

In this Edition

**Welcome** 2  
Message from the  
Managing Director

**Taxation** 3  
Transfer Pricing

**Innovation** 4  
Launching our exciting new  
support and advisory service

**Superannuation** 5  
Introducing the Family Super Fund

**Community** 6  
Breast Care Fundraiser Breakfast

**New Appointments** 7

**Happenings** 8  
Greek Night

**Client Feature** 9  
DMC Digital

**Financial Services** 10  
Opportunity Knocks

**Business Advisory** 11  
Family Business  
Succession Planning

**Tax Calendar** 12  
**Marketing Services**  
Team

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**FAMILY BUSINESS  
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Welcome to the Spring  
LawlerLink for 2010

# Welcome

The current success of the Australian economy, that has survived relatively unscathed from the GFC, is built on the two decades of reform undertaken by previous Australian Governments. At the time of LawlerLink going to print, Labor had formed a minority Government with two of the three country Independents, but we see the real challenge will be in making a coalition of competing interests work to the benefit of the nation. So we hold our breath on the impact that the leadership and this new minority government will have on issues for business and hope that it is not to be used as an excuse to put a reform agenda on hold.

In developments at Lawler Partners, we are launching our exciting new G.E.M. network. Our G.E.M. network (Generate. Experience. Maximise ) is designed for Accountants, Lawyers and Professional Advisers who are seeking expert advice and support for clients in areas in which they do not specialise. Benefits for members will include a separate G.E.M website with personalised log in for technical articles and a help desk service for their enquiries. Members will also receive various communications and alerts and access to ongoing professional education. So, if you currently work in a professional services firm and are interested in being part of the G.E.M. please contact us for details about our launch functions and the network.

We were pleased to announce the appointment of Darren Shone to Taxation Partner. Darren, based out of our Newcastle office, has in excess of 20 years experience across a broad range of taxation areas focussing on developing strategies and solutions for the firm's clients as part of their overall development and wealth creation. Many of our clients know Darren who recently celebrated his 10th anniversary with us and we congratulate him on achieving this important milestone in his career.

For those of you who were able to join us in the perfect Pokolbin weather at the 5th Lawler Partners annual Running Festival last month, it was good to catch up. The Festival attracted almost 3000 competitors and you can see photos of the event on our Facebook page. Our next community project is our annual Breast Care Fundraiser Breakfast in October and we trust you will support us in this endeavour. More information on the breakfast can be found on page 6.

I am also delighted to announce the launch of our new Marketing Services team. Embracing strategic marketing disciplines is a critical component of overall business strategy, and we consider having these skills in house is a tremendous complement to our financial expertise. To read more about these new services turn to page 12.

On a final note, on behalf of the Partners I would like to acknowledge and congratulate our Employee of the Year, Kristen Triglone of our Sydney Business Recovery & Insolvency team, who was announced at our End of Financial Year Ball held in Sydney in July. Kristen's prize includes a \$500 gift voucher at Red Balloon, a company who offers unique life experiences.

Thanks again for your support and the opportunity to work with you.

Kind Regards,

A handwritten signature in purple ink that reads "Steve".

**Steve Meyn**  
Managing Director

# Transfer Pricing

Transfer pricing has been the hot topic in international tax for more than a decade and, in the current economic environment, continues to be a high profile compliance area for the Australian Tax Office (ATO).

The ATO has in recent years specifically increased its compliance focus on the area of transfer pricing in the small to medium enterprise space. The ATO have committed significant resources in ensuring Australia gets its 'fair share' of revenue for the economic contribution made by the Australian side of a business group.

## Taxpayer Wins First Substantive Transfer Pricing Case

The recent case SNF (Australia) Pty Ltd v. Commissioner of Taxation [2010] FCA 635 (SNF) highlights the ATO's hard-line approach to transfer pricing. It is the first Federal Court decision handed down on substantive transfer pricing issues. The case was won by the taxpayer, however the ATO have indicated that they will appeal the decision.

The case demonstrates the ATO's preference to use the statistics-driven "transactional net margin method" (TNMM) to establish prices between international related parties.

In SNF, the ATO based its case around the argument that SNF had returned losses for each of the income years and concluded that it was paying too much for its imported goods.

