

CONTEMPORARY AUSTRALIAN CORPORATE LAW

Contemporary Australian Corporate Law provides an authoritative, contextual and critical analysis of Australian corporate and financial markets law, designed to engage today's LLB and JD students.

Written by leading corporate law scholars, the text provides a number of features including:

- a well-structured presentation of topics for Australian corporate law courses
- consistent application of theory with discussion of corporate law principles (both theoretical and historical)
- comprehensive discussion of case law with modern examples
- integration of corporate law and corporate governance, all with clarity, insight and technical excellence.

Central concepts are enhanced with dynamic and relevant discussions of corporate law in context, including debates relating to the role of corporations in society, the global convergence of corporate law, as well as corporations and human rights.

Exploring the social, political and economic forces which shape modern corporations law, *Contemporary Australian Corporate Law* encourages a forward-thinking approach to understanding key concepts within the field.

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CONTENTS

<i>Preface</i>	<i>xix</i>
<i>Acknowledgements</i>	<i>xxi</i>
<i>Table of cases</i>	<i>xxii</i>
<i>Table of statutes</i>	<i>xxxix</i>
Chapter 1 Context, history and regulation	1
1.05 Introduction: the importance of context	2
1.10 Some perennial questions	2
1.15 English company law in the seventeenth and eighteenth centuries	4
1.20 The <i>Bubble Act</i> and its consequences	8
1.25 The nineteenth century	10
1.30 Early company legislation	11
1.30.05 The <i>Joint Stock Companies Act 1844</i>	12
1.30.10 The <i>Joint Stock Companies Act 1856</i>	13
1.30.15 The <i>Companies Act 1862</i>	14
1.35 Summarising developments in British corporate history	15
1.40 The history of Australian corporate law	15
1.40.05 Small beginnings: 1788–1850s	16
1.40.10 Boom and depression: 1850s–1890s	16
1.40.15 Early moves towards uniformity: 1890s–1930s	18
1.40.20 The first uniform legislation: 1950s–1980	21
1.40.25 The co-operative scheme: 1980–1990	23
1.40.30 The <i>Corporations Act 1989</i> in the High Court	25
1.40.35 The national scheme: 1991–2001	26
1.45 The parameters of twenty-first century corporate law	28
1.50 The current scheme	28
1.50.05 The constitutional basis of the <i>Corporations Act 2001</i>	29
1.50.10 The referral of powers	29
1.50.15 The jurisdiction of the legislation	30
1.55 Regulations and other delegated legislation under the <i>Corporations Act</i>	31
1.60 Administration and enforcement of the <i>Corporations Act</i>	31
1.60.05 The Australian Securities and Investments Commission	32
1.60.10 Other bodies under the <i>ASIC Act</i>	33

1.65	Jurisdiction of the courts	35
1.65.05	The civil penalty regime	36
1.70	Interpretation of the <i>Corporations Act</i>	37
1.70.05	The interpretation provisions	37
1.70.10	Interpretation: issues and debates	38
1.75	Amending the corporations legislation	41
1.80	A global model of corporate law?	41
1.85	Summary	42
Chapter 2	Corporate law theory and debates	44
2.05	Introduction: the importance of corporate theory	44
2.10	Concession theory	45
2.15	Aggregate theory	48
2.20	Economic theories	50
2.25	Natural entity theory	53
2.30	An organisational perspective	54
2.35	Feminist theories	56
2.40	Corporate social responsibility	58
2.40.05	CSR and ‘enlightened shareholder value’	59
2.40.10	CSR and stakeholder theory	61
2.40.15	CSR and globalisation	62
2.45	Is corporate law global or local?	63
2.50	Summary	64
Chapter 3	The company as a separate legal entity	67
3.05	Introduction	67
3.10	The separate legal entity doctrine	68
3.10.05	The importance of <i>Salomon’s case</i>	70
3.15	The adoption of <i>Salomon’s case</i>	72
3.20	Exceptions to the separate legal entity doctrine	74
3.25	Common law contexts in which the separate legal entity doctrine may not apply	74
3.25.05	Evasion of a legal obligation	74
3.25.10	Fraud	77
3.25.15	Agency	77
3.30	Statutory provisions avoiding the separate legal entity doctrine	79
3.35	Corporate groups	79
3.40	A company’s liability for civil and criminal wrongs	82
3.45	A company’s liability in criminal law	83
3.45.05	Commonwealth <i>Criminal Code Act</i>	85
3.45.10	Vicarious liability	86

3.50	Corporate liability in tort	87
3.50.05	Policy considerations with corporate liability in tort	87
3.55	Summary	89
Chapter 4	Formation and types of companies	90
4.05	Introduction	91
4.05.05	Defining ‘corporation’	91
4.10	The registration process	92
4.15	The consequences of registration	93
4.20	Types of corporation	94
4.25	Some other types of corporate entity	95
4.25.05	Incorporated associations	95
4.25.10	Co-operatives	95
4.25.15	Statutory corporations	96
4.30	Companies under the <i>Corporations Act</i>	96
4.35	Proprietary and public companies	97
4.35.05	Proprietary companies	97
4.35.10	Public companies	99
4.35.15	Other differences between proprietary and public companies	99
4.35.20	Changing proprietary/public status	100
4.40	Liability of members to the company	101
4.40.05	Company limited by shares	101
4.40.10	Company limited by guarantee	101
4.40.15	Unlimited liability company	102
4.40.20	No liability company	102
4.45	Change of status	103
4.50	Registration patterns	104
4.55	A company’s relationship to other companies	105
4.60	Registrable Australian bodies and foreign companies	106
4.65	Further ways of classifying corporations	106
4.65.05	Corporate groups	107
4.65.10	Closely-held and widely-held companies	113
4.65.15	One-person companies	114
4.70	Choosing the form of incorporation	115
4.75	Summary	116
Chapter 5	The internal rules of a company	117
5.05	Introduction	117
5.10	An overview of the internal management of a company	118
5.15	Objects clauses and ultra vires	118
5.20	The corporate constitution	119

5.25	The replaceable rules	119
5.30	Internal rules for one director/shareholder companies	121
5.35	The statutory contract	121
5.35.05	The effect of the statutory contract	122
5.40	Remedies for breach of the statutory contract	124
5.40.05	Seeking a declaration or injunction	124
5.40.10	Rectification and damages	125
5.40.15	Additional members' remedies under a shareholders' agreement	126
5.40.20	Additional members' remedies under statute	127
5.45	Interpretation of provisions in the statutory contract	127
5.50	Altering the constitution	128
5.50.05	Restrictions on the majority's power to alter the constitution	128
5.50.10	The decision in <i>Gambotto's case</i>	130
5.50.15	Onus of proof	135
5.50.20	The reaction to <i>Gambotto's case</i>	135
5.50.25	When do the tests established in <i>Gambotto's case</i> not apply?	136
5.50.30	Reform of the compulsory acquisition provisions	136
5.55	Protection of class rights	136
5.60	Summary	140
Chapter 6	Corporate contracting	141
6.05	Introduction	141
6.10	Companies entering contracts directly	141
6.15	Companies entering contracts via agents	143
6.15.05	Actual and actual implied authority	144
6.15.10	Implied authority of a managing director	144
6.15.15	Implied authority of a company secretary	145
6.15.20	Implied authority of a single director	145
6.20	Apparent authority	146
6.20.05	Acquiescence	150
6.25	The effect of non-compliance with internal matters on the validity of a contract	151
6.25.05	The statutory assumptions	152
6.25.10	Limitations on the application of the statutory assumptions – s 128(4)	155
6.30	Authority by ratification	157
6.35	Pre-registration contracts	158
6.40	Summary	159
Chapter 7	Decision-making, meetings and reporting	160
7.05	Introduction	160
7.10	Decision-making	161

7.10.05	Application of the division of powers	161
7.15	Members' rights	162
7.15.05	Members' powers in the general meeting	163
7.15.10	Members' powers to make decisions under the <i>Corporations Act</i>	164
7.15.15	Additional rights given to members under the <i>Corporations Act</i> and the constitution	167
7.15.20	Members' reserve powers	168
7.20	The board of directors	168
7.20.05	Types of directors	169
7.20.10	The role of the board	174
7.25	Where members disagree with a decision of the directors	175
7.30	Meetings	178
7.30.05	Members' meetings	178
7.30.10	Directors' meetings	183
7.35	Decision-making in single director/shareholder companies	184
7.40	Reporting and disclosure	184
7.40.05	Members' information	185
7.40.10	Information provided to ASIC	187
7.45	Financial reporting	188
7.45.05	Financial records	188
7.45.10	Financial reports	188
7.50	Failure to comply	191
7.55	Summary	192
Chapter 8	Corporate finance	193
8.05	Introduction	194
8.10	The concept of capital	194
8.10.05	Sources of corporate finance and the consequences	194
8.15	Share finance	195
8.15.05	Types of share finance	195
8.15.10	Classifying shares	196
8.15.15	The legal nature of a share	200
8.20	Debt finance	202
8.20.05	Sources of debt finance	202
8.20.10	Debentures	203
8.20.15	Security interests and charges	204
8.25	Maintenance of capital	206
8.30	Dividends	210
8.30.05	When may a company pay a dividend?	211
8.30.10	Payment of dividends	212
8.35	Alteration of share capital	213

8.40	Self-acquisition and control of shares	213
8.45	Reduction of share capital	214
8.45.05	Reasons for reducing share capital	214
8.45.10	Regulating reductions of capital	215
8.45.15	Protecting interests affected by a reduction	219
8.45.20	Reductions of share capital and class rights	220
8.50	Share buy-backs	220
8.50.05	Problems and advantages of buy-backs	221
8.50.10	Regulation of share buy-backs	222
8.60	Financial assistance transactions	226
8.60.05	The problems and benefits of financial assistance transactions	226
8.60.10	The regulation of financial assistance transactions	226
8.65	Summary	234
Chapter 9	Corporate fundraising	235
9.05	Introduction	236
9.10	Raising share capital under Chapter 6D	236
9.10.05	Introduction	236
9.10.10	Terminology	237
9.10.15	When must a disclosure document be issued by a company seeking to raise share capital?	239
9.15	The basic framework of Chapter 6D	240
9.15.05	Which offers will require a disclosure document to be lodged with ASIC?	240
9.20	Step 1: 'Offer of securities'	241
9.25	Step 2: Offers that do not need disclosure	241
9.25.05	Small-scale offerings	241
9.25.10	Personal offers	241
9.25.15	Twenty investors ceiling	242
9.25.20	Sophisticated investors	242
9.25.25	Professional investors	243
9.25.30	Rights issues	244
9.25.35	Proving an exemption under Part 6D.2	244
9.30	Step 3: Deciding whether a prospectus is required or a shorter document may be prepared	244
9.35	Lodgement of a prospectus	245
9.35.05	Exposure period	245
9.40	The content of a prospectus	246
9.40.05	General disclosure requirements	247
9.40.10	Forward-looking statements	247
9.40.15	Illustrations of s 710(2)	249
9.40.20	Specific disclosure requirements	251
9.40.25	Content of prospectuses for listed securities	252

9.45	Regulation of further disclosure	252
9.45.05	Supplementary and replacement prospectuses	252
9.50	Regulating secondary sources of information	253
9.50.05	Image advertising – s 734(3)	253
9.50.10	Pathfinders – s 734(9)	253
9.55	Liability for defective disclosure under Chapter 6D	254
9.55.05	General liability	254
9.55.10	Criminal liability	254
9.55.15	Civil liability to pay compensation	254
9.60	Defences	255
9.60.05	Due diligence	255
9.60.10	Lack of knowledge	255
9.60.15	Reasonable reliance	255
9.60.20	Withdrawal of consent defence	256
9.65	ASIC relief from the application of Chapter 6D	256
9.70	Securities hawking	257
9.75	Crowd-sourced funding	257
9.80	Summary	257
Chapter 10	An overview of directors' duties	258
10.05	Introduction	259
10.10	Corporate governance	259
10.10.05	Australian corporate governance	260
10.10.10	Comparative corporate governance	264
10.15	Why do we regulate directors' behaviour?	265
10.20	Who is a director?	266
10.20.05	De facto directors	267
10.20.10	Shadow directors	267
10.20.15	Officers	269
10.20.20	Conclusion	271
10.25	Historical development of directors' duties	271
10.25.05	Company law and directors' duties prior to 1900	271
10.25.10	Company law and directors' duties from the 1900s to today	273
10.30	Directors' duties: a summary	274
10.30.05	The duties of care and diligence	275
10.30.10	The duties of loyalty and good faith	276
10.30.15	Conflicts of interest	276
10.35	Consequences of breach	277
10.35.05	Common law and equitable consequences	277
10.35.10	Regulatory consequences – the civil penalty provisions	278
10.35.15	Criminal consequences	280

10.35.20 Election between regulatory proceedings	280
10.40 Exoneration and relief for directors	281
10.40.05 Ratification by the members	281
10.40.10 Relief by the court	283
10.40.15 Indemnification and insurance	285
10.45 Summary	286
Chapter 11 Duty of care, skill and diligence	287
11.05 Introduction	287
11.10 Common law and equitable foundations	288
11.10.05 The early case law	288
11.10.10 The modern development of the duty of care in the 1980s and 1990s	289
11.10.15 The current common law position	292
11.15 The <i>Corporations Act</i> duty of care, skill and diligence	294
11.15.05 <i>Corporations Act</i> s 180(1)	294
11.15.10 <i>Corporations Act</i> s 180(2)	302
11.20 Delegation and reliance	305
11.20.05 Delegation	306
11.20.10 Reliance	307
11.25 Duty to prevent trading whilst insolvent	309
11.25.05 Section 588G	309
11.25.10 Section 588H	311
11.25.15 Consequences for breach of the duty to prevent trading whilst insolvent	313
11.30 Summary	313
Chapter 12 Duties of good faith	315
12.05 Introduction	315
12.10 The duty to act bona fide in the best interests of the company and for proper purposes under the general law	316
12.10.05 Introduction	316
12.10.10 The development of the duty	316
12.10.15 The first limb: meaning of ‘bona fide’	317
12.10.20 The first limb: meaning of ‘in the interests of the company as a whole’	319
12.10.25 The first limb: application to corporate groups	320
12.10.30 The first limb: application to other stakeholders	321
12.10.35 The second limb: meaning of ‘for proper purposes’	324
12.10.40 The duty: a summary	328
12.10.45 Is the duty equitable or fiduciary?	329
12.15 The statutory duty	331
12.15.05 The coexistence of equity and statute	331

12.15.10	The statutory duty: a brief history	331
12.15.15	Section 181 of the <i>Corporations Act</i>	332
12.15.20	An international comparison: s 172 <i>Companies Act 2006</i> (UK) and enlightened shareholder value	333
12.20	The duty not to fetter discretion	336
12.25	Summary	337
Chapter 13	Conflicts of interest	339
13.05	Introduction	339
13.10	The fiduciary obligation	340
13.10.05	Introduction: a brief history of equity and the fiduciary obligation	341
13.10.10	The origin of the ‘no conflict’ rule	343
13.10.15	The origin of the ‘no profit’ rule	344
13.10.20	Who owes fiduciary obligations: the nominate categories	345
13.10.25	Who is the beneficiary of the fiduciary obligation?	346
13.10.30	The fiduciary obligation in the commercial context	351
13.15	Use of position and information: ss 182–183	357
13.15.05	The relationship between the statute and fiduciary obligation	357
13.15.10	Sections 182 and 183	358
13.20	Disclosure	358
13.20.05	Material personal interests	359
13.20.10	Exceptions to s 191	361
13.20.15	The operation of ss 191–192 and the general law	362
13.20.20	Directors of public companies and s 195	362
13.25	Chapter 2E – related party transactions	363
13.25.05	Related parties and giving a financial benefit	363
13.25.10	Exceptions	364
13.25.15	The procedure	364
13.25.20	Application of the law in the HIH collapse	365
13.30	Summary	366
Chapter 14	Members’ rights and remedies	368
14.05	Introduction	369
14.10	Members’ rights and the common law: the rule in <i>Foss v Harbottle</i>	371
14.15	Common law exceptions to <i>Foss v Harbottle</i>	373
14.15.05	Ultra vires actions	373
14.15.10	Special majority	373
14.15.15	Infringement of a member’s personal rights	374
14.15.20	Fraud on the minority	374
14.15.25	The interests of justice	375
14.20	General law remedies available to minority shareholders	376
14.20.05	<i>Gambotto</i> and expropriation of shares	376

