Insolvency Law
Bulletin

Rethinking Insolvency Practitioner remuneration

Michael Murray *MURRAYS LEGAL*

The current parliamentary inquiry into corporate insolvency law in Australia lists as an item for inquiry the "role, remuneration, financial viability, and conduct of corporate insolvency practitioners".[1] While the scope of that is yet to be clarified, it raises some issues about how remuneration is claimed and approved, and from where it is drawn. A broader issue is the fact that remuneration underlies the financial viability of practitioners, and of the industry itself. In the context of COVID-19, to which the Committee's terms of reference refer, the industry was revealed to be rather narrowly dependent on distressed or failed businesses, which are themselves an unlikely source of secure remuneration.[2]

This article therefore focuses on remuneration of practitioners and suggests that scrutiny of it has been too harsh in not factoring in various relevant issues that impact, adversely, upon it.

Those issues become apparent if focus is given more to the work that is actually required of an insolvency practitioner by the law[3] in administering an estate, for which remuneration is then claimed. If that remuneration appears high, that may only mean that the law required much work to be done, and often irrespective of the size of the estate. As one court has explained, "a trustee has no choice but to carry out certain statutory duties and [. . .] in a small bankruptcy, the trustee's costs might appear disproportionately large".[4]

Similarly, some aspects of these duties may appear unproductive but as another court has said there "are many ways in which costs may be incurred which are not related, principally or even at all, to the assets and liabilities of the estate".[5]

These more refined considerations of the work required to be done need to be factored in when considering the quantum of practitioner remuneration.

A more accurate assessment of that minimum level of work required, and beyond, would then allow a better law reform assessment of the costs and benefits of the system,[6] acknowledging that insolvency also provides many non-financial benefits.

None of this is to suggest that remuneration claims should not be the subject of scrutiny and approval under the various case law and guidance notes — as to the length of time taken in performing tasks, the level of staff used, and related issues — but these should be applied, it is argued, in light of the issues raised here.

Outline

What follows is a summary of some of the particular issues that impact upon practitioners and their remuneration, with two decided cases illustrating the need to focus on the work required more so than on the financial outcome; and an explanation of the expensive nature of insolvency work, and the difficulties in producing "proportionate" outcomes. What is termed the elephant in the room, the extent of unfunded work, is then explained, followed by a lack of legislative and regulatory acknowledgement of that issue; and finally, how all this might assist insolvency law reform generally.

Particular issues that impact upon IPs and their remuneration

Nature of the role of the insolvency practitioner

The peculiar nature of the role of the insolvency practitioner impacts the work required. A private practitioner's role involves the exercise of significant public authority on behalf of the state and in the interests of the state as well as in the private interests of creditors. It is different from, and more senior than, lawyers and accountants in terms of their powers to determine rights, including quasi-judicially, and to direct conduct. Insolvency practitioners have no clients and are not subject to the direction of creditors. This is apparent from the nature and long history of the role itself.[7]

Given the varied nature of the purposes of insolvency, the work of practitioners and their decisions are not necessarily commercial, nor does their work need to financially benefit the estate; it may in fact deplete it. As the case cited earlier said, remuneration may be incurred on tasks "not related, principally or even at all, to the assets and liabilities of the estate".[8] One body of work required is to investigate misconduct and refer offences. As this is work being done on behalf of the state, the practitioner is using funds that might otherwise be paid to creditors as dividends. But going further, if there are no funds available for certain work, the practitioner must attend to the tasks regardless. That cost, it seems, is recouped by higher charge out rates on a cross-subsidisation basis. Ultimately, even if there is work that creditors ask to be done in their favour, or not to their disadvantage, the practitioner has the ultimate discretion.[9]

It should also be added that an IP also assumes personal financial risk in taking an insolvency appointment, and statutory risk under Part 5.3A of the Corporations Act, such that work is required, and funds expended, in mitigating that risk.

Source of funds for remuneration

The operation of the insolvency regime mainly relies for its funding on the remaining assets of the insolvent. Relevant figures in Australia show these to be inadequate resulting in the remuneration of practitioners being uncertain and variable, and in some cases requiring proactive action; but in many cases, claims are simply not able to be met. That leads to legitimate but apparently questionable ways that IPs recoup remuneration, for example by raising charge out rates, or bringing recovery proceedings, discussed below.