SNF argued that its overseas suppliers had made sales to independent parties that were comparable to the transactions made with SNF in Australia. SNF contended that these sales established a "comparable uncontrolled price" (CUP) that was equal to or that exceeded the price paid by SNF in Australia. SNF also explained that it sustained losses due to competition in the Australian market, excessive stock levels, below average sales per salesperson and poor management decisions.

The Federal Court accepted SNF's arguments, and in particular, its use of the CUP method. The court also agreed with the comments in Roche Products Pty Limited v Commissioner of Taxation [2008] AATA 639, which noted that the TNMM attributes all losses to transfer pricing, regardless of whether there were other circumstances that actually caused or contributed to those losses.

A direct result of this decision is that taxpayers with transfer pricing as part of their tax compliance landscape should consider re-evaluating the basis on which their international prices have been set. If they are able to establish an alternate, but accepted, methodology that can provide a more favourable transfer pricing position then this case opens up this possibility. Previously, without a decided case, the ATO applied its view and left little room for alternative positions to be raised.

## It Pays To Be Prepared

With more than 10 years experience in dealing with transfer pricing matters at the top end of town, the ATO has refined its risk assessment procedures, and broadened its enquiries to include groups with turnovers in the \$2 – \$100 million range.

In particular, taxpayers with extensive international related party transactions that consistently return losses or below industry average profits are at an especially high risk of an ATO transfer pricing audit. The SNF case highlights that the ATO continues to take issue with businesses recording losses where they have international related party transactions.

In our experience, taxpayers with well prepared documentation do better in a transfer pricing audit than those with poor or no relevant documentation. It is critical to appreciate that it is not sufficient to merely meet the arm's length standard, it is necessary to demonstrate compliance through appropriate documentation, referred to as contemporaneous documentation.

Businesses need to ensure that there is sufficient contemporaneous documentation in place to justify their transfer pricing policies. This becomes more important in the current economic climate and slowdown of the global economy, in the context of falling sales volumes and falling profits.

Having in place the appropriate documentation is particularly relevant when you consider that there is no limitation period for the ATO to amend assessments. The ATO also has the power to impose tax adjustments and penalties as high as 50% where international related party transactions are not conducted at arm's length.

Should you wish to discuss your transfer pricing practices, please contact Darren Shone in our Newcastle Office on **02 4962 2688** or via [dshone@lawlerpartners.com.au](mailto:dshone@lawlerpartners.com.au) or Tina Louras in our Sydney office on **02 8346 6000** or via [tlouras@lawlerpartners.com.au](mailto:tlouras@lawlerpartners.com.au).



generate. experience. maximise



# Launching Our Exciting New Support And Advisory Service

Lawler Partners is pleased to announce the launch of its G.E.M network for professional service firms. G.E.M is a subscription based network offering a broad range of benefits for small to medium accounting and legal practices who are seeking expert advice and support for their clients in areas in which they do not specialise.

G.E.M will offer its members the opportunity to generate business and relationships, experience regular technical seminars and communications, maximise those business opportunities along with access to professional capabilities that fall outside those normally offered within their own businesses.

Membership of G.E.M will be based on an annual retainer which will allow members access to specialist expertise and resources from all of Lawler Partners' Business Unit teams.

Benefits for G.E.M members will include:

- Technical Help Desk with guaranteed 48 hour response time.
- Member-only access to the G.E.M. website containing technical resources and helpdesk facility.
- Regular Client Alerts, Technical Updates and Newsletters.
- Discounted registration fees to all G.E.M. Professional Training Seminars.

- Access to Lawler Partners' full range of professional and technical resources.
- Access to on-site training with customised in-house taxation and superannuation updates.
- Discounted rates on access to taxation and superannuation resources.

Cocktail functions for our professional colleagues to celebrate the launch of G.E.M will be held on the Central Coast, Newcastle and Sydney with the first round of luncheons to commence in October.

**For more information about G.E.M or to subscribe to the network, please contact Stefanie Portelli on 02 8346 6072 or via [sportelli@lawlerpartners.com.au](mailto:sportelli@lawlerpartners.com.au)**

# Introducing the Family Super Fund

There are more than 400,000 self managed superannuation funds (SMSF) or DIY super funds operating in Australia. The majority of these funds have been established for one reason only and that is to enable members of the fund to control the investment of their superannuation monies. Although this is a powerful driver, this single focus limits the strategic possibilities of the fund.

