

SURVIVING THE CRISIS

Directors need to ensure they are making informed decisions during the closure.

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MOST CLUBS ARE NOW FACED with cash crises of varying degrees. With the forced closure now achieved, your attention will turn to the financial impact on your club. You must have a cash flow forecast projected for at least the next 12 months to enable you to make informed decisions when dealing with; your bank, your creditors, your employees and your members. We do not yet know the period for which the forced closure directive will be in place, but three to six months is possible.

Many directors and senior management have concerns over the solvency of their club and its ability to continue, and their potential personal liability. Although your club may not be trading, it's likely still incurring debt. Section 588G of the *Corporations Act* places a clear obligation on directors to prevent its club from incurring debt whilst it is insolvent or otherwise risk personal liability and, in some instances, criminal penalties.

Special measures were announced, and passed into law on 24 March, which include temporary relief for directors from personal liability for trading whilst insolvent. This relief would also extend to a company that was not trading, but which is still incurring debt.

Directors have been given six months

relief from their duty to prevent insolvent trading, to ensure companies have confidence to continue to trade through the current crisis, with the aim of returning to viability once it has passed.

The relief only relates to debts incurred in the ordinary course of business - one that is necessary to facilitate the continuation of the business during the six-month period, including new borrowings - and does not impact the requirement to pay the debts. There are specific exclusions for dishonest and fraudulent activities.

The onus of establishing the protection of the new 'temporary safe-harbour' rests on the person who would be seeking to rely on the protection (see s 588GAAA(2)). This will require directors or officers seeking the protection to provide 'evidence that suggests a reasonable possibility' that they have complied with the requirements for the protection. A properly prepared forecast and the obtaining of independent advice from a registered liquidator are two key steps in helping to achieve that protection.

However, note that the above measures do not absolve directors and officers of their obligation to act in good faith, in the best interest of the company and with due care and diligence. Reckless or deceitful behaviour is never acceptable

and the new measures will not absolve liability if those circumstances exist. Any debts incurred by your club will still be payable by your club. ■

i Greg Russell of Russell Corporate Advisory is a Registered Liquidator who has provided advice to registered clubs for many years. He and his team are well-placed to assist you in this crisis. For more information, contact Greg Russell on 02 9957 6700 or email greg.russell@russellcorporate.com.au

