

THE POWER OF BEING UNDERSTOOD

AUDIT | TAX | CONSULTING



FAMILY LAW WEBINAR

Assets and Family Law during separation

Wednesday, 29 September 2021



FAMILY LAW & INSOLVENCY

Introduction

When it comes to separating, no two cases are the same. Some clients will have assets that they are looking to grow or protect, while others may be under financial hardship and considering engaging an insolvency specialist.

Whatever the situation your client is facing, it is important to understand what options are available and how you can guide them to get the best possible outcomes.

Indicators of insolvency

- Clearly no one wants their clients to go into financial difficulties.
- Important to identify financial difficulties and act quickly – the earlier the better.
- What to look out for:
 - Ongoing losses
 - Poor cash flow
 - Absence of a business plan
 - Incomplete financial records or disorganised internal accounting procedures
 - Lack of cash-flow forecasts and other budgets
 - Increasing debt (liabilities > assets)
 - Problems selling stock or collecting debts
 - Unrecoverable loans to related parties
 - Creditors unpaid outside usual terms

Indicators of insolvency (cont.)

- Solicitors' letters, demand, summonses, judgments or warrants issued against your client / your client's company
- Suppliers implementing COD terms
- Issuing post-dated cheques or dishonouring cheques
- Special arrangements with selected creditors
- Overdraft limit reached or defaults on loan or interest payments
- Problems obtaining finance
- Change of bank, lender or increased involvement by financier
- Inability to raise funds from shareholders
- Outstanding BAS/income tax lodgements
- Overdue taxes and superannuation liabilities
- Board disputes and director resignations, or loss of management personnel
- Increased level of complaints or queries raised with suppliers
- An expectation that the "next" big job/sale/contract will save the business

What is bankruptcy?



Legal process available to a **person** who is unable to pay their debts as and when they fall due.

Releases the person from most debts, provides relief and allows the person to “make a fresh start”.

Role of the Bankruptcy Trustee

- 1 Identify, collect & realise **divisible assets**.
- 2 Assess requirement for bankrupt to make **income contributions** to estate.
- 3 Dealing with **creditors**, including distributions to employees (where applicable) and creditors in accordance with the Bankruptcy Act.
- 4 Conducting **investigations**.

Ongoing family law proceedings

- The Bankruptcy Trustee may apply to become a party to family law proceedings.
- Before applying, the Bankruptcy Trustee will first consider the value of **divisible assets** subject to the proceedings and the commerciality of becoming a party.
- The bankrupt only has claim to **exempt assets** and **maintenance**.
- With regard to divisible assets, the Court must determine the competing rights of the creditors and the non-bankrupt spouse.
- The Court can order the Bankruptcy Trustee to transfer divisible assets to the non-bankrupt spouse – section 79 FLA

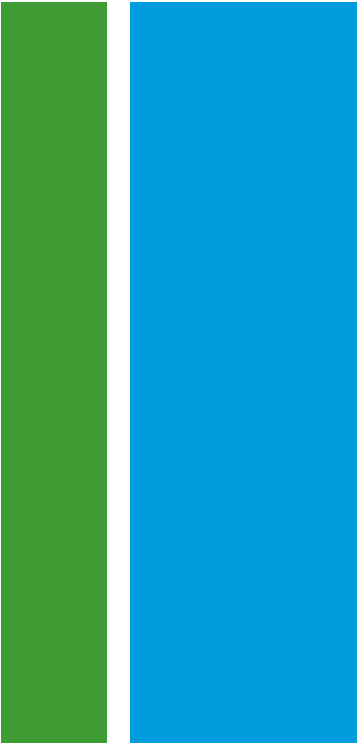
Setting aside orders

- Bankruptcy Trustee can apply to the Family Court to set aside orders under section 79A FLA.

Section 79A(1)(a) – “*there has been a miscarriage of justice, duress, suppression of evidence (including failure to disclose relevant information), or giving of false evidence or any other circumstance*”.

- As part of investigations, Bankruptcy Trustee will review any pre-bankruptcy settlement orders, in particular looking at transfers of divisible assets to non-bankrupt party.