14.20.10	Infringement of a member's personal rights	377
14.25	Statutory remedies available to members	379
14.30	The remedy for oppression or unfairness – Part 2F.1	379
14.30.05	Standing	380
14.30.10	Conduct	381
14.30.15	The grounds for complaint	383
14.30.20	Orders	388
14.35	The statutory derivative action	390
14.35.05	Who may apply for a derivative action?	391
14.35.10	Grounds for granting leave	392
14.35.15	Other court orders	394
14.35.20	Derivative actions and the remedy for oppression	395
14.40	Winding up – s 461	395
14.40.05	The just and equitable ground – failure of substratum	397
14.40.10	The just and equitable ground – deadlocks	398
14.40.15	Winding up and the public interest	399
14.45	The injunction remedy – s 1324	400
14.50	Access to company information	401
14.55	Civil proceedings brought by ASIC – s 50 <i>ASIC Act</i>	404
14.60	Summary	405
Chapter 15	Receivership, schemes of arrangement and voluntary administration	407
15.05	Introduction	407
15.10	Insolvency	408
15.15	Secured creditors in insolvency	411
15.20	Receivership	413
15.20.05	Private appointment	413
15.20.10	Powers, duties and liabilities at law and in the <i>Corporations Act</i>	414
15.20.15	The court appointed receiver	417
15.20.20	Order of payment	418
15.20.25	Effects of appointment of receiver	419
15.25	Relationship with other external administrations	419
15.30	Schemes of arrangement	420
15.30.05	A scheme must involve an arrangement or compromise	421
15.30.10	The process of approval of a scheme of arrangement	422
15.35	Voluntary administration	424
15.35.05	Commencing an administration	426
15.35.10	The administrator's role	427
14.35.15	Creditors' meetings	428

15.40	A deed of company arrangement	430
15.40.05	The administration	431
15.40.10	Setting aside a DOCA	431
15.45	Summary	436
Chapter 16	Winding up and liquidation	437
16.05	Introduction	438
16.10	Policy – winding up and liquidation	438
16.15	Liquidation	439
16.15.05	What is liquidation?	439
16.15.10	Compulsory winding up in insolvency	439
16.15.15	Proving insolvency	440
16.15.20	Statutory demands	441
16.15.25	Court order to wind up the company	443
16.15.30	Effect of a winding up for insolvency	443
16.20	Liquidators – appointment, powers, duties	445
16.20.05	Regulation of liquidators	445
16.20.10	Powers of liquidators	446
16.20.15	Duties of the liquidator	446
16.25	Recovery of assets – voidable transactions	448
16.25.05	Introduction	448
16.25.10	Unfair preferences	449
16.25.15	Uncommercial transactions	451
16.25.20	Insolvent transactions	453
16.25.25	Unfair loans	453
16.25.30	Unreasonable director-related transactions	453
16.25.35	Invalid circulating security interests	454
16.25.40	Voidable transactions – consequences	455
16.25.45	Transactions not voidable against certain people	455
16.25.50	Voidable transactions exemplified	455
16.30	Distributing assets – ranking of creditors	457
16.35	Winding up under s 461	461
16.40	Voluntary winding up	462
16.40.05	Members’ voluntary winding up	462
16.40.10	Creditors’ voluntary winding up	462
16.40.15	Effect of a voluntary winding up	463
16.45	Deregistration and reinstatement of companies	464
16.45.05	Introduction	464
16.45.10	Deregistration of companies	464
16.45.15	Reinstatement of companies	465
16.50	Summary	465

Chapter 17 Financial markets and financial services	466
17.05 Introduction	467
17.10 Terminology and context	468
17.10.05 The financial markets	468
17.10.10 The development of the Australian stock markets	470
17.10.15 Intermediaries	471
17.10.20 Listed companies	471
17.10.25 Investors	472
17.10.30 ASIC	473
17.15 Background to the regulation of financial markets in Australia	473
17.20 Financial products	475
17.20.05 Introduction	475
17.20.10 Definition of security	476
17.20.15 Definition of derivative	476
17.25 Licensing of financial markets	478
17.25.05 Licensing as a regulatory strategy	478
17.25.10 The licensing system for financial markets	479
17.25.15 Supervision of financial markets	480
17.25.20 Content of the operating rules	483
17.25.25 The content of the ASX listing rules	484
17.25.30 Periodic disclosure	485
17.25.35 Continuous disclosure	486
17.25.40 Remedies for breach of the continuous disclosure obligations	490
17.25.45 The legal nature of the listing relationship	491
17.25.50 Challenging ASX decisions – a public law paradigm?	495
17.30 The obligations of advisers and dealers in financial products	497
17.30.05 Financial services licensing	498
17.30.10 General licensee obligations under an AFSL	501
17.30.15 Disclosures required by providers of financial services under the <i>Corporations Act</i>	502
17.30.20 Definition of ‘retail client’	503
17.35 Regulating the broker–client relationship	504
17.35.05 The basic securities transaction	504
17.35.10 The statutory best interests test under s 961B of the <i>Corporations Act</i>	508
17.40 Market misconduct	511
17.40.05 Overview	511
17.45 Insider trading	512
17.45.05 The basic prohibition	513
17.45.10 Insider trading – prerequisites to the prohibition	513
17.45.15 The knowledge test	518
17.45.20 Relevant acts that breach the prohibition	518

17.45.25	Exceptions and defences to the prohibition	519
17.45.30	Remedies for insider trading	520
17.50	General market misconduct	521
17.50.05	Misleading and deceptive conduct in relation to a financial product or financial service – s 1041H	522
17.50.10	False trading and market rigging – ss 1041B and 1041C	522
17.50.15	Market manipulation – s 1041A	525
17.50.20	False and misleading statements – s 1041E	526
17.50.25	Remedies for market misconduct	527
17.55	Overview of enforcement	527
17.55.05	ASIC's approach to enforcement	528
17.55.10	Private enforcement by class actions	529
17.60	Summary	529
Chapter 18	Takeovers	530
18.05	Introduction	531
18.10	What is a takeover?	531
18.10.05	Alternatives to takeovers – schemes of arrangement	532
18.10.10	The concept of 'control'	532
18.10.15	Takeover activity in Australia	533
18.15	Why regulate takeovers?	534
18.20	The framework of Chapter 6	535
18.20.05	The structure of Chapter 6	535
18.20.10	The policy framework of Chapter 6	535
18.25	Dispute resolution in takeovers	536
18.25.05	The Takeovers Panel	536
18.25.10	Declaration of unacceptable circumstances	539
18.25.15	What are 'unacceptable circumstances'?	539
18.25.20	Challenges to the Takeovers Panel	541
18.30	The basic prohibition – s 606	542
18.30.05	Prohibited share acquisitions	542
18.30.10	Acquisition resulting in an increase in voting power	543
18.30.15	Substantial holdings	543
18.30.20	Relevant interests	543
18.30.25	Voting power	544
18.30.30	Who is an associate?	545
18.30.35	Deemed relevant interest	546
18.30.40	Circumstances not giving rise to a relevant interest	547
18.30.45	Collective action by investors and Chapters 6–6C	547
18.35	Exemptions from the prohibition	548
18.35.05	Creeping takeovers	548
18.35.10	Takeover by consent	548

18.40	Takeover bids	549
18.40.05	What is a takeover bid?	549
18.45	Off-market bids	549
18.45.05	Navigating an off-market bid	550
18.45.10	The offer	552
18.45.15	The bidder’s statement	555
18.45.20	Target’s statement	560
18.45.25	The role of the independent expert	561
18.45.30	Variation and withdrawal of offer in off-market bids	563
18.45.35	Extensions of offer period in off-market bids	564
18.50	Market bids	564
18.50.05	The offer in a market bid	565
18.50.10	Variation and withdrawal of offer in a market bid	565
18.55	Takeover defences	565
18.55.05	Introduction	565
18.55.10	Types of defensive activity by the target	568
18.55.15	Frustrating action	572
18.55.20	Application of directors’ duties	572
18.55.25	Challenging defensive actions before the Panel	575
18.55.30	Lock-up devices	577
18.60	Compulsory acquisitions and buy-outs	577
18.60.05	Compulsory acquisition of minority shares in a takeover	578
18.60.10	Dissenting minorities	579
18.60.15	Fair value for securities	579
18.60.20	Compulsory buy-out of securities	580
18.65	Liability and remedies	580
18.65.05	Other remedies	582
18.70	Summary	583
<i>Index</i>		584

PREFACE

Welcome to *Contemporary Australian Corporate Law*. Our primary purpose in writing this book is to explain the rules, principles, doctrines and policies that constitute corporate law in Australia. We do this by locating those rules in their legal, social, economic and political context: our purpose is to provide students of corporate law with the capacity to develop a contextual understanding of this important area of law.

The book is written for undergraduate and postgraduate law students who are approaching the study of corporate law for the first time, and for those returning to investigate specific aspects of the law. We have made no assumptions about the background which individual students may bring to the reading of this book. We know that corporate law is studied by students with a range of disciplinary interests, from economics and commerce to political science and international relations, and more.

We take the view that corporate law is not just a branch of business or commercial law. It is the law that governs and facilitates one of the most significant legal, social and economic structures in contemporary society: the corporation. The corporation, in its many different forms and settings, is an integral part of the contemporary social fabric. Corporations are found in every part of our lives; this book is published by a corporation, and its authors are employed by statutory corporations. We have written this book using computers and software that have been developed, built and supplied by multinational chains of corporations.

It is easy to be critical of corporations and their activities. There are many – too many – examples of corporate misfeasance and misbehaviour that involve environmental damage, financial collapse, personal injury and death, or neglect of human rights. We examine some of this behaviour in this book. However, as US corporate law academic Professor Lynn Stout emphasises, ‘We created corporations; now we share the planet with them’.¹ This underlines the need to understand the parameters of corporate behaviour, and that means understanding the law which governs that behaviour.

Of course, not everyone is sceptical about the role of corporations. Historically, the significance of the corporate form has sometimes been praised in glowing terms. In 1911, for example, one commentator described the limited liability company as ‘the greatest single discovery of modern times’, adding that ‘even steam and electricity are far less important!’² While we do not share in this hyperbole (and, in any event, the company was not ‘discovered’; it was created by law) we recognise that, alongside the harm they can cause, corporations are a mechanism for providing great benefit to society.

And so, to repeat our earlier point, the aim of this book is to assist students of corporate law to develop a critically informed understanding of corporate law and the role of corporations in contemporary society.

1 Lynn Stout, *The Shareholder Value Myth* (Berrett-Koehler Publishers, 2012) 103.

2 Cited in W Hackney and T Benson, ‘Shareholder Liability for Inadequate Capital’ (1982) 43 *University of Pittsburgh Law Review* 837, 841.

Each of us has taught corporate law for many years. This book is the product of those years and the many interactions we have had with our students; we are grateful to them for their questions, comments and insights. We are also thankful for the generous feedback provided by anonymous reviewers of this text. Their suggestions have helped enormously. We welcome future feedback on the book from teachers, students and practitioners.

The writing of the book has been a genuinely collaborative exercise. We have each read and commented on each other's chapters and we take collective responsibility for the entirety of the book. Necessarily though, responsibility for individual chapters was allocated as follows:

- Stephen Bottomley: 1, 2, 4, 14, 16 and 18
- Kath Hall: 3, 5, 6, 7 and 15
- Peta Spender: 8, 9, 16, 17 and 18
- Beth Nosworthy: 10, 11, 12, 13 and 15.

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TABLE OF CASES

Australia

- AAPT v Cable & Wireless Optus* (1999) 32 ACSR 63, **247**
- ABC Developmental Learning Centres Pty Ltd v Wallace* (2006) 161 A Crim R 250, **85**
- ABN AMRO Bank NV v Bathurst Regional Council* (2014) 224 FCR 1, **330, 507, 510**
- Accurate Financial Consultants Pty Ltd v Koko Black Pty Ltd* [2007] VSC 40, **136**
- Acehill Investments Pty Ltd v Incitec Ltd* [2002] SASC 344, **403**
- Adler v Australian Securities and Investments Commission* (2003) 46 ACSR 504, **229, 365**
- Adstream Building Industries Pty Ltd v Queensland Cement & Lime Co Ltd (No 4)* [1985] 1 Qd R 127, **546**
- Advance Bank Australia Ltd v Fleetwood Star Pty Ltd* (1992) 10 ACLC 703, **152**
- Advance Housing Pty Ltd (in liq) v Newcastle Classic Developments Pty Ltd* (1994) 14 ACSR 230, **446**
- Afro-West Mining Ltd v Australian Mining Investments Ltd* (1988) 14 ACLR 709, **547**
- AIG Australia Ltd v Jaques* [2014] VSCA 332, **266**
- Airservices Australia v Ferrier* (1996) 185 CLR 483, **450, 451**
- Al-Kateb v Godwin* (2004) 219 CLR 5, **317**
- Allen v Atalay* (1994) 12 ACLC 7, **400**
- Almario v Allianz Australia Workers Compensation (NSW) Insurance Ltd* (2005) 62 NSWLR 148, **465**
- Ananda Marga Pracaraka Samgha Ltd v Tomar (No 3)* [2012] FCA 184, **394–5**
- Andar Transport Pty Ltd v Bramble* (2004) 217 CLR 424 [2004] HCA 28, **73–4**
- Andrews v Queensland Racing Ltd* (2009) 74 ACSR 538, **123**
- Angas Law Services Pty Ltd (in liq) v Carabelas* (2005) 226 CLR 507, **281**
- ANZ Banking Group Ltd v Australian Glass and Mirrors Pty Ltd* (1991) 9 ACLC 702, **154**
- ANZ Banking Group Ltd v Bangadilly Pastoral Co Pty Ltd* (1978) 139 CLR 195, **416**
- ANZ Banking Group Ltd v Frenmast Pty Ltd* (2013) 282 FLR 351, **152–3**
- ANZ Executors & Trustee Co Ltd v Qintex Australia Ltd (recs and mgrs apptd)* [1991] 2 Qd R 360, **110, 209**
- Ashburton Oil NL v Alpha Minerals NL* (1971) 123 CLR 614, **320, 572**
- Associated Dairies Ltd v Central Western Dairy Ltd* (1993) 44 FCR 335, **558**
- Associated World Investments Pty Ltd v Aristocrat Leisure Ltd* (1998) 16 ACLC 455, **136**
- Astley v Austrust Ltd* (1999) 197 CLR 1, **293**
- Attorney-General (Cth) v Alinta Ltd* (2008) 233 CLR 542, **541**
- Austen & Bulla Ltd v Shell Australia* (1992) 10 ACLC 735, **555**
- Australasian Centre for Corporate Responsibility v Commonwealth Bank of Australia* (2016) 337 ALR 558, **129, 176–7, 179, 370**
- Australasian Oil Exploration Ltd v Lachberg* (1958) 101 CLR 119, **209**
- Australian Institute of Fitness Pty Ltd v Australian Institute of Fitness (Vic/Tas) Pty Ltd (No 3)* (2015) 109 ACSR 369, **386, 387**
- Australian Metropolitan Life Assurance Co Ltd v Ure* (1923) 33 CLR 199, **325**
- Australian Securities Commission v Deloitte Touche Tohmatsu* (1996) 70 FCR 93, **404**

