of insolvency administration. Unusually, however, the circumstances in which they arise in Australia are not settled; neither is the explanation for the lien arising at all. Many have suggested that the lien arises to reward rights of salvage while others have suggested that its proper foundation is in unjust enrichment. This article asserts that neither of these explanations are complete. Importantly, they do not explain why the right is proprietary. The object of this article is to explore the circumstances in which liens of this kind are granted, and the way in which liens of this kind should develop. 37

Debts "incurred" by receivers, administrators and liquidators: The case for a harmonised construction of ss 419, 443A and 556(1)(a) of the Corporations Act – *Mark Wellard*

This article analyses the inconsistent approaches taken by courts when interpreting provisions of the *Corporations Act 2001* (Cth) which address debts or expenses "incurred" by receivers, administrators and liquidators. After reviewing the relevant, historical judicial consideration of the notion of a debt "incurred", the article contends for a consistent construction of these provisions which will enable the legislation to operate as was intended, for the benefit of persons who supply goods, services or labour to companies in external administration. The article explains how and why debts can be "incurred" by insolvency practitioners continuing on pre-existing contracts. Specifically (and contrary to the weight of current authority), the article contends for a construction of ss 419 and 443A of the *Corporations Act* which renders receivers and administrators personally liable for certain entitlements of employees (eg, wages and superannuation contributions) which become due and payable by reason of the decision of a receiver or

administrator to continue a pre-existing contract rather than terminate it. 60

RECENT DEVELOPMENTS – *David Morrison*

Re Mowbray College (Administrator Appointed) [2012] VSC 300 – *Teora Bombek* 82

REPORT FROM NEW ZEALAND – *Lynne Taylor*

Personal Property Securities Act 1999 (NZ): A summary of recent cases – *Sascha Mueller* 85