

# INSOLVENCY LAW JOURNAL

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## ARTICLES

**In Which Payment Trust Should the Australian Construction Industry Place Its Trust?**  
– *Bianca Wei Joo Teng and Jeremy Coggins*

For several years, the rate of construction business insolvency in Australia has been at a critical level. Despite the recommendations of several reports over the past two decades that a statutory payment trust (SPT) scheme be established in the building and construction industry to address its insolvency problem, it is only recently that Australian governments have shown any interest in doing so. This article explores the conceptual detail of two different models for SPTs that have come under the focus of the Queensland, New South Wales and Western Australian governments. It also reviews criticisms of the two models apropos their effectiveness to address construction insolvency. In light of the Building Ministers’ Forum announcement towards the end of 2019 that the States and Territories will attempt to agree on model parameters for a nationally consistent approach to SPTs, the article concludes by suggesting a hybrid SPT model that combines the strengths of the two emerging models. .... 113

**Behavioural Insights into the Impact of Bankruptcy’s Public Record on Business Activity** – *Nicola J Howell, Ann-Kathrin Koessler, Rosalind Mason and Uwe Dulleck*

Many Anglo-American jurisdictions, including Australia, aim to provide debtors with a “fresh start” after a personal bankruptcy. However, to what extent can debtors achieve a fresh start if records of individual bankruptcies are publicly available, with no restrictions on their use? This research involves an economic experiment to investigate the effect of the availability of records of past behaviour, compared to their non-existence, on the behaviour of investors and agents. It shows that the availability of records increases investment, as well as repayment behaviour by agents, but only if the agent has no history of non-return of payments. If, however, an agent failed to return payments in the past, and this information is available, agents show lower instances of return behaviour. These findings may be translated to the personal insolvency environment to explore the impact of the public availability of bankruptcy records on debtors and investors, and to inform the legal policy question of whether, and for how long, public records should be available. .... 125

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