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ARTICLES

Financial counselling and the self-represented debtor in the Federal Circuit Court bankruptcy list: An analysis of a recent pilot service – *Paul Ali*, *Lucinda O'Brien* and *Ian Ramsay*

This article presents a detailed empirical analysis of an innovative financial counselling service offered to self-represented debtors in the Bankruptcy List, in the Melbourne Registry of the Federal Circuit Court, in 2014 and 2015. This pilot service offered on-site financial counselling to debtors who attended the court without legal representation, in response to a creditor's petition. The article draws on the researchers' surveys of debtors and creditors' solicitors, interviews with financial counsellors and Registrars, and data compiled by staff at the court. It concludes that the service improved the efficiency of the List, while also offering significant benefits to debtors. The article outlines potential for further empirical research on the role of financial counselling in the context of contested creditors' petitions, and in the bankruptcy system more generally. It also discusses the role of emotion in bankruptcy proceedings and identifies scope for further, interdisciplinary work in this area. 161

Deeds of company arrangement and secured creditors – *David Morrison*

This article reviews the operation of deeds of company arrangement in Australia since the introduction of the corporate rescue mechanism following the Australian Law Reform Commission's General Insolvency Inquiry in 1988. Part 5.3A of the *Corporations Act 2001* (Cth) followed the Report titled, "Administration of a Company's Affairs with a View to Executing a Deed of Company Arrangement" and operates from 23 June 1993. The deed of company arrangement allows for the creditors and the company debtor to come to an alternate arrangement between themselves to enable the chances of a company within the zone of insolvency a chance of survival and as an alternative to liquidation of the company. This fresh start ideal is a key underpinning feature of modern insolvency and bankruptcy law. The Australian corporate rescue provisions however have been in place for over 20 years and remain largely unaltered. Whilst this is a testament to inter alia clarity of drafting, there are signs that perhaps now is the time to review the operation of the deed of company arrangement provisions, especially in the light of court judgments regarding secured credit and deeds of company arrangement that appear to be at odds with the purpose and drafting of rescue provisions specifically and corporate insolvency generally. This article examines the relevant decisions around previously unanticipated circumstances in the light of the philosophy of the law relating to rescue, particularly the fresh start ideal, and questions whether it is time for a review of the provisions so that the rescue ideal is more easily aligned by stakeholders participating in deeds of company arrangement. 181

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