

Keith Bennetts\*

## **BANKRUPTCY IN AUSTRALIA - A GUIDE BOOK**

**By Paul McQuade**

**Law Book Company, Sydney 1994  
One Looseleaf Volume, \$325  
Includes 12 months of updating releases**

**P**AUL McQuade practices at the Queensland Bar in the area of commercial litigation. He is also a member of the Institute of Chartered Accountants in Australia. His *Bankruptcy in Australia - A Guidebook* has been written to meet the needs of lawyers, accountants and other professionals advising on bankruptcy issues. The objective is to provide a logically ordered presentation of the Australian law governing bankruptcy. Although the law is stated as at 31 December 1993 the work includes some decisions occurring after that date and makes reference to amendments effected by the *Superannuation Industry (Supervision) Consequential Amendments Act 1993* (Cth) which came into effect on 1 July 1994.

That this is a text for practitioners and not for students or those seeking a convenient and inexpensive source of bankruptcy law principles is apparent from its format - a looseleaf service enabling up-dating through releases issued periodically as necessitated by changes in case law, legislation and practice directions.

The book opens with a comprehensive section on creditors' remedies which covers (inter alia) acts of bankruptcy (with separate treatment of the bankruptcy notice), creditors' petition, interim control by a trustee and a useful chapter on the approach of the courts to defects and irregularities in the bankruptcy notice or creditors' petition.

The text then proceeds to discuss debtors' alternatives arising both before and after bankruptcy with a separate treatment of Part X administrations.

The effects of bankruptcy on the bankrupt's income, property and on the bankrupt personally are then covered, with events in bankruptcy

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\* LL M (Comm), ASA, Dip Ed; Senior Lecturer, University of Adelaide Law School; Practitioner of the Supreme Court of South Australia.

(realisation of property, creditors' claims) and public examinations completing the text.

The practitioner will find an accessible text which can be safely relied on as giving an adequate and accurate presentation of the principles of bankruptcy law. Of some concern, however, is the occasional tendency for the text to merely restate sections of the *Bankruptcy Act* 1966 (Cth) without critical analysis and without reference to the difficulties inherent in the application of some rules. In particular, issues or problems which have not yet been brought before the courts or which have not been dealt with by them fully are generally not identified. For example, the consequences of bankruptcy for the bankrupt's spouse, particularly in respect of the matrimonial house, is not considered, leaving the reader to work through general principles to arrive at a position. No doubt the explanation for such mainstream treatment is that the service provides a guide ("a guidebook") to the principles of bankruptcy law. Subscribers to the service should as a result recognise that the service will be a useful place to commence reading but further research will often be required.

Against this, however, is the author's effective use of case law with both reported and unreported decisions being cited to good effect throughout the text. This reviewer selected at random a number of technical issues which have been the subject of judicial scrutiny and was usually satisfied with the text's identification of the issues and the account of the manner in which the courts had dealt with them. There were some exceptions - selected examples demonstrate the point. In paragraph 31.1800, the reference to Heerey J considering the question of a provable debt in the context of a composition, a matter previously considered in *Re Morris; Morris v Maroudas*,<sup>1</sup> does not identify the case in which Heerey J reviews the issues (*Re Wills; Wills v Abram*).<sup>2</sup> In a different context, the discussion of sections 139A-139H would have benefited from a reference to *Dwyer v Ross*,<sup>3</sup> particularly in view of the scarcity of case law on those provisions. Issues relating to the effect of bankruptcy on proceedings by the debtor (s60(2)(5)) were not fully considered - nor, surprisingly, has the order of distribution to creditors (ss108-114) been given sufficient consideration.

In targeting the service as "a step-by-step guide to bankruptcy law for lawyers, accountants and other professionals advising on issues of bankruptcy", the layout of the service is excellent and greatly assists in achieving this aim. On occasions, one may quarrel with the arrangement of the text, for example, the treatment of debtors' property and voidable

1 (1986) 66 ALR 699; (1986) 11 FCR 141 (FC).

2 Unreported, FCA, 12 May 1993, VX 450/91; (1993) ACL Rep 50 FC 48.

3 (1992) 34 FCR 463.

dispositions in the section dealing with ramifications and effect of bankruptcy, but these are matters of presentation on which there can be more than one view. Also the subject index is not as detailed as it could be, not always identifying specific matters raised in the text.

In summary, a useful looseleaf service aimed at the wide range of professionals advising on and working with the principles of bankruptcy law. More accessible, but less comprehensive than the benchmark looseleaf service, *Australian Bankruptcy Law & Practice*,<sup>4</sup> the service has achieved its aim of filling a gap in looseleaf bankruptcy law publications. However, herein lies somewhat of a dilemma for the potential subscriber. Is it necessary to subscribe to a looseleaf service which is primarily directed at principles of bankruptcy law, even acknowledging its clear and direct style, accessible format and undoubted scholarship? For example, in *Lewis' Australian Bankruptcy Law*<sup>5</sup> by Rose, we have a well known text book from the same publisher which with similar objectives provides a similar text, with extensive references to case law and statutory provisions. Its moderate price will cause potential subscribers to closely consider what is being offered by the new service, for example, more effective use of case law, updating releases, bulletins, and precedents, which distinguish it from text books such as *Lewis'*.

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4 McDonald, Henry & Meek, *Australian Bankruptcy Law & Practice* (Law Book Co, Sydney, 5th ed 1977).

5 Rose, *Lewis Australian Bankruptcy Law* (Law Book Co, Sydney, 10th ed 1994).