In short, these unique super funds have a very special place in Australia if designed and used properly. They allow the aggregation and investment of a family's superannuation benefits as well as providing a pool of monies and assets to look after family members including, children and grandchildren at the time of an accident, sickness, permanent disability, death, pre-retirement and retirement. To make the most of a SMSF, turn it into a Family Super Fund.

## What type of SMSF do you have? A DIY, SMSF, or Family Super Fund?

We have found that there is a wide range of SMSF clients – those that want to do everything themselves (the DIY'ers), the SMSF'ers and those that are happy to build their fund into a strong, strategic Family Super Fund. Let's have a look at each of these types of small, four member, superannuation funds:

### 1. DIY Super Fund

This is a super fund where there is a strong hands on focus by the trustees of the fund – the true Bunnings DIY style of fund. The trustee generally does the accounts of the fund. The management of the investments is undertaken by the trustee. Due to the complexity of the superannuation and taxation laws the trustee will need an accountant to compile the tax return and must have an audit under the SIS Act 1993. As can be imagined, unless the trustee is in one or two simple property investments, there is a lot of work that must be done by the trustee – for a trustee trading shares it is a full time job.

Of course once the fund goes to pension mode, with ideally the trustee running a simple but strong SMSF strategy of a retirement accumulation account running alongside for any surplus superannuation benefits, the DIY fund gets left behind. The use of reserves, multi-generational reversionary pensions and other important but simple SMSF strategies are a rarity. The possible cost to the family for those running a DIY super fund is enormous.

### 2. Self Managed Super Fund

This is the one that the majority of SMSFs run. Again, the focus is on investments, but the trustees of a SMSF generally have the advantage of tax and superannuation advice from their accountants and financial planners. Strategy in a SMSF may be around pensions, estate planning and some insurance and taxation strategies. The strategic input will depend on the SMSF skills of the advising professional and the willingness of the trustee to learn and enquire what is possible within their fund.

### 3. Family Super Fund

The Family Super Fund is the same tax structure as a DIY Super Fund and a SMSF but the key focus is on the family. Surprisingly, of the 400,000 SMSFs in Australia that have the opportunity of bringing up to four members of a family into the fund, only 10% have chosen to do so. This is a great loss of opportunity.

To see the difference between the Family Super Fund and the DIY or SMSF fund consider some of the following Family Super Fund strategies:

- An adult child member in the fund has an accident and spends six months off work. The trustees of the Family Super Fund can begin to pay out salary continuance benefits to the incapacitated member to ensure that their salary and wages are kept to a level they were before the accident.
- The retiree members of the fund use some of their superannuation benefits to fund a deposit on a property that is acquired with a loan from a bank. However the younger members of the fund pay off the loan with on-going salary sacrifice contributions made by their employer. When the property is ultimately sold any capital gain is split between the members relevant to their capital investments.
- Mum is the sole remaining parent member of the fund and has been diagnosed with dementia. The adult child members are in the fund guiding her superannuation benefits towards the best in health and psychological care for their mother.
- The retiree pension members of the fund invest in Australian shares with imputation credits. These credits are used by the trustee of the fund to reduce any of the fund's tax liabilities including, any contributions tax liability of the younger members of the fund that salary sacrifice.

**For further information or to discuss which superannuation fund is right for you, please contact Superannuation Principal, Mark Geldens on 02 8346 6000 or via [mgeldens@lawlerpartners.com.au](mailto:mgeldens@lawlerpartners.com.au)**



## Breast Care Fundraiser Breakfast

**Do you want to make a difference to over 100 Hunter nurses assisting the nearly 400 local people diagnosed each year with breast cancer they support?**

Then join us for the Lawler Partners, The Newcastle Herald and Western Suburbs (Newcastle) Leagues Club Hunter Breast Care Fundraiser Breakfast on Thursday, 21 October 2010 from 7.15am – 9am.

Guest speaker will be Dr Charles Douglas, who is a surgeon at the Breast Centre and a Senior lecturer at Newcastle University. The event will be hosted by Master of Ceremonies, Mike Rabbitt.

Tickets are \$55 per person or \$500 for a table of 10, which includes a continental & hot breakfast and your donation to the Hunter Breast Cancer Education and Support Committee. Purchase a full table and name it in honour of a loved one, colleague or friend who has experienced breast cancer.

All donations will support local work by nurses in the Hunter caring for individuals diagnosed with breast cancer.

This is one event not to be missed so RSVP as soon as possible to ensure your attendance!

