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# Winding-up a community organisation

## Presentation By

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# Agenda

- Why a winding-up might be needed
- Understanding legal and constitutional obligations
- Practical steps in a planned closure
- What is insolvency
- Involuntary winding-up
- Implications of various external administrations



# Why a winding-up might be necessary?

- What is our purpose?
- Are we achieving this?
- What are our barriers?
- What are our opportunities?



# Legal and regulatory compliance?

## What do the main laws say?

- Associations / Cooperatives Legislation
- Charities and tax legislation
- Corporations legislation





# Practical steps in a planned closure

Compliance with purpose

Accountability to members

Liabilities

Liquidation





# What is Insolvency?

- s95A(1) – “A person is solvent if, and only if, the person is able to pay all the person’s debts as and when they become due and payable”.
- s95A(2) – “A person who is not solvent is insolvent”.



# The warning signs

- Ongoing losses
- Poor cash flow
- Increasing debt (liabilities greater than assets)
- Overdue taxes
- Late payments
- COD terms
- Special arrangements with selected creditors
- Statutory demands/commencing wind-up proceedings
- Requests for instalment plans or alternative payment terms





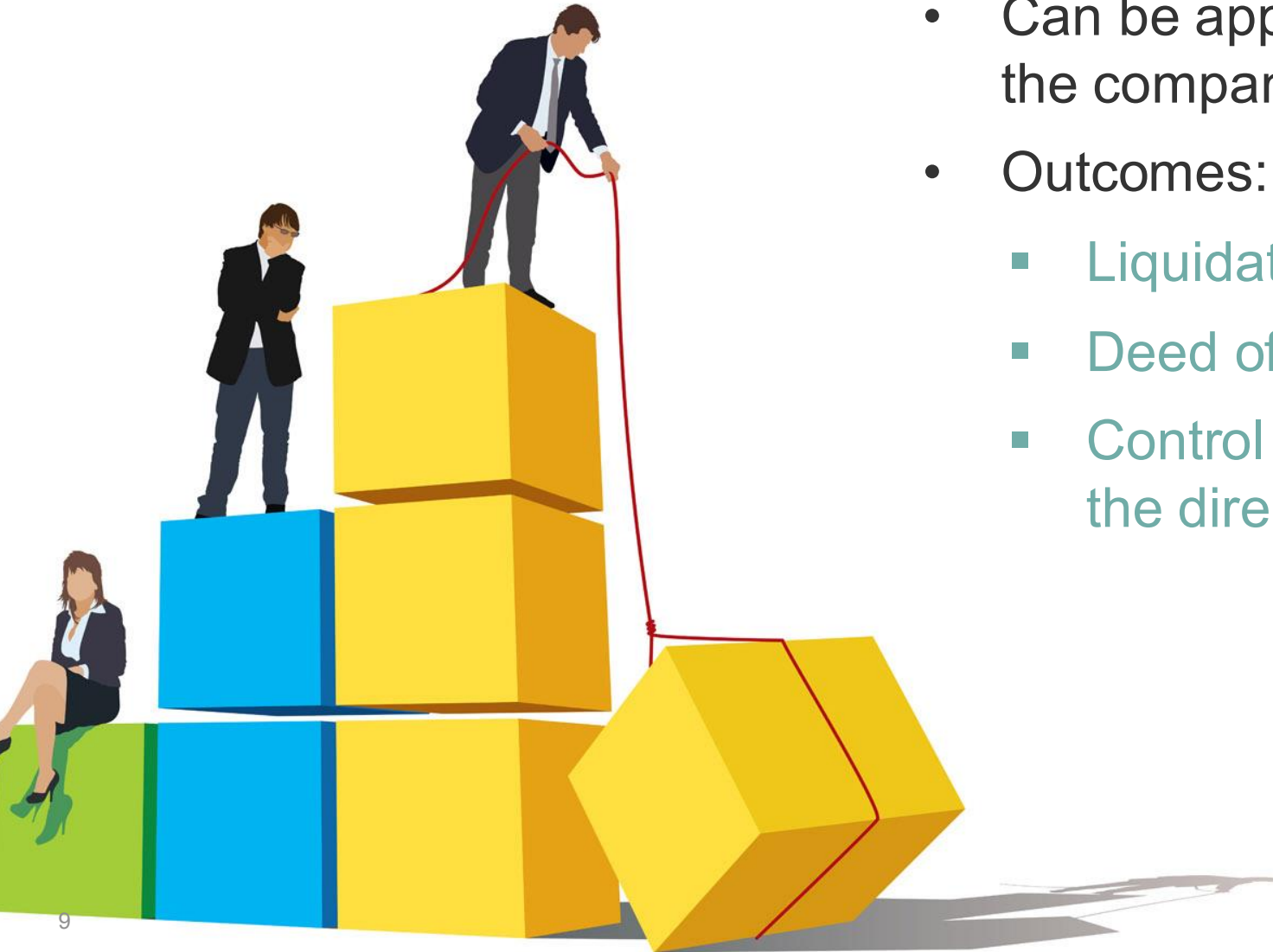
# Types of appointments

- Formal insolvency and restructuring processes
  - Voluntary administration (s 148 of the AIR Act)
  - Receivership and controllers (s 147 of the AIR Act)
  - Winding up/liquidation (ss 149 – 150 of the AIR Act)
- These procedures apply to incorporated associations
- Depending on the appointment different issues may arise