- Australian Securities Commission v Fairlie* (1993) 11 ACLC 669, 191
- Australian Securities Commission v Marlborough Gold Mines Pty Ltd* (1993) 177 CLR 485, 421
- Australian Securities Commission v McLeod* (2000) 22 WAR 255, 248, 526
- Australian Securities Commission v Multiple Sclerosis Society of Tasmania* (1993) 10 ACSR 489, 380, 386
- Australian Securities Commission v Nandan* (1997) 23 ACSR 743, 279, 283
- Australian Securities Commission v Nomura International plc* (1998) 29 ACSR 473, 521, 522, 524–5
- Australian Securities Commission v SIB Resources NL* (1991) 30 FCR 221, 93
- Australian Securities and Investments Commission v ABC Fund Managers Ltd* (2001) 39 ACSR 443, 399
- Australian Securities and Investments Commission v ActiveSuper Pty Ltd (No 2)* (2013) 93 ACSR 189, 399
- Australian Securities and Investments Commission v ActiveSuper Pty Ltd (in liq)* (2015) 235 FCR 181, 401
- Australian Securities and Investments Commission v Adler* (2002) 41 ACSR 72, 227, 228, 229, 230–1, 233
- Australian Securities and Investments Commission v Adler* (2002) 42 ACSR 80, 283
- Australian Securities and Investments Commission v Astra Resources plc* (2015) 107 ACSR, 244
- Australian Securities and Investments Commission v Australian Investors Forum Pty Ltd (No 2)* (2005) 53 ACSR 305, 241, 254
- Australian Securities and Investments Commission v Cassimatis* (2013) 220 FCR 256, 300
- Australian Securities and Investments Commission v Chemq* (2006) 58 ACSR 169, 491
- Australian Securities and Investments Commission v Citigroup Global Markets Australia Pty Ltd (No 4)* (2007) 160 FCR 35, 270, 511, 515–16, 518, 520
- Australian Securities and Investments Commission v CME Capital Australia Pty Ltd (No 2)* [2016] FCA 544, 397, 399
- Australian Securities and Investments Commission v Cyclone Magnetic Engines Inc* (2009) 71 ACSR 1, 244, 254
- Australian Securities and Investments Commission v Elm Financial Services Pty Ltd* (2005) 55 ACSR 544, 243, 279
- Australian Securities and Investments Commission v Fortescue Metals Group Ltd (No 5)* (2009) 264 ALR 201, 304
- Australian Securities and Investments Commission v Fortescue Metals Group Ltd* (2011) 190 FCR 364, 303–4, 489, 490
- Australian Securities and Investments Commission v Gillfillan* (2012) 92 ACSR 460, 299
- Australian Securities and Investments Commission v Healey* (2011) 196 FCR 291, 293, 300–1, 306
- Australian Securities and Investments Commission v Healey (No 2)* (2011) 196 FCR 430, 283, 301–2
- Australian Securities and Investments Commission v Hellicar* (2012) 247 CLR 345, 37, 185, 297, 299–300, 308
- Australian Securities and Investments Commission v Macdonald (No 11)* (2009) 256 ALR 199, 297–8, 308, 332, 527
- Australian Securities and Investments Commission v Macdonald (No 12)* (2009) 73 ACSR 638, 297
- Australian Securities and Investments Commission v Mariner Corporation Ltd* (2015) 241 FCR 502, 300, 305, 551–2
- Australian Securities and Investments Commission v Mauer-Suisse Securities Ltd* (2002) 42 ACSR 605, 400
- Australian Securities and Investments Commission v Maxwell* (2006) 59 ACSR 373, 243, 253, 300, 328, 332
- Australian Securities and Investments Commission v Newcrest Mining Ltd* (2014) 101 ACSR 46, 491
- Australian Securities and Investments Commission v Ostrava Equities* (2015) 106 ACSR 332, 509

- Australian Securities and Investments Commission v Pegasus Leveraged Options Group Pty Ltd* (2002) 41 ACSR 561, **242**
- Australian Securities and Investments Commission v Plymin (No 1)* (2003) 175 FLR 124, **311**
- Australian Securities and Investments Commission v Rich* (2004) 50 ACSR 500, **295**
- Australian Securities and Investments Commission v Rich* (2009) 75 ACSR 1, **295, 304–5**
- Australian Securities and Investments Commission v Somerville* (2009) 77 NSWLR 110, **280**
- Australian Securities and Investments Commission v Southcorp Ltd (No 2)* (2003) 130 FCR 406, **491, 517**
- Australian Securities and Investments Commission v Sydney Investment House Equities Pty Ltd* (2008) 69 ACSR 1, **332**
- Australian Securities and Investments Commission v Vines* (2005) 55 ACSR 617, **295–6**
- Australian Securities and Investments Commission v Vines* (2005) 65 NSWLR 281, **283–4**
- Australian Securities and Investments Commission v Vizard* (2005) 145 FCR 57, **279**
- Australian Stock Exchange Ltd v Hudson Securities Pty Ltd* (1999) 33 ACSR 416, **483**
- Autodom Ltd (admins apptd) (recs and mgrs apptd)* [2012] FCA 1393, **429**
- Avram Investments Pty Ltd v DCT (Vic)* (1992) 9 ACSR 580, **443**
- AWA Ltd v Daniels* (1992) 7 ACSR 759, **161–2, 171–2, 290–1, 306**
- AXA Asia Pacific Holdings Ltd v Direct Share Purchasing Corporation Pty Ltd* (2009) 173 FCR 434, **187**
- Ayrton Investments Pty Ltd v Andrlik* (2000) 34 ACSR 643, **442**
- B & M Quality Constructions Pty Ltd v WG Brady Pty Ltd* (1994) 116 FLR 218, **441**
- Ball v Pearsall* (1987) 10 NSWLR 700, **180**
- Ballarat Goldfields NL* [2002] ATP 7, **577**
- Bank of Australasia v Hall* (1907) 4 CLR 1514, **410**
- Bank of New Zealand v Fibern Pty Ltd* (1994) 12 ACLC 48, **152, 153, 157**
- Barclays Finance Holdings Ltd v Sturgess* (1985) 3 ACLC 662, **157**
- Barrack Mines Ltd v Grants Patch Mining Ltd* [1988] 1 Qd R 606, **402**
- Bateman v Newbaven Park Stud Ltd* (2004) 22 ACLC 943, **224**
- Bateman v Newbaven Park Stud Ltd* (2004) 49 ACSR 454, **494**
- Beck v Weinstock* (2013) 251 CLR 425, **183, 198–9**
- Bell Group Ltd v Herald and Weekly Times* [1985] VR 613, **505**
- Bell Group Ltd (in liq) v Westpac Banking Corporation (No 9)* (2008) 39 WAR 1, **282, 309, 317, 318, 320, 321, 322, 329–30, 361, 409, 509, 572**
- Biala Pty Ltd v Malina Holdings Ltd (No 2)* (1992) 13 WAR 11, **376**
- Bigsbop.com.au Ltd 02* [2001] ATP 24, **572**
- Black v Smallwood* (1966) 117 CLR 52, **158**
- Blackmagic Design Pty Ltd v Overliese* (2011) 191 FCR 1, **346, 352**
- Bluebottle UK Ltd v Deputy Commissioner of Taxation* (2007) 232 CLR 598, **212**
- Bond Brewing Holdings Ltd v National Australia Bank Ltd* (1990) 8 ACLC 330, **417**
- Bond Corporation Holdings Ltd v Grace Brothers Holdings Ltd* (1983) 1 ACLC 1009, **39**
- Brash Holdings Ltd (admin apptd) v Katile Pty Ltd* [1996] 1 VR 24, **431**
- Breen v Williams* (1996) 186 CLR 71, **329, 330**
- Brick & Pipe Industries Ltd v Occidental Life Nominee Pty Ltd* [1992] 2 VR 279, **150–1**
- Briggs v James Hardie & Co Pty Ltd* (1989) 16 NSWLR 549, **74, 78, 81, 88, 107, 109, 265**
- Broken Hill Proprietary Co Ltd v Bell Resources Ltd* (1984) 2 ACLC 157, **400**
- Brooks v Heritage Hotel Adelaide Pty Ltd* (1996) 20 ACSR 1, **310**
- Brunninghausen v Glavanics* (1999) 46 NSWLR 538, **348, 349**

- BTR Nylex Ltd v Churchill International Inc* (1992) 9 ACSR 361, 200
- Bundaberg Sugar Ltd v Isis Central Sugar Mill Co Ltd* [2006] QSC 358, 133–4, 136, 213
- Burton v Palmer* (1980) 2 NSWLR 878, 229
- Buzzle Operations Pty Ltd (in liq) v Apple Computer Australia Pty Ltd* (2010) 77 ACSR 410, 266, 268, 269
- Buzzle Operations Pty Ltd (in liq) v Apple Computer Australia Pty Ltd* (2011) 81 NSWLR 47, 269
- C & K Flanagan Sailmakers Pty Ltd v Walker* [2002] NSWSC 1125, 346
- Caason Investments Pty Ltd v Cao* (2015) 108 ACSR 567, 529
- Campbells' Cash and Carry v Fostif* (2006) 229 CLR 386, 529
- Camelot Resources Ltd v MacDonald* (1994) 14 ACSR 437, 278, 361–2
- Cantena v Australian Securities and Investments Commission* (2011) 276 ALR 25, 520
- Capital Finance Australia Ltd v Tolcher* (2007) 164 FCR 83, 452
- Capricorn Diamonds Investments v Catto* [2002] 20 ACLC 931, 580
- Carabelas v Scott* (2003) 177 FLR 334, 358
- Caratti v Mammoth Investments Pty Ltd* (2016) 50 WAR 84, 155
- Carew-Reid v Public Trustee* (1996) 20 ACSR 443, 124
- Carey v Australian Securities and Investments Commission* (2008) 169 FCR 311, 405
- Casaclang v WealthSure Pty Ltd* (2015) 107 ACSR 274, 500
- Cassegrain v Gerard Cassegrain Pty Ltd* (2008) 68 ACSR 132, 392
- Castrisios v McManus* (1990) 4 ACSR 1, 311
- Catalano v Managing Australia Destinations Pty Ltd* (2014) 314 ALR 62, 387
- CEMEX Australia Pty Ltd v Takeovers Panel* (2009) 177 FCR 98, 541–2
- Chabwan v Euphoric Pty Ltd (t/as Clay & Michael)* (2008) 245 ALR 780, 392
- Chan v Zacharia* (1984) 154 CLR 178, 276, 316, 340, 344, 351
- Chapman v E-Sports Club Worldwide Ltd* (2000) 35 ACSR 462, 391, 392
- Chapmans Ltd v Australian Stock Exchange Ltd* (1994) 51 FCR 501, 495
- Chew v The Queen* (1992) 173 CLR 626, 358
- Chippendale Printing Co Pty Ltd v Deputy Commissioner of Taxation* (1995) 55 FCR 562, 442, 443
- Christianos v Aloridge Pty Ltd* (1995) 59 FCR 273, 371–2
- City of Swan v Lehman Brothers Australia Ltd* (2009) 179 FCR 243, 422
- Classic International Pty Ltd v Lagos* (2002) 60 NSWLR 241, 158
- Clayton Robard Management v Siu* (1988) 6 ACLC 57, 507
- Clements Marshall Consolidated Ltd v ENT Ltd* (1988) 13 ACLR 90, 137, 197
- Clifton v CSR Building Products* [2011] SASC 103, 450
- Club Flotilla (Pacific Palms) Ltd v Isherwood* (1987) 12 ACLR 387, 145
- Coco v The Queen* (1994) 179 CLR 427, 317
- Colorado Constructions Pty Ltd v Platus* (1966) 2 NSWLR 598, 124, 171
- Combined Auctions Pty Ltd v Gray Eisdell Timms Pty Ltd* [1997] NSWSC 612, 134
- Commissioner of State Taxation v Pollock* (1993) 11 WAR 64, 311
- Commonwealth Bank of Australia v Friedrich* (1991) 5 ACSR 115, 102, 289, 291, 292
- Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Queensland Rail* (2015) 256 CLR 171, 46
- Con-Stan Industries v Norwich Winterthur Insurance (Australia) Ltd* (1986) 160 CLR 226, 506
- Consul Development Pty Ltd v DPC Estates Pty Ltd* (1975) 132 CLR 373, 278
- Corbett v Corbett Court Pty Ltd* (2015) 109 ACSR 296, 389
- Cordiant Communication (Australia) Pty Ltd v Communications Group Holdings Pty Ltd* (2005) 55 ACSR 185, 127

- Corporate Affairs Commission v Harvey (liquidator of Timberlands Ltd (in liq))* [1980] VR 669, 446
- Crabtree-Vickers Pty Ltd v Australian Direct Mail Advertising and Addressing Co Pty Ltd* (1975) 133 CLR 72, 145, 148–9
- Craig v South Australia* (1995) 184 CLR 163, 495
- Crawley v Short* (2009) 262 ALR 654, 351
- Crumpton v Morriner Hall Pty Ltd* [1965] NSW 240, 137, 197
- Daly v Sydney Stock Exchange Ltd* (1986) 160 CLR 371, 345, 507–8, 510
- Daniels v Anderson* (1995) 37 NSWLR 438, 174, 275, 277, 290, 291–2, 293, 306, 307
- Darvall v North Sydney Brick & Tile Co Ltd* (1988) 6 ACLC 154, 276, 320, 329, 567, 571, 572, 575
- Darvall v North Sydney Brick & Tile Co Ltd* (1989) 16 NSWLR 260, 326, 328, 567, 571, 573
- Davidson v Smith* (1989) 15 ACLR 732, 336
- Deangrove Pty Ltd v Buckby* [2006] FCA 212, 305
- Delta Beta Pty Ltd v Everhard Vissers* (1996) 20 ACSR 583, 442
- Deluge Holdings Pty Ltd v Bowlay* (1991) 9 ACLC 1486, 188
- Dempster & Biala Pty Ltd v Mallina Holdings Ltd* (1994) 13 WAR 124, 307
- Dempster v National Companies and Securities Commission* (1993) 9 WAR 215, 228
- Dennis Willcox Pty Ltd v Federal Commissioner of Taxation* (1988) 79 ALR 267, 81
- Deputy Commissioner of Taxation v Austin* (1998) 28 ACSR 565, 267
- Deputy Commissioner of Taxation v Comcorp Australia Ltd* (1996) 70 FCR 356, 429, 432–3
- Deputy Commissioner of Taxation v Pddam Pty Ltd* (1996) 14 ACLC 659, 431–2
- Designbuild Australia Pty Ltd v Endeavour Resources Ltd* (1980) 5 ACLR 610, 492–3
- Digital Pulse Pty Ltd v Harris* (2002) 166 FLR 421, 277, 346, 359
- Director of Public Prosecutions (Cth) v JM* (2013) 250 CLR 135, 521, 525–6
- DJE Constructions Pty Ltd v Maddocks* [1982] 1 NSWLR 5, 227, 440
- DSG Holdings Australia Pty Ltd v Helenic Pty Ltd* (2014) 86 NSWLR 293, 435
- Dungowan Manly Pty Ltd v McLaughlin* (2012) 90 ACSR 62, 126, 197, 401
- Earglow Pty Ltd v Newcrest Mining Ltd* (2015) 324 ALR 316, 491
- Eden Energy Ltd v Drivetrain USA Inc* (2012) 90 ACSR 191, 157
- Edwards v Attorney-General (NSW)* (2004) 60 NSWLR 667, 283, 431
- Elkington v CostaExchange Ltd* (2011) 29 ACLC 11-079, 216–17
- Elkington v Shell Australia Ltd* (1993) 32 NSWLR 11, 578
- Elm Financial Services Pty Ltd v MacDougall* [2004] NSWSC 560, 442
- Entwells Pty Ltd v National & General Insurance Co Ltd* (1991) 6 WAR 68, 144–5
- Environment Protection Authority v Caltex Refining Co Pty Ltd* (1993) 178 CLR 477, 47
- Equiticorp Finance Ltd (in liq) v Bank of New Zealand* (1993) 32 NSWLR 50, 111–12, 321
- Equiticorp Financial Services Ltd (NSW) v Equiticorp Financial Services Ltd (NZ)* (1992) 29 NSWLR 260, 321
- Ex parte D* (1995) 13 ACLC 1348, 232
- Executor Trustee Australia Ltd v Deloitte Haskins and Sells* (1996) 14 ACLC 1789, 401
- Exeter Group Ltd v Australian Securities Commission* (1998) 16 ACLC 1382, 250–1
- Exicom v Futuris Co* (1995) 13 ACLC 1758, 514
- Expo International Pty Ltd v Chant* [1979] 2 NSWLR 820, 415, 416
- FAI Insurances Ltd v Pioneer Concrete Services Ltd (No 2)* (1986) 10 ACLR 801, 494
- FAI Traders Insurance Co Ltd v ANZ McCaughan Securities* (1991) 9 ACLC 84, 506

