

INSOLVENCY LAW JOURNAL

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**Removing administrators and liquidators tainted by conflict, bias or bad practice –
*Vicki Donnenberg and Jaclyn Grant***

This article considers the options available to persons who seek to have an administrator or liquidator removed from office during an administration or winding up. Some mechanisms by which the independence of both administrators and liquidators can be assessed at the outset are examined. There are limited instances where the removal of an administrator or liquidator can be sought without recourse to the courts. Provisions in the *Corporations Act* provide that a court has power to remove an administrator at its discretion and a liquidator where cause is shown. It is generally accepted that the courts will remove administrators and liquidators from office if there is evidence they are tainted by conflict or bias or have engaged in bad practice. This article considers the judicial treatment of removal applications in those circumstances.....

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Insolvency, trade unions – and the third way? – *Louise Willans Floyd*

This article reaffirms the positive role that trade unions have played in recent corporate insolvencies – ranging from their role as advocates for the rights of workers, to making recommendations to Parliamentary advisory bodies, to actually influencing the implementation of voluntary administration in order to ensure the continuation of worker's employment. The article also considers possible outcomes of the Howard Government's proposed labour reforms and emphasises the importance of legal theory in identifying power imbalances in the relationships between employers and employees.

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**Should directors be pursued for insolvent trading where a company has entered into
a Deed of Company Arrangement? – *Dr Colin Anderson and Dr David Morrison***

This article examines the tension in Australia between the insolvent trading prohibition and the voluntary administration regime provided for in the *Corporations Act*. The tension exists since the former seeks to prosecute directors for incurring debts that the company cannot pay whereas the latter provisions seek to allow a company in financial distress to resolve the means of dealing with financial difficulty with its creditors and move forward on an agreed basis. The case of John Elliott is the first case in Australian corporate law history concerning the relevant provisions where an agreement was made with creditors, after which the director was prosecuted pursuant to the insolvent trading prohibition

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Bankruptcy notices and imperfect debts – *Christopher Wood*

While it may seem that execution on a judgment (such as a writ of execution against property) is a form of enforcement quite separate to bankruptcy, the two have been closely linked for over 50 years. This article explores and attempts to resolve the conflicting lines of authority as to an obscure pre-condition to issuing a valid bankruptcy notice. The prevailing authority requires that a creditor be in a position to obtain a writ of execution on the judgment before having a bankruptcy notice issued, which can sometimes require first obtaining the leave of the court that issued the judgment. In particular, care needs to be taken where the creditor has been assigned the judgment debt and seeks to proceed to bankruptcy 173

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