# Voluntary Administration

- Can be appointed by a secured creditor, the company's directors or a liquidator
- Outcomes:
  - Liquidation
  - Deed of Company Arrangement
  - Control of the Company goes back to the directors



# Voluntary Administration General Timeline

First meeting of creditors  
(within eight business days of  
appointment)

Second meeting of creditors (within  
25 business days of appointment or  
30 days in limited circumstances)

Return control to directors

DOCA

Liquidation

# Receivership

Usually, a private appointment by a secured creditor

Receiver has one priority to get back the money owed to the secured creditor – not to distribute funds to unsecured creditors

Potential personally liability for post appointment liabilities

Powers conferred by appointment and s 420



# Liquidation/winding-up

- Court appointed or voluntary (members or creditors)  
- sections 125 and 126 of the AIR Act
- Provisional liquidator
- End result is deregistration of the company or cancellation of an incorporated association
- Priorities for payment – secured creditor/unsecured creditor

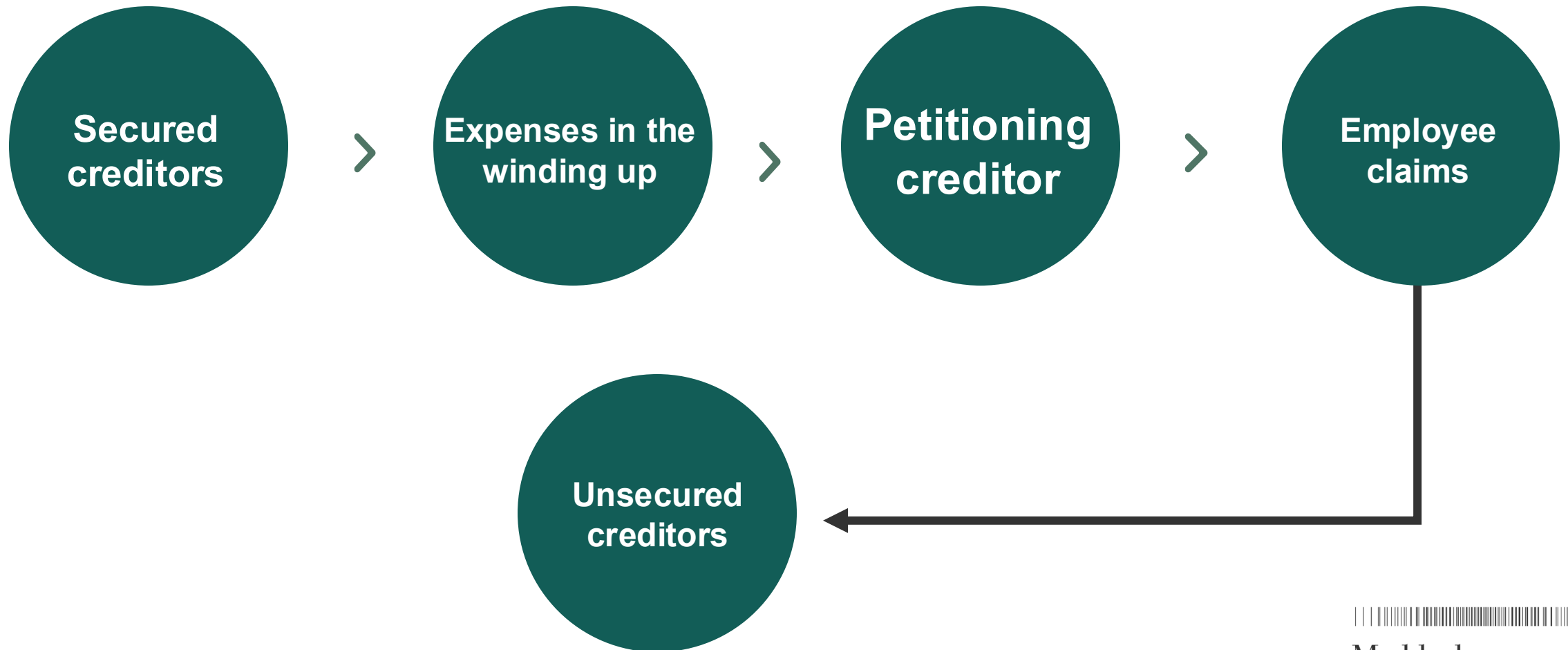


# Statutory demands

From 1 July 2021, the statutory minimum for a creditor to issue a statutory demand to a company increased to \$4,000.