<i>Fame Decorator Agencies Pty Ltd v Jeffries Industries</i> (1998) 28 ACSR 58, 523–4	<i>Gambotto v WCP Ltd</i> (1992) 8 ACSR 141, 131
<i>Farah Constructions Pty Ltd v Say-Dee Pty Ltd</i> (2007) 203 CLR 89, 329, 352	<i>Gambotto v WCP Ltd</i> (1995) 182 CLR 432, 129, 130–7, 202, 217, 370, 376–7, 578
<i>Federal Commissioner of Taxation v Bank of Western Australia</i> (1995) 133 ALR 599, 91	<i>Gantry Acquisition Corporation v Parker & Parsley Petroleum Australia Pty Ltd</i> (1994) 51 FCR 554, 559–60
<i>Federal Commissioner of Taxation v Commonwealth Aluminium Corporation Ltd</i> (1980) 143 CLR 646, 177	<i>Georges v Seaborn International</i> (2012) 206 FCR 408, 508
<i>Fexuto Pty Ltd v Bosnjak Holdings Pty Ltd</i> (2001) 37 ACSR 672, 382, 383, 384, 387	<i>Gibbins Investments Pty Ltd v Savage</i> (2011) 84 ACSR 1, 123
<i>Fire Nymph Products Ltd v Heating Centre Pty Ltd</i> (1988) 14 NSWLR 460, 412	<i>Gillfillan v Australian Securities and Investments Commission</i> (2012) 92 ACSR 4, 297
<i>Fire Nymph Products Pty Ltd v Heating Centre Pty Ltd (in liq)</i> (1992) 7 ACSR 365, 205	<i>GIO Australia Holdings Ltd v AMP Insurance Investment Holdings Pty Ltd</i> (1998) 29 ACSR 584, 247
<i>Firmin v Gray & Co Pty Ltd</i> [1985] 1 Qd R 160, 227	<i>Glavanics v Brunninghausen</i> (1996) 19 ACSR 204, 113, 349, 350–1
<i>Fitzsimmons v The Queen</i> (1997) 23 ACSR 355, 356	<i>Gold and Resources Development NL v Australian Stock Exchange Ltd</i> (1998) 30 ACSR 105, 495
<i>Flexirent Capital Pty Ltd v EBS Consulting Pty Ltd</i> [2007] VSC 158, 148, 149	<i>Goozee v Graphic World Group Holdings Pty Ltd</i> (2002) 42 ACSR 534, 388
<i>Flinders Diamonds Ltd v Tiger International Resources</i> (2003) 21 ACLC, 546	<i>Gondwana Resources Ltd 02</i> [2014] ATP 15, 577
<i>Florgale Uniforms Pty Ltd v Orders</i> (2004) 11 VR 54, 416	<i>Gould v Brown</i> (1998) 193 CLR 346, 35
<i>Forge v Australian Securities and Investments Commission</i> (2004) 52 ACSR 1, 281, 358	<i>Grand Enterprises Pty Ltd v Aurium Resources Ltd</i> (2009) 256 ALR 1, 359–61
<i>Forrest v Australian Securities and Investments Commission</i> (2012) 247 CLR 486, 303, 489–90, 522	<i>Grant v John Grant & Sons Pty Ltd</i> (1950) 82 CLR 1, 124, 374
<i>Fortescue Metals Group Ltd v Australian Securities and Investments Commission</i> (2012) 247 CLR 486, 304	<i>Grant-Taylor v Babcock & Brown (in liq)</i> (2016) 245 FCR 402, 489
<i>Fowler v Lindholm; Opes Prime Stockbroking Ltd</i> (2009) 178 FCR 563, 421, 422	<i>Grant-Taylor v Babcock & Brown Ltd (in liq)</i> (2015) 104 ACSR 195, 517
<i>Fraser v NRMA Holdings Ltd</i> (1994) 52 FCR 1, 249–50	<i>Grants Patch Mining Ltd v Barrack Mines Ltd</i> (1988) 6 ACLC 101, 402, 403
<i>Fraser v NRMA Holdings Ltd</i> (1995) 55 FCR 452, 250	<i>Gray v Bridgestone Australia Ltd; Ewing v Fiandri Pty Ltd</i> (1986) 10 ACLR 677, 447
<i>Fraser Edmiston Pty Ltd v AGT (Qld) Pty Ltd</i> [1988] 2 Qd R 1, 345	<i>Gray Eisdell Timms Pty Ltd v Combined Auctions Pty Ltd</i> (1995) 17 ACSR 303, 134
<i>Friend v Booker</i> (2009) 239 CLR 129, 276, 316	<i>Green v Crusader Oil NL</i> (1985) 10 ACLR 120, 38
<i>Furs Ltd v Tomkies</i> (1936) 54 CLR 583, 278, 281, 282, 346, 355	<i>Green and Clara Pty Ltd v Bestobell Industries Pty Ltd</i> [1982] WAR, 346
	<i>Grimaldi v Chameleon Mining NL (No 2)</i> (2012) 200 FCR 296, 266, 267, 330, 508–9

<i>Hall v Ledge Finance Ltd</i> [2005] NSWSC 645, 453	<i>Hurley v BGH Nominees Pty Ltd (No 2)</i> (1984) 37 SASR 499, 348, 355
<i>Hall v Poolman</i> (2007) 65 ACSR 123, 284, 312	<i>Hymix Concrete Pty Ltd v Garritty</i> (1977) 12 ALR 321, 410
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<i>Harlowe's Nominees Pty Ltd v Woodside (Lakes Entrance) Oil Co NL</i> (1968) 121 CLR 483, 236, 302, 316, 325–6	<i>ICAL Ltd v McCaughan Dyson & Co Ltd (No 2)</i> (1987) 11 NSWLR 508, 569
<i>Harris v Digital Pulse Pty Ltd</i> (2003) 56 NSWLR 298, 277, 343, 346, 359	<i>ICM Investments Pty Ltd v San Miguel Corporation</i> (2014) 48 VR 503, 209
<i>Hawkins v Bank of China</i> (1992) 26 NSWLR 562, 310	<i>Independent Steels Pty Ltd v Ryan</i> (1989) 15 ACLR 518, 229
<i>Hellenic Pty Ltd (as trustee of the Mastrantonis Family Trust) v Retail Adventures Pty Ltd (admins appt)</i> [2013] NSWSC 1973, 434–5	<i>Industrial Equity Ltd v Blackburn</i> (1977) 137 CLR 567, 213
<i>Hewson v Sydney Stock Exchange</i> (1968) 2 NSWLR 224, 508	<i>Inspector James v Ryan</i> [2009] NSWIRComm 215, 125
<i>Heydon v NRMA Ltd</i> (2000) 51 NSWLR 1, 136, 376	<i>Inspector James v Ryan (No 3)</i> [2010] NSWIRComm 127, 124
<i>Hill v Rose</i> [1990] VR 129, 277	<i>International Hospitality Concepts Pty Ltd v National Marketing Concepts Inc (No 2)</i> (1994) 13 ACSR 368, 398
<i>Hillam v Ample Source International Ltd (No 2)</i> (2012) 202 FCR 336, 383, 396	<i>J Wright Enterprises Pty Ltd (in liq) v Port Ballidu Pty Ltd</i> [2010] QSC 21, 143
<i>Hillig v Darkinjung Pty Ltd</i> (2006) 205 FCR 450, 461	<i>James Hardie Industries NV v Australian Securities and Investments Commission</i> (2010) 81 ACSR 1, 297, 488–9, 517, 527
<i>HNA Irish Nominee Ltd v Kingborn (No 2)</i> (2012) 88 ACSR 427, 387	<i>Jelin Pty Ltd v Johnson</i> (1987) 5 ACLC 463, 310
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<i>Homestake Gold of Australia v Peninsula Gold Pty Ltd</i> (1996) 20 ACSR 67, 124	<i>Jeogla v Australia and New Zealand Banking Group Ltd</i> (1999) 150 FLR 359, 415
<i>Hospital Products Ltd v United States Surgical Corporation</i> (1984) 156 CLR 41, 276, 278, 316, 345, 346, 507, 509, 510	<i>Joffe v The Queen; Stromer v The Queen</i> (2012) 82 NSWLR 510, 514
<i>Houghton v Immer (No 155) Pty Ltd</i> (1997) 44 NSWLR 46, 129	<i>John Alexander's Clubs Pty Ltd v White City Tennis Club Ltd</i> (2010) 241 CLR 1, 345, 346
<i>Howard v Mechtler</i> (1999) 30 ACSR 434, 180	<i>John J Starr (Real Estate) Pty Ltd v Robert R Andrew (Australasia) Pty Ltd</i> (1991) 9 ACLC 1372, 388, 389
<i>Howard Smith Ltd v Ampol Petroleum Ltd</i> [1974] AC 821, 176, 236, 302, 326, 327, 328, 329, 378, 567, 574, 575	<i>Jones v Canavan</i> [1972] 2 NSWLR 236, 508
<i>Huang v Wang</i> (2016) 114 ACSR 586, 392, 393	<i>Junker v Hepburn</i> [2010] NSWSC 88, 146, 150
<i>Huddart, Parker & Co Ltd v Moorehead</i> (1909) 8 CLR 330, 20, 22, 25–6	
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- Kinsela v Russell Kinsela Pty Ltd (in liq)* (1986) 4 NSWLR 722, 278, 282, 320, 323–4, 572
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- Lehman Brothers Holdings Inc v City of Swan* (2010) 240 CLR 509, 422
- Levin v Clark* (1962) NSWLR 686, 173
- Lewis v Doran* (2005) 219 ALR 555, 409
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- Lion Nathan Australia Pty Ltd v Coopers Brewery Ltd* (2006) 156 FCR 1, 125, 127–8
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- Maguire v Makaronis* (1997) 188 CLR 449, 352
- Mansfield v the Queen; Kizon v The Queen* (2012) 247 CLR 86, 515
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- Martin v Australian Squash Club Pty Ltd* (1996) 14 ACLC 452, 388
- Massey v Wales* (2003) 57 NSWLR 718, 168
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- Mills v Mills* (1938) 60 CLR 150, 317, 319–20, 327, 328, 329, 357, 574
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- North v Marra Developments Ltd* (1981) 148 CLR 42, 521, 522–3, 524, 526
- North Sydney Brick and Tile Co Ltd v Darvall* (1986) 5 NSWLR 681, 39, 547
- Northside Developments Pty Ltd v Registrar-General* (1990) 170 CLR 146, 47, 84, 142, 143, 145–6, 149, 151, 152, 156–7, 168
- NRMA Ltd v Scandrett* (2002) 43 ACSR 401, 165
- NRMA Ltd v Snodgrass* (2001) 52 NSWLR 383, 176
- NRMA v Parker* (1986) 6 NSWLR 517, 176, 177
- Oates v Consolidated Capital Services Ltd* (2009) 76 NSWLR 69, 91, 391
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- R v Evans* [1999] VSC 488, **517**
- R v Farris* (2015) 107 ACSR 26, **519**
- R v Firms* (2001) 51 NSWLR 548, **512**, **516–17**
- R v Fodera* (2007) 65 ACSR 109, **280**
- R v Glynatsis* (2013) 230 A Crim R 99, **519**
- R v Hanznes* (2000) 36 ACSR 72, **518**
- R v Hughes* (2000) 202 CLR 535, **27–8**
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- R v Williams* (2005) 23 ACLC 601, **254**
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- Re Allgas Energy Ltd* [1998] 1 Qd R 472, **219**
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- Re Augold NL* [1987] 2 Qd R 297, **403**
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- Re Bright Pine Mills Pty Ltd* [1969] VR 1002, **384**, **387**
- Re Capel Finance Ltd* (2005) 52 ACSR 601, **198**
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- Re CIC Australia Ltd (No 2)* [2015] NSWSC 1314, **224**
- Re Claremont Petroleum NL (No 2)* [1990] 2 Qd R 310, **403**
- Re Consolidated Minerals Ltd O3* (2007) 25 ACLC 1739, **567**
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- Re CSR Ltd* (2010) 264 ALR 461, **423**
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- Re Email Ltd* (2000) 18 ACLC 708, **552**

