

## **EDITORIAL: QUT LAW REVIEW SPECIAL EDITION BANKRUPTCY**

A key legal aspect of any economy that has a feature of the widespread use of credit is the law relating to insolvency. In Australia and New Zealand, the insolvency law is divided between that which relates to corporations and that which deals with natural persons. Many of our comparable jurisdictions have ended this divide but for whatever reason, the Australian government has so far resisted any call to do so despite what seem to be the clear cost saving potential of such a move. The division in the legislation not only has practical consequences for practitioners it also affects the manner in which the legislation is studied. It seems that whilst corporate insolvency law is the subject of widespread coverage in the academic journals and conferences, there is much less focus on the personal insolvency legislation in our academy. Research into this area seems to be something of an afterthought and often just tagged on to conferences where the focus is more likely to be on consumer law or corporate law. In terms of simplistic numbers though this should not be the case as in Australia personal insolvencies in 2013-2014 were 29,514. In the same period corporate insolvencies were 9,822. Such broad figures need further analysis but if nothing else it suggests that personal insolvency should not be ignored because it is unimportant.

In July 2013, a group of Australian and New Zealand academics who specialise in studying insolvency law, and who meet under the name of the Insolvency Academics Network (IAN) met at the Queensland University of Technology for their annual roundtable discussion. For that year there was a theme of dealing with personal insolvency only. The academics were joined by a number of representatives of the Australian Financial Security Authority as well as a representative of the Australian Reconstruction Insolvency and Turnaround Association. This special edition contains a number of the papers that were presented on that day. As editors of this special edition we are grateful to the authors, the anonymous reviewers and the editorial staff at the Journal who have assisted in putting this edition together. We also take the opportunity to thank the participants at the Insolvency Academics Network meeting in July 2013 and we hope that that discussion along with these articles will promote further debate about our personal insolvency law in the future.

The following provides an outline of what is contained in the articles in this special edition as adapted and taken from the abstracts or the introductions provided by the authors themselves. The first article is by Professor Rosalind Mason and Stephen O'Mahony and is entitled Perspectives On Australian Bankruptcy Law Through The Prism Of The World Bank Report On The Treatment Of The Insolvency Of Natural Persons. In this article there is coverage of the World Bank's Report on the Treatment of the Insolvency of Natural Persons which was set out to guide nations in addressing the issues raised by an individual debtor's insolvency. The article reviews Australia's personal insolvency laws and shows that the existing law addresses many of the issues raised by the Report. However two areas are identified as worthy of further investigation by policy-makers and scholars to better address a concern for equity. The next article is entitled The Fresh Start Goal of the Bankruptcy Act: Giving a Temporary Reprieve or Facilitating Debtor Rehabilitation? by Nicola Howell. Here Nicola argues that providing debtors with the opportunity for a fresh start is popularly regarded as one of the main goals of bankruptcy legislation. However, she suggests there has been limited analysis of

this goal. This article confirms that the fresh start is one of the main goals of the Australian Bankruptcy Act, and argues that this fresh start focuses on discharge of debt but does not explicitly address debtor rehabilitation. A review of the key goals of bankruptcy law could examine whether, and to what extent, rehabilitation should also be a focus of the fresh start in Australian bankruptcy law.

The next article explores the issue of income of bankrupts from the historical, theoretical and legislative viewpoints. This contribution is by Associate Professor Christopher Symes and Mark Wellard and is titled *After-acquired Income and Contributions by Australian Bankrupts: Can pay, Should pay, Making them pay!*. After setting out the foundation for our present law, the article reviews the current statistics on the use of the existing legislative income contribution regime and analyses the jurisprudence which has made the notion of after-acquired income - and the ability of bankrupts to invest it - opaque. It then canvasses the 'can pay, should pay' notion of income contributions by bankrupts together with the current debate on 'making them pay'. The penultimate article is from Trish Keeper and is entitled *New Zealand's No Asset Procedure: A Fresh Start At No Cost?* As the title suggests it covers the No Asset Procedure ('NAP') that was introduced into New Zealand law in 2007 when the Insolvency Act 2006 (NZ) came into force. The first part of this article considers the objectives behind the introduction of the NAP procedure into New Zealand law by identifying the gap between the insolvency procedures available before 2007 and the characteristics of this new class of debtors. The paper then reviews the legislative framework for NAP and the impact of NAP since its inception. Finally, it evaluates the operation of the procedure and provides some suggestions for amendment. The last article is a contribution by Associate Professor Christopher Symes simply titled *Bankrupts and Passports*. As the name suggests it examines the requirement for bankrupts to surrender their passports. This is one of a number of disabilities that have long been part of the bankruptcy landscape but it is a relatively simple law to enforce. The justification for the restriction is examined.