Mistakes and Misdeeds:
External Administrators, Personal Liability and Loss of Office

Matthew McLennan
Senior Associate

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Introduction

This paper is concerned with things that can go wrong from the perspective of an insolvency practitioner engaged in an external administration governed by the Corporations Act 2001 (Cth). The paper takes the form of a survey of the key issues and principles rather than a comprehensive statement of the law. It is a form of risk identification of the kind contemplated by principle 4.3 of the Insolvency Practitioner's Association of Australia's new Code of Professional Practice for Insolvency Professionals.¹

The topics addressed are:

• personal liability of external administrators:
  • for legal costs where the external administrator:
    • is a party to the proceeding;
    • is not a party to the proceeding;
  • for other costs owed to:
    • the company;
    • other persons;
• discipline and removal of external administrators from office for:
  • lack of independence; and
  • misconduct.

"External administrators"

In this paper the expression "external administrator" is used to refer to a provisional liquidator, liquidator, administrator of a company, or administrator of a deed of company arrangement. The expression is a convenient shorthand which reflects the usage in the Corporations Act, in particular the title of Chapter 5 of the Act. It is appropriate to group these different types of offices under a common rubric because, within the confines of the subject matter of this paper, their obligations are very similar and often the same. Nevertheless, it is important to bear in mind that the contexts in which those obligations apply often differ.

¹ Effective from 31 December 2007. See www.ipaa.com.au. Note also Draft 55 of the codes for comment circulated by the IPA.
Personal liability

Personal liability for legal costs

External administrators and companies under administration are frequent litigants. Where they succeed, the usual rule is that the unsuccessful opponent will pay the costs of the litigation. Where the external administrator or company fail, however, the victorious opponent will look for payment of its costs. If the assets of the estate are insufficient to meet those costs the victor may seek an order that they be paid by the external administrator personally. Alternatively, even if the estate is good for the money, the victor may still prefer that the costs be paid from the external administrator’s own pocket.

Where the external administrator is a party to the proceeding

The ordinary rule or practice where a liquidator or administrator is party to a proceeding is summarised by Hodgson JA (with whom Ipp and Basten JJ agreed) in Silvia v Brodyn Pty Limited (2007) 25 ACLC 385 at 393 to 395. The rules are as follows:

- If proceedings are brought by a liquidator or administrator in relation to a company’s affairs:
  - generally an order for security for costs will not be made; but
  - if those proceedings are unsuccessful an order for costs would generally be made against the liquidator or administrator personally.

- The liquidator or administrator would generally be entitled to an indemnity from the assets of the company, although indemnity may be denied if the external administrator has acted unreasonably.

- If proceedings brought against a liquidator or administrator are successful, generally a costs order would be made in such a way that the liquidator or administrator does not incur any personal liability. This may be achieved by ordering that:
  - the company in administration pay the costs (provided the company is also a defendant); or
  - the external administrator’s liability for costs be limited to the amount of assets of the company available for that purpose.

If, however, the liquidator has acted unreasonably in defending the litigation, the liquidator may be made personally liable.

- The court may depart from the ordinary rule or practice where the external administrator had acted unreasonably or in his or her own interests.

Different considerations may apply where a deed administrator is concerned. The administrator of a deed of company arrangement is in a different position because he or she has significantly greater opportunity to obtain contractual protection. That being so, there will less often be justification for the court to limit the liability for costs of an administrator as unsuccessful defendant.

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where the assets of the company may be insufficient to cover liability. The normal costs order against a deed administrator as unsuccessful defendant will be the same as the normal costs order against a deed administrator as unsuccessful plaintiff – that is, an order that the administrator pay the successful party’s costs without limitation to the company’s assets.³

**Where the external administrator is not a party to the proceeding**

In *Knight v FP Special Assets Limited* (1992) 174 CLR 178 the High Court of Australia held that a superior court had jurisdiction to award costs against a non-party. In that case the non-party was a receiver and manager conducting litigation through an insolvent company. Mason CJ and Deane J (with whom Gaudron J agreed) stated the law as follows (174 CLR 178 at 192 to 193):

> The prima facie general principle is that an order for costs is only made against a party to the litigation. There are, however, a variety of circumstances in which considerations of justice may support an order for costs against a non-party. There is a general category of case in which an order for costs should be made against a non-party and which would encompass the case of a receiver of a company who is not a party to the litigation. That category of case consists of circumstances where the party to the litigation is an insolvent person or man of straw, where the non-party has played an active part in the conduct of the litigation, and where the non-party, or some person on whose behalf he or she is acting or by whom he or she has been appointed, has an interest in the subject of the litigation. Where the circumstances of a case fall within that category, an order for costs should be made against the non-party if the interests of justice require that it be made [emphasis added].