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<i>Re Employ (No 96) Pty Ltd</i> (2013) 93 ACSR 48, 450	<i>Re McLellan; Stake Man Pty Ltd v Carrol</i> (2009) 76 ACSR 67, 284–5, 311–12
<i>Re Enterprise Gold Mines NL</i> (1991) 9 ACLC 168, 110	<i>Re Molopo Energy Ltd</i> (2014) 104 ACSR 46, 219
<i>Re Essendon Apartment Developments Pty Ltd (in liq) (No 2)</i> [2013] VSC 210, 453	<i>Re Norvabron Pty Ltd (No 2)</i> (1986) 11 ACLR 279, 382, 383
<i>Re Felden and Australian Securities and Investments Commission</i> (2003) 73 ALD 149, 502	<i>Re Opes Prime Stockbroking Ltd</i> (2009) 179 FCR 20, 424
<i>Re G Jeffrey (Mens Store) Pty Ltd</i> (1984) 9 ACLR 193, 384–5, 387	<i>Re Overton Holdings Ltd</i> [1985] WAR 224, 389
<i>Re G8 Communications Ltd</i> (2016) 112 ACSR 22, 238	<i>Re Pinnacle VRB Ltd (No 8)</i> (2001) 39 ACSR 55, 575–6
<i>Re George Raymond Pty Ltd</i> (2001) 19 ACLC 553, 222	<i>Re Polyresins Pty Ltd</i> [1999] 1 Qd R 599, 383
<i>Re George Raymond Pty Ltd; Salter v Gilbertson</i> (2000) 18 ACLC 85, 386	<i>Re Powertel Ltd</i> [2003] ATP 27, 549
<i>Re Goodman Fielder</i> (2003) 44 ACSR 254, 553–4	<i>Re Property Force Consultants Pty Ltd</i> [1997] 1 Qd R 300, 307
<i>Re Goodyear Australia Ltd; Kelly-Springfield v Green</i> (2002) 20 ACLC 983, 580	<i>Re Rancoo Ltd</i> (1995) 17 ACSR 206, 216
<i>Re Great Outdoors Co Ltd</i> (1985) 3 ACLC 465, 382	<i>Re Realstate.com.au Ltd</i> (2001) 37 ACSR 218, 551
<i>Re Harman Energy Research Group Australia Ltd</i> (1985) 9 ACLR 897, 493, 494	<i>Re Salfa Pty Ltd (in liq)</i> [2014] NSWSC 1493, 311
<i>Re Harrison's Pharmacy Ltd (admins apptd) (recs and mgrs apptd)</i> [2013] FCA 458, 428–9	<i>Re Skywest Ltd</i> (2004) 50 ACSR 72, 550
<i>Re HIH Insurance Ltd</i> [2016] NSWSC 482, 530	<i>Re South Australian Barytes Ltd (No 2)</i> (1977) 19 SASR 91, 418
<i>Re HIH Insurance Ltd and HIH Casualty and General Insurance Ltd; Australian Securities and Investments Commission v Adler</i> (2002) 41 ACSR 72, 279, 292, 303, 307, 358, 365–6	<i>Re Spargos Mining NL</i> (1990) 3 WAR 166, 110–11, 380, 383, 386, 388, 390
<i>Re Independent Quarries Pty Ltd</i> (1994) 12 ACSR 188, 380	<i>Re SSH Medical Ltd</i> [2003] ATP 32, 551–2
<i>Re Jungstedt and Australian Securities and Investments Commission</i> (2003) 73 ALD 105, 502	<i>Re Stockbridge Ltd</i> (1993) 9 ACSR 637, 424
<i>Re Kerisbeck Pty Ltd</i> (1992) 10 ACLC 619, 408, 410	<i>Re Style Ltd; Merim Pty Ltd v Style Ltd</i> (2009) 255 ALR 63, 402
<i>Re Kornblums Furnishings Ltd</i> [1982] VR 123, 544	<i>Re Sydney Formworks Pty Ltd (in liq)</i> [1965] NSW 646, 445
<i>Re Lehman Brothers Australia Ltd (in liq) (No 2)</i> (2013) 95 ACSR 685, 420	<i>Re Taipan Resources NL</i> [2001] ATP 5, 559
<i>Re Madi Pty Ltd</i> (1987) 5 ACLC 847, 153	<i>Re The President's Club Ltd</i> [2012] ATP 10, 544
	<i>Re Tivoli Freeholds Ltd</i> [1972] VR 445, 384, 398
	<i>Re Tummon Investments Pty Ltd (in liq)</i> (1993) 11 ACSR 637, 145
	<i>Re Venturex Resources Ltd</i> (2009) 27 ACLC 883, 583
	<i>Re Village Roadshow Ltd O3</i> (2005) 23 ACLC 10, 222, 224
	<i>Re Wakim; Ex parte McNally</i> (1999) 198 CLR 511, 27, 28, 35
	<i>Rees v Bank of New South Wales</i> (1964) 111 CLR 210, 451
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- Roberts v Walter Developments Pty Ltd* (1997) 15 ACLC 882, 387, 396
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- Salter v Gilbertson* (2003) 6 VR 466, 222
- Sandell v Porter* (1966) 115 CLR 666, 410
- Sanford v Sanford Courier Service Pty Ltd* (1986) 10 ACLR 549, 382, 387
- SEA Food International Pty Ltd v Lam* (1998) 16 ACLC 552, 354
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- Sbafron v Australian Securities and Investments Commission* (2012) 247 CLR 465, 270–1, 297, 299
- Shamsallah Holdings Pty Ltd v CBD Refrigeration & Airconditioning Services Pty Ltd* (2001) 19 ACLC 517, 386, 387, 388
- Shears v Phosphate Co-operative Co of Australia Ltd* (1989) 7 ACLC 812, 134, 388
- Shedlezki v Bronte* (1970) 72 SR(NSW) 378, 73
- Simon v HPM Industries Pty Ltd* (1989) 7 ACLC 770, 125
- Skinner v Jeogla* (2001) 37 ACSR 106, 415
- Smith Martis Cork & Rajan Pty Ltd v Benjamin Corporation Pty Ltd* (2004) 207 ALR 136, 389
- Smolarek v Liuszyc* (2006) 32 WAR 101, 122
- Solomon Pacific NL v Acacia Resources Ltd* (1996) 14 ACLC 505, 555
- Somerville v Australian Securities Commission* (1995) 60 FCR 319, 404, 405
- Sons of Gwalia v Margaretic* (2007) 231 CLR 160, 460–1
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- Soyfer v Earlmaze* [2000] NSWSC 1068, 152
- Spain v Union Steamship Co of New Zealand* (1923) 32 CLR 138, 441
- Spencer Constructions Pty Ltd v G & M Aldridge Pty Ltd* (1997) 76 FCR 452, 441
- Spies v The Queen* (2000) 201 CLR 603, 322
- Standard Chartered Bank of Australia Ltd v Antico* (1995) 38 NSWLR 290, 97, 268, 311
- State Bank of Victoria v Perry* (1990) 2 ACSR 15, 81
- Statewide Tobacco Services Ltd v Morley* (1990) 2 ACSR 405, 289, 306
- Stein v Saywell* (1969) 121 CLR 529, 412, 418
- Stone v ACN 000 337 940 Pty Ltd* (2008) 68 ACSR 242, 465
- Story v Advance Bank Australia Ltd* (1993) 11 ACLC 629, 153
- Story v National Companies and Securities Commission* (1988) 13 NSWLR 661, 501–2
- Strickland v Rocla Concrete Pipes Ltd* (1971) 124 CLR 468, 22, 26
- Sub Rosa Holdings Pty Ltd v Salsa Sudada Production Pty Ltd* [2006] NSWSC 916, 394
- Sunburst Properties Pty Ltd (in liq) v Agwater Pty Ltd* [2005] SASC 335, 157
- Super Art Australia Pty Ltd v Foden* [2014] FCA 1168, 452, 454, 455–7
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- Swansson v RA Pratt Properties Pty Ltd* (2002) 42 ACSR 313, 392, 393
- Sydlow Pty Ltd (in liq) v TG Kotselas Pty Ltd* (1996) 65 FCR 234, 446
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- Tallglen Pty Ltd v Optus Communications Pty Ltd* (1998) 16 ACLC 1526, 228, 229

- Tavistock Holdings Pty Ltd v Saulsman* (1990) 3 ACSR 502, **277, 278**
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- Theseus Exploration NL v Foyster* (1972) 126 CLR 507, **102**
- Thomas v Mackay Investments Pty Ltd* (1996) 22 ACSR 294, **397–8**
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- Tourprint International Pty Ltd v Bott* (1999) 32 ACSR 201, **313**
- Tracy v Mandalay Pty Ltd* (1953) 88 CLR 215, **346**
- Tully Sugar Ltd O1R* [2009] ATP 26, **561**
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- U & D Coal Ltd v Australian Kunqian International Energy Co Pty Ltd* (2014) 32 ACLC 14-047, **214**
- Varangian Pty Ltd v OFM Capital Ltd* [2003] VSC 444, **107**
- Vasudevan (as Joint and Several Liquidator of Wulguru Retails Investments Pty Ltd) (in liq) v Becon Constructions (Australia) Pty Ltd* (2014) 41 VR 445, **454**
- Vero Insurance Ltd v Kassem* (2010) 79 ACSR 330, **144**
- Vimblue Pty Ltd v Toweel (t/as Carpenters Core Building)* [2009] NSWSC 494, **441**
- Vines v Australian Securities and Investments Commission* (2007) 73 NSWLR 451, **283, 296**
- Virgtel Ltd v Zabusky* [2006] 2 Qd R 81, **391**
- VR Dye & Co v Peninsula Hotels Pty Ltd (in liq)* [1999] 3 VR 201, **450**
- Walden Properties Ltd v Beaver Properties Pty Ltd* [1973] 2 NSWLR 815, **346**
- Waldron v Green* (1978) 3 ACLR 289, **515**
- Walker v Wimborne* (1976) 137 CLR 1; [1976] HCA 7, **80, 107, 109, 110, 282, 320, 321, 322, 324**
- Wallington v Kokotovich Constructions Pty Ltd* (1993) 11 ACLC 1207, **396**
- Wambo Coal Pty Ltd v Sumiseki Materials Co Ltd* (2014) 88 NSWLR 689, **210**
- Wambo Mining Corporation Pty Ltd v Wall Street (Holding) Pty Ltd* (1998) 16 ACLC 1601, **228**
- Warman International Ltd v Dwyer* (1995) 182 CLR 544, **278**
- Watson v James* [1999] NSWSC 600, **381**
- Wattyl Ltd* [2006] ATP 11, **577**
- Wayde v New South Wales Rugby League Ltd* (1985) 180 CLR 459, **383, 385, 386**
- WCP v Gambotto* (1993) 30 NSWLR 385, **131**
- Welcome Homes Real Estate Pty Ltd v Ziade Investments Pty Ltd (in liq)* [2007] NSWCA 167, **452**
- Westpac Banking Corporation v Bell Group Ltd (in liq) (No 3)* (2012) 44 WAR 1, **304, 318, 324 329**
- White v Shortall* (2006) 68 NSWLR 650, **201**
- Whitehouse v Carlton Hotel Pty Ltd* (1987) 162 CLR 285, **326, 327–8, 329, 378, 574, 575**
- Whitlam v National Roads and Motorists' Association Ltd* (2006) 58 ACSR 370, **285**
- Williams v Scholtz* [2008] QCA 94, **409**
- Wilson v Meudon Pty Ltd* [2006] ANZ ConvR 93, **124, 197**
- Windsor v National Mutual Life Association of Australia Ltd* (1992) 34 FCR 580, **103**
- Wingecarribee Shire Council v Lehman Brothers Ltd* (2012) 301 ALR 1, **330, 507, 509–10, 511**
- Winpar Holdings Ltd v Austrim Nylex Ltd* [2005] VSCA 211, **580**
- Winpar Holdings Ltd v Goldfields Kalgoorlie Ltd* (2001) 40 ACSR 221, **215, 217–18, 219, 376 578**
- Winthrop Investments Ltd v Winns Ltd* [1975] 2 NSWLR 666, **135, 281, 283, 352, 375**
- Wood v Links Gold Tasmania Pty Ltd* [2010] FCA 570, **394**
- Woolworths Ltd v Kelly* (1991) 22 NSWLR 189, **278, 362**

Woolworths Ltd v Olson (2004) 184 FLR 121, **346**
Wrights Hardware Pty Ltd v Evans (1988) 13 ACLR 631, **417**
Yorke v Lucas (1985) 158 CLR 661, **233**
Young Investments Group Pty Ltd v Mann (2012) 91 ACSR 89, **500**
Zephyr Holdings Pty Ltd v Jack Chia (Australia) Ltd (1989) 7 ACLC 239, **388–9**
Ziade Investments Pty Ltd v Welcome Homes Real Estate Pty Ltd (2006) 57 ACSR 693, **454**

Canada

Farnham v Fingold [1971] 3 OR 688, **348**
Galbraith v Merito Shipping Co [1947] SC 446, **398**
Peoples Department Stores Inc (Trustee of) v Wise [2004] 3 SCR 461, **357**
Teck Corporation Ltd v Millar (1972) 33 DLR (3d) 288, **322**

New Zealand

Coleman v Myers [1977] 2 NZLR 225, **348**
New Zealand Stock Exchange v Listed Companies Association Inc [1984] 1 NZLR 699, **495**
Nicholson v Permakraft (NZ) Ltd (in liq) [1985] 1 NZLR 242, **46, 324**
Re Wellington Publishing Co Ltd [1973] 1 NZLR 133, **228**
Thexton v Thexton [2001] 1 NZLR 237, **349**
Thomas v HW Thomas Ltd [1984] 1 NZLR 686, **383, 385, 387**
Timberworld Ltd v Levin [2015] 3 NZLR 365, **451**

United Kingdom

Aberdeen Railway Co v Blaikie Brothers (1854) 1 Macq 461, **272, 340, 343, 347, 351, 356**
Adams v Cape Industries plc (1990) 2 WLR 657, **81**

Aleyn v Belchier (1758) 1 Eden 132, **316**
Allen v Gold Reefs of West Africa Ltd [1900] 1 Ch 656, **129, 317, 370**
Allen v Hyatt (1914) 30 TLR 444, **348**
Asbbury Railway Carriage & Iron Co v Riche [1874–80] All ER Rep Ext 2219, **47, 49**
Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223, **495**
Automatic Self-Cleansing Filter Syndicate Co Ltd v Cuninghame [1906] 2 Ch 34, **48, 162, 175, 177**
Bamford v Bamford [1970] Ch 212, **282, 375, 378**
Barnes v Addy (1874) LR 9 Ch App 244, **278, 293, 329, 330, 344**
Barron v Potter [1914] 1 Ch 895, **168**
Belmont Finance Corporation v Williams Furniture Ltd (No 2) [1980] 1 All ER 393, **230**
Bishop of Winchester v Knight (1717) 1 PWms 406, **342**
Blewett v Millett (1774) 7 Bro PC 367, **342**
Boardman v Phipps [1967] 2 AC 46, **344, 351, 352**
Bond v Barrow Haematite Steel Co [1902] 1 Ch 353, **210**
Boulting v Association of Cinematograph, Television and Allied Technicians [1963] 2 QB 606, **336**
Bradbury v English Sewing Cotton Co [1923] AC 744, **201**
Bristol and West Building Society v Mothew [1998] Ch 1, **282**
Broderip v Salomon [1895] 2 Ch 323, **69**
Burland v Earle [1902] AC 83, **371, 372**
Charterbridge Corporation Ltd v Lloyds Bank Ltd [1970] Ch 62, **111–12, 321**
Charterhouse Investment Trust Ltd v Tempest Diesels Ltd (1985) 1 BCC 99544, **227, 228, 231**
Citico Banking Corporation v Pusser's Ltd [2007] 2 BCLC 483, **135**
Colonial Bank v Whinney (1886) 11 App Cas 426, **201**
Commissioners of Inland Revenue v Sansom (1921) 2 KB 492, **74**

<i>Cook v Deeks</i> [1916] 1 AC 554, 282, 375	<i>Hedley Byrne v Heller & Partners Ltd</i> [1964] AC 465, 275, 293
<i>Coomber v Coomber</i> [1911] 1 Ch 723, 344	<i>Hely-Hutchinson v Brayhead Ltd</i> [1968] 1 QB 549, 144
<i>Cumbrian Newspapers Group Ltd v Cumberland and Westmorland Herald Newspaper and Printing Co Ltd</i> [1987] Ch 1, 137–8, 197	<i>Hickman v Kent or Romney Marsh Sheepbreeders' Association</i> [1915] 1 Ch 881, 122, 123
<i>Dale v Inland Revenue Commissioners</i> [1954] AC 11, 340, 344, 351	<i>HL Bolton (Engineering) Co Ltd v TJ Graham & Sons Ltd</i> [1957] 1 QB 159, 53, 82
<i>Daniels v Daniels</i> [1978] Ch 406, 375	<i>Hogg v Crampborn Ltd</i> [1967] Ch 254, 236, 316, 326, 375, 378
<i>Deyes v Wood</i> [1911] 1 KB 806, 416	<i>Houldsworth v City of Glasgow Bank</i> (1880) 5 App Cas 317, 126
<i>DHN Food Distributors v London Borough of Tower Hamlets</i> [1976] 1 WLR 852, 80–1	<i>Hutton v West Cork Railway Co</i> (1883) 23 Ch D 654, 318, 322, 334
<i>Dimbula Valley (Ceylon) Tea Co Ltd v Laurie</i> [1961] 1 Ch 353, 199	<i>Industrial Development Consultants Ltd v Cooley</i> [1972] 1 WLR 443, 352, 353
<i>Dovey v Cory</i> [1901] AC 477, 273	<i>John Shaw & Sons (Salford) v Shaw</i> (1935) 2 KB 113, 175
<i>Downsview Nominees Ltd v First City Corporation Ltd</i> [1993] AC 295, 415, 416	<i>Keech v Sandford</i> (1726) 25 ER 223, 342, 344
<i>Ebrahimi v Westbourne Galleries Ltd</i> [1973] AC 360, 114, 349, 350, 397	<i>Kregor v Hollins</i> (1913) 109 LT 225, 336
<i>Edwards v Halliwell</i> [1950] 2 All ER 1064, 372, 374	<i>Lee v Lee's Air Farming Ltd</i> [1961] AC 12, 73
<i>Eley v Positive Government Security Life Assurance Co Ltd</i> (1875) 1 Ex D 20, 122, 123–4, 138	<i>Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd</i> [1915] AC 705, 53, 84
<i>Ex parte Lacey</i> (1802) Ves Jun 625, 342	<i>London and Mashonaland Exploration Company Ltd v New Mashonaland Exploration Co Ltd</i> [1891] WN 165, 356
<i>Foss v Harbottle</i> (1843) 67 ER 189, 273, 277, 348, 371–7, 379, 391, 405	<i>Macaura v Northern Assurance Co Ltd</i> [1925] AC 619, 201
<i>Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd</i> [1964] 2 QB 480, 146–8, 149, 347	<i>MacDougall v Gardiner</i> (1875) 1 Ch D 13, 372, 377
<i>Gilford Motor Co Ltd v Horne</i> [1933] Ch 935, 74–5	<i>Meridian Global Funds Asia Ltd v Securities Commission</i> [1995] 2 AC 500, 85
<i>Gluckstein v Barnes</i> [1900] AC 240, 344	<i>Morris v Kanssen</i> (1946) AC 459, 151
<i>Gramophone & Typewriter Ltd v Stanley</i> [1908] 2 KB 89, 94	<i>Mozley v Alston</i> (1847) 1 Ph 790, 371
<i>Greenbalgh v Arderne Cinemas Ltd</i> [1946] 1 All ER 512, 134, 138, 213	<i>New Brunswick and Canada Railway and Land Co v Muggeridge</i> (1860) 62 ER 418, 246
<i>Greenbalgh v Arderne Cinemas Ltd</i> [1951] Ch 286, 276, 320, 328, 572	<i>Newborne v Sensolid (Great Britain) Ltd</i> [1954] 1 QB 45, 158
<i>Harris v North Devon Railway Co</i> (1855) 20 Beav 284, 336	<i>Newhart Developments Ltd v Co-operative Commercial Bank Ltd</i> [1978] QB 814, 419
<i>Heald v O'Connor</i> [1971] 1 WLR 497, 227–8	

