



## **Appendix D – List of cases**

**Federal Court and Federal Magistrate Court cases where s120 and 121 of the  
Bankruptcy Act 1966 have been considered**

**Reported on Austlii / Butterworths CaseBase**

**Over period 2000-2004  
(Created 20 July 2004)**

<b>Case name</b>	<b>Outcome for trustee on s120/s121 argument</b>
Official Trustee in Bankruptcy v Mateo [2003] FCAFC 26	Unsuccessful
Anscor Pty Ltd v Clout (Trustee) [2004] FCAFC 71	Unsuccessful
Clout (Trustee) v Anscor Pty Ltd [2003] FCA 326 (10 April 2003)	Successful
Prentice v Cummins (No 5) (includes summary) [2002] FCA 1503 (5 December 2002)	Successful
Jabbour v Official Receiver & Ors [2002] FMCA 28 (26 June 2002)	Successful
Official Trustee in Bankruptcy v Lopatinsky [2003] FCAFC 109	Uncertain — remitted to primary judge
McVeigh v Long [2002] FMCA 53 (3 May 2002)	Uncertain — only determined trustees standing

Jabbour v Sherwood [2003] FCA 529 (28 May 2003)	Uncertain— matter remitted to magistrate
Official Trustee in Bankruptcy v Trevor Newton Small Superannuation Fund Pty Ltd [2001] FCA 1267	Successful
Matthews v Nilant & Ors [2002] FMCA 201 (15 November 20)	Successful
Sellers v Tsimiklis & Anor (No.1) [2003]FMCA 139 (11 April 2003)	Successful (on 120)
Dare & Anor v Nowbrook Pty Ltd & Anor [2002]FMCA 364 (19 November 2002)	Successful
Mateo v Official Trustee in Bankruptcy [2002] FCA 344	Unsuccessful
Worrell & Anor v Pix & Ors [2002]FMCA 93 (6 June 2002)	Successful
Official Trustee in Bankruptcy, the Trustee of the Property of Phillip Martin Higgins v Higgins [2000] FCA 1850	Transferred to Family Court
Benson v Cook [2001] FCA 1684	Unsuccessful
Schmierer v Horan & Anor [2004] FMCA 16 (3 February 2004)	Successful on 120
Lumsden v Snelson [2001] FCA 83	Successful
Macks v Morris [2003] FMCA 208 (3 June 2003)	Successful
Jones v Southall and Burke Pty Ltd [2003]FMCA 27 (13 February 2003)	Unsuccessful
Sellers v One Step Plumbing and Concrete Pty Ltd [2002] FCA 478	Successful
Official Trustee in Bankruptcy v Dunwoody [2004]FMCA 143 (27 February 2004)	Mareva inj sought against possible 121 120, but not granted
Permfox Pty Ltd, in the Matter of Chase v Official Receiver for the Bankruptcy District of New South Wales [2002] FCA 1564	Partially successful on 121
Young v Turner [2003] FMCA 144 (24 April 2003)	Partially successful on 121

Lopatinsky v Official Trustee in Bankruptcy, in the matter of Lopatinsky [2002] FCA 861	Unsuccessful on 120
Trustee of the Property of O'Halloran, in the matter of O'Halloran v O'Halloran [2002] FCA 1305	Successful
McBain v Parsons [2000] FCA 935	Successful
Lin v Official Trustee in Bankruptcy (No.1) [2001] FMCA 106 (31 October 2001)	Unsuccessful
Pastro v Official Trustee in Bankruptcy [2000] FCA 744	Successful
McVeigh v Zanella [2000] FCA 1890	Successful
Scott v Page [2003]FMCA 439 (7 October 2003)	Successful
Lopatinsky v Official Trustee in Bankruptcy, in the matter of Lopatinsky [2003] FCA 1256	Unsuccessful
Prentice v Cummins (No 6) [2003] FCA 1002	Dealt with another issue
Daniel v Daniel, in the matter of Daniel [2004] FCA 648 (18 March 2004)	Unsuccessful
Fletcher & Anor v Landgridge & Ors [2002] FMCA 139 (26 July 2002)	Unsuccessful
Green v Dare [2003] FCA 172	Successful
Cottrell v Nicholls, in the matter of Cottrell [2003] FCA 1351	Successful
Parsons and Parsons v McBain [2001] FCA 376 (5 April 2001)	Partially successful
Jessup (Trustee) v Mountain View Farm [2002] FCA 312	Unsuccessful
Cook v Benson [2003] HCA 36 (19 June 2003)	Successful
Zink v Official Receiver [2002] FCA 523 (19 April 2002)	Successful
Prentice v Cummins [2002] FCA 1140	Dealt with another issue
Cook v Benson [2003] HCA 36 (19 June 2003)	Successful

Tsimiklis v Sellers [2003] FCA 1257	Dealt with another issue
Prentice v Harrison [2000] FCA 1764	Dealt with another issue
Cook (Trustee), In the matter of Benson [2000] FCA 1777	Successful
Macks v Morris (No.2) [2003] FMCA 241 (3 July 2003)	Dealt with costs
One Step Plumbing & Concrete Pty Ltd v Sellers [2002] FCA 865	Dealt with other issue
Ambrose (Trustee), in the matter of Little (Bankrupt) v Little [2002] FCA 877 (3 July 2002)	Dealt with other issue
Cottrell v Nicholls (Trustee) in the matter of Cottrell(Bankrupt) [2004] FCA 358 (25 March 2004)	Dealt with other issue
MACKS (as trustee in bankruptcy in the bankrupt estates of HOUSE) v HOUSE— BC200207543	Unsuccessful
Dare & Anor v Nowbrook Pty Ltd & Anor [2002] FMCA 364 (19 November 2002)	Successful
Zohar & Ors v Hicks [2002] FMCA 308 (24 December 2002)	Successful
Bartrop v Nilant (Trustee), in the matter of Bartrop [2003] FCAFC 306	Unsuccessful
Posnerv Gibb & anor [2001] FMCA 93 (25 September 2001)	Successful
Cottrell v Nicholls, in the matter of Cottrell [2003] FCA 1351	Dealt with another issue
Official Trustee in Bankruptcy v Lopatinsky [2003] FCAFC 109	Unsuccessful
Official Trustee in Bankruptcy v Mateo [2003] FCAFC 26	Unsuccessful

Total number of 2000-2004 cases reported:	58
No. cases where Trustee successful:	26 (44.83%)
No. cases where Trustee partially successful:	3 (5.17%)
No. cases where Trustee unsuccessful:	15 (25.96%)
No. cases where outcome for Trustee uncertain/decided another issue:	14 (24.14%)