Public interest

The broader non-financial purposes and impacts of insolvency should be kept in mind, that an "insolvent liquidation cannot be dismissed as 'just a case about money'."[10] Insolvency law is a necessary regime that relies largely on the work and skills of registered practitioners. They have been grouped with the courts as constituting the two pillars of any insolvency system.[11]

There are other related features of the role of an insolvency practitioner that will be raised in this article.[12]

A focus on the work required to be performed

These two examples illustrate the need to give focus to the tasks required in insolvency, and less so on the time taken to perform them.

Mirror Group v Maxwell

In a matter involving a substantial fraud,[13] Ferris J famously found it to be "profoundly shocking" that an insolvency practitioner, a receiver, had recovered £1.672m in assets and claimed £1.449m (£744,000 in professional fees and £705,000 in legal fees and disbursements), so as to leave a net figure of £43,428 for creditors.

However, after ordering a detailed assessment of the remuneration of the receivers and their advisers, very little was taxed off the amounts claimed. There had been a "painstaking investigation" and "the receivership was carried out with a high degree of skill and efficiency. While the recovery of assets appeared disappointing when set against the total remuneration and disbursement claimed, the figures were far more acceptable and understandable when seen against the total asset recovery on behalf of the estate".[14]

Nevertheless one of several comments in response was "the fact that cases of no, or minimal, returns to creditors after remuneration and costs continue to occur is one reason why issues of liquidator's remuneration will remain controversial".[15]

The fact that cases of no, or minimal, returns to creditors after remuneration and costs continue to occur is not so controversial, or not for the reason implied. Rather it is perhaps indicative of the reality that winding up and investigations takes time and skill, and that any funds or assets that remain are difficult to locate and retrieve. Fraud, and the need for investigation in the public interest, adds much to the workload.

Five Star Finance

In contrast to the judicial comments in Maxwell, in the caseof a large-scale Ponzi scheme, involving investor losses of NZ$43 million, the New Zealand High Court approved liquidators' remuneration of over NZ$330,000 which left no dividend for creditors.[16] In approving the remuneration, the Court said that the efforts of the liquidators were properly undertaken in the face of what was a massive fraud.

"The liquidators represented the only prospect of the creditors receiving any appreciable recovery. ... That nothing came of those efforts is not in any way a matter for which the liquidators are to be criticized. Further, there was a strong public policy requirement that there be a proper investigation of the affairs of the company . . .".

That is a more realistic and fair response.

The work that must be done is expensive

As to the work that is or can be required of a practitioner, the former Australian High Court Judge Michael Kirby has written:[17]

"the task of insolvency administration is inherently expensive. Principally this is so because of the intensive nature of the investigation of accounts (sometimes in a shambles and sometimes deliberately deceptive) that the insolvency practitioners must analyse and understand".

He went on to say that there is an unwillingness of people to appreciate that securing a just outcome (in law) is inherently costly.

"It is unreasonable to demand that skilled professionals should perform their functions at low cost. Dispute resolution has a cost component".

Any insolvency system will cost money to administer — a court system and a registry are two fundamentals. Another fundamental is the IP who must be fairly paid for professional services in some way.

That then creates a tension between the quantity of work that is required in winding up an estate, which incrementally reduces the amount that may be available for creditors. That brings in the issue of proportionality.

Proportionality

Proportionality is not unusual in many contexts. The same tension arises for a lawyer acting to recover a debt for a client. The difference with the latter is that the lawyer's work is solely in the client's interests and is subject to the client's instructions. Certainly, commercial considerations as to how much time a liquidator spends to recover moneys are relevant. Any person in commerce knows that it takes time and costs money to recover money, or to resolve legal problems. But a commercial pursuit of assets by a liquidator is not as a simple as debt recovery on behalf of a client.

We need to dissect what proportionality in the administration of an insolvency, in fact, means.

First, in any insolvency there are the establishment tasks — the obtaining of a list of assets and liabilities, the gathering in of those assets, reporting to the creditors, maintaining the public record and establishing a proper set of accounts. These are statutory duties required to be performed many of which are really in the nature of public interest duties of the practitioner — to formally record the insolvency of the company and provide a base of information for those inquiring. There is little discretion in how these should be performed. In fact, these lend themselves to a fixed charge amount, broadly based on the number of creditors.

Second, liquidators must investigate and report breaches of all laws in Australia in relation to the company and support any prosecution.[18] Bankruptcy trustees have similar obligations.[19] This is claimed to be so even if there are no funds to pay for the work done, which is the majority of cases. If there are funds available, the creditors might complain about their use. This is public interest work at its core. The unfunded costs of a practitioner must be factored into their charge out rates or otherwise recovered; as we will see, this is accepted by the law and the regulators, if perhaps begrudgingly. Properly, this should inform creditors of the reason for the high rates of IPs and that they, the creditors, are in effect funding those public interest and other unfunded tasks.[20]

Third, there are then tasks immediately imposed on the practitioner — leases that may have to be ended, assets disclaimed, litigation assessed, employment contracts terminated etc.

