

INSOLVENCY LAW JOURNAL

Volume 28, Number 4

2020

EDITORIAL – *General Editor: Dr David Morrison* 163

ARTICLES

Judicial Guidelines for Insolvent Litigation Funding Agreements – *Sulette Lombard and Christopher F Symes*

The usefulness of litigation funding to enable litigation in insolvency that may not otherwise have been possible due to funding constraints has been widely recognised. However, concerns have been raised about potential abuse of litigation funding. In Australia, certain provisions of the *Corporations Act 2001* (Cth) created an opportunity for the court to become involved in “approving” insolvent litigation funding agreements, and a system of “judicial oversight” consequently developed. This article provides an analysis of these “judicial guidelines”, in order to assess the extent to which the system of judicial oversight in respect of insolvent litigation funding could serve to address some of the concerns that have been raised. 165

Regulation of Insolvency Practitioners in a Pandemic – *Catherine Robinson*

The COVID-19 pandemic has demanded greater attention be paid to the regulatory agenda and recalibration in enforcement approaches to reduce regulatory burden. This is imperative for regulators and insolvency practitioners in preparedness for current and emerging harms to vulnerable consumers, and the anticipated increased number of insolvencies following the removal of interim government measures. This article presents the first post-reform review of the application of enforcement tools in the discipline of insolvency practitioners from a study of publicly available information. It identifies significant gaps and inconsistencies in the reporting of enforcement statistics, as well as elements of good practice and innovative regulatory approaches. It concludes that improved collaboration and strengths-based regulation, and transparency in enforcement action, should be the “new normal” in insolvency practitioner regulation. Timely provision of outputs and outcomes by regulators is necessary to glean important lessons from the regulatory responses during this time of crisis. 181

RECENT DEVELOPMENTS – *Editor: Dr David Morrison*

Creditor-defeating Dispositions: A Necessary Addition to Australia’s Corporate Insolvency Laws – *Stephanie Bruce* 205

REPORT FROM NEW ZEALAND – *Editor: Professor Lynne Taylor*

Enforcement of Directors’ Duties in a Liquidation Context: *Madsen-Ries v Cooper* – *Lynne Taylor* 216

VOLUME 28 – 2020

Table of Authors 225
Table of Cases 227
Index 233