

INSOLVENCY LAW JOURNAL

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EDITORIAL	167
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ARTICLES

On the brink: Creditors as shadow directors when dealing with debtors approaching insolvency – John R Anderson

This article explores the small number of United Kingdom authorities concerning creditors as “shadow directors”. It considers the circumstances in which questions of shadow directorship may arise for Australian creditors, the degree of risk for Australian creditors and factors which might go to showing that a creditor is (or is not) acting as a shadow director of its debtor. Lastly, the article considers steps which creditors may take to minimise the risk of their being considered to act as a shadow director of their debtor. 169

Mind the insolvency gap: Lessons to be learned from audit expectations gap theory – Colin Anderson and Catherine Brown

There is a general perception that public confidence in the insolvency profession is low as the result of the recent unethical practices of a few high profile liquidators. As a result, the effectiveness of the current regulatory mechanisms has been questioned, leading to a review of the performance of insolvency practitioners and subsequent regulation proposals. The challenge for the insolvency profession is balancing the expectations of the general public whilst ensuring that the obligations and duties imposed upon them are performed to acceptable and realistic standards. It is difficult (if not impossible) for the profession to meet this challenge in the absence of a cohesive framework which identifies those issues that require further regulation as opposed to those that relate to general education on the insolvency process. This article will examine the audit expectations gap theory in the context of insolvency practitioners and suggests that a model based on this theory provides an effective framework for evaluating the regulation of the insolvency industry. 178

RECENT DEVELOPMENTS – Dr David Morrison

Why is there a gap in the tax treatment of solvent versus insolvent companies and why does it matter? – David Morrison

192

Bailed out ... A closer look at bailments and consignments under the PPSA – Martin Lovell

201

REPORT FROM NEW ZEALAND – Lynne Taylor

Bankruptcy and superannuation schemes – Lynne Taylor

207

VOLUME 22 – 2014	
Table of Authors	217
Table of Cases	219
Index	229