Four, it is then that the IP has to decide what further work is required, by way of investigations, examinations, and litigation. It is in this phase that proportionality is properly to be assessed. But by this stage, a certain amount of time will have properly been spent, for which I say proportionality is not relevant.

Those scenarios are often overlaid by the reality of practice. In one case, the bankrupt complained that the trustee's proceedings were being brought only to recoup his fees.[21] The Judge rejected this, agreeing with the trustee that this was neither exceptional nor improper. There were no funds in the estate available for the trustee's own fees let alone for the creditors but the trustee had obtained creditor funding to pursue certain trust assets. That the moneys recovered might provide the only source of funds to pay the trustee's fees was simply a factor of the substantial priority (s 109(1)(a)) given to fees under the law.

To stronger effect is the comment in *Cardinal Group*,[22] the Judge responding to a claim by counsel for the respondents to a preference claim that "irrespective of the outcome of the proceedings, there will be no return to creditors. ... that the litigation appears to be advanced for the benefit of the litigation funder and to meet the liquidators' professional fees", or at a maximum, to pay creditors "a fraction of a cent in the dollar".[23]

However the Judge said that ". . . even if the proceedings were pursued to seek to recover the liquidators' costs or funding which had been devoted to the conduct of the proceedings, it seems to me that that is a proper purpose, where liquidators would less readily accept appointment, and litigation funders would less readily fund proper proceedings in liquidation, if liquidators could not recover their remuneration or litigation funders could not recover the funding which they provided."[24]

The Judge saw this as consistent with the approach laid down by the NSW Court of Appeal in *Hall v Poolman*[25] which is significant in the context of financial proportionality as to both the pursuit of litigation to recoup costs and to enforce the insolvency laws. The pursuit of insolvent trading, or attempting to recover purloined assets, is important in itself even if this may result in no recoveries by liquidators beyond recovery of their own remuneration and expenses and the funder's fees.

From these more refined examples we can at least say that proportionality is not as straightforward as a matter dealt with by a lawyer for a client, and in some cases can be complex.[26]

Inherently, proportionality depends on the size of the estate. As earlier quoted, with many small to medium enterprises (SMEs) which constitute the bulk of insolvencies in most jurisdictions, the IP's fixed costs might appear disproportionately high, even to the extent of consuming all remaining funds. The acceptance that reasonable and necessary work need not necessarily increase the funds available for creditors is hardly relevant in such cases.[27]

In a large matter, while remuneration and expenses may be very high, they may well be proportionate to the value and complexity of the administration. In relation to a remuneration claim of $8 million in winding up a managed investment scheme in *Gunns Plantations,*[28] involving 35,000 growers holding 49,000 investments of a value in excess of $1.6 billion, while the Federal Court accepted that to the lay person the hourly rates and remuneration charged seemed 'extraordinary', they were market rates and the liquidation was 'a most complex insolvency administration, certainly well above the run of the mill administration or liquidation'. The claim for remuneration was "reasonable and proportionate to the services undertaken by the liquidators and their staff".[29]

The extent of unfunded bankruptcies and liquidations — the elephant in the room

The extent of unfunded work is significant, when discussing the remuneration of practitioners, but is little acknowledged.

The limited data available suggests that remaining funds in insolvent estates are insufficient to support the costs of the system, that is, the costs of winding up and payment of a dividend to creditors.

This may be increasing with a decreasing amount of remaining assets in most insolvencies, or more complex structures around them. Trading trusts are one example, the lack of insolvency reform of which would have added millions to the costs of insolvencies over the years. The government's acknowledgement that IPs need not accept unfunded work seems to have led to the predicted increase in the number of deregistered companies, avoiding the system. While the intention was to prevent or limit IP cross-subsidisation[30] it is doubtful that has been the outcome.[31]

Even in personal insolvency there appears to be much unfunded work. In a 2020 AFSA report on the remuneration of trustees,[32] AFSA inquired not only as to the amount charged in each estate which appears on the official accounts but also as to the reality of how much was in fact paid.

That further inquiry was relevant because it led to the report revealing that, in the year in question[33] in 63% of bankruptcies administered that year, no remuneration was recovered at all by trustees, with an average of $4,804 drawn in the remainder; and over 30% of bankruptcies finalised in that year produced no remuneration in any year of the administration.

