Administrator	
employment contracts, 175, 178	
administrator's powers to deal with, 176-177	
effect of administration on, 176	
personal liability	
employee entitlements, 179-180	
employee wages, 178-179, 180-181	
mitigating risk of, 182-183	
payments, for, 177	
s 443 of Corporations Act 2001, under, 175, 178	
"services rendered", for, 175-176	
Alternative dispute resolution (ADR) – see also Mediation	
conciliation, 144	
"med-arb", 144	
non-binding appraisal, 145	
Applications	
voidable transaction proceedings	
"blanket" applications, 129-131	
extant applications, 131-132	
joinder of party, 129	
s 588FF, under, 128	
spent applications, 131-132	
ASIC	
disclosure obligations, enforcing, 204	
powers to discipline liquidator, 162	
regulatory role, 204, 210	
representative proceedings by, 192, 204	
Assisted dispute resolution – see Alternative dispute resolution (ADR)	
Australian Bureau of Statistics (ABS), 77	
Australian Securities and Investment Commission – see ASIC	
Bankruptcy	
act of, 70	
administration of, 70-71	
annulment of	
grounds for, 72	
bankrupts – <i>see</i> <b>Bankrupts</b>	
business related, 82-83	
consequences of, 71	
discharge from, 72	
NSW, in, 99	
non-business related, 83-87	
numbers of, increase in, 79, 98-103	
repeat, 101	
Topout, 101	

research Consumer Bankruptcy Project, 213 lack of, 209-210 nature of, 211-213 secured creditors, rights of, 71 State and Territory, by, 80-82 stigma attached to, 101-102 voluntary or involuntary basis, 70 **Bankruptcy Act 1966 (Cth)** Family Law Act 1975 (Cth) and conflict that exists between, 104-107 personal bankruptcy and, 210 **Bankrupts** aged 45 or older, 100 characteristics of, age, 89 employment status, 92-93 family situation, 90-91 gender, 88 household income, 95 occupation, 91-92 personal income, 93-94 property ownership, 97 realisable assets, 96-97 unsecured debt levels, 95-96 creditors of, 97-98 dependants, with, 99-100 higher prestige occupational groups, from, 100 **Centro Property Group** case study, 199-203 financial troubles, 199-201 litigation troubles, 201-202 **Class actions** Centro Property Group case study, 199-203 commercial litigation, difference to, 188 corporate rescue, and, 192-193, 198 litigation funding services, use of, 188-190 procedure, 187-188 range of claims, 191-192 ASIC, representative proceedings by, 192 misleading and deceptive conduct, 191 termination of, discretion of court, 187 value of, 190-191

**Commercial mediation** – see Mediation Companies Act 1993 (NZ) ss 135, 136, 56 statutory demand under s 290(4)(c), setting aside, 45-47 voluntary administration under Pt 15A, 163 administrator, court appointed, 163-165 proceedings against company, 165-166 watershed meeting, extending convening period, 166-167 **Consumer Bankruptcy Project**, 213 **Corporate insolvency laws, 193 Corporate rescue** Centro Property Group case study, 199-203 class actions, impact of, 187, 192-193, 199 Sons of Gwalia decision, 192, 205 corporate insolvency laws, 193 investor protection, and, 186 procedures, 194, 198 regime, formal benefits of, 194 dangers of, 195 voluntary administration, scope of, 195-198 Deed of Company Arrangement (DOCA), implementation, 197-198 **Corporations Act 2001 (Cth)** insolvency provisions, amendment of, 147 voidable transaction proceedings applications, 128-132 "blanket" applications, 129-131 existing proceedings, 132-133 expiry of limitation period, 132-133 extension of limitation period, 125-128 joinder of party to application, 129 limitation period under s 588FF, 121-122 Court-to-court communication, 206-209 joint hearings, 208 judicial cooperation, 209 voice contact, 207 **Cross-Border Insolvency Act** foreign proceedings, 206, 208 judicial cooperation, 209 Culpability court's approach to, 65-67 **Debt agreement** administration of, 74

