Secured, unsecured and everything in between: Lessons from the current insolvency cycle

By Lachlan Wilson MICM and Clare Thompson MICM*

Insolvencies are rising, the ATO is taking a firmer approach and challenging conditions may continue into 2027. For credit teams, the time to fix documents and processes is now, before they need to rely on them.



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Credit managers are used to reading the economic weather. The current forecast is a difficult one, and recent court decisions show clearly where creditor protections hold up and where they fall apart. The common thread is simple: there is nothing worse than discovering a defect in your security or your agreement at the moment you try to enforce it.

A lagging indicator with more to come

Insolvency is a lagging indicator. Changes in the economy typically flow through to insolvency appointments three, six, nine or twelve months later. The statistics were distorted during COVID by government support, but they have now returned to a more normal baseline, and that baseline is climbing.

Corporate insolvencies are rising across the board. Creditors' voluntary liquidations are up as directors respond to pressure from the ATO and from credit managers enforcing their terms of trade. Court liquidations are also increasing as creditors take more direct action. Construction remains the largest source of insolvency appointments, followed by accommodation and food services, retail and transport.

The pain is also reaching individuals. Business-related bankruptcies have traditionally sat between 28% and 32% of all bankruptcies. In



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August they reached close to 48%, meaning almost one in two bankruptcies now stems from a business failure. Secured lenders are calling in personal guarantees, which puts directors' personal assets squarely in play.

The outlook for the year ahead remains challenging. GDP growth is around 1.6% to 1.7%, inflation over 4% and unemployment near 4.7%, with limited prospect of meaningful interest rate relief in the immediate term. As Wilson puts it, *"What you see now is what you've got for the next 12 months."* Credit teams should be prepared for difficult conditions to continue rather than relying on a quick recovery.

The ATO is no longer a patient creditor

One of the biggest shifts is the behaviour of the Australian Taxation Office. Director Penalty Notices passed 84,000 last calendar year, a 136% increase on the year before. The ATO is also cutting back on payment plans.

Small Business Restructuring appointments have also fallen sharply, against the backdrop of the ATO taking a firmer approach. The ATO now expects returns of around 30%, well above the roughly 10% initially anticipated when the regime began. It is also looking closely at a company's payment and lodgement history and at the character of its directors before supporting a ▶



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restructure. An unsuccessful restructure prevents another attempt for seven years.

New payday superannuation requirements add to the pressure. Businesses that once lodged their tax and super obligations without paying them, effectively using the government as an informal lender, can no longer rely on that option. Customers who previously juggled their obligations may run out of room much faster.

CASE ONE: Khan v DP Bonds

***Khan v DP Bonds Pty Ltd* [2026] NSWSC 942**

This case shows that a forged signature does not automatically let a customer escape liability. A deposit bond company recovered $70,000 from two brothers even though the court found their broker had forged their signatures on the application.

The court found that the brothers had given the broker authority to do what was necessary to secure the property. The court also considered their subsequent knowledge and conduct and found they were estopped from denying liability. As Thompson explains, *"If you relied on that for your benefit, you can't then say that you're not liable for it."*

The creditor won, but the case is also a warning. The evidence that carried the day was the email trail and contemporaneous records, not the identity documents attached to the application. ID documents alone do not prove who signed.

The lessons for credit teams:

- Keep records of emails and make file notes of conversations.
- Do not rely solely on identity documents to establish who signed.
- Check signatures against the ID provided and investigate discrepancies.
- Consider requiring an independent witness for signatures.

CASE TWO: Direct Steel Traders v Abdallah

***Direct Steel Traders Pty Ltd v Abdallah* [2025] NSWSC 1551**

This case tested a question many credit managers worry about: can a guarantee be defeated because the guarantor was vulnerable? The guarantors were elderly, had limited English and claimed they believed they were signing a character reference. The court still upheld the guarantee.

The key finding was that there was no unconscionable conduct. To succeed on that argument, the guarantors needed to show the creditor knew, or ought to have known, of their

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special disadvantage and took unfair advantage of it. The court found that the creditor had no such knowledge and confirmed there is no general duty on a creditor to investigate a guarantor's personal circumstances. In Thompson's words, *"Vulnerability alone does not defeat the guarantee."*

That is reassuring, but it is not a licence to ignore what is in front of you. If red flags appear during onboarding, such as language barriers or a guarantor with no involvement in the business, the creditor's knowledge may change the analysis. Credit teams should follow up those signals, make sure guarantees, mortgages and deeds are properly explained, and encourage independent advice where it is warranted.

Deeds, electronic signatures and enforcement

Electronic signing has made documents easier to complete, but it has not removed the formal requirements applying to deeds. For example, in New South Wales, section 38A of the Conveyancing Act 1919 (NSW) requires that deeds are still to be witnessed. As Wilson explains, *"A deed must be witnessed. If it's not witnessed, it's an agreement."* Where an agreement lacks consideration, that may affect its enforceability. Guarantees are commonly drafted as deeds precisely to avoid issues around consideration, so getting the execution requirements right remains important.

On enforcement, judicial sale applications can provide a pathway from judgment to recovery against property, provided the security documentation is properly drafted in the first place. Well-drafted caveat rights and charging provisions can make the difference between a faster recovery and a long, expensive chase.

What credit teams should do now

With challenging conditions likely to continue, the practical lessons come down to a short list:

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1. **Review your documents before you need them.** Check credit applications, guarantees and security for defects now, not when a customer defaults.
2. **Verify execution, not just identity.** Compare signatures against ID, follow up discrepancies and consider independent witnesses.
3. **Keep the paper trail.** Emails and file notes were important evidence in Khan v DP Bonds.
4. **Check how your deeds are signed.** Make sure electronically signed guarantees meet the execution and witnessing requirements in each relevant state.
5. **Act on red flags at onboarding.** Vulnerability alone will not defeat a guarantee, but known warning signs should be followed up.
6. **Watch ATO pressure on your customers.** Rising DPNs, fewer payment plans and stricter restructuring requirements mean distress can escalate quickly.
7. **Plan your enforcement path.** Know whether your security supports a caveat or judicial sale before you need to use it.

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This article is general information only and is not legal advice. Credit teams should seek advice on their own documents and circumstances.