

C

orporate Law  
Seminar Series

2003

**PROTECTION OF CREDITORS:  
DO EMPLOYEES DESERVE  
SPECIAL TREATMENT?**

*Dr David B Noakes*

*Allens Arthur Robinson*

*Commentator:*

*Joellen Riley, Sydney Law School*

Monday 15 December 2003

5.30 – 7.00 pm

Venue: Faculty of Law, 173 Phillip Street, Sydney

General Convenor:

*Professor Jennifer Hill*

**FACULTY OF LAW**  
UNIVERSITY OF SYDNEY

173-175  
Phillip Street  
Sydney 2000

DX 983  
Sydney

C

Corporate Law  
Seminar Series

2003

FACULTY OF LAW  
UNIVERSITY OF SYDNEY173-175  
Phillip Street  
Sydney 2000DX 983  
SydneyProtection of Creditors: Do Employees  
Deserve Special Treatment?

Recently there have been a number of changes to the corporations legislation designed to afford employees preferred treatment, generally at the expense of other creditors. The clear implication is that employees have previously been shortchanged, and that the increase in deferred compensation has given rise to an unacceptably high risk of significant loss upon the insolvency of the employer. Yet, empirical research conducted by David Noakes (published in the *Insolvency Law Journal* in June 2003) indicates that loss of employee entitlements through strategic insolvency comprises a very small proportion of insolvencies in Australia. Most failures have therefore been as a result of the involuntary insolvency of the employer, and employees have arguably been adequately protected by a safety-net scheme for entitlements. The question must therefore be asked: do employees deserve special protection as unsecured creditors of a company?

This seminar critically analyses the recommendations of a number of law reform proposals to address the loss of employee entitlements after employer insolvency. The seminar also considers alternative reforms in this area proposed by David Noakes, which seek to balance the competing aims of employers and employees in situations involving strategic insolvency. The reforms discussed are designed to create meaningful protections for employees, without significantly affecting the ability of the board and senior management to make sensible entrepreneurial decisions as to the appropriate use of a firm's capital.

**Dr David Noakes** completed his PhD in Law at the University of Melbourne in 2003. His PhD thesis studied the application of corporate law to the problem of loss of employee entitlements in the strategic insolvency of corporate groups. He undertook empirical analysis of judicial decision-making and the actual use of strategic insolvency and found that the decision-making had been inconclusive and strategic insolvency was a small proportion of insolvencies.

David has published a number of journal articles and presented at various conferences and seminars on topics related to his thesis. He has also been invited to comment on corporate law issues involving corporate group collapses by Australian and international newspapers (including *The Australian Financial Review*, *The Sydney Morning Herald* and *The New York Times*) and has contributed articles to *The Australian* and *The Australian Financial Review*.

**Joellen Riley** will provide a commentary. Joellen Riley was originally a journalist with the *Australian Financial Review* and is now a member of the Faculty of Sydney Law School. She has written widely in the area of the effect of corporate insolvency and restructuring on employees.

# C

# Corporate Law Seminar Series

# 2003

## Protection of Creditors: Do Employees Deserve Special Treatment?

- Date:** *Monday 15 December 2003*
- Time:** *5:30 - 7:00 pm (seminar commences at 6.00pm)*
- Venue:** *Faculty of Law, University of Sydney, 173-175  
Phillip Street, Sydney NSW 2000*
- Cost:** *\$70 (including GST)(includes light refreshments)*

**FACULTY OF LAW**  
UNIVERSITY OF SYDNEY

173-175  
Phillip Street  
Sydney 2000

DX 983  
Sydney

# C

# Corporate Law Seminar Series

# 2003

## Registration Form

**University of Sydney ABN: 15211513464**

THIS DOCUMENT WILL BE A TAX INVOICE FOR GST WHEN YOU MAKE PAYMENT.

Name:.....Mr/Ms..

Firm/Organisation:.....

Address:.....

.....DX.....

Telephone:.....Fax:.....

Email:.....

I would like to attend the following seminar:

- Protection of Creditors: Do Employees Deserve Special Treatment?**  
(15 December 2003)

(The cost of each seminar is \$70.00 including GST and light refreshment).

**Please Note: Payment should made in advance of the seminar. Places at the seminar are limited, and payment will secure your registration.**

I enclose my cheque for \$..... made payable to The University of Sydney

OR please charge the following credit card:

- Mastercard
- Bankcard
- Visa

Name on Card:.....

Card No:.....

Expiry Date: .....Amount.....

Signature of Cardholder:.....Date:.....

Please return this form to:

**Continuing Legal Education**  
**Faculty of Law, University of Sydney**  
**173-175 Phillip Street, Sydney 2000**  
**DX 983 Sydney**  
**Ph: (02) 9351 0238 Fax: (02) 9351 0200**  
**Email: [cle@law.usyd.edu.au](mailto:cle@law.usyd.edu.au)**

**FACULTY OF LAW**  
UNIVERSITY OF SYDNEY

173-175  
Phillip Street  
Sydney 2000

DX 983  
Sydney