- Nocton v Lord Ashburton* [1914] AC 932, **344**
North-West Transportation v Beatty (1887) 12 App Cas 589, **370**
Ooregum Gold Mining Co of India Ltd v Roper [1892] AC 125, **208**
Panorama Developments (Guildford) Ltd v Fidelis Furnishing Fabrics Ltd [1971] 2 QB 711, **145, 170**
Parke v Daily News Ltd [1962] Ch 927, **322**
Pender v Lushington (1877) 6 Ch D 70, **377**
Percival v Wright [1902] 2 Ch 421, **347–9**
Pharmaceutical Society v London and Provincial Supply Association Ltd (1880) 5 App Cas 857, **83–4**
Platt v Platt [1999] 2 BCLC 745, **349**
Prest v Petrodel Resources Ltd [2013] UKSC 34, **75–7, 89**
Punt v Symons & Co (1903) 2 Ch 506, **326**
R (on the application of People & Planet) v HM Treasury [2009] EWHC 3020, **335**
R v Board of Trade; Ex parte St Martins Preserving Co Ltd [1965] 1 QB 603, **416**
R v Panel on Takeovers and Mergers; Ex parte Datafin [1987] QB 815, **495–6**
Re Alabama, New Orleans, Texas and Pacific Junction Railway Co [1891] Ch 213, **422**
Re Cardiff Saving Bank [1892] 2 Ch 100, **288–9**
Re Chez Nico (Restaurants) Ltd [1992] BCLC 192, **349**
Re City Equitable Fire Insurance Co Ltd [1925] Ch 407, **273, 285, 289, 291, 307**
Re Compania de Electricidad de la Provincia de Buenos Aires [1980] Ch 146, **196**
Re Darby [1911] 1 KB 95, **77**
Re HR Harmer Ltd [1959] 1 WLR 62, **382**
Re Hydrodam (Corby) Ltd [1994] 2 BCLC 1, **266**
Re Isle of Thanet Electricity Supply Co Ltd [1950] Ch 161, **199**
Re James (1803) 8 Ves Jun 337, **342**
Re Jermyn Street Turkish Baths Ltd [1971] 1 WLR 1042, **384**
Re Jupiter House Investments (Cambridge) Ltd [1985] 1 WLR 975, **214**
Re Mack Trucks (Britain) Ltd [1967] 1 WLR 125, **419**
Re Manchester & Milford Railway Co; Ex parte Cambrian Railway Co (1880) 14 Ch D 645, **413**
Re New York Taxicab Co [1913] 1 Ch 1, **418**
Re Sea, Fire & Life Insurance Co (1854) 3 De GM & G 459, **11**
Re Smith & Fawcett Ltd [1942] Ch 304, **316, 317–18, 325, 332**
Re VGM Holdings Ltd [1942] Ch 235, **227**
Regal (Hastings) Ltd v Gulliver [1967] 2 AC 134, **273, 278, 281, 282, 353, 354**
Regentcrest plc (in liq) v Cohen [2001] 2 BCLC 80, **318**
Reid v Explosives Co Ltd (1887) 19 QBD 468, **419**
Royal British Bank v Turquand (1856) 119 ER 886, **151, 152**
Russell v Wakefield Waterworks Co (1875) 20 LR Eq 474, **373**
Salomon v Salomon & Co Ltd [1897] AC 22, **15, 46, 68–74, 77, 83, 347**
Scottish Co-operative Wholesale Society Ltd v Meyer [1959] AC 324, **173, 337, 382–3, 384**
Short v Treasury Commissioners [1948] 1 KB 116, **201**
Shuttleworth v Cox Brothers & Co (Maidenhead) Ltd [1927] 2 KB 9, **123**
Sidebottom v Kershaw Leese and Co Ltd (1920) 1 Ch, **133**
Smith v Anderson (1880) 15 Ch D 247, **115**
Smith, Stone & Knight Ltd v Birmingham Corporation [1939] 4 All ER 116, **77–8**
Spokes v Grosvenor Hotel Co [1897] 2 QB 124, **375**
Steen v Law [1964] AC 28, **232**
Tesco Supermarkets Ltd v Natrass [1972] AC 153, **84**
Trevor v Whitworth (1887) 12 AC 409, **207–8, 209, 213, 214, 218, 221**
Ultraframe (UK) Ltd v Fielding [2005] EWHC 16, **269**
Vatcher v Paull [1915] AC 372, **129, 325, 374**

Wallersteiner v Moir (No 2) [1975] QB 373, 373
Walley v Walley (1687) 1 Vern 484, 342
Webb v Earle (1875) LR 20 Eq 556, 199
White v Bristol Aeroplane Co Ltd [1953] Ch 65, 138
Woolfson v Strathclyde Regional Council (1978) SLT 159, 81

United States of America

Basic v Levenson (1988) 485 US 224, 529
Carpenter v Danforth, 52 Barb 582 (1868), 347

Chevron USA Inc v Natural Resources Defense Council Inc, 467 US 837 (1984), 39
Federal Deposit Insurance Corporation v Bierman, 2 F 3d 1424 (1993), 306
First National Bank of Boston v Bellotti, 434 US 765 (1978), 46
Hale v Henkel, 201 US 43 (1906), 47
Halliburton Co v Erica P John Fund, Inc (2014) 134 S Ct 2398, 529
Strong v Repide, 213 US 419 (1909), 348
Unocal v Mesa Petroleum Co, 493 A 2d 946 (1985), 566, 567

TABLE OF STATUTES

Australia

Acts Interpretation Act 1901, 38

s 2C, 513

s 15AA, 38

ss 15AA–15AD, 38

s 15AA, 38, 39

s 15AB(2), 38, 39

s 22, 97

s 22(1)(a), 97

Administrative Appeals Tribunal

Act 1975, 29

Administrative Decisions (Judicial Review)

Act 1977, 29, 35, 495, 496, 541

Australian Charities and Not-for-profits

Commission Act 2012, 102

Australian Consumer Law, 262

s 18, 250, 522

Australian Securities Commission Act 1989,

25, 26, 29

Australian Securities and Investments

Commission Act 2001, 28, 29, 33–4, 35, 36, 38, 255, 262, 274

pt 9, 33

pt 10, 33, 537

pt 11, 33

pt 12, 34

pt 14, 34

s 1(2), 32, 473

s 4, 30

s 8, 32

s 11, 32

s 12, 33

s 12DA(1A), 255

s 50, 379, 391, 404–5

s 93AA, 490

s 172, 537

s 174, 537

s 184, 537

s 188, 538

s 192, 538

s 194, 538

s 195(4), 538

s 201A, 540

ss 201A(3)–201A(4), 540

s 225, 34

Australian Securities and Investments

Commission Amendment (Corporations and Markets Advisory Committee Abolition) Bill 2014, 33

Australian Securities and Investments

Commission Regulations 2001, 540

reg 13, 538

reg 16(2), 538

reg 23, 538

regs 35–41, 538

Charities Act 2013, 102

Close Corporations Act 1989, 25, 26

Commonwealth Authorities and Companies

Act 1997, 359

Companies Act 1981, 23

s 219(1), 350

Companies (Acquisition of Shares) Act 1980, 23

Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980, 23

Companies and Securities Legislation

(Miscellaneous Amendments) Act 1983

s 89, 273

Companies Code 1981, 23, 150

s 68A, 153, 155

s 229(3), 273

s 229(4), 273

s 241, 285

s 299(2), 290

s 320, 385

s 556, 309

s 574, 400

Company Law Review Act 1998, 166, 464

s 1414, 118

Competition and Consumer Act 2010, 533

s 84, 86

sch 2, 250

Constitution, 26

ch III, 541	ch 6A, 531, 535, 540, 542, 550, 578, 583
s 51, 29, 359	ch 6B, 532, 535, 540, 542, 550, 580, 583
s 51(i), 28	chs 6–6C, 539, 542, 547–8, 550, 562, 582
s 51(xx), 20, 22, 25	ch 6C, 531, 535, 540, 542, 550, 583
s 51(xxix), 28	ch 6CA, 467, 476
s 51(xxxvii), 29	ch 6D, 98, 194, 236, 252, 254, 256, 270,
s 51(xxxix), 29	274, 476, 550
ss 75–77, 27	ch 6D pt 6D.2 div 3, 238
s 122, 29	ch 7, 30, 241, 467, 475–80, 502, 527, 550
<i>Corporate Law Economic Reform Program</i>	ch 7 div 3 sub-div A, 513
<i>Act 1999</i> , 264, 269, 274, 280, 302, 537	ch 7 div 3 sub-div B, 475, 514
s 181(1), 332	ch 7 div 3 sub-div C, 475
s 184(1), 332	ch 7 div 3 sub-div D, 475
<i>Corporate Law Economic Reform Program</i>	ch 7 pt 7.5 div 4, 480
<i>(Audit Reform and Corporate</i>	ch 7.10 div 2, 527
<i>Disclosure) Act 2004</i> , 167, 184, 270	ch 8, 30
<i>Corporate Law Economic Reform Program</i>	pt 1.2, 37
<i>Bill 1998</i> , 308	pt 1.5, 40, 99
s 5, 332	pt 2 J.1 div 2, 127
s 181, 331	pt 2B.6, 92
s 181(1)(a), 332	pt 2B.7, 103
<i>Corporate Law Reform Act 1992</i>	pt 2F.1, 374, 379–90, 396
s 232, 289	pt 2F.1A, 374, 375, 376, 379, 390, 391
<i>Corporate Law Reform Bill 1992</i> , 212,	pt 2F.3, 401, 403
359, 415	pt 2J.1, 217
pt 3.2A, 274	pt 2J.1 div 1, 222, 233
s 231, 274	pt 2J.1 div 2, 222, 233
s 232A, 274	pt 2J.1 div 3, 215
<i>Corporations Act 1989</i> , 25, 26–7	pt 2J.2, 213
s 82, 27	pt 2J.3, 226
s 231, 359	pt 2M.2, 191
s 232, 296	pt 2M.3, 191, 301,
s 232(4), 296	pt 5.1, 422, 436, 464, 532, 548
s 232A, 359	pt 5.2, 413, 436
s 529, 309	pt 5.3A, 422, 431
<i>Corporations Act 2001</i> , 11, 28, 83, 85, 91,	pt 5.5, 462
95, 96, 98, 141, 259, 350, 369, 412, 438,	pt 5.7B div 2, 448
473, 485	pt 5B.2 div 2, 106
ch 2, 277	pt 6A, 561
ch 2C, 404	pt 6A.1, 136
ch 2E, 100, 112, 113, 276, 339, 340, 363,	pt 6A.2, 136
366, 367	pt 6A.4, 561
ch 2J, 220, 400	pt 6D.2, 244
ch 2L, 203	pt 6.10 div 2, 33
ch 2M, 188, 244	pt 7.1, 479
ch 5A, 464, 465	pt 7.2, 474, 479
ch 5B, 106	pt 7.2A, 474, 482
ch 6, 222, 476, 526, 531, 532, 533, 534,	pt 7.3, 474
535–6, 537, 539, 540, 542, 543, 548, 549,	pt 7.4, 474
550, 553, 554, 555, 560, 583	pt 7.5, 474, 480

pt 7.6, 474	ss 18–21, 498
pt 7.6 div 6, 500	s 21(2)(b), 106
pt 7.7, 474, 503	s 21(3), 106
pt 7.7A, 474, 498, 508	s 45A, 260
pt 7.9, 270, 474	s 45A(2), 98
pt 7.10, 468, 475, 512	s 45A(3), 98
pt 7.10 div 2, 511, 512, 521, 527	s 46, 105, 113, 161, 363
pt 7.10 div 3, 511, 512, 513, 514, 517, 519, 520	s 46(b), 106
pt 9.12, 31	ss 46–50AA, 414
pt 9.4A, 501	s 47, 105, 161
pt 9.4B, 36, 219, 225, 233, 280	s 48, 105
pt 9.6A, 35	s 48(2), 105
s 2, 309	s 50, 106, 363, 391
s 3, 29	s 50AA, 113, 214, 363, 546
s 4(1), 30	s 50AA(1), 112
s 4(4), 29	s 51A, 204
s 4(5), 29, 30	s 51A(a), 204
s 4(6), 30	s 51A(b), 204
s 4(9), 30	s 51C, 205, 412
s 5(2), 30	s 53, 381, 546
s 5C(2), 38, 97	s 57, 197
s 5C(3), 38, 97	s 57A, 91
s 7, 37	s 57A(1), 91
s 9, 30, 35, 37, 91, 92, 99, 101, 102, 103, 106, 112, 121, 125, 145, 154, 170, 181, 186, 203, 205, 222, 224, 227, 232, 233, 240, 243, 261, 266, 267, 269, 270, 309, 395, 401, 413, 416, 417, 428, 440, 441, 443, 446, 448, 453, 454, 518, 540, 543, 550, 552, 554	s 57A(3), 91
s 9A, 238, 244	s 68A, 150, 153, 155
s 9A(1)(c), 299	s 79, 219, 225, 233, 279, 358
s 9(b)(i), 270	s 90, 413
s 9(b)(ii), 97, 270, 271	s 92, 195, 204, 476
s 10, 224	s 92(3), 476, 550
s 11, 224	s 92(4), 476
ss 11–17, 545	s 95A, 309, 408, 440, 457
s 12, 545, 546, 547, 562	s 95A(1), 408
s 12(1), 103	s 95A(2), 79, 309, 408
s 12(2), 545	s 109X, 188
s 12(2)(a), 545	s 111AD, 488
s 12(2)(b), 546	s 111AE, 488
s 12(2)(c), 546	s 112, 101, 122
s 12DA, 527	s 112(1), 97
s 12GF, 527	s 112(2), 102, 103, 119
s 15, 224	s 112(3), 103
s 15AA, 38	s 113, 97, 100, 238
s 15AB, 38	s 113(1), 238
s 15AB(2), 38	s 113(2)(b), 97
s 16(1), 546	s 113(3), 98
	ss 113–114, 265
	s 114, 54, 97, 99, 350
	s 115, 11, 115
	s 117, 169, 261
	s 117(2), 92
	s 118, 93

