

August 2022 **Communique**

Welcome to our August newsletter after a fantastic Australian team effort at the Commonwealth Games in Birmingham to win 178 medals ahead of the host nation on 176 medals. Our gold medal tally was 67 medals with England next on 57 gold medals. The most important feature was the integration of the Paralympic athletes with the able-bodied athletes.

WE ARE BEING APPROACHED BY DIRECTORS WITH DPNs or NOTICES OF INTENTION TO ISSUE A DPN. ARE YOU?



As the Australian Taxation Office ramps up its recovery actions, we are being approached by directors who have received Director Penalty Notices (DPN) or Notices of Intention to issue a DPN.

At this stage of the recovery process, it appears to be the favoured action by the ATO instead of commencing winding up proceedings. Winding up proceedings by the ATO are still in very small numbers.

As mentioned previously in an earlier newsletter, it is essential that all lodgements with the ATO are made on time or at least within three months of the due date. By ensuring

compliance, the director may avoid a lockdown DPN where the options are limited to payment in full or declaring themselves bankrupt.

Where compliance has been achieved, the director has more options available including the appointment of a liquidator, administrator or restructuring practitioner within 21 days from the date of issue of the DPN.

By proceeding with the formal appointment of an insolvency practitioner, the penalty is likely to be remitted. Contact our office to obtain the proper advice for your client's circumstances as this should only be considered general information.

THE ECONOMY CONTINUES TO SURPRISE ON THE UPSIDE



Although insolvency appointments are recovering back to levels of pre-COVID years, this appears to be a backlog of insolvent companies which are being forced to take action as a result of creditor action.

Commodity volumes and prices continue to climb resulting in record trade surpluses in Australia over recent months. Unemployment continues to hover around record lows allowing a reduction in those claiming unemployment benefits from the Government.

Inflation has raised its ugly head resulting in regular interest rate rises from a very low record base. Although some economists appear to be predicting falls of 18-20% in Sydney house prices, my recent discussions with some real estate agents reveal that there is still a lot of demand for real estate as the prospective buyer realises that interest rates are still at extremely low levels. It will remain to be seen whether Sydney prices fall by the percentages predicted in a market where demand still outstrips supply.

The economists may have been right about a soft landing for the Australian economy despite recessions currently underway in the UK and USA. It will depend on how the Governor of the Reserve Bank of Australia handles the monetary policy over the next few months.

HOW CAN YOU OBTAIN THE BEST RESULT FROM COMMERCIAL MEDIATION?



I recently attended a discussion group where John Vohralik, Solicitor and Nationally Accredited Mediator, presented on this topic and I thought it might be useful for anyone who may become involved in commercial mediation.

Firstly, it is important that your pre-mediation is properly organised including the selection of a mediator. Do you need a facilitative mediator or an evaluative one? Do you need expert reports?

Prepare a statement of issues or position paper to assist the mediator with:

- an understanding of the issues involved including a brief summary of the legal issues;
- potential solutions to the problems;
- current status of the case;
- summary of the prior settlement negotiations (if any);
- costs to date and future costs;
- any roadblocks to settlement; and
- draft settlement deed.

It is important not to overload the mediator with all the evidence and affidavits filed in the matter but rather a summary may be provided in the position paper. Often it is good to encourage your client to speak at the mediation to provide the commercial and moral issues that may not be addressed by your legal team.

Secondly, you should consider the following during the mediation session:

- Help with setting the agenda for the mediation;
- Look to solve the problem and not attack the opposing side;
- The client should be encouraged to speak at the mediation to provide the emotional aspects;
- Consider making concessions to encourage compromise and promote dialogue;
- Assist the opposing side with how you have calculated your claim or how to analyse their claim/cross claim;
- Prepare your argument to address the opposition's claim and deal with the perceived risks;
- Assess the risks and strengths with your client and the mediator; and
- Look at needs, options and solutions rather than legal analysis and facts/documents.

If the matter settles, prepare a deed of settlement including all critical terms and do not settle for a Heads of Agreement as problems may arise later.

If there is no settlement reached, consider putting your best offer and provide a reasonable time for acceptance. This may lead to a compromise or Calderbank offer which may lead to a post mediation settlement.

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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