Annual statistics



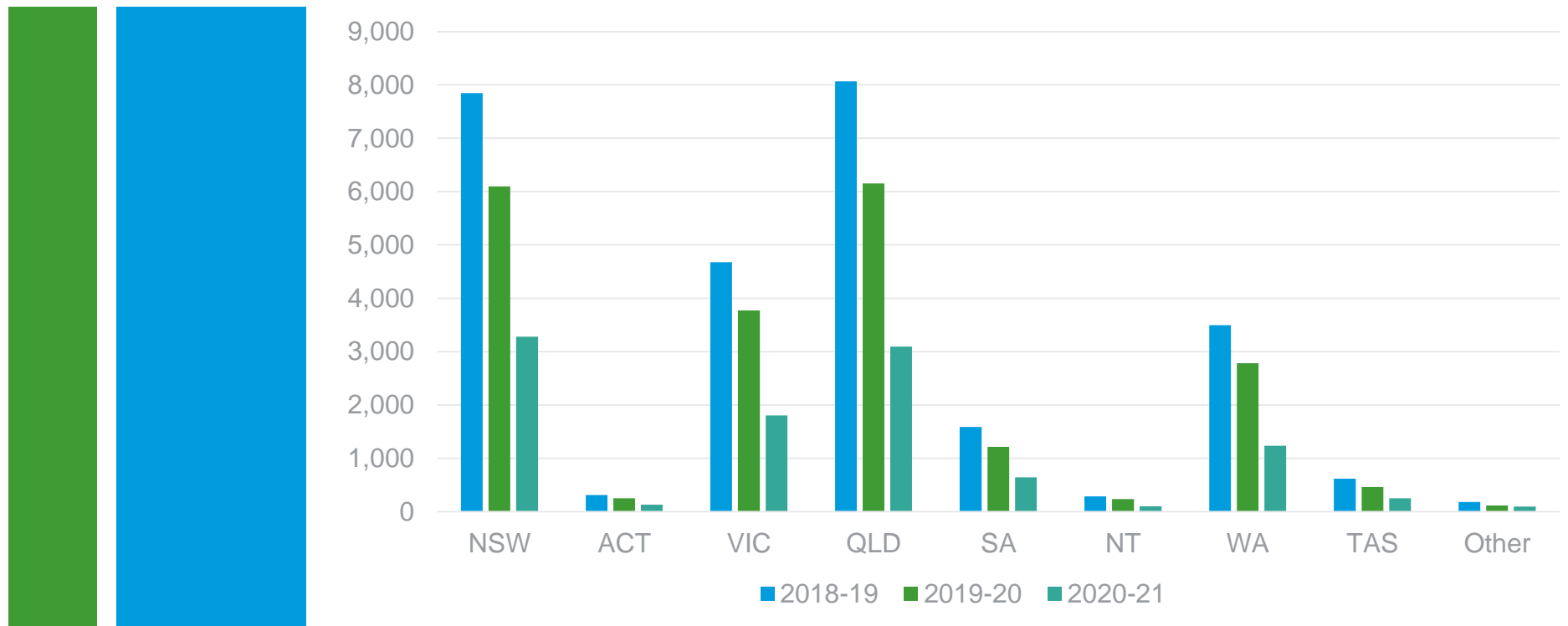
AFSA publishes annual statistics for personal insolvency (bankruptcies, personal insolvency agreements and debt agreements) on their website.

These statistics can be accessed via:

www.afsa.gov.au/statistics/annual-statistics

Most recent annual statistics are for 2020-21

Personal insolvency activity





SEPARATION AND PLANNING

General Advice Warning

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The information contained in this presentation is current as at 24 September 2021.

Understanding your client's situation

Before we start planning for the future, we need to understand the now:

- Ownership of current assets – cash, property, shares
- Superannuation – SMSF?
- Companies / trusts – shareholders and control
- Other factors – Family dynamic, client's financial literacy, capital gains tax, stamp duty issues etc.

Taking stock – what's next

We're through the separation, the clients financial position is clear... now what?

- What are the client's needs?
- What are the client's goals?
- Getting the legal framework right, from the start, is critical

Key Considerations – Tax comparison

Who wants to pay more tax than absolutely necessary...

	Capital	Income
Individual (resident)	MTR 0% - 47%*	MTR 0% - 47%
Company	25% - 30%	25% - 30%
Trust	47%	47%
Super (accumulation)	10% - 15%	15%
Super (pension^)	0%	0%

Includes Medicare

** 50% discount available on capital gains on assets held over 12 months*

^ maximum \$1.6M in pension phase

Building and protecting wealth

When building wealth, critical considerations are:

- Risk tolerance
- Timeframe
- Liquidity/income needs

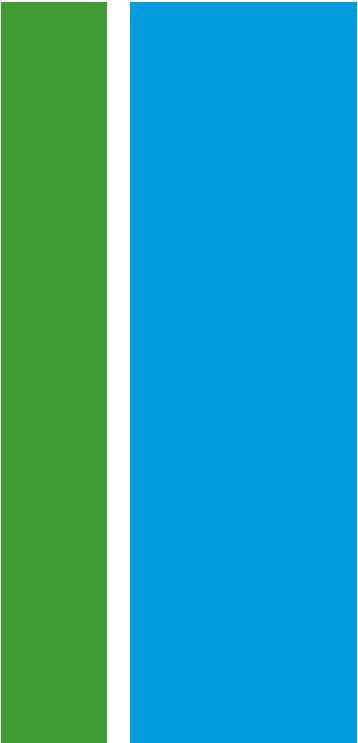
Protecting wealth comes in two key forms, that is, from:

- Illness or injury
- Themselves / others

- *Cash savings – easy access, low returns*
- *Term deposits – slightly higher returns, fixed term investment*
- *Direct shares – small initial investment, higher risk*
- *Direct property – large initial investment, higher ongoing costs, illiquid*
- *Exchange Traded Funds (ETF) – cheap, diverse within and across asset classes*
- *Managed Funds, mFunds – broad diversification*
- *Investment Bonds – tax effective, 10+ year investment timeframe*
- *Superannuation – tax effective, illiquid*

QUESTIONS ?

THANK YOU FOR
YOUR TIME AND
ATTENTION



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