

Business Structures

25 May @ 7.30 am



Business Law Breakfast

Aitken
partners

Agenda

- Julie Maxfield
- Ralph Davies
- Lauren Woolley
- Mike Chenoweth

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Ralph Davies

BUSINESS STRUCTURES

Sole Trader/Sole Proprietor



Key Elements



Small Scale
Operations

Unincorporated

Owner is
ultimately
responsible

Weighing it up

Pros

- Control
- Ownership
- Easy to set-up
- Minimal Reporting Obligations

Cons

- Unlimited Personal Liability
- Restricted Growth



Partnership



Key Elements



Two or more
people

Unincorporated

Equal
Distribution

Weighing it up

Pros

- Easy to set-up
- Minimal Reporting Obligations
- Equal Responsibility
- Share Profits

Cons

- Joint and Several Liability
- Liable for actions of other partners
- Partner Disputes
- Difficult to transition

Corporation



Key Elements



Directors and
Shareholders

Incorporated

Separate
Legal Entity

Weighing it up

Pros

- Limitation of Liability
- Enhanced Credibility
- Raising Capital
- Transfer of Ownership
- Management

Cons

- Enhanced Reporting
- Shareholder's Rights
- Costly Management

Trust



Key Elements



Trustees and
Beneficiaries

Unincorporated

Fiduciary
Duties

Weighing it up

Pros

- Limitation of Liability
- Privacy
- Asset Protection

Cons

- Complexity
- Fiduciary Duties
- Expensive
- Restricted Trustee Powers

Lauren Woolley

Practical Tips

Registration

- Business Structure?
- Intended business and company name?
- Address and contact details for company and directors?
- Tax file number?
- Trust Deed



Australian Government

Australian Business Register

Trademarks



Location

Purchase



GST & Stamp Duty



Vacant Possession



Due Diligence



Location

Lease

Commercial
or
Retail



Fit out and Equipment



- Up front costs
- Maintenance and repairs
- Modifications
- Quality

Licenses and Regulations



Food Premises
Registration



Liquor Licence



Food safety

Employees

- What are their entitlements?
- What are their pay rates?
- Can they work in Australia?
- Child labor laws?





Mike Chenoweth

WHAT HAPPENS WHEN IT ALL GOES WRONG?





Partnerships

- Each state has its own separate legislation that deals with partnerships.
- In Victoria, it is the *Partnership Act 1958* (VIC).
- The *Partnership Act* has rules for how a partnership can be formed, dissolved and for how assets are to be distributed.

Shareholder Disputes

- Primarily dealt with under the *Corporations Act 2001* (Cth), associated rules, as well as general law.
- Often involve issues of alleged oppressive conduct against the company generally or against shareholders.
- Relief can include:
 - (i) Injunctive relief – either mandatory or prohibitive;
 - (ii) Orders to purchase shares; or
 - (iii) Appointment of receiver/liquidator.

What is Bankruptcy?

“Bankruptcy is a legal process where you're declared unable to pay your debts. It can release you from most debts, provide relief and allow you to make a fresh start.”

Consequences of Bankruptcy

Consequences of Personal Insolvency



A Trustee will be appointed to your estate.



Your assets will “vest” in that trustee.



Trustee can (and will) investigate historical transactions.



You may need to pay income contributions.