Dawson J reached a similar conclusion (referring to the non-party as "the real litigant") (174 CLR 178 at 202).

**Other liabilities**

*Liabilities owed to the company*

External administrators are "officers" within the meaning of the Corporations Act. This means that Part 2D.2 of the Corporations Act applies in respect of them. That Part of the Act limits the capacity of a company to indemnify or exempt an officer from liability to the company. Section 199A(1) provides that a company or a related body corporate must not exempt a person (whether directly or through an interposed entity) from a liability to the company incurred as officer of the company.

*Liabilities owed to other persons*

Section 199A(2) of the Corporations Act provides that a company or a related body corporate must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against liability incurred as an officer of the company that is owed to someone other than the company or a related body corporate and did not arise out of conduct in good faith.

In addition to this general rule, there are different regimes which apply in respect of administrators, deed administrators and liquidators.

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Administrators

Subdivision A, Division 9 of Part 5.3A of the Corporations Act is concerned with the liability of administrators. The key provision is s443A(1):

The administrator of a company under administration is liable for debts he or she incurs, in the performance or exercise, the purported performance or exercise, of any of his or her functions and powers as an administrator, for:

(a) services rendered; or
(b) goods bought; or
(c) property, hired, leased, used or occupied; or
(d) the repayment of money borrowed; or
(e) interest in respect of money borrowed; or
(f) borrowing costs.

Subparagraphs (d) to (f) where added to the Corporations Act with effect from 31 December 2007.4

Whereas Subdivision A makes administrators liable, Subdivision B confers a right of indemnity out of the company's property. The key provision is s443D, which provides:

The administrator of a company under administration is entitled to be indemnified out of the company’s property for:

(a) debts for which the administrator is liable under Subdivision A or a remittance provision as defined in subsection 443BA(2) [which is concerned with taxation]; and

(aa) any other debts or liabilities incurred, or damages or losses sustained, in good faith and without negligence, by the administrator in the performance or exercise, or purported performance or exercise, of any of his or her functions or powers as administrator; and

(b) his or her remuneration as fixed under section 449E.

It will be noted that paragraph (aa) makes s443D wider in its scope than s443A(1) because it is not limited to "debts". It was added to the Corporations Act with effect from 31 December 2007.5

It is appropriate in this context to note that liabilities may arise under s447E(1) of the Corporations Act. That section is discussed further below.

Deed administrators

A deed administrator does not have a statutory right of indemnity. It has been held, however, that deed administrators have an equitable right to an indemnity and lien from the property of the company. These rights arise from the deed administrator's position as an agent of the company (see clause 1, Schedule 8A to the Corporations Regulations 2001 (Cth)). This right is, however, a qualified one. It is limited to liabilities incurred properly, that is to say reasonably and honestly.6

Section 447E(1) of the Corporations Act also applies in respect of deed administrators.

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4 Corporations Amendment (Insolvency) Act 2007 (Cth) Schedule 4, item 60.
5 Corporations Amendment (Insolvency) Act 2007 (Cth) Schedule 4, item 22
Liquidators

Section 556(1)(a) of the Corporations Act gives priority to expenses properly incurred by a liquidator or provisional liquidator in preserving, realising or getting in property of the company, or in carrying on the company’s business.

Liquidators and provisional liquidator may also be made liable under s536 of the Corporations Act (which is similar to s447E(1)). Section 536 is discussed further below.

Discipline and removal of external administrators from office

The statutory framework

The Corporations Act contains a suite of rules governing the appointment and removal of external administrators. As the principles which apply to the appointment and removal of an external administrator are the same it is appropriate to review those provisions together.

Liquidators and provisional liquidators

There are separate rules for voluntary and compulsory windings up.

Under ss495(1) and 499(1) of the Act the members and the creditors respectively of a company in a voluntary winding up may appoint a liquidator. Section 503 of the Act gives the Court the power, on cause shown, to remove such a liquidator and appoint a replacement liquidator.

Under ss472(1) and (2) of the Act the Court may appoint an official liquidator to be liquidator or provisional liquidator of a company. Section 473(1) of the Act empowers the Court, on cause shown, to remove the liquidator.

