

# INSOLVENCY LAW JOURNAL

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EDITORIAL ..... 163

## ARTICLES

### **An empirical study of Australian judicial decisions relating to insolvency practitioner remuneration** – *Stacey Steele, Vivien Chen and Ian Ramsay*

Insolvency practitioner remuneration is controversial as recent debates and reforms in Australia evidence. The role of courts in reviewing and setting remuneration has also been called into question. These debates have lacked, however, empirical evidence about remuneration and the role of courts. This article analyses 162 decisions from Australian courts to find out what roles courts are playing in reviewing and setting corporate insolvency practitioner remuneration. The findings suggest that there are still important roles for courts, particularly in the context of allegations of misconduct. The study also suggests, however, that there is merit in continuing to explore low cost, out-of-court mechanisms for reviewing and setting remuneration. The study found that many claims for approval of remuneration are coupled with requests from practitioners seeking other orders, are unopposed and typically approved as claimed. Over one third of the cases involved claims for amounts of less than \$50,000. Out-of-court mechanisms focused solely on remuneration may also provide more certainty and consistency across remuneration decisions which will benefit all stakeholders. .... 165

### **Receivers and employees: An analysis of receivership and its effects on employee contracts and entitlements** – *Lewis Gentry and Christopher Symes*

The position of the employee of a company in receivership is often uncertain. Ongoing employment may cease, and important entitlements owed to the employee may be lost. Despite this, in many cases, a receivership relies on the ongoing service of the company's employees to achieve its objectives. The receiver may depend on the experienced employee to assist with the operation of the going concern, which in turn may maximise the return delivered to the receiver's appointor. This article critically examines the legal framework covering the treatment of employees and employee entitlements in a receivership and concludes that legislative reform is necessary. Specific reform is proposed which seeks to give certainty to practitioners and secured creditors, as well as conferring employees with appropriate protection in the form of priority entitlements. .... 192

## RECENT DEVELOPMENTS – *Dr David Morrison*

### **At the coalface of corporate insolvency and Phoenix activity: A Survey of ARITA and AICM Members** – *Helen Anderson, Jasper Hedges, Ian Ramsay and Michelle Welsh* ..... 209

### **Personal and corporate insolvency doing the same thing for the business end of town: why so complicated?** – *David Morrison* ..... 217

## REPORT FROM NEW ZEALAND – *Lynne Taylor*

### **Insolvency practitioners in the spotlight** – *Lynne Taylor* ..... 227