Last years event was an overwhelming success raising \$17,000 for the Hunter Breast Cancer Education and Support Committee, with all of these funds going to support the education and training of breast care nurses within the Hunter Region.

For more information and to secure your seats or table contact Jacqueline Osborn on (02) 4962 2688 or email [josborn@lawlerpartners.com.au](mailto:josborn@lawlerpartners.com.au)

We look forward to seeing you and assisting in supporting this great cause.

# New Appointments

## Tina Louras



Tina has joined Lawler Partners as Taxation Principal in our Sydney office and is responsible for providing advice and assistance to clients across a range of taxation issues. She has a detailed knowledge of tax law and a strong understanding of commerce, in both the domestic and international arenas. This combined with her practical approach means Tina is able to deliver her clients realistic and easy to understand advice that is tailored to their circumstances.

Tina's experience extends more than 12 years across a wide range of sectors and industries, including high net

worth individuals, private corporate groups and the small to medium enterprise (SME) sector. She also has significant experience in advising other professional practices.

Tina has been involved in internal technical training sessions and has written a number of articles in client publications, including annual budget updates. She has also been involved with the CA Program for the Institute of Chartered Accountants, facilitating workshops and mentoring candidates.

## Nick Falzon



Nick joins us as a Partner in the Sydney Business Advisory Services team where he has significant taxation, commercial and valuation experience across a range of industries.

Nick's background includes extensive experience in advising high net worth individuals in relation to their remuneration packages, tax strategies, investment structuring, estate and retirement planning.

Nick has worked with a number of foreign companies establishing subsidiaries in Australia and advised on all financial aspects of establishing the

business. He has also advised venture capital backed companies in a range of industries as they deal with the issues associated with rapid growth.

Nick is a specialist in advising on, and applying for, the R&D Tax Concessions (now R&D Tax Incentives) on behalf of companies. The tax offset (cash refund) element of the program has been vital to his clients in having the cash flow to continue growing.

## David King



David is the Chief Financial Officer at Lawler Partners and is a key member of the firm's Business Management Team.

David's background includes over 22 years experience in commerce, in addition to senior roles in a chartered accounting environment.

He has expertise in a number of key areas including:

- Strategic planning and organisational leadership
- Budgeting and cost management
- Process design and productivity improvement

- Contract negotiations
- Profitability and cost analysis
- Corporate and investment finance

David holds a Bachelor of Business from the University of Technology Sydney and he is a Member of the Institute of Chartered Accountants in Australia.

# Greek Night



Audit Partner Clayton Hickey with Adrian Bouris



Business Recovery & Insolvency Partners John Vouris and Brad Tonks with Stavros Tsakalos (middle)



(L-R), Stan Tsaridis, Dion Vertzayias, Betty Ivanoff and Maria Zoras-Christo



Elena and Kerry Loizou



Tony Doyle shows off his Greek dance moves

The Sydney Office held a Greek Night on its balcony on Thursday 19 August 2010, with our resident Greeks, John Vouris, Business Recovery & Insolvency Partner and Tina Louras, Tax Principal hosting the event.

Guests feasted on taramosalata, lamb souvlaki, octopus, Keftethes and spanikopita with Greek music in the background and of course some traditional Greek dancing.

It was a great evening and our clients and contacts of Greek heritage hope it will become an annual event.



Terry Lawler, Adrian Bouris and Tina Louras

DMCDI

# The Post Production Home for Some of Australia's Best Known Companies

DMC Digital is a Sydney based, second generation family owned business that has been operating for over 26 years. Originally founded in 1984 by Doug Meredith (above on left), today the business has grown to employ twenty five people at their Crows Nest facility and is now run by Doug's son, Paul (above on right). DMC Digital has been a client of Lawler Partners for 15 years.

The core business of DMC Digital is the creation of audio visual communications that are simple and effective and that have a strong focus on retail. The company specialises in television commercials (TVC's), video productions and post production, and produces more TVC's than anyone else in Australia, delivering more than 40,000 spots around the world every year.

According to Managing Director, Paul Meredith, this is no small feat.

"Our in-house video facilities and abilities allow us to take on any video job head-on. From concept evolution and script development to full production and post, we are able to deliver on all formats on any platform and for all applications."

A focus on service has seen DMC Digital maintain some of the same clients for over 22 years and they boast an impressive client list that contains a number of Australia's biggest retailers, including Harvey Norman, IGA and Video Ezy.

