INSOLVENCY LAW JOURNAL

Volume 27, Number 3

2019

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ARTICLES

The ACCC's Pursuit of Corporate Respondents in the VET Sector Operating under External Administration – *Mary Wyburn*

The Australian Competition and Consumer Commission (ACCC) has brought proceedings against a number of corporate respondents that operated in the vocational education and training (VET) field during the period when VET courses were supported by the Commonwealth Government VET FEE-HELP loan scheme. The alleged contraventions of the Australian Consumer Law include misleading and deceptive conduct, false representations, unconscionable conduct and breach of the unsolicited consumer agreements provisions. What has complicated the proceedings is that several of the respondents entered external administration just prior to or during the conduct of the proceedings. The article examines the ACCC's VET FEE-HELP litigation where the corporate respondents entered external administration. It looks at the procedural hurdles the ACCC had to overcome in order to continue its actions. It discusses what was sought to be achieved by persisting with the litigation. A key focus has been on obtaining remedies for the students caught up in the contravening conduct, in particular in relation to the debts they incurred to the Commonwealth. The cases reveal the potential for conflict between the enforcement objectives of the ACCC and the policy objectives of the regime for the external administration of companies. 99

Rescuing the Rescue Culture? Australian Corporate Restructuring After the Safe Harbour and Ipso Facto Reforms – *Corey Byrne*

In 2017, the Federal Government passed a number of reforms to corporate insolvency law, which included a carve-out to liability for insolvent trading or "safe harbour" and a stay on ipso facto clauses during formal insolvency procedures. The government declared these reforms would lead to a "cultural shift" and provide a better balance between the competing imperatives of creditor protection and corporate rescue. This article challenges this assertion and argues that these reforms may not prove as effective in encouraging corporate rescue as the government proclaimed. First, it is argued that the safe harbour carve-out may be difficult to rely on in practice and may be hindered by other concurrent obligations owed by company directors. Second, it is argued that, although the ipso facto stay should be welcomed, it should be only the first step in a broader reform of Australia's statutory restructuring processes. 122

Insolvent Trading in Australia: A Study of Court Judgments from 2004 to 2017 – *Stacey Steele and Ian Ramsay*

The introduction of a safe harbour for directors' personal liability for breach of the duty to prevent insolvent trading highlights the ongoing controversy surrounding this duty. This article presents the findings from a study of 39 judgments of Australian courts which

considered insolvent trading by directors under s 588G of the *Corporations Act 2001* (Cth) from 2004 to 30 November 2017. 156

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