PEAK V NET INDEBTEDNESS

"fondly known as the running account defence..."

The **net indebtedness** rule comes from section 588FA(3) of the Corporations Act.

It requires you look to the whole of the trading relationship and treat it as a single transaction.

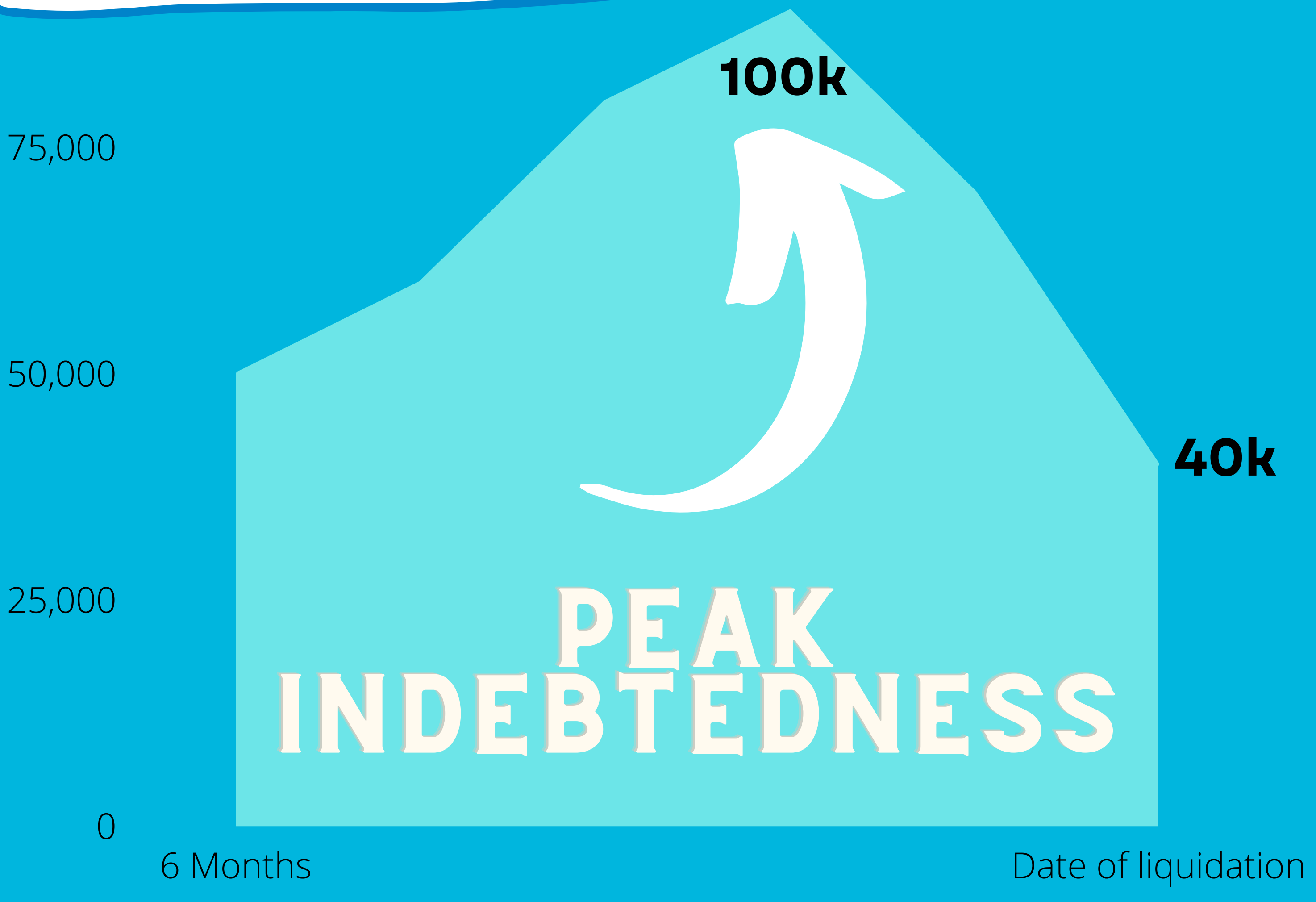
The **peak indebtedness** "rule" allowed a liquidator to choose the point at which the company in liquidation was most in debt to the creditor and net that against the balance.

In 2021, the full Federal Court rejected the peak indebtedness "rule", finding that it was arbitrary, and inconsistent with the doctrine of ultimate effect.

FOR EXAMPLE

Six months before the relation back date, there was a debt of $50,000, it went up to $100,000, and ultimately ended at $40,000. Under the **peak indebtedness** "rule" the liquidator would have a claim of $60,000 - the peak of $100,000 net against the $40,000 balance.

Under the **net indebtedness** rule, the liquidator's claim is $10,000, being the starting debt of $50,000 minus the $40,000 balance.



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