

2017 VIC CONGRESS

Thursday 2 – Saturday 4 March
RACV Goldfields Resort, Creswick

WELCOME



IPA INSTITUTE OF PUBLIC ACCOUNTANTS



2017 VIC CONGRESS

WORRELLS WORKSHOPS

Introduction to Insolvency

Get introduced to the different insolvency administrations in Australia and their basic features.

Five Phases of Failure

Identify which phase your clients are in, so your clients can respond appropriately and swiftly.

Basics of the Personal Property Securities Act

Learn what affects this legislation has on your clients and why it is critical to understand.

Trusts and Insolvency

Gain understanding of the implications of a trust structure in the event of insolvency.

Sole Trader to Company

Learn which factors should be considered when advising a client wanting to move from a sole trader to a corporate structure.



Complimentary
in-house training

Visit worrells.net.au/worrells-workshops to view all our topics.



IPA INSTITUTE OF PUBLIC ACCOUNTANTS

2017 VIC CONGRESS

SUPERANNUATION AND INSOLVENCY



2017 VIC CONGRESS

STORY



JOHN PAUPER

BANKRUPT



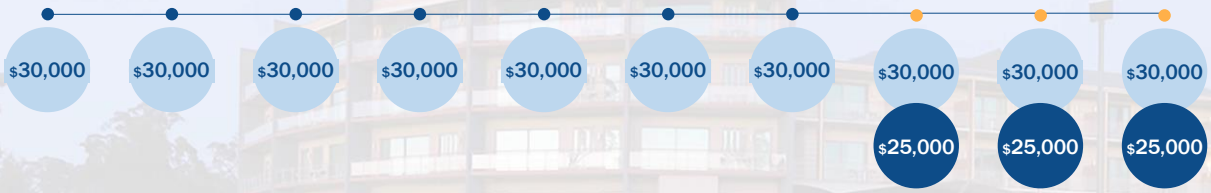
SELF MANAGED SUPERANNUATION FUND

\$1,000,000



\$1,000,000

Maximum concessional contribution



+ Non-concessional contribution

JOHN PAUPER

SOLE TRUSTEE
& MEMBER OF
THE SMSF



Prior to being declared bankrupt	
Withdrew	\$ 50,000
Remaining	\$ 20,000

SUPERANNUATION AND INSOLVENCY



DIVISIBLE
PROPERTY



INCOME
CONTRIBUTIONS



CLAWING BACK
PRE-BANKRUPTCY
SUPER CONTRIBUTIONS



ATO GARNISHEE
NOTICES



SELF MANAGED
SUPER FUND



FORFEITURE
PROVISIONS IN
TRUST DEED



**DIVISIBLE
PROPERTY**

Q & A

**Can the bankruptcy trustee
close down the SMSF and
take the money?**

SECTION 116 (2) (d) (iii)

BANKRUPTCY ACT

Divisible property that belongs to a bankrupt does not extend to the interest of the bankrupt in:

(A)

a regulated superannuation fund (within the meaning of the Superannuation Industry (Supervision) Act 1993; or

(B)

an approved deposit fund; or

(C)

an exempt public sector superannuation scheme;

11

FUND

Superannuation Industry (Supervision) Act 1993

REGULATED SUPERANNUATION FUND



12

FUND

Superannuation Industry (Supervision) Act 1993

If it has breached the SIS Act or the SIS Regulations

REGULATED SUPERANNUATION FUND



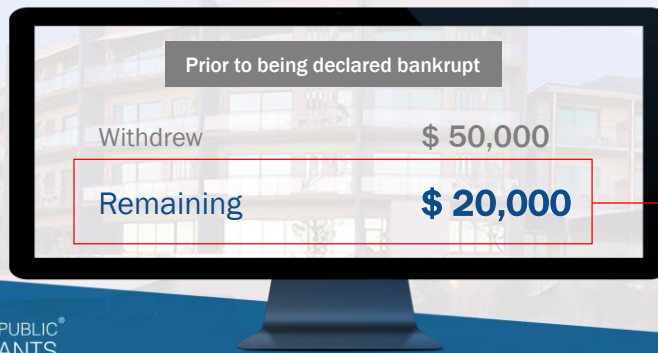
A NON COMPLYING SUPERANNUATION FUND



FUND

Superannuation Industry (Supervision) Act 1993

The protection only applies 'on or after the date of bankruptcy'.



Divisible asset



**INCOME
CONTRIBUTIONS**

s 139 P

BANKRUPTCY ACT

**A bankrupt may be liable to make a
contribution to their bankrupt estate from
income earned during their bankruptcy.**

s 139S

BANKRUPTCY ACT

If the income of a bankrupt exceeds a statutory threshold then the bankrupt is liable to pay half the surplus income above the threshold to the trustee as a contribution.