Trustees were therefore significantly unfunded for their work in the period examined by the report. That is significant given that Australia has a government Official Trustee in Bankruptcy that takes the bulk of assetless consumer and business bankruptcies.

AFSA's legal and policy answer to this is that lack of funds to pay a trustee's remuneration is an inherent feature of trustees' work and that they may validly set higher charge-out rates — to cross-subsidise — to accommodate those losses.[34] Those high rates are then charged against moneys otherwise payable to creditors in the few bankrupt estates with assets. A write-off of one third of fees would allow for a substantial mark up.

So, either the trustee pays, or, if they manage it well, the unrelated creditors in their other estates, unwittingly, pay. That seems to be the policy decision of the government and it may partly explain why, in 2020–2021, the average dividend paid to unsecured creditors by registered trustees was just 2.37c/$.

This is consistent with UNCITRAL's Legislative Guide on Insolvency Law which acknowledges that practitioners' charge out rates can be adjusted to take into account unremunerative work.[35]

It can also be reasonably surmised that there is often no record kept by the practitioner of unfunded hours worked; that is, time records were not maintained or not maintained fully because there was no point in quantifying them if the practitioner realised that there was no prospect of any assets.

This is another factor that might properly be taken into account in any view about remuneration. A judge's recent shocked comment about high hourly rates of practitioners"[36] might be seen in these contexts.

Options available to and adopted by practitioners

If lawyers or accountants were to be confronted with unfunded work, their response would be to refuse it. Insolvency practitioners can and probably should also but when work is limited, and risk criteria extend, many take the work, and apply various legitimate ways to address the losses.

As much as there are regulator, judicial or legislative responses to this lack of funds, they include practitioners setting higher hourly charge out rates for paying estates that have assets so as to make up for the losses. As explained earlier, a risk premium is imposed. Those estates would be charged in full, subject to approval, and in accord with relevant law and guidelines.

Litigation funding is available, including to recover fees.

Government funding through ASIC's assetless administration fund is available, for particular purposes, as is some funding from the Fair Entitlements Guarantee (FEG) scheme, and from the Australian Taxation Office (ATO).[37]

Ultimately, liquidators in particular can refuse to consent to wind up insolvent companies that cannot afford the process, or that may involve undue personal financial risk, and the companies and their liabilities can simply disappear off the companies register or otherwise be dealt with by ASIC.

Relevance and responsibility

The reason for raising these remuneration issues is to add context and colour to the "concerns" about excessive practitioner remuneration, and also to explain where the responsibility for that lies. That is not to say that there are not concerns about practitioners' remuneration per se, nor to say that regulation is not required. But there are various perverse structural issues in an insolvency not found elsewhere in professional remuneration practices that need to be acknowledged.

Responsibility for setting the standards for remuneration necessarily lies with the legislature. While processes for recording and disclosure of remuneration are required, they border on the excessive. The cost of approval of remuneration is high, more so if court approval is required, as in corporate insolvency. There is little or no legislative guidance on dealing with unfunded estates; the limits of s 545 of the Corporations Act are unclear[38] and there is no assistance in bankruptcy law. The reality of unfunded work has been addressed through a financially opaque system of funding with little public responsibility taken by government. Funding of public interest services provided by insolvency practitioners are sourced from creditors generally, through higher charge out rates. It is all hardly exemplary of sound and transparent public financial management.

All this is in the context of Australia not having an Official Receiver in corporate insolvency, as originally proposed at federation.[39]

Professional bodies and regulators can and do provide guidance, including by way of instilling a culture of compliance but the issues of managing unfunded and public interest work is likewise avoided.

The courts have a role in their considered judgments on remuneration, providing points of principle. Courts could do more, in terms of their obligation to ensure efficiency in litigation processes, for example by way of monitoring the financial outcome of litigation, a query raised by the trial judge in *Hall v Poolman*.[40] Similarly, a judge ordered that the trustees in bankruptcy file "evidence that identifies the benefits the creditors of the bankrupt are likely to receive if the Trustees succeed" in the voidable transaction claims for which leave was being sought.[41] These are, however, exceptions.

As for insolvency practitioners, they administer the insolvency system with a good faith effort. In so far that system works to a degree but with considerable complexity, delay and effort, they are recompensed for their efforts. How they manage that recompense is a matter of their business, ethical and legal judgment.

