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The Price of Power: Restraints on Liquidators under s 477(2A) and (2B) of the Corporations Act – *Mark Wellard*

The restraints on the powers of company liquidators under s 477(2A) and (2B) of the *Corporations Act 2001* (Cth) have produced a number of challenges in practice. Uncertainty surrounding when the restraints are engaged, anomalous outcomes in their arbitrary application to particular transactions and the significant cost they impose on insolvent liquidations produce what one judge has described as “unfavourable circumstances” for both liquidators and courts. A critical analysis of these fetters on liquidators’ powers informs a debate as to whether Australia should follow the lead of the United Kingdom (in 2015) and repeal these restraints so that liquidators enjoy the same unfettered powers as company administrators. 69

Addressing Disclosure Issues: Combining Freezing and Search Orders in Liquidation – *Aaron Whittenbury and Jessica Wood*

In cases where there is a high risk of asset dissipation or evidence destruction by directors, freezing orders under s 1323 of the *Corporations Act 2001* (Cth) may prove inadequate as they rely on the directors’ compliance to provide complete and accurate disclosure of assets. To address this evidentiary risk, the authors question whether adding a search order provision within s 1323 assists. The section is currently limited to freezing orders which secure assets in liquidation and protect creditors by preventing the dissipation of resources. Ancillary search order provisions might provide a reliable method to preserve evidence and support investigations by allowing applicants to seize documents and assets directly. This article examines the limitations of s 1323 and advocates for the inclusion of an ancillary search order provision. It further discusses how this addition might enhance the section’s effectiveness by addressing financial and evidentiary risks in liquidation proceedings. 95

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