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BANKRUPTCY IN AUSTRALIA A GUIDEBOOK

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Updated commentary

Author Paul McQuade has reviewed and updated commentary on the following.

Events in bankruptcy

Introduction to the chapter

The prescribed official name of a trustee may be used in any action by the trustee or against the trustee or in respect of disposal or acquisition of property or entering into of contracts which will be binding on the trustee and her or his successors in office: s 161 of the *Bankruptcy Act 1966*. See [51.100].

Registration of trustees

A registration is automatically cancelled if the person becomes an insolvent under an administration or the person dies, with the cancellation taking effect on the day the respective event happens: s 40-20 of the *Insolvency Practice Schedule (Bankruptcy)*. In *Mannigel v Aitken* (1983) 77 FLR 406, it was held that the minimum standard required of a trustee is that the person shall handle the assets with a view to achieving the maximum return from the assets to satisfy the claims of the creditors and to provide the best surplus for the bankrupt. See Introduction at [51.102].

Remuneration of trustee

A trustee, unless authorised, must not directly or indirectly derive any profit or advantage from the estate which includes a profit or advantage from a creditor of the estate: s 60-20 of the *Insolvency Practice Schedule (Bankruptcy)*. See *Insolvency Practice Schedule (Bankruptcy)*, Pt 3 Div 2; *Insolvency Practice Rules (Bankruptcy) 2016*, r 42-70(b), Div 60, rr 70-35 – 70-47 at [51.200].

Removal of trustee – appointment of further trustee

An introduction is provided with reference to *Barranbali Pty Ltd v Pioneer Australia Pty Ltd* [2021] FCAFC 100.

By s 90-15 of the *Insolvency Practice Schedule (Bankruptcy)*, the court has power to remove a trustee and appoint another trustee.

Creditors may by resolution at a meeting remove a trustee and appoint another trustee: s 90-35 of the *Insolvency Practice Schedule (Bankruptcy)*. See Introduction at [51.204].

Inquiry into conduct of trustee

Pursuant to ss 90-5, 90-10 and 90-15 of the *Insolvency Practice Schedule (Bankruptcy)*, the court has wide powers to inquire into the conduct of a trustee or the administration of an estate. See Inquiry into conduct of trustee at [51.208].

Decision of trustee

An act, omission or decision of a trustee may be challenged by a creditor, a regulated debtor, a creditor on behalf of the committee of inspection or the Inspector-General. See Introduction at [51.215].

Section 90-15 of the *Insolvency Practice Schedule (Bankruptcy)* grants the court a broad discretion to make orders as it thinks fit in relation to an administration: *Andersen v Lennon* [2017] FCCA 2452 at [12] (Judge Jarrett). See Approach of the court at [51.230].

Discovery of property

The *Insolvency Practice Rules (Bankruptcy) 2016* include standards for trustees regarding preliminary inquiries to be made by a trustee: r 42-30. See Introduction at [51.310].

Realisation of property

A trustee must realise only those assets that will give a cost-effective return to creditors or that contribute to the payment of the costs of the administration: r 42-40 of the *Insolvency Practice Rules (Bankruptcy) 2016*. See Introduction at [51.720].

Disclaimer of property

Administration of property is discussed with reference to cases including *Federal Commissioner of Taxation v Lane* [2020] FCAFC 184. See [51.940].

Procedure

Lodging a proof of debt is considered in regard to *Barranbali Pty Ltd v Pioneer Australia Pty Ltd* [2021] FCAFC 100. See [51.1520].

Public examinations

General purpose and principles

The examination process is discussed with reference to cases including *Bazzo v Kirman* [2020] WASCA 43. See [61.140].

Who may be examined?

The requirement of association with the financial affairs of the bankrupt is considered in regard to *Jane v Secatore* [2021] FCAFC 108. See [61.350].

The application

Examination for the benefit of a creditor or creditors is looked at with reference to cases including *ACN 004 410 833 Ltd (in liq) v Walton* (2020) 383 ALR 298; [2020] NSWCA 157 and *Shangri-La Construction Pty Ltd v Hyatt* [2020] FCA 1577. See [61.560].

Financial affairs of an examinee

The examinable affairs of the bankrupt are discussed in regard to cases including *Pitman v Park* [2020] FCA 887 and *Re Newheadspace Pty Ltd (in liq)* [2020] NSWSC 173. See [61.560].

Questions

The fact that a court has control over the questioning of examinees is considered with reference to *Bazzo v Kirman* [2020] WASCA 43. See [61.920].

Recording and use of evidence in subsequent proceedings

Admissibility of evidence is looked at in regard to cases including *Aravanis v Twin Investors Pty Ltd* [2021] FCA 899. See [61.1220].

Precedents and Practice Directions

All prescribed court forms have been updated, see Court prescribed precedents at [F.P05].

The following Practice Directions have been updated:

- CORP 2: Cross-Border Insolvency – Cooperation with Foreign Courts or Foreign Representatives at [81.140].
- CORP 3: Schemes of Arrangement at [81.150].
- QLD 3: Listings arrangements in matters under the *Bankruptcy Act 1966* at [81.410].
- Ex parte applications for substituted service in bankruptcy proceedings and applications for examination summonses under s 81 of the *Bankruptcy Act 1966* at [81.710].