benefits in comparison to bankruptcies, 75 business related, 83 introduction of, 73 non-business related, 87 numbers of, increase in, 80, 98-102 proposal for, 73-74 State and Territory, by, 82 variation or termination of, 74 **Debt agreement debtors** characteristics of age, 89-90 employment status, 93 family situation, 91 gender, 88 household income, 95 occupation, 92 personal income, 94 property ownership, 97 realisable assets, 97 unsecured debt levels, 96 creditors of, 98 **Deed of Company Arrangement (DOCA)** case law, decisions under s 444DA, 154-156 content, prescribed provisions for, 149-150 corporate rescue tool, as, 198 employee priority provisions, 151 "eligible employee creditors", definition, 152 exceptions to employee priority court approval, 154 employee approval, 152-154 voluntary administration, 197-198 **Directors' duty** breach of fiduciary duty claim, 123 reckless trading, avoidance of, 55-68 Employees administrator, personal liability of, 175, 178-181, 182 mitigating risk of, 182 Deed of Company Arrangement (DOCA), content of, 149-150 case law, decisions under s 444DA, 154-156 "eligible employee creditors", definition, 152 exceptions, court approval for, 154 exceptions, employee approval for, 152-154 priority provisions, 151

```
employment contracts
        administrator's powers to deal with, 176-177
        effect of administration on, 176
    entitlements, 179-180
    General Employee Entitlements and Redundancy Scheme (GEERS), 151
    leave, 151
    redundancy payments, 151
    rights of, 148-149
        before 2007 amendments, 149
    superannuation, 151
    wages, 151, 178-179, 180-181
        post-administration, 183-184
Family Court
    bankruptcy of spouse involved in matrimonial proceedings, jurisdiction to deal with, 104-107
Family Law Act 1975 (Cth)
    Bankruptcy Act 1966 (Cth) and
        conflict that exists between, 104-107
Foreign corporations
    winding up, 108-110
General Employee Entitlements and Redundancy Scheme (GEERS), 151
Insolvency Act 2006 (NZ)
    proposals under Pt 5, 214-219
        Kelly v Structured Finance, 216-218
        Mutual Finance Group Ltd v Duff, 214-216
        St Laurence Lending Ltd and Ors v Olliver, 218
Insolvency and Trustee Service Australia (ITSA), 70, 77
    Annual Reports, 77
    personal bankruptcy research, data in, 212
    Profiles of Debtors, 77
    regulatory role, 210
Insolvency practitioner
    mediation, in, 135, 140-141
        conflict of interest, 143
        court appointed, 142-143
        fees, details of, 142
        persuasion and coercion, 139
        pressure to settle, 139-140
Insolvent estate
    administration of, 73
Investor class actions - see Class actions
Investor protection
    corporate disclosure, and, 186
    regulations, 185-186, 204
```

Lemnos v Lemnos, Trustee of the Property of decision at first instance, 105 on appeal, 106-107 facts, 105 judgment, 107 legislative background, 104 Liquidator ASIC powers of discipline, 162 funding in liquidation, 126 litigation funding agreements, 159-160 protection of, 159 recovery powers in a winding up, 122 replacement, 132 voidable transactions, pursuing, 126 "blanket" applications, 129-131 Litigation funding agreements Hall v Poolman, 159-162 decision, 160-162 Litigation funding services class actions, use in, 188-190 fees, 189 growth of, 189 profitability, 189 Long tail liability claims Briggs v James Hardie and Co Pty Ltd, 12 Corporations and Markets Advisory Committee (CAMAC) proposals and reforms for protection of unascertained future claimants, 15-24 "contingent creditors" under Corporations Act 2001 (Cth), classified as, 23 insolvent companies, "lifting corporate veil" under s 588V of Corporations Act 2001 (Cth) of, 20-24 mass future claims, 15-18 solvent companies and capital maintenance doctrine, 18-20 Special Commission of Inquiry into Medical Research and Compensation Foundation, report, 12-13 unascertained future claimants, 8-15 creditors, 8-9 creditors under Corporations Act 2001 (Cth), whether constitute, 10-11 future claims, 10 protection mechanisms, 11-12 United Kingdom, in, 13-14 United States, in, 13, 22, 23