Remuneration and law reform

As to law reform, Mr Michael Kirby was earlier quoted[42] as to the costs of insolvency practice and that "greater efficiency and more realism" is required in the approach to insolvency law reform.

Given the figures available, the law might be changed to allow more presumptions in favour of asset recoveries, or preferences.[43] The need for reporting to creditors might be reduced, or perhaps ameliorated by information technology systems. The introduction of administrative recovery mechanisms in bankruptcy[44] was based on a need to try to avoid the time and costs of litigation.[45] Default approvals and on-line meeting processes are other examples that show that legally imposed scrutiny has cost consequences and can be a focus of productive and efficient law reform.

One fundamental law reform would be to define the limits of the legal responsibility of practitioners to continue to administer an estate when there are no or limited funds.[46]

Information and data are needed for any law reform. An IMF Working Paper — *The Use of Data in Assessing and Designing Insolvency Systems*[47] — explains the need for insolvency legislation to be designed and assessed based on data recording the actual performance of the system, and the issues experienced in its application. In reality, while there are qualitative assessments based on standards and practice, there are limited instances of reform based on empirical data.

Time recording of work done provides data that would assist in law reform. The amount of necessary work properly done by insolvency practitioners for which there are no or inadequate funds is not reportable to AFSA or ASIC. Perhaps the actual time spent in administering a bankruptcy or liquidation should be reported by practitioners, for the purpose of providing transparency and accountability in the operation of the insolvency system, including as to who supports and pays for it. That information would also assist in monitoring the efficiency of the insolvency laws for the purposes of law reform.

That would require legislative action. In the absence of that, perhaps the task lies with the industry itself, for its representative bodies to survey their members and find out how much time is spent on matters for which there is no recompense, and then explain why, and how they recoup those losses. A similar task was undertaken some years ago when it was revealed that liquidators personally funded disbursements of $1.4 million and remuneration of $47.3 million each year.[48]

Insolvency Law
Bulletin

AFSA has good, if basic, statistics. An example of their potential use comes from data showing that trustee fees represent around 25% of all realisations. That could provide a law reform response to increase the commission rate in the rules,[49] necessary financial analyses in support being assumed. In comparison, the Official Trustee takes $4 000 plus 20% of the realised balance in each matter, acknowledging that most of its estates are assetless.[50]

The new Australian Business Register will provide a good source of data and other information.[51]

Conclusion

There is more to IP remuneration than regulating excessive charging. Rather, remuneration highlights a range of idiosyncratic features of insolvency law and practice that should be acknowledged when remuneration is being assessed, and which should provide some springboard for efficiency-based law reform.[52] On the raw figures available, there does not seem to be enough money in the SME sector for remuneration, let alone for any recoveries for creditors.

While the issues raised here might not prompt any early substantive change, they should at least inform the thinking and processes, and dispel some of the unwarranted assumptions, concerning insolvency practitioner remuneration.

