

The logo for Sharrock Pitman Legal is located in the top left corner. It features a stylized, white, abstract line drawing that resembles a signature or a calligraphic flourish. Below this graphic, the words "Sharrock", "Pitman", and "Legal" are stacked vertically in a clean, white, sans-serif font.

WELCOME

COVID-19 Update:

Temporary changes to statutory demands, bankruptcy notices and insolvent trading

WELCOME



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AGENDA

- 1. Coronavirus Economic Response Package Omnibus Act – an overview**
- 2. Changes to Statutory Demands**
- 3. Changes to Bankruptcy Notices and procedure**
- 4. Changes to Insolvent Trading provisions**

AGENDA

5. Directors duties and obligations

6. Other enforcement options

COVID-19 LEGAL UPDATE

Disclaimer

The guidance in this presentation is of a general nature only as of 21 May 2020 and should not be relied upon as legal advice.

Any legal matters affecting you should be discussed specifically with a lawyer.

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Coronavirus Economic Response Package Omnibus Act

Overview

Designed to provide temporary relief to economically stressed individuals and businesses.

Part of package of 8 pieces of Commonwealth legislation to address the effects of COVID-19 on Australian society

Responses under the CERPO Act include:

- Schedules 4 and 11 – One-off payments and increases to Centrelink benefits
- Schedule 13 – Early access to superannuation
- Schedule 1 – Increased thresholds (eligible asset and aggregated turnover) for instant asset write-offs

Coronavirus Economic Response Package Omnibus Act

Schedule 12 - Temporary relief for financially distressed individuals and businesses

- Changes to the statutory demand scheme under the Corporations Act 2001 (Cth)
- Changes to the Bankruptcy Act 1966 (Cth)
- Changes to the insolvent trading regime (director's personal liability) under the Corporations Act 2001 (Cth)
- Temporary relief – how long?

Changes to Statutory Demands

What is a statutory demand?

Criteria for issuing a statutory demand – prior to 25 March 2020

Criteria for issuing a statutory demand – 25 March 2020 onwards
(temporary)

Increases scope for arguments to set aside statutory demands

Changes to Bankruptcy

What is a bankruptcy notice?

Criteria for issuing a bankruptcy notice – prior to 25 March 2020

Criteria for issuing a bankruptcy notice – 25 March 2020 onwards
(temporary)

Creditors petitions

Voluntary bankruptcy

Changes to Insolvent Trading provisions

What is insolvent trading?

Director's personal liability

Defences:

- Prior to 19 September 2017
 - Reasonable grounds to expect solvency
 - Reasonable grounds to believe subordinate person
 - Illness or other good reason
 - Reasonable steps to prevent debt being incurred

Changes to Insolvent Trading provisions

Defences (continued)

- From 19 September 2017
 - Safe harbour “defence”
- From 25 March 2020 until 24 September 2020
 - New amended safe harbour “defence”

Consequences

- Compensation
- Pecuniary penalty
- Individual creditor claims
- Assignment of claims

Directors Duties and Obligations

No change to other director's duties and obligations (common law and statute)

- Duty of good faith
- Duty of care and skill
- Business judgment rule
- Improper use of position
- Improper use of inside information

Civil and criminal liability

Director's penalty notices

- PAYG withholding
- WET tax
- Luxury car tax
- GST
- Superannuation

Other Enforcement Options

Bankruptcy not founded on a bankruptcy notice

Insolvency not founded on a statutory demand

Court action

ADR



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Q&A

Fighting For Enterprise Success: Through the Eye of the Tiger

By David Sharrock



www.fightingforenterprisesuccess.com

THANK YOU



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