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# Update Summary

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**UPDATE 45**

**OCTOBER 2013**

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

**RI Barrett**  
General Editor

### **Highlights**

- **Updated** annotations issued for Pts 5.4 and 5.4B of the *Corporations Act 2001* (Cth).
- **Amendments** made to the *Corporations Regulations 2001* (Cth) and the *Australian Securities and Investments Commission Regulation 2001* (Cth).
- **Table of Limitation of Actions** has been updated and reissued.

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## COMMENTARY

Updated annotations have been inserted into Pt 5.4 of the *Corporations Act 2001* (Cth) by the author Christopher Wood. Some of the key additions include:

### **[459A.20] Concepts: Discretion of court**

The court is not obliged to undertake a “for good reason assessment”: *CBA Corporate Services (NSW) Pty Ltd v Walker and Moloney* [2013] FCAFC 74; (2013) 31 ACLC 13,028.

### **[459E.20] Practice and procedure: Who may serve demand and how – s 459E(1)**

The recent case of *Re Watson Road Moss Vale Developments Pty Ltd* [2013] NSWSC 783 has been added to this paragraph.

### **[459E.40] Practice and procedure: Specification of debt and amount – s 459E(2)(a)**

A statutory demand can be issued for a portion of the debt in certain circumstances: *Commonwealth Bank of Australia v Garuda Aviation Pty Ltd* (2013) ACSR 168; [2013] WASCA 61.

### **[459E.80] Practice and procedure: “signed by or on behalf of the creditor” – s 459E(2)(f)**

Issues may arise where one or two joint creditors issue a statutory demand: *Manzo v 555/255 Pitt Street Pty Ltd* (1990) 21 NSWLR 1 and *Randall Pty Ltd v Chepan Pty Ltd* [2009] NSWSC 783.

### **[459G.30] Practice and procedure: Content of supporting affidavit – s 459G(3)**

The statutory test requires that the affidavit should support the application and a number of cases relating to this have been discussed in this paragraph.

### **[459H.20] Concepts: Genuine dispute – general**

An application to set aside the default judgment is likely not to establish a genuine dispute.

Updated annotations have been inserted into Pt 5.4B of the *Corporations Act 2001* (Cth) by the author David Parish. Some of the key additions include:

**[477.50] Concepts: “property” – s 477(2)(c)**

The cause of an action can include a claim for breach of fiduciary duties by a director: *EC Dawson Investments Pty Ltd v Crystal Finance Pty Ltd (No 3)* [2013] WASC 183.

**[481.40] Practice and procedure: Release of liquidator and revocation – s 481(3)**

It is inappropriate to leave the company without a liquidator if tasks still need to be done to conclude the winding up: *Re Adellos Pty Ltd (In Liq)* [2013] NSWSC 747.

**[482.80] Practice and procedure: Undertakings**

Undertakings proposed upon winding up have sometimes been accepted by the court for actions to take place after the termination of winding up.

Except in obvious circumstances, the better course for the court to take will be to grant leave under s 417A(1A). The cases of *Deputy Commissioner of Taxation v Directcorp Pty Ltd* [2006] FCA 1020; (2006) 58 ACSR 398; *Owners Strata Plan 70294 v LNL Global Enterprises Pty Ltd* [2006] NSWSC 1386; (2006) 60 ACSR 646 and *Re 311 Hume Highway Liverpool Fund Pty Ltd (In Liq)* [2013] NSWSC 465; 93 ACSR 683 have been discussed.

## LEGISLATION

### Corporations Act 2001 (Cth)

Cross references have been added and amended throughout the *Corporations Act 2001* (Cth).

### Corporations Regulations 2001 (Cth)

*Corporations and Australian Securities and Investments Commission Amendment Regulation 2013 (No 1)*

The *Corporations Regulations 2001* (Cth) have been amended by the *Corporations and Australian Securities and Investments Commission Amendment Regulation 2013 (No 1)*. This regulation was registered on 25 July 2013 as SLI 192 of 2013.

*Superannuation and Corporations Legislations Amendment (Low Income Superannuation Contribution) Regulation 2013*

The *Corporations Regulations 2001* (Cth) have been amended by the *Superannuation and Corporations Legislations Amendment (Low Income Superannuation Contribution) Regulation 2013*. This regulation was registered on 6 August 2013 as SLI 202 of 2013.

Cross references have been added and amended throughout the *Corporations Regulations 2001* (Cth).

#### **Australian Securities and Investments Commission Regulations 2001 (Cth)**

*Corporations and Australian Securities and Investments Commission Amendment Regulation 2013 (No 1)*

The *Australian Securities and Investments Commission Regulations 2001* (Cth) have been amended by the *Corporations and Australian Securities and Investments Commission Amendment Regulation 2013 (No 1)*. This regulation was registered on 25 July 2013 as SLI 192 of 2013.