Section 532(2) of the Act disqualifies certain persons from acting as liquidator of a company, whether the winding up is voluntary or compulsory, without leave of the Court. It provides that a person must not seek to be appointed, or act, as a liquidator without leave:

(a) if the person, or a body corporate in which the person has a substantial holding, is indebted in an amount exceeding $5,000 to the Company or a body corporate related to the Company; or

(b) if the person is, otherwise than in his or her capacity as liquidator, a creditor of the Company or of a related body corporate in an amount exceeding $5,000; or

(c) if:

(i) the person is an officer or employee of the Company (otherwise than by reason of being a liquidator of the Company or of a related body corporate); or

(ii) the person is an officer or employee of any body corporate that is a mortgagee of property of the Company; or

(iii) the person is an auditor of the Company; or

(iv) the person is a partner or employee of an auditor of the Company; or

(v) the person is a partner, employer or employee of an officer of the Company; or

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the person is a partner or employee of an employee of an officer of the Company.

There is a deeming provision, s532(6), which provides that for the purposes of s532(2) a person is taken to be an officer, employee or auditor of a company if the person is an officer, employee or auditor of a related body corporate or, subject to an exemption from ASIC, the person has, at any time within the immediately preceding period of 2 years, been an officer, employee, auditor or promoter of the company or of a related body corporate.

There are exceptions to s532(2) which apply only to voluntary windings up. They are not addressed in this paper.

It has been held that an appointment as administrator or deed administrator in contravention of s448C(1) (see below), a provision analogous to s532(2), is not a nullity. That is, the appointment is effective despite the contravention. By parity of reasoning one would expect the same to be true of an appointment in contravention of s532(2).

Section 536 is concerned with the supervision of liquidators and provisional liquidators. It provides (relevantly):

(1) Where:
   (a) it appears to the Court or to ASIC that a liquidator has not faithfully performed or is not faithfully performing his or her duties or has not observed or is not observing:
      (i) a requirement of the Court; or
      (ii) a requirement of this Act, of the regulations or of the rules; or
   (b) a complaint is made to the Court or to ASIC by any person with respect to the conduct of a liquidator in connection with the performance of his or her duties;

   the Court or ASIC, as the case may be, may inquire into the matter and, where the Court or ASIC so enquires, the Court may take such action as it thinks fit.

(2) ASIC may report to the Court any matter that in its opinion is a misfeasance, neglect or omission on the part of the liquidator and the Court may order the liquidator to make good any loss that the estate of the company has sustained thereby and may make such other order or orders as it thinks fit.

In Australian Securities and Investment Commission v Edge (2007) 211 FLR 137 it was held that a court could order a liquidator to make good losses resulting from his or misconduct under either s536(1) or (2) (211 FLR 137 at 160).

Administrators and deed administrators

Section 448C(1) of the Act provides that a person must not, except with the leave of the Court, seek or consent to be appointed as, or act as, administrator of a company or of a deed of company arrangement if:

(a) the person, or a body corporate in which the person has a substantial holding, is indebted in an amount exceeding $5,000 to the Company or to a body corporate related to the Company; or

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the person is, otherwise than in a capacity as administrator or liquidator of, or as administrator of a debt of company arrangement executed by, the Company or a related body corporate, a creditor of the Company of a related body corporate in an amount exceeding $5,000; or

(c) the person is a director, secretary, senior manager or employee of the Company; or

(d) the person is a director, secretary, senior manager or employee of a body corporate that is a mortgagee of property of the Company; or

(e) the person is an auditor of the Company; or

(f) the person is a partner or employee of an auditor of the Company; or

(g) the person is a partner, employer or employee of an officer of the Company; or

(h) the person is a partner or employee of an employee of an officer of the Company.

Section 448C(3) contains a 2 year deeming clause similar to s532(6). It provides that a person is presumed to be a director, secretary, senior manager, employee or auditor of a company if, subject to an exemption from ASIC, the person is or has within the last 2 years held such a position.

Section 448C(4) provides that, in paragraphs (g) and (h) above, officer does not include liquidator.

Section 449B of the Act provides that, on the application of ASIC or of a creditor, liquidator or provisional liquidator of the company concerned, the Court may remove from office the administrator of a company under administration or of a deed of company arrangement and appoint someone else as administrator of the company or deed.

