

The option which the writer favours most is a 'reckless' or 'wrongful' trading concept in line with New Zealand, Ireland, South Africa and the UK, which is not solely directed at preventing directors incurring debts whilst there are reasonable grounds to suspect insolvency, but which imports a more broad business judgment rule to allow directors more flexibility to continue to trade and incur debts if there are reasonable prospects that the company may survive.

One thing remains certain - directors who find their companies in financial difficulty should seek professional advice earlier rather than later to ensure their actions in attempting to protect shareholder value do not result in personal liability.

Footnotes

* B Com (UQ), LLB (UQ), LLM (UQ), Partner, McCullough Robertson Lawyers

1. As announced by the Federal Treasurer, Wayne Swan in his budget speech on 12 May 2009

2. The author acknowledges and commends the excellent paper 'Insolvent Trading: The Latest Developments and Uncertain Future', 5 November 2008, by Patrick Holmes and Mary Berton of Allens Arthur Robinson Lawyers. This paper has incorporated some extracts from that paper.

3. *The Bell Group Ltd (in liq) v Westpac Banking Corporation & Ors* [No 9] [2008] WASC 239 at [1065], *Austin Australia Pty Ltd v De Martin and Gasparini Pty Ltd* [2007] NSWSC 1238 at [7].

4. Section 136 *Companies Act* 1993 (NZ)

5. Section 135 *Companies Act* 1993 (NZ). There are similar provisions in Ireland under section 297A of the *Companies Act*, 1963 (as amended

by Section 138 of the *Companies Act*, 1990) and section 424 of the *South African Companies Act* 1973 which prohibit directors knowingly carrying on of any business of the company in a reckless manner.

6. *Goatlands Ltd (in liquidation) v Borrell* (High Court Hamilton, CIV 2005-419-1643, 14 December 2006, Lang J); *Mason v Lewis* [2006] 3 NZLR 225 (CA)

7. *Insolvency Act* 1986 (UK) s214(6)

8.. Mayer Brown, Restructuring Bankruptcy & Insolvency Legal Alert, 24 October 2008.

9. Accessed on 14 May 2009 at www.treasury.gov.au/contentitem.asp?NavId=013&ContentID=1182

Scott Butler is a partner at McCullough Robertson Lawyers. He may be contacted on (07) 3233 8653 or via email at sbutler@mccullough.com.au.

nt Women Lawyers Association Inc.

By Lindy Morgan, President NTWLA

NT Women Lawyers Association Inc (NTWLA) held a very successful fundraising Quiz Night at the Waratah's Football Club in Darwin on Friday evening (17 April 2009). Funds raised will help:

- The children at Dawn House.
- Send our representative to National Women Lawyer meetings and events interstate; to ensure we in the NT have a say in policy etc down south.

Quiz Master Extraordinaire, Rex Wild QC did a brilliant job writing some tricky questions and trying to keep the "unruly" crowd in order.

Our patron Her Honour Justice Sally Thomas AM couldn't attend but sent her apologies and made a generous donation.

About 90 members of the profession including Judges, Magistrates, Lawyers and Prosecutors along with students, friends, allied professionals and others attended the event.

It was a fantastic and fun evening, with many fabulous prizes for the raffle, lucky chair, top 'n tails and the "winning" tables.

Congratulations to the winning table - Erica Sims, Paris Lord, Mary Dyer, Jenni Rigby, Peter Thomas and Rob Trenergy who were the recipients basket of goodies donated by Heavenlee Deli (Tipperary Waters), an ASUS "My Cinema" U3000 Mini USB 2.0 Digital TV, a dozen bottles of wine donated by Barristers Block and a \$60 gift voucher donated by Butterfly Nails (Star Village).

The second table snared a dozen bottles of wine and six movie tickets, and the table that was last got the best prize – WOODEN SPOONS!!

Other prizes included:

- \$100 x 2 gift vouchers for Angus & Robertson donated by Thomas J
- \$50 gift voucher donated by di Croco Boutique (Darwin)
- \$25 gift voucher from Absolutely (Book & gift shop @ Cullen Bay) donated by Melanie Little SM
- A bottle of Bowen Estate wine donated by Bowen Lawyers
- A gift voucher Darwin Chinese Massage (donated by DCM Darwin)
- Gift voucher from RM Williams

The gathering enjoyed pizzas organized by NTWLA and the bar kindly run by Waratah Club staff.

A big thank you to:

- The Warratah's Football
- Rex Wild QC
- The fantastic sponsors who kindly donated prizes
- The NTWLA Committee
- Everyone for turning up!