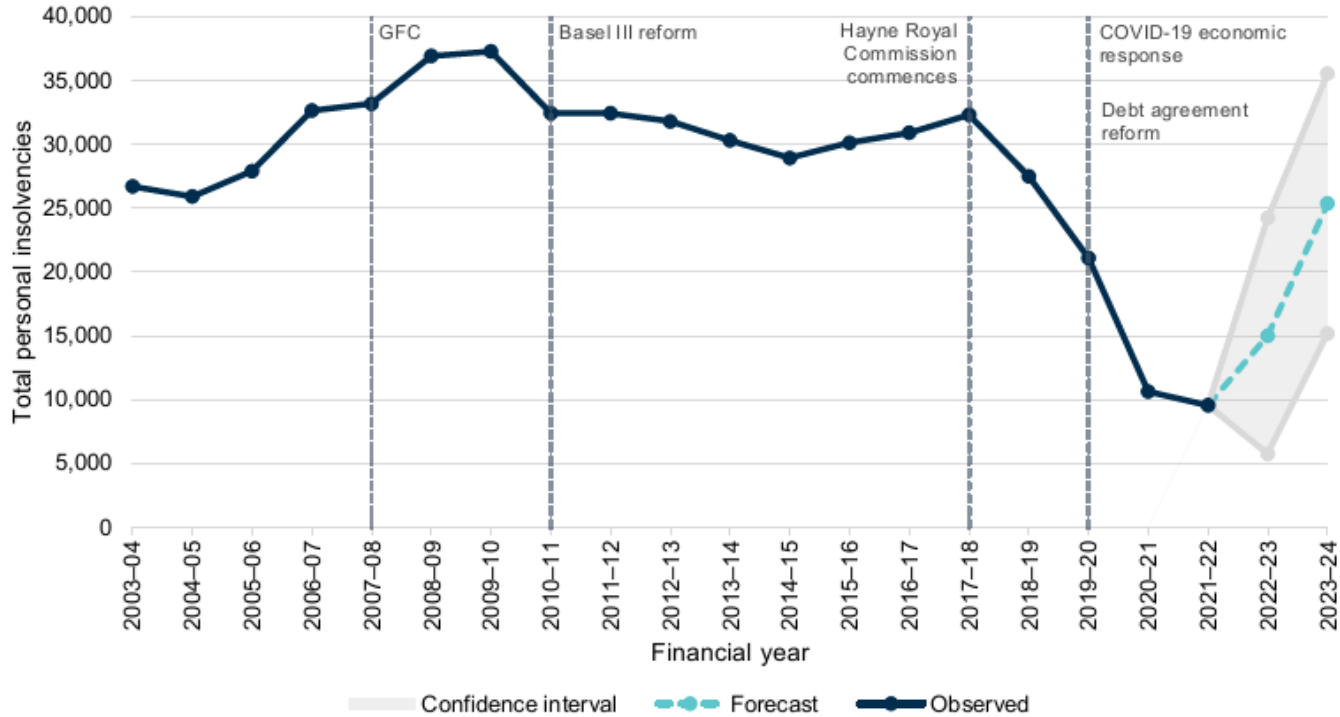


May have to forfeit your passport.



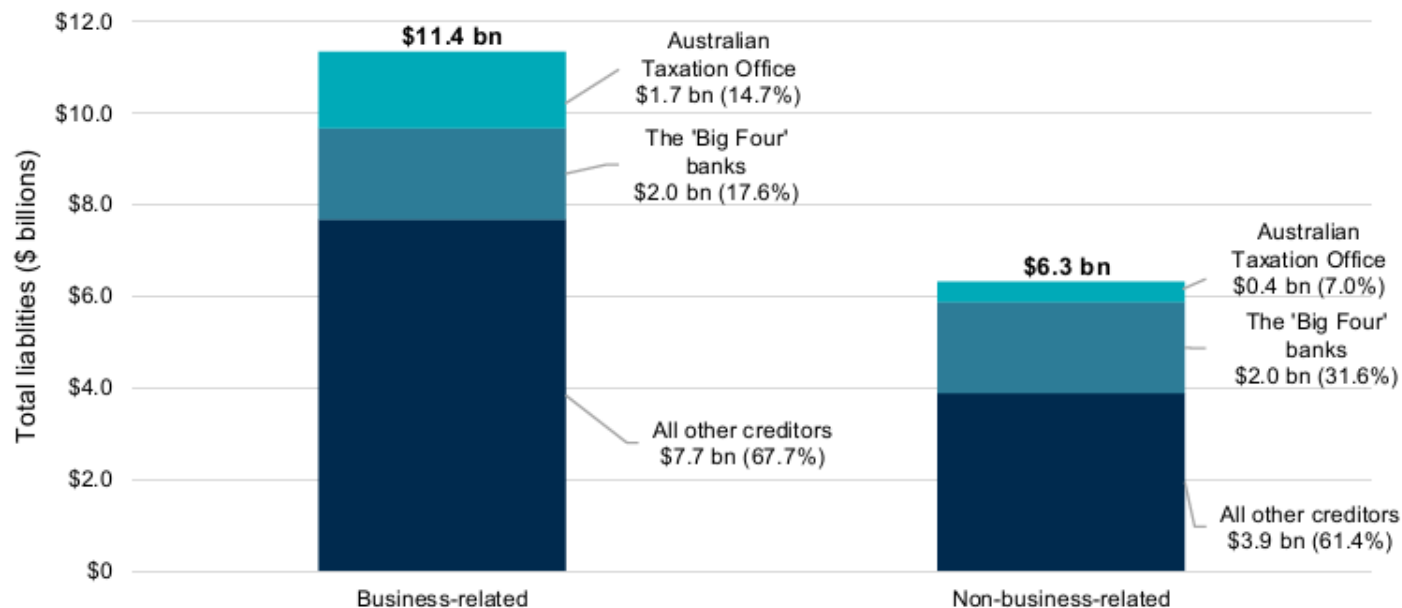
Not all debts are released.