Section 447E(1) of the Corporations Act is concerned with the supervision of administrators and deed administrators. It provides:

Where the Court is satisfied that the administrator of a company under administration, or of a deed of company arrangement:

(a) has managed, or is managing, the company’s business, property or affairs in a way that is prejudicial to the interests of some or all of the company's creditors or members; or

(b) has done an act, or made an omission, or proposes to do an act or to make an omission, that is or would be prejudicial to such interests;

the Court may make such order as it thinks just.

Section 447E(1) is in similar terms to s536(1). In light of the conclusion in Australian Securities and Investment Commission v Edge (2007) 211 FLR 137 at 160 that a court could order compensation under s536(1), it is likely that an administrator or deed administrator could be ordered under s447E(1) to make good losses.

Companies Auditors and Liquidators Disciplinary Board

The jurisdiction and powers of the Companies Auditors and Liquidators Disciplinary Board are described below.
Lack of independence

The key principle

The key principle is that an external administrator must be, and be seen to be, independent. The authority of the principle is well established. Other 'tests', 'rules' and 'principles' stated in the cases are best understood as elaborations of this essentially simple proposition.

The best interests test and the conflict test

In applying the key principle to the removal of external administrators Courts have used two different formulations. One, articulated by the Supreme Court of Victoria in Commissioner for Corporate Affairs v Peter William Harvey [1980] VR 669 at 696, is that an external administrator will be removed where it is in the best interests of the administration to do so. This formula has been approved in many cases. A variation in the language used appears in a decision of the Supreme Court of New South Wales, Re Biposo Pty Limited (1995) 17 ACSR 730. In that case, Young J held (at 734) that the question was whether in the interests of the public the removal of the liquidator would be for the general advantage of persons interested in the winding up.

A different formula was used by the Supreme Court of New South Wales in Advance Housing Pty Limited (in Liquidation) v Newcastle Classic Developments Pty Limited (1994) 14 ACSR 230. In that case Santow J held (at 234) that the question should be whether there would be a reasonable apprehension by any creditor of lack of impartiality on the liquidator’s part in the circumstances, by reason of prior association with the company or those associated with it, including creditors, or indeed any other circumstance.

In Dallinger v Halcha Holdings Pty Limited (administrator appointed) (1995) 60 FCR 594 at 599-600 Sundberg J proceeded on the basis that there were two separate tests. In Bovis Lend Lease Pty Limited v Willy (2003) 45 ACSR 612 at 697 Austin J expressed the view that the two tests, or formulations, were not inconsistent with each other. Warren J in Re Central Springworks Australia

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12 See also Hill v David Hill Electrical Discounts Pty Limited (in liquidation) (2001) 37 ACSR 617; Re St George Builders Hardware Pty Limited (1995) 18 ACSR 451.
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Pty Limited (Administrator Appointed) (2000) 34 ACSR 169 at 173 adopted a medial position, stating that it would be in the best interests of the administration to remove an external administrator where there was a reasonable apprehension that the administrator lacked independence.

Examples

There is a large body of case law concerning the removal of external administrators for lack of independence. The following table lists some of the cases by category.

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<th>Category</th>
<th>Crux of the alleged problem</th>
<th>Case</th>
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</thead>
<tbody>
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<td>Conduct before appointment</td>
<td>Investigating accountants</td>
<td>Re National Safety Council of Australia, Victorian Division [1990] VR 1</td>
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<td></td>
<td>Insolvency advice</td>
<td>Re Club Superstores Australia Pty Limited (in liq) (1993) 10 ACSR 730</td>
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<td>Prior appointments</td>
<td>Hill v David Hill Electrical Discounts Pty Limited (in liquidation) (2001) 37 ACSR 617</td>
</tr>
<tr>
<td>Conduct after appointment</td>
<td>Corporate groups</td>
<td>Re HIH Insurance Limited &amp; Ors [2006] NSWSC 385</td>
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<td>Fraternisation</td>
<td>Re Allebart Pty Limited (in liquidation) [1971] 1 NSWLR 24</td>
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<td>Over-familiarity</td>
<td>National Australia Bank Limited v Market Holdings Pty Limited (in liquidation) (2001) 37 ACSR 629</td>
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<td></td>
<td>Litigation funding</td>
<td>National Australia Bank Limited v Wily [2002] NSWSC 573</td>
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<td>Puppets</td>
<td>National Australia Bank Limited v Wily [2002] NSWSC 573</td>
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<tr>
<td></td>
<td>Conduct of administration</td>
<td>Re Giant Resources Limited [1991] 1 Qd R 107</td>
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<td></td>
<td>Dissatisfied creditors</td>
<td>City &amp; Suburban Pty Limited v Smith (1998) 28 ASCR 328</td>
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<tr>
<td></td>
<td>Potential breaches of duty</td>
<td>Bovis Lend Lease Pty Limited v Wily (2003) 45 ACSR 612</td>
</tr>
</tbody>
</table>
Misconduct

