



THOMSON REUTERS

Update Summary

PLEASE CIRCULATE IMMEDIATELY!

UPDATE 55

AUGUST 2014

ROBSON'S ANNOTATED CORPORATIONS LEGISLATION

RI Barrett
General Editor

Highlights

- **New and updated** annotations issued for Chs 1, 2B, 2C, 5A, 6 and 6C of the *Corporations Act 2001* (Cth).
- **Amendments** made to the *Corporations Act 2001* (Cth), *Corporations Regulations 2001* (Cth), *Australian Securities and Investment Commission Act 2001* (Cth) and *Australian Securities and Investments Commission Regulations 2001* (Cth).
- **Cross references** have been added and updated throughout the *Corporations Act 2001* (Cth).
- **New Developments** updated.

Material Code 41655846

© Thomson Reuters (Professional) Australia Limited 2014

Looseleaf Support Service

You can now access the current list of page numbers at

<http://www.thomsonreuters.com.au/support/product-support.aspx?id=/mediaTree/58599>

If you have any questions or comments, or to order missing pages, please contact Customer Care LTA ANZ on 1300 304 195 Fax: 1300 304 196 Email: LTA.Service@thomsonreuters.com

COMMENTARY

Updated annotations have been inserted into Chs 1, 2B, 2C, 6 and 6C of the *Corporations Act 2001* (Cth) by the author Michael Phillips. Some of the key additions include:

[9.40] Definition: Benefit

The phrase “on behalf of, or for the benefit of” when used in s 58FDA has been discussed in the cases of *Vasudevan v Becon Constructions (Australia) Pty Ltd* (2014) 97 ACSR 627; 32 ACLC 14-003 and *Re Great Wall Resources Pty Ltd (in liq)* [2013] NSWSC 354.

[9.150] Definition: Debenture

It has been said that the concept of a debenture, being the creation of commercial dealers and their lawyers, is elusive of precise definition: *Handvel Pty Ltd v Comptroller of Stamps (Vic)* (1985) 157 CLR 177; 60 ALJR 40; 16 ATR 1044; [1985] HCA 73. However the Full Court of the Federal Court has stated that the definition of debenture in s 9 of the Act departs from the common law and previous statutory definitions in two respects: *ABN AMRO Bank NV v Bathurst Regional Council* [2014] FCAFC 65.

[9.170] Definition: Director

Commentary has been updated regarding the decision in *Australian Competition and Consumer Commission v SensaSlim Australia Pty Ltd (in liq) (No 5)* (2014) 98 ACSR 347; [2014] FCA 340.

[9.410] Definition: Property

“Property” includes a claim by a company for breach of a fiduciary duty, which is capable of assignment under s 477(2)(c): *Re Colorado Products Pty Ltd (in liq)* [2014] NSWSC 789.

[48.10] Concepts: Shares held in a fiduciary capacity – s 48(2)

In *Jones v Aussie Networks Pty Ltd* the Supreme Court of Queensland held that s 48(2) has the effect that a company is not a subsidiary of another body where the other body holds all of the shares in the company in a fiduciary capacity for any other person, in that case a family trust: [2014] QSC 126.

[53.20] Concepts: Affairs of a company

In the context of an oppression application under s 232, the “affairs” of the company may extend to the affairs of its subsidiaries, or of its holding company, but the precise meaning of “affairs” in this context is not settled: *Ubertini v Saeco International Group SpA (No 4)* (2014) 98 ACSR 138; [2014] VSC 47.

[60.10] Practice and procedure: Declaration of relevant relationships – s 60

This new commentary paragraph has been added in regards to the decision in *Australian Securities and Investment Commission v Franklin* (2014) 32 ACLC 14-002; [2014] FCA 68.

[95A.20] Concepts: Able to pay – s 95A(1)

Commentary has been added regarding the case *First Strategic Development Corporation Ltd (in liq) v Sing Chuk Charles Chan* [2014] QSC 60; (2014) 11 ABC(NS) 698.

[124.20] Concepts: Powers of a body corporate – s 124(1)

Section 124 has nothing to say as to whether the powers of the company were properly exercised, and the court will not grant a declaration to that effect without further proof: *Cody v Live Board Holdings Ltd* (2014) 97 ACSR 606; [2014] NSWSC 78.