Michael Murray
Co-editor
Insolvency Law Bulletin
michael@murrayslegal.com.au

Footnotes

1. Parliamentary Joint Committee on Corporations and Financial Services — Corporate Insolvency in Australia, 2022.
2. Discussed in *Rebuilding the structure of the Australian insolvency system* (2022) 22 (1&2) INSLB 14, M Murray and J Harris (“*Rebuilding the structure, Murray & Harris*”).
3. The terms “insolvency practitioner” or “practitioner” are used here to refer to both company liquidators and bankruptcy trustees.
4. *Simion v Brown* [2007] EWHC 511 (Ch).
5. *Brook v Reed* [2011] EWCA Civ 331; [2011] 3 All ER 743.
6. *The Costs and Benefits of Regulating the Market for Corporate Insolvency Practitioner Remuneration* (2015) 25(1) International Insolvency Review p 56-71, J Dickfos.
7. See *Keay’s Insolvency*, 11th ed, Thomson Reuters, 2022, M Murray & J Harris, Ch 1 (“*Keay’s Insolvency*”).
8. *Brook v Reed* [2011] EWCA Civ 331; [2011] 3 All ER 743.
9. *Re Weiss* [1986] FCA 287.
10. *In re Barlow Clowes* [1992] Ch 208.
11. “In the field of insolvency there are two actors whose integrity and expertise are central to the functioning of the insolvency system: judges and administrators’: *A Global View of Business Insolvency Systems,* Westbrook, Booth, Paulus and Rajak, The World Bank and Brill, 2010, at p 203.
12. *Rebuilding the structure,* Murray & Harris; *Keay’s Insolvency*, Ch 1.
13. *Mirror Group Newspapers v Maxwell & Others (No 2)* (1997) Ch D 15 Jul 1997; [1998] 1 BCLC 638.
14. *Mirror Group Newspapers n Maxwell & Others* [1999] BCC 685.
15. Corporations Law Conference August 2016, *Three recent developments in insolvency law,* Justice Ashley Black, Supreme Court of New South Wales. See also Finch and Milman *Corporate Insolvency Law*, *Perspectives and Principles,* Cambridge University Press, 3rd ed, pp 203ff.
16. *Five Star Debenture Nominee Limited (in liq) v Five Star Finance Limited (in rec’p)* [2015] NZHC 142.
17. *Bankruptcy and Insolvency Change, Policy and the Vital Role of Integrity and Probity* (2010) 22(2) A Insol J 4, M Kirby, (Kirby, *Bankruptcy and Insolvency,* 2010).
18. At least as required by the regulators; see for example ASIC’s RG 16 External administrators — Reporting and lodging at RG16.19ff.
19. See *Offence reporting by insolvency practitioners* — (2019) 20(4&5) INSLB 88, M Murray
20. See generally, *Rebuilding the structure,* Murray & Harris.
21. *Boensch v Pascoe* [2007] FCA 1977.
22. *In the matter of Cardinal Group Pty Limited (in liquidation)* [2015] NSWSC 1761.
23. At [33].
24. At [34].
25. [2009] NSWCA 64. Discussed in *Proceed with caution — NSW Court of Appeal overturns inquiry into liquidators’ conduct* (2009) 9(8) INSLB 181, S Mullette.
26. *Templeton v ASIC* [2015] FCAFC 137 at [52], which addresses, for example, where insolvency work is being performed to preserve property of known value as compared with work performed to achieve a return to creditors that is inherently unclear. In the latter case, proportionality is assessed by comparing the cost of such work against the then expected and realistic return, and not with the benefit of any hindsight review.
27. *Sanderson, as liquidator of Sakr Nominees Pty Ltd (in liq) v Sakr,* [2017] NSWCA 38 at [54].
28. *Gunns Plantations Limited (in liq) (R&M App’d)* [2015] VSC 102
29. At [67].
30. Explanatory Memorandum Insolvency Law Reform Bill 2015 at [9.52]–[9.53].
31. See “*Is ASIC deregistering more abandoned companies? What the data shows”,* [2022] 34[2] ARITA J 40, T Eszenyi.

32. Registered Trustee Remuneration in the Personal Insolvency System Best Practice Report, March 2020 at www.afsa.gov.au.
33. 2018-2019, that is, pre-COVID-19.
34. Remuneration entitlements of a registered bankruptcy trustee (IGPD6); Proper performance of duties of a bankruptcy trustee (IGPD14)
35. Insolvency | United Nations Commission On International Trade Law at [75], although perhaps UNCITRAL did not contemplate adjustments to that extent.
36. Up to A$847 incl GST. *Westpac Banking Corporation v Forum Finance Pty Limited* [2021] FCA 807.
37. AFSA's level of funding under s 305 *Bankruptcy Act* 1966 is minimal.
38. Discussed at *Re ACN 151 726 224 Pty Ltd (in liq)* [2016] NSWSC 1801 at [57].
39. See the then proposed Companies Bill 1908.
40. [2007] NSWSC 1330.
41. *Macks v Lee (No 2)* [2021] FCCA 1800
42. Kirby, Bankruptcy and Insolvency, 2010, see footnote 16.
43. *Avoidance Provisions in Insolvency Law*, LBC Information Services, 1997 at pp 377–384.
44. Section 139ZQ notices etc.
45. See Explanatory Memorandum to the Bankruptcy Amendment Bill 1991 at [22–25].
46. As to s 545 Corporations Act, see footnote 19.
47. www.imf.org WP/19/27, prepared by J Garrido (dir.) and others, February 2019
48. See Explanatory Memorandum to the Insolvency Law Reform Bill 2015 at [9.53] referring to Phillips, A, *An analysis of official liquidations in Australia*, February 2013.
49. s 60-20.
50. Bankruptcy (Fees and Remuneration) Determination 2015
51. Home | ABR
52. See also *Insolvency fees and the cost of regulation — the details behind the headlines*, 2022 at www.R3.org.uk; and *Corporate insolvency practitioners, ethics and remuneration Not a case of moral bankruptcy?* 2020 at www.insol.org, L Jacobs. Although I have not individually footnoted or quoted these reports, they were of considerable assistance to me in the insights they gave.