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# Australian Law Journal

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# THE AUSTRALIAN LAW JOURNAL

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### COMPANIES ACT 2006 (UK): A NEW APPROACH TO DIRECTORS’ DUTIES

**Rt Hon Lady Justice Arden DBE**

The United Kingdom has enacted its first codified statement of the duties of directors in the Companies Act 2006 (UK). This article explains the thinking behind this statutory statement and points out that it reflects the “enlightened shareholder” model of directors’ duties. This means that directors must promote to the success of the company for the benefit of its members, rather than for the benefit of different interest groups, but at the same time they must have regard to the interests of other parties which contribute to the company’s success. This article contains a commentary on the new provisions and an evaluation. It also refers to the recent reports of the Australian Joint Parliamentary Committee on Corporations and the Corporations and Markets Advisory Committee which both considered whether there should be an equivalent provision in Australia to the new codified statement of directors’ duties in the UK. .... 162

### CHOOSING YOUR LIFE RAFT: A REVIEW OF LAW REFORM (MISCELLANEOUS PROVISIONS) ACT 1946 (NSW), s 6, AND ITS ANALOGUES

**N G Rein SC**

Legislative schemes exist both at the State and Commonwealth level to deal with the inability of an insured to make, or continue with, a claim on an insurance policy arranged by that insured and covering liabilities to third parties. The article summarises the current law in relation to s 6 of the Law Reform (Miscellaneous Provisions) Act 1946 , discusses some of the remaining difficulties and compares s 6 with the Commonwealth legislative provisions providing relief to those asserting such claims against insureds. .... 180

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THE COMMONWEALTH: A MULTITUDE OF MANIFESTATIONS – FEDERAL  
JURISDICTION UNDER s 75(III) OF THE CONSTITUTION

**Darrell Barnett**

It is important for practitioners and judges alike to know when, and on what basis, legal proceedings involve the exercise of federal jurisdiction. This article is concerned with the attraction of federal jurisdiction under s75(iii) of the Constitution, on the basis that the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party to the proceedings. The article deals with the meaning of the constitutional expression “the Commonwealth” as the central or national government of Australia and encompassing its “agencies and instrumentalities”. The article examines the legislative regime governing Commonwealth authorities and other statutory bodies with a view to showing that those bodies generally are “agencies and instrumentalities” of the Commonwealth and hence are themselves “the Commonwealth” for the purposes of s75(iii). This has the result that litigation by or against such a statutory body involves the exercise of federal jurisdiction under s 75(iii) of the Constitution. Finally, the article considers the meaning of the phrase “person suing or being sued on behalf of the Commonwealth” in s 75(iii) and identifies some situations in which a person may fall within the scope of that phrase notwithstanding that the person is not itself “the Commonwealth”. ..... 195

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