[175.10] Outline

Commentary has been added regarding the decisions in *Miltonbrook Pty Ltd v Westbury Holdings Kiama Pty Ltd* (2008) 71 NSWLR 262; 229 FLR 267; 26 ACLC 230; 65 ACSR 545; [2008] NSWCA 38; *Re Motasea Pty Ltd* (2014) 97 ACSR 589; [2014] NSWSC 69; and *Re Mogul Stud Pty Ltd* [2012] NSWSC 1639.

[610.10] Concept: Voting power: s 610(1)

In this paragraph the case of *Queensland North Australia Pty Ltd v Takeovers Panel* [2014] FCA 591 has been discussed.

[611.90] Practice and procedure: Rights issues – Exception 10

The cases of *Re Argosy Minerals Ltd* [2014] ATP 7; *Re Sherwin Iron Ltd* [2014] ATP 12; and *Gondwana Resources Ltd* [2014] ATP 9 have been discussed.

[638.55] Practice and procedure: Rejection statements – s 638(5)

This new paragraph deals with *Re Bullabulling Gold Ltd* [2014] ATP 8 where the Panel was sharply critical of a target which relied on rejection statements solicited in an internet chat room, and then misleadingly relied on them without seeking proper consent under s 638(5), and in breaching of ASIC's Truth in Takeovers Policy.

[657A.140] Practice and procedure: Unacceptable circumstances – Frustrating transaction and its exceptions – s 657A(2)

A target in a stressed financial position which is unable to access funds from other sources should consider approaching a hostile bidder to discuss funding before resolving to conduct the frustrating action: *World Oil Resources Ltd* [2013] ATP 1.

[657B.15] Practice and procedure: Ongoing circumstances: s 657B

This new commentary paragraph discusses the decisions in *Queensland North Australia Pty Ltd v Takeovers Panel* [2014] FCA 591 and *Brickworks Ltd (No 1)* [2000] ATP 6.

[657C.60] Practice and procedure: Extension of time – s 657C(3)(b)

In considering whether to extend time under s 656C(3)(b), the Panel must provide procedural fairness to the affected parties under s 195(4) of the ASIC Act: *Queensland North Australia Pty Ltd v Takeovers Panel* [2014] FCA 591.

[671B.10] Outline

Commentary has been added in regards to the decisions in *National Can Industries Ltd* [2003] ATP 35 and *Re National Can Industries Ltd (No 1)(R)* (2003) 48 ACSR 409; [2003] ATP 40.

[672A.10] Outline

The case of *Re Northern Iron Ltd* [2014] ATP 11 has been discussed in this paragraph.

Updated annotations have been inserted into Ch 5A of the *Corporations Act 2001* (Cth) by the author Duncan McKay. Some of the key additions include:

[601AG.10] Outline

Commentary has been added in regards to the decision in *Mercer v Allianz Australia Insurance Ltd* (2013) 273 FLR 459; 31 ACLC 13-013; [2013] TASSC 11.

LEGISLATION

Corporations Act 2001 (Cth)

The *Corporations Act 2001* (Cth) has been amended by the *Clean Energy Legislation (Carbon Tax Repeal) Act 2014* (Cth). Schedule 1 items 105–107 commenced on 1 July 2014 as Act No 83, 2014.

ASIC has introduced New Class Orders and Regulatory Guides and revoked others. Consequently, cross references to these Guides and Class Orders in the *Corporations Act 2001* (Cth) have been updated.

Corporations Regulations 2001 (Cth)

The *Corporations Regulations 2001* (Cth) have been amended by the *Corporations Amendment (Streamlining Future of Financial Advice) Regulation 2014* (Cth). Schedule 1 commenced on 1 July 2014 as SLI No 102, 2014.

Australian Securities and Investment Commission Act 2001 (Cth)

The *Australian Securities and Investment Commission Act 2001* (Cth) has been amended by the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* (Cth). Schedule 5, item 110 and Sch 6, item 28 commenced on 1 July 2014 as Act No 62, 2014.

This Act has also been amended by the *Clean Energy Legislation (Carbon Tax Repeal) Act 2014* (Cth). Schedule 1, items 92–94 commenced on 1 July 2014 as Act No 83, 2014.

Australian Securities and Investments Commission Regulations 2001 (Cth)

The *Australian Securities and Investments Commission Regulations 2001* (Cth) has been amended by the *Corporations Laws Amendment (2014 Measures No 2) Regulation 2014* (Cth). Schedule 3, items 1 and 2 commenced on 14 June 2014 as SLI No 88, 2014.

NEW DEVELOPMENTS

The “Pending Legislation” section has been updated at [ND.10] and [ND.20].