# Mediation

acceptance of, 136 confidentiality, 139 exceptions, 139 features of, 137 fees, 142-144 insolvency practitioner, participation of, 135, 140-141 court appointed, 142-143 fees, details of, 142 persuasion and coercion, 139 joint sessions, 137 legal representation, 140 "med-arb", 144-145 mediator, role of, 138 model litigant, 144 participants in sessions, 138, 140 private sessions, 137, 138 process, 137-138 settlement pressure to settle, 139-140 terms of, 141 Model litigant, 144 National Personal Insolvency Index, 72, 74 New Zealand proposals under Pt 5 of Insolvency Act 2006 (NZ), 214-219 Kelly v Structured Finance, 216-218 Mutual Finance Group Ltd v Duff, 214-216 St Laurence Lending Ltd and Ors v Olliver, 218 statutory demand under s 290(4)(c) of Companies Act 1993 (NZ), setting aside, 45-47 abuse of process, where, 45 AMC Construction Ltd v Frews Contracting Ltd, 46-47 elements to satisfy grant of application under s 290(4), 45 voluntary administration in, 111-113 administrator, court appointed, 163-165 proceedings against company in, 165-166 under Pt 15A of Companies Act 1993 (NZ), 163 watershed meeting, extending convening period, 166-167 Non-binding appraisal, 145 Nutri-Care Ltd v ACN 080 633 754 Pty Ltd application and supporting affidavit, service of, 157, 158 decision, 157 facts, 157 statutory demand, service of, 157, 158

compliance with Court Rules, 158 Part X arrangements former, 76-77 personal insolvency agreements, 75-76 Personal insolvency agreements, 75-76 Australian law on, 70 bankruptcy, 70-73 business and non-business related, 79 causes of, 82-87 State and Territory, by, 88 debt agreements, 73-75 Insolvency and Trustee Service Australia (ITSA), 70 middle class phenomenon, whether, 102 non-business related insolvencies, increase in number of, 98 numbers of, increase in, 69, 78-79, 98-102 bankrupts aged 45 or older, 100 bankrupts with dependants, 99-100 credit, excessive use of, 99 employed insolvents, 100 gambling or speculation, 99 ill-health, 99 insolvents from higher prestige occupational groups, 100 middle-class phenomenon, 102 personal income and household income, higher levels of, 100 realisable assets and property ownership, 101 repeat bankruptcies, 101 stigma, 101-102 unsecured debt, 100 personal insolvents - see Personal insolvents regulated forms of, 69 State and Territory, by, 80-82 stigma in, role of, 101-102 type of, proportions of, 80 **Personal insolvents** characteristics of, 69, 77, 88-98 age, 88-90 employment status, 92-93 family situation, 90-91 gender, 88 household income, 94-95 occupation, 91-92 personal income, 93-94

property ownership, 97 realisable assets, 96-97 unsecured debt levels, 95-96 creditors of, 97-98 **Reckless trading** causation, culpability and duration test, 62-68 compensation, calculation of, 57-59 early approaches, 57-59 two step test, 59-68 culpability of directors, 65-67, 68 directors' duty in regard to, 55-68 duration, 67 financial position, quantification of deterioration in, 60-61 litigation concerning, 56, 65, 67 Mason v Lewis, decision in, 59 maximum liability and punitive damages, 61-62 remedies for, 56-57 "serious risk of substantial loss", 57 Ruddock, Philip, 104 Sons of Gwalia decision, 192, 205 **Starport Futures Trading Corp, Re** decision, 108-110 facts, 108 Voidable transaction proceedings existing adding causes after expiry of limitation period, 132-133 adding defendant after expiry of limitation period, 132 adding plaintiff after expiry of limitation period, 132 expiration of limitation period, 132-133 extension applications "blanket" applications, 129-131 extant applications, 131-132 joinder of party, 129 notice of, 128 spent applications, 131-132 extension of limitation period, 125 discretion of court, factors for, 125 notice of application, 128 reasons for, 126-128 limitation period under s 588FF, 121-122 commercial certainty, restoring, 123 expiration of, 132-133 extension of time, grant, 125

```
filing application within, 124
        "relation-back day", definition, 122
        strict time limit, 124
    liquidators, replacement, 132
Voluntary administration
    corporate rescue regime, as a, 195-198
    Deed of Company Arrangement (DOCA), implementation, 197-198
    moratorium on claims, 196
    New Zealand, in, 111-113
        administrator, court appointed, 163-165
        proceedings against company in administration, 165-166
        under Pt 15A of Companies Act 1993 (NZ), 163
        watershed meeting, extending convening period, 166-167
    scope of, 195-198
Winding up
   expenses, 126
    foreign corporations, 108-110
    voidable transactions, and, 122
        limitation period under s 588FF, 121-122
```