

INSOLVENCY LAW JOURNAL

Volume 32, Number 2

2024

EDITORIAL – *Editor: Dr David Morrison* 71

ARTICLES

The Adjudication of Proofs of Debt in Liquidation: On Power and History –
Nikita Angelakis

The High Court has held that when adjudicating proofs of debt, a liquidator acts quasi-judicially “according to the standards no less than the standards of a court or judge”. The first article in this series considered the potential impact and misconceptions that follow from this characterisation of a liquidator’s function, including whether it suggests the liquidator’s power is in fact a judicial power. The second article in this series examines the effect of a liquidator’s adjudication on a creditor’s rights, and whether such an adjudication might be immune from collateral attack by creditors and others in proceedings before a court. It then turns to the history of the procedure and the course by which it originated as a function of a court and was later referred to the liquidator. The last article in this series will consider the limitations on the powers and obligations of liquidators. 73

All at Sea: Safe Harbour’s Failure to Protect Stakeholders against Insolvency –
Luke Byrnes

Australia’s insolvency law regime provides a critical means of ensuring that the engines of Australia’s economy remain humming. However, Australia’s insolvency regime has recently aimed to tackle the tension between entrepreneurialism and creditor protection by introducing s 588GA of the *Corporations Act 2001* (Cth) as a “safe harbour” carve out to the director’s duty to prevent insolvent trading. A closer examination of the 2023 “Corporate Insolvency in Australia” report by the Parliamentary Joint Committee on Corporations and Financial Services and 2022 “Review of the Insolvent Trading Safe Harbour”, suggests some concerns as to whether the practical implications of s 588GA are meeting its policy justifications. This article considers four key criticisms borne out of the 2023 Corporate Insolvency Report and makes four recommendations for policy reform. 103

THE SOLICITOR’S EQUITABLE LIEN: AN UPDATE

Candey Ltd v Crumpler [2023] 2 All ER 527 – *Patrick Quirk* 119

INTERNATIONAL NOTES – *Editor: Dr David Morrison*

Ipsa Facto: Where Are We Now? 125

Even Homer Nods ... about Executory Contracts – *Bruce A Markell* 131

NEW ZEALAND REPORT – *Editor: Professor Lynne Taylor*

Liquidators’ Residual Powers in Relation to Property Subject to Secured Creditor’s Charge – *Lynne Taylor* 141

BOOK REVIEW – *Editor: Dr David Morrison*

Corporations Legislation 2024 (23rd ed), by Edmund Finnane; Revised by Dr Jason Harris et al – *Reviewed by Dr David Morrison* 145