s 119, 68, 93, 261	s 136(1), 92, 119, 164
s 119A(1), 30	s 136(2), 121, 125, 128, 164, 370
s 119A(2), 30	s 136(3), 128
s 119A(3), 31	s 136(4), 164
s 119A(4), 31	s 136(5), 128, 164
s 120, 92	s 138, 265
s 121, 187	s 140, 122, 123, 124, 263, 372, 377, 568
s 123, 142	s 140(1), 121, 122
s 124, 116, 118, 141, 147, 160, 204, 261, 373, 398	s 140(2), 124
s 124(1), 101, 265	s 141, 100, 119
s 124(1)(a), 236	s 148(2), 98, 101, 102
s 124(1)(c), 196	s 148(3), 102
s 124(1)(e), 196	s 148(4), 103
s 125, 373, 398	s 149, 98
s 125(2), 119	s 150, 102, 122
s 126, 144	s 152, 92
s 126(1), 158	s 157, 164
s 127, 142	s 162, 164
s 127(1), 142, 154	s 162(1), 100, 104
s 127(2), 142, 154, 157	ss 162–167, 103
s 128, 152, 156, 159	s 163, 100, 103, 164
s 128(1), 152	s 164, 103, 164
s 128(3), 153, 155	s 165, 98, 100
s 128(4), 153, 154, 155–7, 159, 362	s 166(1), 100, 103
ss 128–129, 142, 151, 362	s 169, 186
s 129, 150, 152, 153, 155, 156, 159	s 169(7), 186
s 129(1), 153, 156	s 170, 186, 196
s 129(2), 153–4, 156	s 171, 186
s 129(3), 154	s 172, 186, 334, 335
s 129(4), 154	s 173, 404
s 129(5), 153, 154–5	s 173(1), 186
s 129(6), 154–5, 156	s 173(2), 167
s 129(7), 155	s 173(3), 186
s 129(8), 153	s 173(3A), 187
s 130(1),	s 175, 374
s 131, 159	s 176, 186
s 131(1), 158	s 177(1), 187
ss 131(1)–(3), 159	s 177(1A), 187
s 131(2), 158	s 180, 275, 287, 289, 294
s 131(3)(c), 158	s 180(1), 275, 281, 287, 292, 293–8, 300–2, 304, 305, 306, 314, 358, 415
s 131(4), 158	s 180(1)(b), 295
ss 131–133, 158, 159	s 180(2), 275, 287, 294, 302–5, 314, 393, 573
s 132, 159	s 180(3), 303, 304
s 132(1), 159	ss 180–181, 358
s 134, 99, 119	ss 180–183, 36, 278
s 135, 121, 260	ss 180–184, 300, 401, 446
s 135(2), 119, 265	s 181, 276, 315, 316, 332–3, 561, 575
s 135(3), 124	s 181(1), 276, 332, 334, 337, 356, 358
s 136, 137, 168, 389	

s 181(1)(a), 332	s 198E(1), 121
s 181(2), 279	s 199A, 285
s 182(1), 281, 357, 358	s 199A(1), 285
s 182(2), 279, 358	s 199A(2), 285
ss 182–183, 276, 285, 315, 338, 339, 357, 358, 366, 367	s 199A(3), 285
s 183, 520	ss 199A–199AC, 417
s 183(1), 357, 358	s 199B, 285
s 183(2), 279, 358	s 200B, 161
s 184, 276, 280, 357	s 201A, 92, 169, 265
s 184(1), 280, 332	s 201A(1), 97, 350
s 184(2), 281, 358	s 201A(2), 99
s 184(2)(a), 280	s 201B, 267, 269
s 184(2)(b), 280	s 201B(1), 97
s 184(3)(a), 280	s 201BB, 169
s 184(3)(b), 280	s 201E, 100, 165, 184
s 185, 274, 277, 286, 293, 331, 341, 357, 359	s 201F, 121
s 187, 112, 113, 173, 321, 333, 388	s 201F(1), 115
s 189, 307, 308, 573	s 201F(2), 114
s 190(1), 306	s 201F(3), 114
s 190(2), 306–7, 308	s 201G, 120, 164, 168, 169
s 191, 276, 277, 285, 357, 359, 361–2	s 201H, 120, 164, 168, 169
s 191(1), 359, 361	s 201H(1), 164
s 191(1A), 359	s 201H(2), 164
s 191(2), 277, 359, 361	s 201H(3), 164
s 191(2)(b), 361	s 201J, 120, 144, 169
s 191(2)(c), 361	s 201K, 120, 174
s 191(3), 361	s 202A, 120
s 191(4), 359, 362	s 202C, 115, 121
s 191(5), 359	s 203A, 120
ss 191–192, 359, 362	s 203C, 100, 119, 120, 165
ss 191–195, 339, 340, 366, 573	s 203D, 100, 166, 180, 534
ss 191–196, 276	s 203D(2), 165
s 192, 361	s 203D(3), 165
s 192(2)(d), 361	s 203D(4), 165
s 193, 273, 277, 359, 360, 362	s 203E, 165
s 194, 100, 119, 120, 359	s 203F, 120
ss 194–195, 260	s 204A, 92, 169, 265
s 195, 100, 359, 362–3	s 204A(1), 92, 142, 145
s 195(4), 168, 362	s 204A(2), 170
s 198A, 120, 161, 163, 277, 573	s 204F, 120
s 198A(1), 568	s 205B, 154, 266
s 198A(2), 161, 163	s 206B(1), 279
ss 198A–198E, 265	s 206B(3), 279
s 198B, 120	s 206C, 37, 279, 295
s 198C, 120, 169, 306	s 206C(2), 279
s 198D, 144, 306	ss 206C–206EAA, 285
s 198D(3), 306	s 206E, 295
s 198E, 114, 121, 142, 184, 265	s 207, 277, 363, 364
	s 208, 366
	s 208(1), 363, 365

s 209, 277, 363, 365, 366	s 237(2)(e), 394
s 209(2), 365, 366	s 237(3), 393
s 210, 366	s 237(3)(c), 393
ss 210–216, 277, 363, 364	s 237(4), 393
s 212, 285	s 239, 394
s 217, 277, 363	s 240, 394
ss 217–227, 363	s 241, 394
s 218, 364	s 242, 394
s 219, 277, 363, 365	s 245D, 123
s 220, 365	s 246, 196
s 221, 54, 365	s 246B, 137–9
s 224(1), 365	s 246B(1), 139
s 224(6), 365	s 246B(2), 139, 166
s 228, 112, 277, 363	ss 246B–246G, 127, 137, 197, 220, 226
s 228(1)–(3), 363	s 246C, 138–9
s 228(4), 363	s 246C(1), 138
s 228(5), 364	s 246C(2), 139
s 228(6), 364	s 246C(3), 138
s 228(7), 364	s 246C(4), 139
s 229, 363	s 246C(5), 139
s 229(1), 364	s 246C(6), 139
s 229(2), 364	s 246D, 139
s 229(3), 364	s 246D(3), 139
s 230, 363	s 246E, 139
s 231, 97, 380	s 247A, 186, 379, 401, 402, 403, 404
s 232, 111, 127, 231, 285, 380, 381, 383, 385, 387, 388, 396, 439	s 247A(5), 402
s 232(a), 381	s 247B, 401
s 232(b), 382	s 247C, 401
s 232(c), 382	s 247D, 120, 186, 401
s 232(d), 383	s 248A, 120, 178, 183
s 232(e), 383	ss 248A–248G, 183
ss 232–235, 233, 379	s 248B, 115
s 233, 380, 389, 417, 439, 461	s 248C, 120
s 233(1)(a), 396	s 248E, 120, 171
s 233(3), 389	s 248F, 120, 183, 362
s 234, 380	s 248G, 120, 184
s 234(a)(i), 381	s 249A, 178, 218, 261
s 234(a)(ii), 381	s 249B, 115, 121
s 234(b), 381	s 249C, 120, 179, 266
s 234(c), 381	s 249CA, 179
s 234(d), 380	s 249D, 167, 176, 179, 184, 374
s 234(e), 381	s 249D(2), 179
s 236, 167	s 249D(5), 179
s 236(1), 391	s 249E(4), 179
s 236(1)(b), 392	s 249F, 178
s 236(3), 391	s 249G, 179
ss 236–242, 379	s 249H(1), 180
s 237, 167, 394, 395	s 249H(2), 180
s 237(2), 392	s 249H(3), 180
	s 249H(4), 180

s 249HA(1), 180	s 250R(3), 166
s 249J, 180	s 250R(4), 166
s 249J(2), 120	s 250S, 166
s 249J(4), 120	s 250V(1), 167
s 249K, 180	s 250W(2), 167
s 249L, 179	s 251A, 121, 185
s 249L(1), 181	s 251A(1), 185
s 249M, 120	s 251A(1)(e), 184
s 249N, 167, 179	s 251A(2), 185, 266
s 249P, 179	s 251A(3), 185
s 249P(6), 179	s 251A(5), 185
s 249Q, 176	s 251A(6), 185
s 249R, 180	s 251B, 185
s 249S, 178	s 254A(1), 200
s 249T, 120, 180	s 254A(1)(a), 200
s 249T(3), 180	s 254A(1)(c), 196
s 249U, 120, 171	s 254A(2), 137, 198
s 249U(3), 171	s 254A(3), 199
s 249W, 180	s 254B(1), 195, 197
s 249W(2), 120	s 254C, 195
s 249X, 100, 119, 120, 181	s 254D, 100, 119, 120, 236
s 249X(1), 181	s 254G, 199
s 249X(1A), 182	s 254G(2), 199
s 249X(2), 181	s 254G(3), 200
s 249X(3), 181	s 254H, 166, 213
s 249Y(1), 181	s 254J(1), 200
s 250A, 182	s 254K, 200, 215
s 250B, 182	s 254L, 200
s 250BA, 182	s 254M, 196
s 250BB, 181, 182	s 254M(2), 102
s 250BC, 182	ss 254P–254R, 103
s 250C(2), 120	s 254SA, 101
s 250D(1)(d), 181	s 254T, 168, 211, 212
s 250E, 120, 180, 373	s 254T(1)(a), 211
s 250E(1)(a), 180	s 254T(1)(b), 211
s 250E(1)(b), 180	s 254U, 120, 210, 212
s 250E(2), 180	s 254V(1), 210, 212
s 250E(3), 180	s 254V(2), 210, 212
s 250F, 120	s 254W, 210
s 250G, 120, 181	s 254W(1), 211
s 250H, 181	s 254W(2), 100, 119, 120, 210
s 250J, 120, 181, 373	s 254Y, 219, 224
s 250J(1A), 182	s 256A, 215, 219, 222
s 250K, 181, 374	s 256B, 166, 216, 217, 218, 219, 222, 578
s 250L, 181, 374	s 256B(1), 216
s 250M, 120	s 256B(1) Note 1, 215
s 250N, 178	s 256B(2), 216
s 250R, 166	s 256B(3), 216
s 250R(1), 178	s 256C, 166, 218, 578
s 250R(2), 166	s 256C(4), 219

s 256D, 166, 219	s 260C(1)(b), 232
s 256D(2), 216	s 260C(2), 232
s 256D(3), 212	s 260C(3), 232
s 256E, 220, 221	s 260C(4), 233
s 257A, 222, 225, 548	s 260C(5)(a), 233
ss 257A–257J, 225	s 260C(5)(b), 233
s 257B, 222, 224, 225	s 260C(5)(c), 233
s 257B(1), 225	s 260C(5)(d), 233
s 257B(2), 223	s 260D, 233
s 257B(3), 223	s 260E, 219–20, 226, 233
s 257B(4), 223	s 283AA, 204
s 257B(5), 223	s 285, 189
s 257B(6), 225	s 286, 186, 189, 191
s 257C, 225	s 286(1), 188
s 257C(1), 223	s 286(2), 188
s 257C(3), 223	s 288, 188
s 257D, 165, 224	s 290(1), 188
s 257D(2), 224	s 292, 190
s 257D(3), 224	s 292(1), 189
s 257D(4), 224	s 292(2), 189
s 257E, 223	s 293, 99, 186
s 257F, 223, 225	s 293(1), 189
s 257G, 223	s 293(3), 189
s 257H, 224	s 293(3)(c), 191
s 257J, 225	s 294, 99, 191
s 258A, 102, 215	s 294(1), 189
s 258B, 215	s 295, 189
s 258B(1), 215	s 295(2), 112, 189
s 258B(2), 215	s 295A, 189
s 258C, 215	s 298(1)(c), 191
s 258D, 213, 215	s 299, 36, 190
s 258E, 215, 225	s 299(1), 190
s 258F, 216	s 299(1)(f), 61
s 259A, 213, 214, 225	s 299A, 190
s 259A(c), 214	s 300, 190
s 259B, 213	s 300(1), 190
s 259C, 214	s 300(8), 285
s 259E, 214	s 300(11), 190
s 259F, 225	s 300(19), 190
s 260A, 166, 227, 228, 230, 231, 232, 233–4	s 300A, 166, 190, 191
s 260A(1), 231	s 300A(1)(g), 166
s 260A(1)(a), 230, 231	s 301(2), 99
s 260A(2), 233	s 307(3), 191
s 260A(2)(b), 227, 228	s 307C, 190
s 260A(3), 227	s 307C(5B), 191
ss 260A–260C, 228	s 308, 191
s 260B, 232	s 308(1), 187, 191
s 260B(1), 231	s 308(2), 191
s 260C, 232–3	s 308(3)(a), 191
s 260C(1)(a), 232	s 308(3)(b), 191

s 309, 191	s 420A(1), 416
s 309(1), 191	s 420A(1)(a), 416
s 309(2), 191	s 420C, 419
s 309(3)(a), 191	s 422, 417
s 309(3)(b), 191	ss 427–428, 417
s 310(a), 191	s 428, 419
s 314, 167, 374	s 432, 417
s 315, 189	s 433, 418
s 319(3), 189	ss 434D–434G, 419
s 323, 112	s 435A, 411, 425
s 324BA, 33	s 435C(1), 426
s 324CA, 190	s 436A, 426
s 324CD, 191	s 436B, 426, 463
s 325, 191	s 436C, 426
s 327A(1), 191	s 436F(2), 428
s 329, 180	s 437A, 427
s 329(6), 418	s 437C, 426
s 329(7), 418	s 438A, 427
s 334, 31	s 439A, 428
s 336, 31	s 439A(4)(b), 429
s 341(1), 186	s 439A(4)(c), 429, 432
s 344, 300	s 439B(2), 428
s 344(1), 186, 191	s 439C, 429
s 346A, 187	ss 440A–440J, 428
s 346C, 187	s 440B, 419, 428
s 347A, 187	s 440J, 427
s 347B, 187	s 440J(1), 427
s 351, 245	s 441A, 412, 413, 428
s 411, 421, 532	s 441A(1), 428
s 411(1), 218, 422	s 441C, 412, 413, 419
s 411(4), 422, 423	s 442A, 427
s 411(5), 424	s 443A(1), 428
s 411(6), 424	s 443D, 428
ss 411–414, 578	s 444A(2), 431
s 412, 422	s 444A(4), 430
s 412(1), 424	s 444DA(1), 430
s 414, 578	s 445D, 432, 433
ss 414A–414B, 419	s 445D(1)(a), 432
s 418(1)(d), 414	s 445D(1)(b), 432
s 418(1)(f), 414	s 445D(1)(c), 432
s 418(3), 414	s 445D(1)(d), 432
s 418A, 414	s 445D(1)(e), 432
s 419, 417	s 445D(1)(f), 432, 433, 434
s 419(3), 417	s 445D(1)(g), 432
s 419A, 417	s 445F(1), 431
ss 419A(3)–419A(8), 417	s 445F(2), 431
s 420(1), 414	s 445G, 431
s 420(1)(b), 415	s 446A, 463
s 420(2), 414	s 446AA, 463
s 420A, 415, 416	s 447A, 428, 431