ASSESSED INCOME

ACTUAL INCOME THRESHOLD AMOUNT
20 MARCH 2016



NO

dependants

\$54,736.50



ONE

dependants

\$64,589.07



TWO

dependants

\$69,515.36



THREE

dependants

\$72,252.18



FOUR

dependants

\$73,346.91



FOUR+

dependants

\$74,441.64

s 139 L (1) (a) (i)

BANKRUPTCY ACT

Income includes an annuity or pension paid to the bankrupt from a superannuation fund.



Is a lump sum payment part of this?

s 139 L (1) (a) (i)

BANKRUPTCY ACT

Income includes an annuity or pension paid to the bankrupt from a superannuation fund.



PAYMENTS INTO A SUPERANNUATION FROM
A BANKRUPT'S INCOME

6.12B (1) (a)

BANKRUPTCY REGULATION

**Compulsory superannuation payments
are not considered income.**

PAYMENTS INTO A SUPERANNUATION FROM
A BANKRUPT'S INCOME

THOMAS ROBBINS & INSOLVENCY & TRUSTEE SERVICE

AAT 13585, 24 December 1998

**Voluntary superannuation contributions
are considered income (e.g. where the
bankrupt salary sacrifices)**



CLAWING BACK PRE-BANKRUPTCY SUPER CONTRIBUTIONS

s 128B & s 128C

BANKRUPTCY ACT

Transfers made by a debtor are void if:



occurred after
28 July 2006



to eligible
superannuation plans
of the bankrupt



the property would
have formed part of the
bankrupt estate if the
transfer had not been
made



the main purpose of the
transaction was to keep
an asset from falling
into the trustee's hands
and being available to
creditors.

2017 VIC CONGRESS

Maximum concessional contribution



2017 VIC CONGRESS

CLAWING BACK PRE-BANKRUPTCY SUPER CONTRIBUTIONS

Freezing of Superannuation Accounts (s128E)

Recovery of void contributions (s139ZQ)

Treatment of taxes and costs (s128B(5A) & s128C(7A))

When superannuation has been rolled over (s139ZU)

Protection of superannuation fund trustees (s128L)



ATO GARNISHEE NOTICES

s 260 - 5

TAXATION ADMINISTRATION ACT 1953

ATO has the power to recover tax related liabilities and certain other debts payable to the Commonwealth from third parties owing money to, or holding money for, a tax debtor.



GARNISHEE NOTICES

PSLA 2011/18 (para. 118)

PRACTICE STATEMENT LAW ADMINISTRATION

“

A garnishee notice in respect of any tax-related liabilities may be served on a superannuation fund but it will not be effective until the tax debtor's (member's) benefits are payable under the rules of the fund (for example, the tax debtor retires or dies). A notice served on the fund will generally request payment as a lump sum unless the anticipated retirement income stream can guarantee repayment within a satisfactory period of time.

”



IPA INSTITUTE OF PUBLIC
ACCOUNTANTS

29



**SELF MANAGED SUPER
FUND**



IPA INSTITUTE OF PUBLIC
ACCOUNTANTS

30

s 17 A

SIS ACT

All members of a SMSF must be the trustees of the super fund, or if the trustee is a company—directors of the corporate trustee.

s 120 (1) (b)

SIS ACT

An insolvent under administration is disqualified from acting as a trustee of a SMSF.

s 206 B (3)

CORPORATION ACT

**An insolvent under administration
is disqualified from acting as a
director of a company.**

Notify ATO
28 days

JOHN PAUPER
~~TRUSTEE~~

BANKRUPT

SMSF has six months to:



Roll-over John's benefits to another complying fund



Appoint an APRA approved small fund trustee



Wind up the fund

Australian Executor Trustees and Perpetual Limited **SMALL FUND TRUSTEES**

1

take over diversified funds

2

not cost effective for funds with balances under \$250,000

3

review the portfolio and prepare accounts up to the date of their appointment

4

get approval from APRA and the ATO



**FORFEITURE
PROVISIONS IN
TRUST DEED**

s 3 0 2 A / Reg 13.16

BANKRUPTCY ACT / SIS REGULATIONS

**Forfeiture provisions have no
effect pursuant to the Bankruptcy
Act and SIS Regulations.**

2017 VIC CONGRESS



WORRELLS

SOLVENCY + FORENSIC ACCOUNTANTS

www.worrells.net.au



IPA INSTITUTE OF PUBLIC
ACCOUNTANTS

2017 VIC CONGRESS

Thursday 2 - Saturday 4 March
RACV Goldfields Resort, Creswick

THANK YOU



IPA INSTITUTE OF PUBLIC
ACCOUNTANTS