Judicial review under ss536 and 447E

Sections 536 and 447E of the Corporations Act were considered in detail by the Supreme Court of Victoria in Australian Securities and Investment Commission v Edge (2007) 211 FLR 137. The conduct about which ASIC complaint was summarised by Justice Dodds-Streeton at 230-1. It is worth reproducing a long excerpt because the judgment is replete with examples of undesirable conduct:

In my opinion, the evidence establishes that for a period of some years, the defendant repeatedly contravened numerous significant provisions of the Act and Regulations in relation to numerous companies. His chronic and widespread failure to comply with the statutory requirements to maintain proper books and records (including books of account), prepare and lodge half-yearly and final accounts and statements, hold and advertise meetings, and prepare and lodge s 533(1)(c) reports, cannot be viewed as mere technical or administrative default. Rather, the defendant's repeated contraventions struck at the heart of the statutory regime designed to ensure the liquidator's accountability, to facilitate the audit and review of his conduct and to inform and protect members, creditors and the public. Similarly, the defendant's failure to advertise meetings, lodge minutes, prepare adequate s 439A reports and ensure that DOCAs were duly executed was conduct prejudicial to the creditors and members of companies of which he was administrator or deed administrator.

The defendant's wholesale destruction of the books and records of many companies, in breach of s 542 of the Act, has rendered impossible a detailed and comprehensive review of his conduct of the relevant liquidations and administrations. The unauthorised destruction of the books and records was a serious breach of duty.

The defendant's long-term delegation to, and reliance upon, an unqualified, unsupervised and incompetent associate did not, as the defendant submitted, excuse the contraventions, but was itself a serious breach of duty, as was his delegation of numerous insolvency administrations to another firm.

The defendant repeatedly drew or caused to be drawn funds characterised as remuneration, which, in some cases, was paid by a cheque directly to a party subsequently identified as a creditor of the defendant or his associate. The remuneration was not validly approved and satisfactory supporting documentation was not prepared or was not in evidence. The defendant failed to open separate bank accounts for some administrations and caused the funds of various companies to be intermingled in the bank account of his practice, from which payments were subsequently made without making or maintaining any appropriate record. The defendant signed blank cheques, which he provided to his associate, and permitted cheques to be written to cash.

I am satisfied that, by reason of the matters discussed in detail above, the defendant failed faithfully to perform his duty as a liquidator, and has conducted administrations in a manner prejudicial or potentially prejudiced to the creditors and members of the relevant companies. The entrenched pattern of contraventions and dereliction of duty has demonstrated his unfitness to conduct liquidations as the representative of the Court or to exercise the extensive powers of a voluntary administrator or receiver. The defendant's attitude to ASIC's investigation was needlessly uncooperative. He was not a conscientious, candid or reliable witness. The evidence establishes that the defendant has failed to maintain the high standards of impartiality, probity and competence demanded by his important fiduciary office. In my opinion, the defendant should be removed from
those offices he currently holds and should be prohibited from holding the office of liquidator, provisional liquidator, voluntary administrator, deed administrator or receiver for a period of 10 years.

The Companies Auditors and Liquidators Disciplinary Board

Under s1292(2) of the Corporations Act the Companies Auditors and Liquidators Disciplinary Board (CALDB) may:

… if it is satisfied on an application by ASIC for a person who is registered as a liquidator to be dealt with under this section that, before, at or after the commencement of this section:

…

(d) the person has failed, whether in or outside this jurisdiction, to carry out or perform adequately and properly:

(i) the duties of a liquidator; or

(ii) any duties or functions required by an Australian law to be carried out or performed by a registered liquidator;

or is otherwise not a fit and proper person to remain registered as a liquidator;

by order, cancel, or suspend for a specified period, the registration of the person as a liquidator.

The effect of cancelling or suspending the registration of a person as a liquidator is that he or she will be unable to accept appointments as an external administrator (see ss448B(2) and 532(1) of the Corporations Act).

