

Episode Summary

Episode number: 109
Episode name: Choppy Waters or Gently Rising Tide? Key Insolvency Issues for 2024
Guest(s): Richard Cowen

What area(s) of law does this episode consider? Key insolvency issues for 2024.

Why is this topic relevant? Against the backdrop of the COVID-19 pandemic, Australia witnessed the dynamics of its insolvency market go through an unprecedented shift. The economic fallout of the virus, coupled with policy interventions, created a swirling set of challenges for lawyers specialising in the insolvency domain.

While the virus might have become endemic, many of those shifts have come to a natural conclusion. But is it really back to business as usual for insolvency and insolvency professionals? This episode aims to provide practitioners with a comprehensive overview of the key insolvency issues set to shape the Australian legal landscape in 2024 as we return to a 'new' insolvency normal.

What legislation is considered in this episode? *Corporations Act 2001* (Cth)

What are the main points?

- The insolvency market in Australia experienced unprecedented shifts due to the economic impacts of COVID-19 and subsequent policy interventions.
- Despite the virus becoming endemic, the shifts have not entirely concluded, and “business as usual” has yet to return for insolvency lawyers and professionals.
- New insolvency processes such as the small business restructuring regime and the simplified liquidation process were introduced during the COVID-19 pandemic, these follow earlier efforts at tinkering with the market.
- Historically, voluntary administration was a significant legislative change affecting insolvency, shifting market dynamics by allowing directors greater control of the insolvency process.
- During the 2008-2009 Global Financial Crisis, banks became reluctant to make formal insolvency appointments, leading to a preference for informal workouts and restructuring.
- The small business restructuring regime, which had a slow start, is designed for businesses with less than \$1 million in liabilities and aims to provide a simpler alternative.

- Despite early skepticism, insolvency professionals have gradually accepted the small business restructuring regime due to its fit for smaller businesses heavily impacted by the pandemic.
- The post-pandemic period is expected to witness a “cleanup” of accumulated insolvencies, partially driven by increased activities of the Australian Taxation Office.
- There is speculation that Australia may face a rise in insolvencies in the future due to economic factors such as interest rate hikes and labour shortages.
- Personal insolvency numbers have not yet returned to pre-pandemic levels, but there are early indications of a potential rise in corporate insolvencies.
- The Parliamentary Joint Committee on Corporations and Financial Services has suggested a comprehensive review of the corporate insolvency regime, highlighting the need for legislative reform.
- The PJC report recommends interim changes to address pain points in the insolvency market, such as unfair preference claims and corporate trustee insolvencies.

What are the practical takeaways?

- Insolvency is a broad practice area touching several fields of law, offering an engaging and dynamic career for lawyers who aspire to enter this specialty.
- Retail, tourism, and hospitality, together with the residential construction industry, are areas predicted to face challenges and thus potentially higher insolvencies in the future.