

CREDITORS AND THE INSOLVENCY LAW REFORM ACT 2016

Date : December 7, 2017

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As the 2017 year draws to a close, creditors would be aware that both instalments of the Insolvency Law Reform Act 2016 (“the ILRA”) have come to pass.

What should creditors be aware of under the new regime?

The ILRA is an attempt to reform the insolvency law but also to provide an improvement in the confidence of the public in the overall performance of the trustees and liquidators appointed to the various estates and administrations that are commenced every day.

Under the Corporations Act 2001 only the liquidator of the company can commence an action for preference payments or voidable transactions. The ILRA allows a liquidator to assign a voidable transaction to a third party (including creditors!). This may result in claims being commenced which the liquidator thought were not commercial to pursue.

Under the ILRA creditors are given significant additional powers to call meetings, request information, and documentation regarding the administration of a bankrupt or corporate insolvency administration. This gives control, upon the passing of a resolution, to give certain directions to the trustee or liquidator and in addition, to remove the trustee or liquidator, although the practitioner has a right to apply to the Court to avert removal.

The fees/expenses of the trustee or liquidator can be reviewed by an independent expert appointed by the creditors.

The creditors can give to the trustee or liquidator certain directions and whilst the practitioner is not required to comply with the direction, he/she must record the direction in the records of the administration and the reasons for not complying with such direction.

Whilst the above summary has been simplified, it gives a general idea to creditors of the changes that have been made under the ILRA that will impact upon them. Any specific advice on the details of the ILRA and its impact upon creditors can be confirmed by contacting the team here at Matthews Folbigg.

The ILR Act can be reviewed at: <https://www.legislation.gov.au/Details/C2016A00011>

If you would like more information or advice in relation to insolvency, restructuring or debt recovery practice and procedure, contact Darrin Mitchell on 02 9806 7428 or darrinm@matthewsfolbigg.com.au or a Principal of the Matthews Folbigg Insolvency,



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