In addition to cancelling or suspending a person’s registration as a liquidator, under s1292(9) the CALDB may:

• admonish or reprimand the person;

• require the person to give an undertaking to engage in, or to refrain from engaging in, specified conduct; and

• require the person to given an undertaking to refrain from engaging in specified conduct except on specified conditions.

In Albarran v Members of the CALDB (2007) 234 ALR 618 the High Court of Australia rejected a challenge to the validity of s1292(2). The challenge was based on the ground that s1292(2) conferred judicial power on the CALDB. The High Court approved the description of the CALDB’s jurisdiction given in the decision on appeal (at 624):

The function of the Board is not, as was submitted, to find … whether an offence has been committed and, if so, to inflict a punishment therefor. It is, as we have said, to assess whether someone should continue to occupy a statutory position involving skill and probity, in circumstances where (not merely because) the Board is satisfied that the person has failed in the performance of his or her professional duties in the past. Messrs Gould and Albarran say that punishment or a penal or harmful consequence is finally inflicted on the person consequent on the finding of the committal of an offence prescribed by law. That is not what s1292(2) says the function of the Board is. It is not, in substance, what the Board does.

A decision of the CALDB may be reviewed by the Administrative Appeals Tribunal (s1317B(1) Corporations Act). An application for review by the Administrative Appeals Tribunal is not an appeal, it involves a rehearing of the matter in question.
CALDB decisions may also be the subject of an application for judicial review under the Administrative Decisions Judicial Review Act 1977 (Cth). Such a review is limited to the legality of the decision, it is not a rehearing. A registered liquidator invoked this jurisdiction in Dean – Willcocks v CALDB (2006) 59 ACSR 698. One of the issues which Justice Tamberlin had to decide in that case was whether it was appropriate for the CALDB to take professional standards into account in determining whether or not the registered liquidator had failed to perform “the duties of a liquidator” within the meaning of s1292(2). The CALDB had considered the IPAA Code of Professional Conduct and the ICAA Code of Professional Conduct. Justice Tamberlin held that it was appropriate for the CALDB to have regard to those codes of conduct (59 ACSR 698 at 710 to 711).

Overview of recent CALDB decisions

The following table sets out the results of CALDB decisions made since September 2006. The information contained in the table is taken from the ASIC media releases (MR) identified in it.

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<tr>
<th>ASIC MR</th>
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<th>Liquidator</th>
<th>Result</th>
<th>Key Facts</th>
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<td>06-341</td>
<td>26 Sep 2006</td>
<td>Sleiman</td>
<td>Registration cancelled</td>
<td>Administrations. Failure to investigate or report adequately, lack of independence, failure to perform duties in the required time frame.</td>
</tr>
<tr>
<td>06-383</td>
<td>3 Nov 2006</td>
<td>Lucas</td>
<td>Reprimand and requirement for independent review.</td>
<td>Role as receiver and manager. Lack of independence resulting from the hiring of staff employed by another insolvency practitioner who appointed the registered liquidator in question when he was unable to act himself.</td>
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<tr>
<td>06-405</td>
<td>21 Nov 2006</td>
<td>Dean-Willcocks</td>
<td>Suspension for 12 months</td>
<td>Administrations. Lack of independence resulting from prior relationships; failure to disclose relationships.</td>
</tr>
<tr>
<td>06-427</td>
<td>8 Dec 2006</td>
<td>Anderson</td>
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<td>Administrations. Failure properly to investigate company’s affairs, failure to provide an adequate report to the creditors, and failure to properly form an opinion about what would be in the best interests of creditors.</td>
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<td>06-427</td>
<td>8-Dec-2006</td>
<td>Suspension for three months and independent review of conduct of administrations</td>
<td>Administrations. Failure properly to investigate company’s affairs, failure to provide an adequate report to the creditors, and failure to properly form an opinion about what would be in the best interests of creditors.</td>
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<td>07-199</td>
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<td>Murphy</td>
<td>Reprimand and undertaking to complete professional development course</td>
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<td>08-8</td>
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<td>Albarran</td>
<td>Suspension for 9 months</td>
<td>Failure to carry out or perform functions properly or adequately. The registered liquidator performed the functions of an administrator or deed administrator where he was barred from accepting the formal appointment.</td>
</tr>
</tbody>
</table>

MGMS
7 May 2008