Figure 1: Total personal insolvencies by financial year



Source: AFSA

Figure 5: Creditor concentration in active personal insolvencies in 2021–22



Note: The 'Big Four' banks are the Commonwealth Bank of Australia, National Australia Bank Limited, Westpac Banking Corporation and Australia and New Zealand Banking Group Limited

Source: AFSA

Consequence of Corporate Insolvency

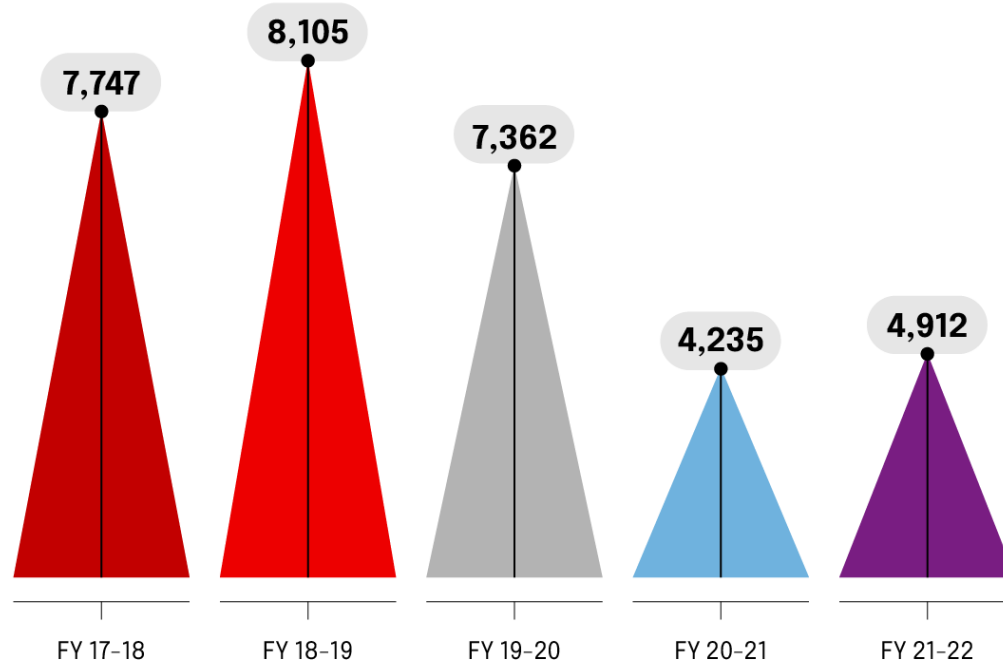
Appointment of Administrator

- An independent person is appointed to take control of the company for a short period of time to protect the status quo while investigations into the company's affairs are undertaken.
- The administrator has all the powers of the directors of the company to manage the company's affairs.
- The administrator takes control to ultimately put 3 options to creditors:
 1. Return the company to its directors;
 2. Enter into a Deed of Company Arrangement; or
 3. Place the company into liquidation

Appointment of Liquidator

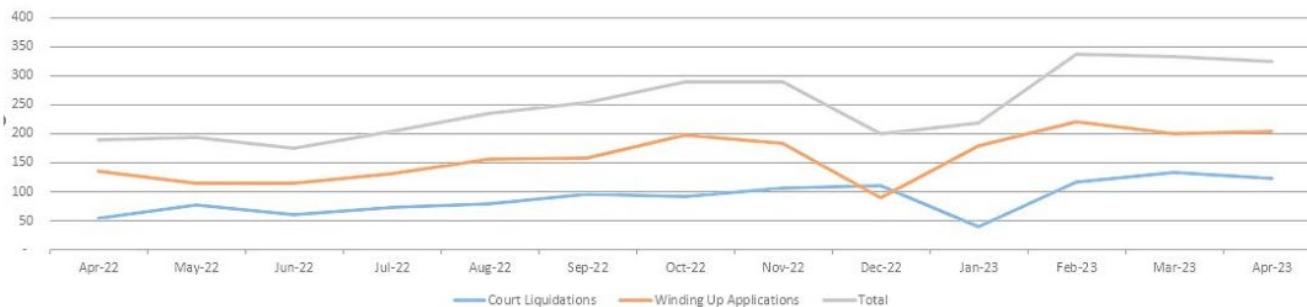
- An independent person is appointed to take control of the company's affairs for the purposes of realising its assets (where there any) for the purposes of making a distribution to creditors and then members.
- Liquidator can (and will) investigate the affairs of the company.
- Will look to historical transactions.