Building long term mutually beneficial relationships for clients, partners and staff is paramount to the business.

"We're committed to make everyone we work with more successful and we are especially proud of our relationships with small business and start-ups. We add value by guiding them through their introduction to the television advertising world and then focus on delivering them results to keep them in it", says Paul.

They credit standing out from their competitors to being exceptionally well resourced with a small business mentality.

"It's rare in our industry to get the level of resources and service at our price point and, unlike most small businesses that are high on customer service, we also have the capacity to ramp up quickly with clients needs. We are continually training our staff and updating our equipment to stay ahead of the industry and building the internal systems that help our clients grow," comments Paul.

DMC Digital is focused on the future and isn't resting on its laurels, especially with motion video moving from traditional broadcast to online and multiple touch points demanding they be a step ahead with their people, machines and infrastructure.

Whilst they operate quite successfully dealing with clients remotely, regional and international offices are always potential future opportunities.

"With the conditions we have seen over the last year or so it's really satisfying to have seen growth in our business. The support and assistance from Steve Meyn and the Lawler team to focus us on business improvement and to pro-actively manage not only the tax planning for our business but how our family can build wealth through the right structuring, asset protection and use of superannuation has been instrumental to our overall success."

## PAUL'S SECRETS TO SUCCESS

Love the daily grind! Be passionate and enjoy every aspect of your business, if you're not it sets a poor example for anybody working in that area and that area will surely suffer.

# Opportunity Knocks

Famed investment guru Warren Buffett is quoted as saying 'the time to be fearful is when others are greedy and the time to be greedy is when others are fearful'.

If it is that simple, now must surely be a time to be greedy, as fear appears to be a major contributor to current market behaviour.

The 'here we go again' mentality has certainly crept into investor psyche and it may be some time before the GFC can be extracted from the market memory bank.

In such times, some have suggested that the way to make money is to time the market by buying in after a downward adjustment and taking profits just before market adjusts down again. Having done so further profits can be easily made by doing the same thing all over.

Sounds so simple until you actually try it!

Short of having the much sought after crystal ball you will lose as often as you gain trying to pick the market, with the downside risk being that you will lose with even greater regularity than you gain.

Certainly we could not, in good conscience, recommend such an approach.

It does appear however that those who are willing to take a long term position in quality stocks are most likely to be well rewarded over the longer time horizon of five to ten years.

Taking such a position will not come without volatility in the short term, and 'averaging into the market' followed by a measure of putting the investment 'in the bottom drawer' may be necessary (albeit with periodic investment reviews and portfolio refining). However it is very difficult to imagine that, as market fear subsides and the 'here we go again mentality' fades, those who have taken such a position will not be richly rewarded.

While history is no guarantee of the future, we still take lessons from it and if history is any sort of worthy guide it appears to be reassuring us that good times will return, pessimism will abate and bull will replace bear, to the reward of those who bought while others were fearful.

**For tailored investment advice please contact Lawler Financial Services on 02 4928 7000.**

# Family Business Succession Planning

## Family Business – The Facts

- \$1.6 trillion – the size of the Australian Family Business sector
- 45% – the proportion of family business owners actively planning to sell
- 61% – the proportion of family business owners considering selling now
- 25% – the proportion of family business owners that have been approached to sell in the last 12 months
- 55 years – the average age of the family business owner
- 66% – the proportion of family businesses not ready for sale

(Source: MGI Australian Family and Private Business Survey 2010)

Succession planning is a significant issue facing Australian Family Business owners at present. With many baby boomers looking to sell and retire, a significant amount of businesses are predicted to flood the market over the next 2 years creating a potential oversupply problem.

This combined with other stumbling blocks such as the recent global financial crisis, family disputes, a lack of interest from the next family generation and a lack of planning will eventuate in many owners not realising enough capital from the sale of their business to fund their retirement. With other investments such as property or direct equities also decreasing in value, many owners will have to work for longer and shelve plans to retire.

There will always be stumbling blocks and uncertainty however, family business owners should curtail this by taking control of the succession process and allowing time to do so. With an abundance of opportunities for investors expected, now is the time for family business owners to start planning their exit strategy, to smooth the transition, and maximise both the attractiveness and value of the business to potential purchasers at exit.

