

June 2021 Communique Insolvency Update

Welcome to our latest bulletin on what's happening at Helm Advisory and the latest news in the insolvency industry.

The LAST RESORT is sometimes the only way out of a Property Dispute

When there is financial stress, ownership breakdown, inability to commercially function, who are you going to call?

We would like to think you pick up the phone and ring Helm. Not only are we registered insolvency practitioners but we are able to act as trustees for sale.

Something that we have done over many years is to act as a trustee for sale of real property. Considered the last resort in any attempt to have a property sold when one of the parties refuses to cooperate is to go to court and get independent trustees for sale appointed. In NSW this is done under section 66G of the Conveyancing Act 1919.

See the relevant section below:

CONVEYANCING ACT 1919 - SECT 66G

Statutory trusts for sale or partition of property held in co-ownership

66G Statutory trusts for sale or partition of property held in co-ownership

(1) Where any property (other than chattels) is held in co-ownership the court may, on the application of any one or more of the co-owners, appoint trustees of the property and vest the same in such trustees, subject to incumbrances affecting the entirety, but free from incumbrances affecting any undivided shares, to be held by them on the statutory trust for sale or on the statutory trust for partition.

If you are in need of a Trustee for sale when the cooperation between co-owners of real estate has reconcilably broken down, give us a call.

Certainly, it is up to the Court and we state that we have the experience to get the job done and make our best efforts to maximise the return to all the co-owners.

Safety in the Workplace - It's everyone's business

Safety management in the workplace is at times underrated but can affect a business's workers compensation, public liability premium or prosecution as workplaces grapple with the fall out of operating under COVID-19. Under various safety laws throughout Australia, all company employees have duty of care responsibilities, particularly those designated as Person or Persons in Control of a Business or Undertaking (PCBU), or Officers. All States and Territories, with the exception of Victoria and Western Australia, have adopted the National Model Work Health and Safety Act (WHS Act, 2011). Victoria and the harmonised states adopted the same definitions of the meaning of PCBU or officer, whereas in WA, an officer has a broader definition under the *Occupational Safety and Health Act 1984* (OSH Act).

In Victoria, Under the OSH Act, a director, manager, secretary or other officer (e.g. a supervisor who is considered an officer by law) acting in those roles can be personally liable if it can be proven an offence has been committed due to their neglect. Several businesses were fined when they failed to comply with COVID-19 safe work place rules.

Companies fined for breach of COVID-19 health rules news article

The maximum penalties for a Category 1 offence are imprisonment for up to five years and/or a fine of \$346,500 for an individual and \$3,463,000 for a corporation. As of 10 June 2020 in NSW, insurance and indemnity arrangements for WHS fines are now prohibited in New South Wales. However, it is still permissible to insure legal and investigation costs that will be incurred in Safework investigations and the defence of WHS prosecutions.

Complying with safety is often challenging and even more so when COVID-19 is included. To make your business compliant a simple risk assessment can help you to gather valuable information. Contact Michael Chin from Capital People Solutions on 0431 500 301.

Industrial Relations Risk Management – Wage Review to Mitigate the Risk of Penalties.

A part of Helm's work is to review employee's entitlements and assess under (and over) payments for companies. We do this when assisting the Fair Entitlements Guarantee (FEG) and when required to adjudicate employees claims.

Our skills are not restricted to the insolvent world but are available to solvent companies too.

Take this matter recently reported in the Accounts Daily to see what short paying has cost the company and directors personally.

FWA issues penalty

There are several similar stories coming through the courts.

If you think your client needs a wage review, give us a call. Catching an underpayment early might be the best way out of a punishment.

Recently we assisted in settling a potential \$950k underpayment claim by 22 ex-employees. Better resolved than having the threat unresolved.

INDUSTRY-FOCUSED FORUM NIGHT “Are there yet? The answer is NOT EVEN CLOSE...”

On the 27 May 2021, our Managing Director, Stephen Hathway, hosted a panel discussion featuring 3 members from the tourism and events sector - Penny Lion from Tourism Australia, Stephen Turner from Medical Meetings and David Thompson from the Travel Authority Group. The question posed to the panel was: “Are we there yet?” It was a very interactive discussion with the panel including a number of questions posed by the audience.

The general consensus was that a tourism recovery is well underway in some specific domestic sectors. Luxury lodges are booked out well in advance. For example, Hamilton and Hayman Islands are experiencing solid forward bookings in both leisure and group travel. Luxury train travel has a 6-month waiting list. In addition, there is a waiting list to purchase SUVs and an increasing price for caravans.

It seems the domestic market will continue to flourish if domestic borders remain open and international borders remain closed. Luxury retreats and lodges are perhaps getting the highest frequency of bookings in the sector.

However, this upward domestic trend does not reflect how some tourism-related small businesses have been affected by a downturn in supply and void of international visitors. Average days overdue payment terms for the Accommodation and Food Services industry sector have increased from 16 days in April to 90 days in June. Clearly there are segments within the industry that are struggling and will continue to struggle for some time to come.

The advice is consistent across the board, from accountants, lawyers, management consultants, industry associations and ratings agencies. If you foresee trouble ahead, seek advice as early as possible. If a restructure is required, then there are numerous solutions available, depending on specific circumstances. Sometimes it may be as simple as refinancing existing debt to more favourable terms, potentially with a lower interest rate and an extended repayment term, or converting from principal and interest to interest-only repayments for a period of time. If it is not possible to refinance debt, then an equity raising may be an appropriate option. Sale of assets could be another possibility.

If real property is in the asset mix, then even more possibilities are on the table for discussion.



WE CAN HELP YOU NOW

If you have clients who are experiencing difficulty in paying their debts and/or need to restructure their business, please contact me.

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