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# Update Summary

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## **ROBSON'S ANNOTATED CORPORATIONS LEGISLATION**

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## Revisions to annotations on Part 5.6 of Chapter 5 by David Edney

### **Practice and procedure: warrant conditions – s 530C**

Section 530C enables the Court to issue a search warrant for a company being wound up or if a provisional liquidator is in place if it is satisfied that a person has concealed or removed the company's property or books to prevent or delay the liquidator taking control of it. A liquidator may also seek an order to keep the issue of the warrant confidential before it is executed: *Copeland v Odeesh* [2024] FCA 1136. See [530C.10].

### **Practice and procedure: Creditor of company or related body – s 532(2)(b)**

Section 532 specifies when a liquidator must not consent to an appointment to act as liquidator of a company. If there is no security so as to attract s 543(2)(c)(ii), there is no bar to a liquidator taking simultaneous appointments to companies that are creditors or debtors of one another, which is common where a group of connected entities are liquidated at the same time: *Deputy Commissioner of Taxation v Starcrest Construction Pty Ltd (recs and mgrs apptd)* [2024] FCA 1254. See [532.30].

### **Practice and procedure: what can be set off – s 553C**

Section 553C sets off mutual debts or other dealings between an insolvent company that is being wound up and a creditor who wishes to have a debt or claim admitted against the company. It does not exclude the operation of the "rule in *Cherry v Boulton*", by which equity might prevent a person drawing from a fund without allowance being made for their obligation to contribute to that fund: *Harris Health Care Pty Ltd v Hayes* [2024] NSWCA 301. See [553C.20].

### **Concepts: Expenses ... properly incurred by a relevant authority – s 556(1)(a)**

Section 556 sets out the priority for payments in a liquidation. Strata levies payable with respect to properties retained by a company in liquidation will ordinarily be payable as an expense: *Morelli v White Hills Pty Ltd* [2024] FCA 789. See [556.10].

### **Outline – s 563B**

Section 563B entitles a debtor or claimant to interest regarding an admitted debt or claim and prescribes the circumstances in which it may be paid. Because s 563B(1) only authorises the payment of interest where a liquidator pays an "admitted debt or claim", it will not apply where a creditor is directly paid out by a third party (even if pursuant to an agreement with the liquidator) without the liquidator actually admitting their claim: *Re Queensland Nickel Pty Ltd* [2024] FCA 1300. See [563B.10].

### **Practice and procedure: In connection with a business, scheme or undertaking – s 579E(1)(b)(iv)**

Section 579E enables the court to make a pooling order under certain circumstances. However, where the relevant "property" was sold pre-liquidation it cannot be relied upon for the purposes of s 579E(1)(b)(iv), with it (at least ordinarily) not being sufficient to say that the sale gave rise to a chose in action that a group company still owns: *Morgan v McMillan Investment Holdings Pty Ltd* [2024] HCA 33. See [579E.40].