Have you got a plan in place? Have you considered who will fill your shoes? Do you know what is involved in selling a business? What would life look like for your family if you died unexpectedly? Will your family drive the business as much as you? Are processes in place in your business to maximise value? Does your successor have the right skill set? If you can't answer these questions confidently, then it is likely that your succession plan needs attention.

### How Can Lawler Partners Help?

Our succession planning process helps family business owners plot their future. It provides a strategy and prioritised choices to work on. And it works well. This is why succession planning is one of our most valued services.

We work with the family business owner every step of the way ensuring that the business and owner are given the level of support and guidance that is required for such an essential business strategy.

We understand the importance of ensuring that the entire individual and business requirements are discussed and carefully considered within each personalised documented plan. We also appreciate that progressively

“letting go of the reigns” is very difficult for family business owners who have been actively involved for many years.

Our team can assist in the implementation of appropriate governance, risk management and reporting systems designed to give the family business owner knowledge and security as they transition to a less “hands on” role. We can also assist with the recruitment and selection of key personnel and act as a “sounding board” to management if required.

If family business owners don't consider a strategic approach to their succession any value they have created may well retire with them.

**Lawler Partners is planning to bring family business owners together in an intimate group environment to openly discuss the succession challenge. This would include our clients that have been through the process and clients or contacts that identify from this article that they require assistance. Sessions will be held at various locations and we encourage you to register your interest by contacting Katerina Mudd on 02 4935 6184 or [kmudd@lawlerpartners.com.au](mailto:kmudd@lawlerpartners.com.au)**

## 5 Must Do's For Any Family Business Thinking About Succession Planning:

1. Plan Early – allow yourself time
2. Manage the family – communicate
3. Look at the family realistically for skill and desire
4. Management handover process – formalise expectations
5. The business sale – involve your advisers

# Tax calendar

## September 2010

21 | Due date for lodgement and payment of August 2010 monthly BAS and IAS.

## October 2010

- 21 | Due date for lodgement and payment of September 2010 monthly BAS and IAS.
- 21 | Due date for lodgement and payment (or variation) of Annual PAYG Instalment Notice for the 2009-2010 Income Year.
- 21 | Due date for lodgement and payment of September 2010 quarterly IAS (tax consolidated groups only).
- 28 | Due date for lodgement and payment of September 2010 quarterly BAS and IAS (all other taxpayers).
- 28 | Last day for payment of September 2010 quarter employee superannuation contributions to avoid liability for the Super Guarantee Charge
- 31 | Due date for the lodgement of 2010 income tax returns for all entities with one or more returns outstanding as at 30 June 2010. (NB – if all outstanding returns have been lodged by 31 October 2010 then lodgement of the 2010 return will be as per usual dates)
- 31 | Due date for lodgement of self prepared individual, partnership and trust tax returns. Extensions apply to these returns if lodged by tax agents.

## November 2010

21 | Due date for lodgement and payment of October 2010 monthly BAS and IAS.

## Introducing the New Lawler Partners Marketing Services Team

For many years, Lawler Partners has been ahead of its peers in the Hospitality, Gaming and Marketing arena. This quarter we are delighted to announce the formation of our own unique Marketing Services team led by Julie Pascoe. This new team is already providing a broad range of strategic and tactical marketing services to Lawler clients of all types.

The team boasts highly skilled and qualified professionals with extensive experience across a broad range of industries. These include major multi-nationals, international advertising agencies, leading Australian hospitality venues, major financial services organisations and manufacturing companies in both retail and B2B sectors. Because our people have operated within these large, successful businesses, they have a keen appreciation of how to make a positive impact very quickly and efficiently, and follow a structured and disciplined approach.

Just as we work with our clients to unlock their business potential through our financial and strategic expertise, the new Marketing Services team uses their insights around market development, customer service experiences, product management and promotion to recommend and implement initiatives for growth. We believe it's a perfect complement to our existing suite of services.

If your business would like to take advantage of these specialist skills, ask your Lawler Partners Client Relationship Manager for an obligation-free introduction.

**For more information, visit our website and click through to the Marketing Services pages or contact Julie Pascoe on 02 8346 6000 or via [jpascoe@lawlerpartners.com.au](mailto:jpascoe@lawlerpartners.com.au).**

## Contacts

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Andrew Beattie  
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### Business Recovery & Insolvency

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### Corporate Services

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All firms are independent members of the Lawler National Alliance