# Distributions out of the winding up – general position





# Winding up in insolvency - implications



Common questions:

- Can I sue the company?  
x
- Can I sue directors (e.g. personal guarantees)?  
✓
- Can you terminate contracts?  
✓
- What is the effect on employees?

# Voidable transactions

- Available to a liquidator, including:
  - unfair preferences
  - uncommercial transactions
  - unreasonable director related transactions
  - unfair loan
  - transactions to defeat creditors
  - void security interests
- General intention: to unwind any transactions that result in a particular creditor receiving more than they would have, had the creditor participated/proved in the liquidation.



# Insolvent trading

Section 588G requires a director of a company to prevent the company from incurring a debt if:

- (a) the company is *already* insolvent at the time the debt is incurred; or
- (b) by incurring that debt, or by incurring a range of debts including that debt, the company becomes insolvent; and
- (c) at the time of incurring the debt, there are reasonable grounds for suspecting that the company is already insolvent, or would become insolvent by incurring the debt (see s588G(1)).



# Safe harbour

## Protection from personal liability where:

Start developing course of action or courses of action

Course is “*reasonably likely to lead to better outcome for the company*”

Debt is incurred in connection with course of action



# Insolvency Law

*For many non-lawyers and non-insolvency specialists (and indeed, many lawyers and insolvency specialists too), it is an impenetrable quagmire that is scary, complex and unknown....*

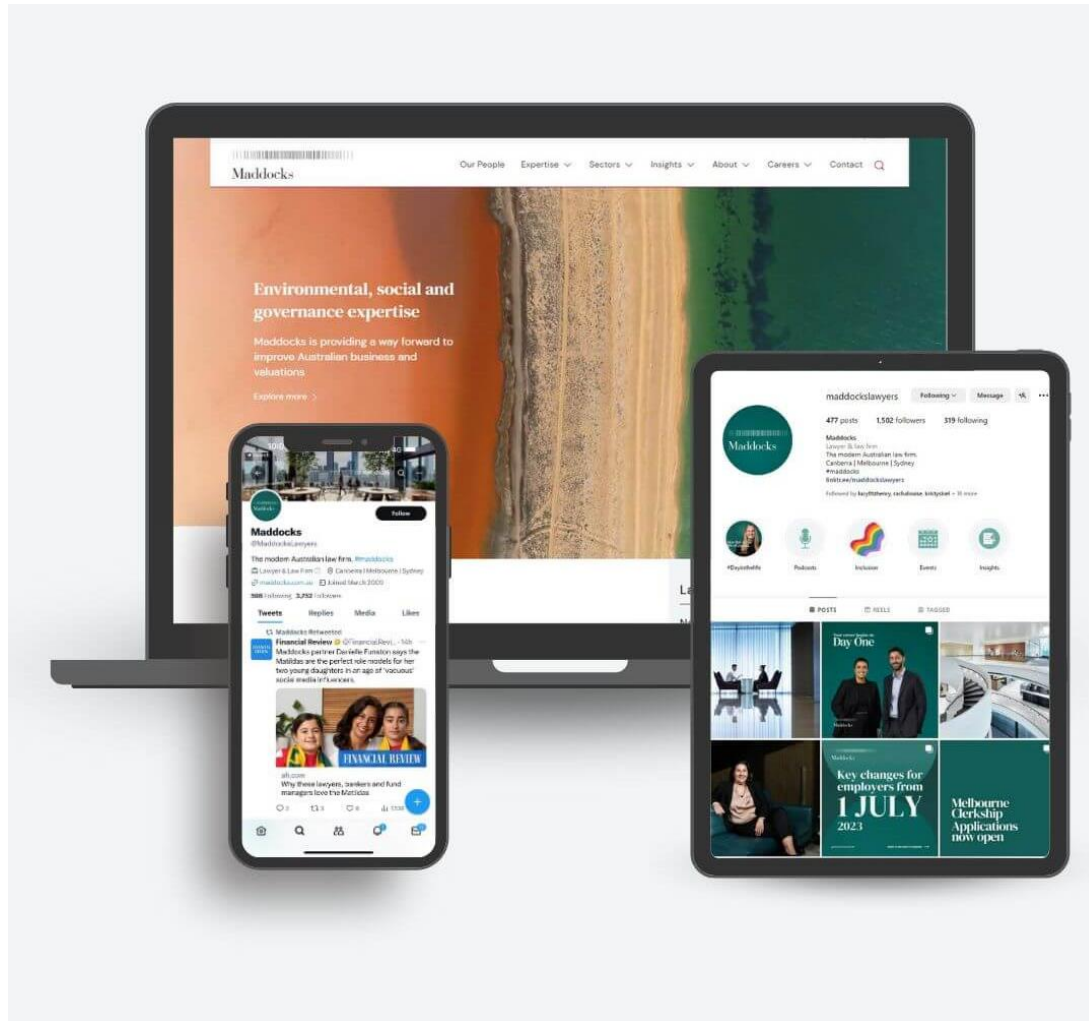
*Australia's bankruptcy, restructuring, insolvency and turnaround regimes are among the most complex in the world.*



# Questions







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