

EMERGING TRENDS IN THE AUSTRALIAN RESTRUCTURING AND INSOLVENCY MARKET – THE VIEW FROM THE 2023 TMA NATIONAL CONFERENCE

The Turnaround Management Association (TMA) hosted its 2023 Annual Australian National Conference in Melbourne, Australia on 15 and 16 August 2023, with the theme "Back to the Future – Learn from the Past, Invest in Tomorrow".

Clifford Chance was pleased to attend once again this year, with attendees from its Restructuring & Insolvency, Finance, Corporate and Litigation / Dispute Resolution Teams.

KEY RESTRUCTURING & TURNAROUND INSIGHTS

James Wagg (KordaMentha) led a presentation on KordaMentha's Annual TMA Survey.

Key takeaways from this session were as follows:

- The last 5 years have been marked by unprecedented government stimulus, a boom period and increased M&A activity (with \$130 billion in deals in 2022 including Afterpay and Sydney Airport).
- Sentiment has significantly worsened since the last survey in the face of increased inflation, tightening monetary policy, the (relative) closing of traditional debt and equity markets, rising cost bases, labour shortages and a more active pursuit of debts by the Australian Taxation Office in recent months.
- Over 90% of respondents predict a recession within the next 24 months (and 70% over the next 12 months).
- Unsurprisingly, the construction, commercial real estate, retail and hospitality industries continue to be distressed. Healthcare and aged care continue to face headwinds.
- Respondents also commented on the relative difficulty in obtaining traditional debt / equity finance, and the commensurate opportunities that brings for alternative capital providers.

KEY HIGHLIGHTS

Other key highlights from the National Conference were as follows:

- **Pizza Hut (Medium Turnaround of the Year)** – The Medium Turnaround of the Year was awarded to Allegro Funds for its sale of Pizza Hut Australia to the Flynn Restaurant Group. Clifford Chance, led by Corporate Partner, Mark Currell, acted for Allegro Funds in this

significant (and now award winning) transaction. A link to further information can be found [here](#).

- **Safe Harbour / Informal Workouts** – The safe harbour regime was introduced in 2018 and has led to the successful turnaround of scores of Australian businesses that might have otherwise been forced to go into voluntary administration or liquidation by providing an exception to directors' personal liability for insolvent trading. For directors to benefit from the regime, they must ensure that the company meets baseline eligibility requirements (including payment of employee entitlements as and when due and keeping tax filings up to date) and take advice from appropriately qualified financial and legal advisors. The directors must develop course(s) of action which are reasonably likely to lead to a better outcome for the company than its immediate voluntary administration or liquidation. The Clifford Chance Restructuring & Insolvency Team has regularly acted and advised on safe harbour engagements since 2018.
- **Predictions about the Australian Economy** – A key risk for the Australian economy over the next 10 years will come in the combination of significant population growth, an aging population and an impending "retirement cliff", which are yet to be mitigated through responsive education / skills, migration and housing policies.
- **Future of Energy / Infrastructure** – The construction and infrastructure sectors continue to face headwinds, particularly in meeting the demands on the transition to renewable energy sources and infrastructure investment. Separately, construction and infrastructure projects have been at risk over the last 5 years, and remain at risk, due to fixed cost arrangements with customers and increasing labour / materials costs. The National Conference included a recap of the lessons learned by Clough Group on its journey through voluntary administration and its acquisition by Webuild (an Italian construction group and Clough's JV partner on the Snowy Hydro 2.0 project) out of that process. Clifford Chance acted for Webuild in what is, to date, the largest successful trade-on and turnaround of a construction group through voluntary administration in Australia.
- **International Restructuring Landscape** – The National Conference covered recent restructuring developments and challenges faced in the United Kingdom, the United States and Singapore. The relevance and timeliness of these comparative law / cross-border matters were further emphasised by Evergrande filing for Chapter 15 Bankruptcy Protection late last week.
- **Alternative Capital in Australia** – The National Conference covered the alternative capital and private credit industry in Australia (which has seen significant growth over the last decade given its flexible offerings when compared with the traditional products of retail and investment banks in Australia). The consensus was that the secondary debt market in Australia and the region is nascent.
- **Artificial Intelligence in Restructuring** – Accounting and consulting firms have developed, and are implementing, "operations advisory" AI tools (which have the potential to complement and enhance restructuring professionals' financial analytics and process improvements). AI can already be used to identify declining areas a business (faster and more accurately than financial advisors). It has also been used to identify parts of businesses which are worth saving versus those that should be wound up or sold. On buy-side transactions, it could provide valuable insights as to where to focus efforts in the early days post-completion. Proactive integration of AI into restructuring projects could prove to be a differentiator, though in our view strategy and experience in leading turnaround and restructuring will remain paramount.
- **Other Highlights** – Other highlights from the National Conference included: (1) the 100% consensual restructuring of Camp Australia (a significant recapitalisation transaction of a distressed pre and after school care provider through a debt for equity swap in 2022); (2)

Crown Melbourne Limited's positive transformation under new management and ownership (since the 2021 Royal Commission dealing with its suitability to hold a Casino Operator Licence); (3) asset value trends in logistics, mining and construction (which remain high due to continuing supply chain issues); and (4) retail and hospitality industry insights (both at risk due to significantly reduced consumer confidence, household disposable incomes, increasing rents, failures to innovate / adapt to changing customer expectations and recent minimum wage increases mandated by the Fair Work Commission).

If you have any questions, or if we can provide any additional information, we would be happy to assist.

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