Insolvencies by the numbers



Winding Up applications filed with the Court in April 2023

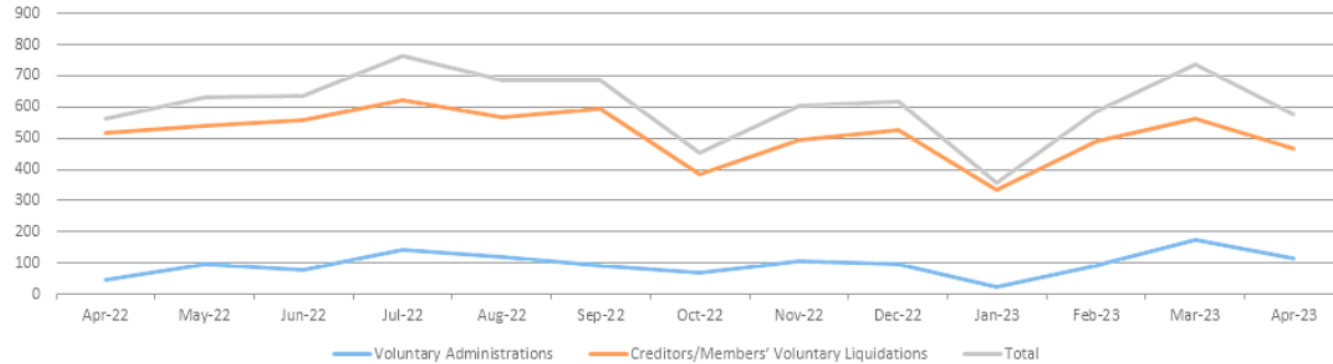
**Winding Up Applications and Court Liquidations
April 2022 - April 2023**



Winding Up applications	Australia	NSW		VIC		QLD		WA		ACT		SA		NT		TAS	
	(No.)	(No.)	(%)	(No.)	(%)	(No.)	(%)	(No.)	(%)	(No.)	(%)	(No.)	(%)	(No.)	(%)	(No.)	(%)
Total	203	74	36	72	35	45	22	4	2	0	0	4	2	1	0	3	1

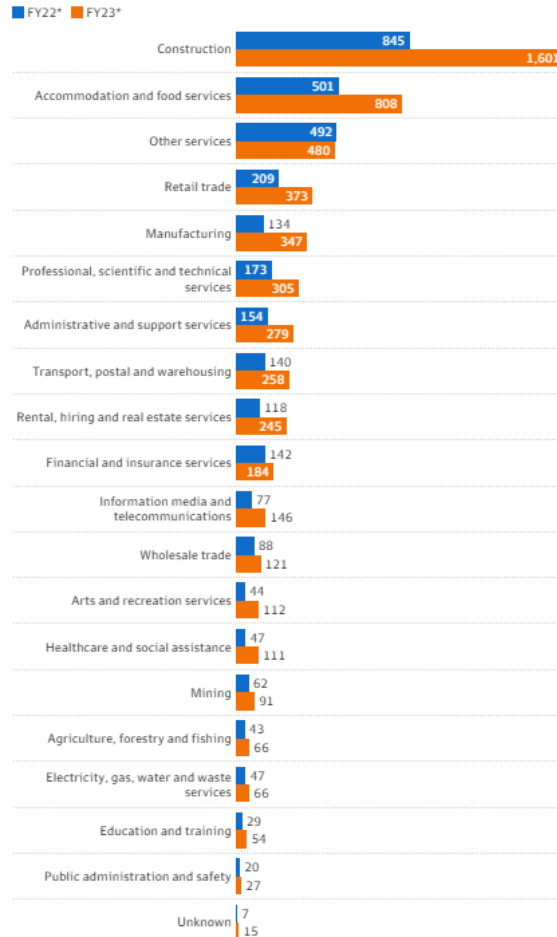
Formal Appointments in April 2023

Voluntary Administrations and Voluntary Liquidations
April 2022 - April 2023



Formal Appointments	Australia	NSW		VIC		QLD		WA		ACT		SA		NT		TAS	
	(No.)	(No.)	(%)	(No.)	(%)	(No.)	(%)	(No.)	(%)	(No.)	(%)	(No.)	(%)	(No.)	(%)	(No.)	(%)
Total	700	354	51	165	24	106	15	27	4	14	2	26	4	1	<1	7	1
Creditors'/Members' Voluntary Liquidation	485	242	52	109	23	65	14	13	3	10	2	20	4	0	0	6	1
Court Liquidation	122	53	43	32	26	23	19	6	5	0	0	6	5	1	1	1	1
Voluntary Administration	113	59	52	24	21	18	16	8	7	4	4	0	0	0	0	0	0

First time a company enters external administration or has a controller appointed, by industry



* Financial year to Apr 2

Chart: Financial Review • Source: ASIC

What to do if things do go wrong?



Not this...

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