s 448C, 427	s 476, 443, 447
s 450E(2), 431	s 477, 446, 447
s 450E(4), 431	s 477(1), 446
s 450E(5), 431	s 477(2), 446
s 455D, 432	s 477(2)(c), 447
s 459A, 408, 439, 440, 442, 443, 461	s 477(2A), 446
s 459B, 439	s 478, 447
s 459C(2), 440	s 478(1), 447
s 459E, 441	s 480, 444
s 459E(2), 441, 442	ss 480–481, 447, 464
s 459E(3), 441	s 490, 462
s 459G, 441, 442, 443	s 491, 461, 462
s 459H, 441, 442	s 493A, 463
s 459J, 441	s 494, 462
s 459J(1)(a), 442	s 494(1), 462
s 459J(2), 441	s 494(2), 462
s 459P, 440, 441, 443, 463	s 495(1), 462
s 459P(2), 440	s 495(2), 463
s 459P(3), 440	s 496(1), 463
s 459Q, 442	s 499, 462
s 459S, 442	s 500(2), 463
s 461, 127, 167, 379, 391, 395–7, 439, 461–2	s 501, 463
s 461(1), 396, 461	s 506, 446
s 461(1)(a), 461	s 509, 463
s 461(1)(b), 461	s 509(5), 464
s 461(1)(c), 461	s 513A, 443, 448
s 461(1)(d), 461	s 513B, 462
s 461(1)(e), 396, 461	s 513C, 449
s 461(1)(f), 396, 461	s 515, 440
s 461(1)(g), 396, 461	s 516, 71, 101, 196
s 461(1)(h), 461	s 517, 71, 101
s 461(1)(i), 461	s 532(1), 33
s 461(1)(j), 461	s 532(8), 443, 445
s 461(1)(k), 114, 396, 397, 461	s 532(9), 445
s 461A(1), 426	s 533, 275, 309, 444, 447
s 462, 399	s 533A, 447
s 462(2), 395, 396	s 553, 431, 444, 447
s 462(2)(c), 395	s 554A, 447
s 462(2)(e), 399	s 555, 444, 447, 458, 459
s 464, 399	s 556, 419, 444, 458, 459, 460
s 467(4), 397	s 556(1), 458
s 468, 444	s 556(1)(a), 459
s 468(1), 444	ss 556(1)(a)–556(1)(df), 458
s 471, 444	s 556(1)(de), 459
s 471B, 444, 458	s 556(1)(e), 418, 459
s 472, 443	s 556(1)(g), 418, 459
s 472(2), 446	s 556(1)(h), 418, 459
s 474, 444, 447	s 556(1A), 459
s 475, 444	s 556(1B), 459
	s 556(1C), 459

s 556(2), 458	s 588H(5), 426
s 558, 445	s 588H(6), 313, 427
s 558FE(5), 448	s 588J(1), 313
s 559, 458	s 588K, 313
s 560, 418, 459	s 588L, 457
s 562, 418, 458	s 588M, 313
s 562A, 458	s 588M(3), 313
s 563A, 212, 322, 459, 460, 461	s 588M(4), 313
s 563C, 458	ss 588R–588U, 313
s 564, 458	s 588V, 81, 112, 213, 309
s 588E, 453	s 601AA(1), 464
s 588E(4), 186, 191	s 601AA(2), 464
s 588F, 310	s 601AB, 464
s 588FA, 448, 450	s 601AD(1), 464
ss 588FA–588FG, 191	s 601AD(1A), 464
ss 588FA–588FI, 449	s 601AG, 465
s 588FA(1), 449–50	s 601AH, 465
s 588FA(3), 450	s 601AH(2), 465
s 588FA(3)(a), 450	s 601CA, 106
s 588FB, 310, 448, 452	ss 601CF–601CJ, 106
s 588FB(1), 452	s 601FD, 300
ss 588FB(1)(a)–588FB(1)(d), 452	s 602, 535, 536, 537, 540, 553, 554, 557, 576
s 588FC, 448	s 602(a), 535, 552, 572, 577
s 588FD, 448, 449, 453	ss 602(b)–602(c), 535
s 588FD(2), 453	s 602(b)(ii), 560
s 588FDA, 448, 449, 453, 454	s 602(c), 572, 576
s 588FDA(1)(c), 454	s 602A, 539
s 588FE, 212	s 602AH(5), 465
s 588FE(2), 449	s 606, 483, 535, 542–3, 544, 547
s 588FE(3), 449	s 606(1), 548
s 588FE(3)(c), 451	s 606(1)(a), 542
s 588FE(4), 448, 449	s 606(1)(c), 542
s 588FE(5), 449	s 606(1)(c)(i), 542
s 588FE(6), 449	s 606(1)(c)(ii), 542
s 588FE(6A), 449	s 607, 542
s 588FF, 212, 451, 452, 455, 456	s 608, 543, 547
s 588FG, 455, 457	s 608(1), 543
s 588FI, 448, 455	s 608(2), 544
s 588FJ, 448, 454, 455	s 608(3), 544, 579
s 588G, 79, 191, 212, 220, 225, 234, 275, 284, 287, 294, 309–11, 313, 314, 322, 416	s 608(3)(a), 544
s 588G(1), 309	s 608(3)(b), 544
s 588G(1A), 212, 220, 225, 310	ss 608(4)–608(7), 544
s 588G(2), 284, 309, 311	s 608(8), 546
s 588G(3), 284, 309, 311, 313	s 609, 543, 547
s 588H, 276, 287, 310, 311–13	s 609(7), 549
s 588H(2), 312, 313	s 609(8), 547
s 588H(3), 312	s 609(9), 547
s 588H(3)(a)(i), 312	s 610, 543, 544–5
s 588H(4), 312, 313	s 610(3), 545

I Table of statutes

s 611, 548, 9–549	s 640, 561, 562
s 612, 549	s 643, 581
s 616, 549	s 644, 581
s 616(2), 549	s 648A, 562
s 617(1), 550, 565	s 648A(1), 562
s 617(1)(b), 550	s 648A(2), 562
s 617(2), 550, 565, 569	s 648A(3), 562
s 617(3), 565, 569	ss 648D–648H, 569
s 618, 549, 550	ss 649A–649C, 565
s 618(3), 565	ss 650A–650F, 563
s 619(1), 550	s 650B, 564
s 619(2), 550	s 650B(2), 564
s 620, 552	s 650C, 552, 564
s 621(1), 552	s 651A, 564
s 621(2), 544, 565	s 652B, 564
s 621(3), 552, 565	s 652C, 565
s 623, 554	s 655A, 540
s 623(2), 554	s 656A, 538
s 624, 552, 559	s 657A, 222, 537, 539, 558, 572
s 624(2), 564	s 657A(1), 539
s 625(1), 565	s 657A(2), 539, 541
s 625(2), 553	s 657A(2)(a), 539
s 625(3), 583	s 657A(2)(c), 539
s 626, 553	s 657A(3), 540, 541
s 626(1), 553	s 657B, 539
s 629, 554	s 657C, 538–9
s 630, 554	s 657C(2), 539
s 631, 550–1, 552, 582	s 657C(3), 539
s 631(1), 551, 582	s 657D, 542
s 631(1A), 551	s 657D(1), 540
s 631(2)(a), 551	s 657D(2), 540, 541
s 631(2)(b), 551	s 657EA, 538, 541
s 633, 552, 555, 559–60, 563	s 657EA(4), 541
s 633(2), 550	s 657F, 540
s 636, 555, 556, 557, 581	s 657G, 540
s 636(1)(a), 555	s 657H, 541
s 636(1)(c), 555, 557, 558	s 658A, 539
s 636(1)(f), 555, 558	s 658C, 540
ss 636(1)(h)–636(1)(i), 555	s 659AA, 537
s 636(1)(h)(iii), 562	s 659B, 537, 582, 583
s 636(1)(j), 550	s 659B(2), 583
s 636(1)(l), 555, 559	s 659B(4), 537
s 636(1)(m), 555, 557	s 661A, 578, 579
s 636(2), 555, 562	s 661A(1), 579
s 638, 560, 561, 570, 581	s 661A(4), 579
s 638(2), 560	s 661B, 579
s 638(3), 560	s 661B(2), 579
s 638(5), 561	s 661C, 579
s 638(6), 561	s 661E, 579
s 639(1), 561	s 661E(1), 579

s 661E(2), 579	ss 710–713, 552
s 662B, 580	s 710(1), 248
ss 662B–662C, 580	s 710(1)(a), 248
s 662C, 580	s 710(1)(b), 248
s 667C, 579	s 710(2), 248–51
s 667C(1), 580	s 710(2)(a), 249
s 667C(1)(a), 580	s 710(2)(c), 249
s 670A, 527, 570, 581	s 710(3), 248
ss 670A–670E, 580	s 710(3)(f), 248
s 670A(2), 581	s 711, 251
s 670A(3), 581	s 711(2), 251
s 670B, 581	s 711(3), 251
s 670C, 581	s 711(4), 251
s 670D, 582	s 711(5), 251
s 670E, 582	s 711(6), 251, 252
s 670F, 582	s 712, 244, 251
s 671B, 543	s 713, 249, 252
s 673, 540	s 713(2), 252
s 674, 244, 303, 487, 488, 489, 490, 495, 527, 529	s 714, 252
s 674(2), 487, 489, 490	s 715, 252
s 677, 488, 489	s 715A, 245
s 700, 241	s 718, 245
s 700(2), 241	s 718(1), 239
s 705, 244	s 719(1), 252
s 706, 239, 240, 241	s 719(2), 253
s 707, 240	s 719(3), 253
s 708, 239, 240, 241, 244	s 720, 245
s 708(1), 241	s 721, 240, 244
s 708(2), 241–2	s 723, 238,
s 708(2)(b), 242	s 724, 214, 246, 253
s 708(3)(a), 242	s 724(3), 253
s 708(3)(b), 242	s 726, 238, 254
s 708(8), 254	s 727, 240, 254
s 708(8)(a), 242	s 727(1), 240
s 708(8)(c), 242	s 727(2), 238
s 708(10), 242	s 727(3), 245
s 708(10)(b), 243	s 727(4), 242
s 708(10)(d), 243	s 728, 245, 248, 250, 252, 255, 527
s 708(11), 243, 254	s 728(1), 253, 254, 255
s 708(11)(a), 243	s 728(2), 247
s 708(11)(b), 243	s 728(3), 254
s 708AA, 239, 240, 241, 244	s 729, 248, 253, 254–5
s 708AA(7), 244	s 729(1), 255
s 709, 240	s 729(4), 254
s 709(1), 244	s 730, 252
s 709(2), 244	s 731, 255
s 709(4), 244	s 732, 255
s 710, 240, 247, 248, 250, 251, 252, 254, 255, 560	s 733(1), 255
	s 733(2), 256
	s 733(3), 256

s 734, 245, 253	s 764A(1)(d), 476
s 734(1), 242	s 766A, 498
s 734(2), 253	ss 766A–766D, 498
s 734(2A), 253	s 766A(1)(b), 499
s 734(3), 253	s 766A(3), 499
s 734(6), 253	s 766B, 498
s 734(7), 253	s 766B(3), 499
s 734(9), 253	s 766B(4), 499
s 736, 257	s 766C, 499
s 736(2), 257	s 766C(1), 499
s 737, 214, 253	s 766C(2), 499
s 738C, 257	s 766C(3), 499
s 738H, 257	s 766C(4), 499
s 738L(1), 257	s 766B(5), 499
s 738L(5), 257	s 766C(6), 499
s 738ZC, 257	s 766D, 499
s 739, 240, 245, 246	s 767A, 479, 499
s 739(1), 246	s 768A, 480, 481
s 739(1A), 245	s 769B, 86
s 739(2), 245	s 791A, 479
s 739(3), 245, 246	s 792A, 480
s 739C, 492–4	s 792B, 481
s 741, 256	s 792C, 481
s 761A, 241, 476, 479, 481, 482, 491	s 792D, 480, 481
s 761A(e), 241	s 793A, 479
s 761A(f), 241	s 793B, 482
s 761B, 477	s 793C, 61, 482, 491, 492, 493, 494,
s 761D, 477, 514	495, 527
s 761D(1), 477	s 793C(3), 493
s 761D(1)(a), 477	s 793C(5), 494
s 761D(1)(b), 477	s 793C(6), 494
s 761D(1)(c), 477	s 793E, 491
s 761D(2), 477	s 795A, 479
s 761D(3), 477, 478	s 795B, 479, 480
s 761D(3)(a), 478	s 795B(1)(c), 479–80
s 761D(3)(b), 478	s 795B(1)(e), 480
s 761D(3)(c), 476	s 795B(1)(f), 480
s 761D(4), 477	s 795B(1)(g), 480
s 761G, 503, 509	s 798F, 480
s 761G(7), 503	s 798G, 480
s 761G(12), 504	s 798H, 480, 482
s 761GA, 504	s 798H(3), 482
s 761GA(d), 504	s 798J, 482
s 762A, 475	s 798K, 482
s 763A, 475, 498	s 850B, 480
s 763B, 475	s 881A, 480
s 763C, 475	s 887A, 480
s 763D, 475	s 910A, 500
s 764A, 475	s 911A, 498, 499
s 764A(1)(a), 476	s 911A(2), 500

- s 911A(2)(a), 500
- s 911A(2)(ea), 500
- s 911A(2)(eb), 500
- s 911A(2)(ec), 500
- s 911B, 500
- s 912A, 501
- s 912A(1)(g), 496
- s 912D, 501
- s 914A, 501
- s 915C, 502
- s 915B, 502
- s 915C(1), 501
- s 915C(2), 501
- s 915C(4), 501
- s 916A, 500
- s 916F, 500
- s 917A, 500
- ss 917A–917F, 500
- s 917A(1)(b), 500
- s 917B, 500
- s 917D, 500
- s 917F(5), 500
- s 920, 501
- s 920A, 520
- s 941A, 503
- s 941B, 503
- s 941D, 503
- s 942B, 503
- s 942C, 503
- s 946A, 503
- s 946AA, 503
- s 947B, 503
- s 947C, 503
- s 952A, 503
- s 953A, 503
- s 960A, 510
- s 961, 508
- s 961B, 507–511
- ss 961B(2)(a)–961B(2)(f), 508
- s 961B(2)(g), 508
- s 961K, 510
- s 961M, 510
- s 991B, 508
- s 991E, 508
- s 992A, 257
- s 998, 522
- s 1010A, 503
- s 1012A, 503
- s 1012B, 503
- s 1012C, 503
- ss 1040A–1041K, 512
- s 1041A, 521, 525–6, 527
- ss 1041A–1041C, 226
- s 1041B, 521, 522, 523, 524, 525, 527
- s 1041B(1), 525
- s 1041B(1)(a), 525
- s 1041B(1)(b), 525
- s 1041C, 521, 522, 527
- s 1041D, 527
- s 1041E, 521, 526–7
- s 1041E(1)(c), 526
- s 1041E(2), 527
- s 1041E(1)(b)(i), 527
- s 1041E(1)(b)(ii), 527
- s 1041E(2)(b)(iii), 526
- ss 1041E–1041H, 527
- s 1041G, 527
- s 1041H, 303, 460, 490, 521, 522, 527, 528, 529, 582
- s 1041H(2), 581
- s 1041H(2)(b)(iii), 582
- s 1041H(3), 255, 527, 581
- s 1041I, 527
- s 1041J, 521
- s 1042A, 513, 514, 516
- ss 1042A–1045A, 512
- s 1042C, 516, 517
- s 1042C(1)(a), 516
- s 1042F, 518, 519
- s 1042G, 514, 518, 520
- ss 1042G–1042H, 518
- s 1042H, 520
- s 1043A, 513, 514, 518, 520, 570
- s 1043A(1), 520
- s 1043A(1)(c), 514
- s 1043A(1)(d), 513, 514, 519
- s 1043A(2), 513, 518, 519
- ss 1043B–1043K, 519
- s 1043F, 520
- s 1043G, 519
- s 1043L, 520
- s 1070A, 201
- s 1070A(1), 201
- s 1072A, 120
- s 1072B, 120
- s 1072D, 120
- s 1072F, 120
- s 1072G, 100, 119, 120
- s 1101B, 491, 494, 495, 496, 527
- s 1101B(1)(a), 494

- s 1101B(1)(b), 494
- s 1101B(1)(d), 494
- s 1101B(2), 494
- s 1101B(3), 494
- s 1101B(4), 494
- s 1273(7A), 93
- s 1274, 404
- s 1274(2), 404
- s 1274(7A), 93
- s 1274A, 404
- s 1274AA, 279
- s 1279, 414
- s 1282, 445
- s 1282(3), 427
- ss 1282–1283, 445
- s 1283, 445
- s 1292, 34
- s 1308A, 85
- s 1311, 520, 527
- s 1316, 280
- s 1317B, 35
- s 1317C, 35
- s 1317DA, 278
- s 1317DAC, 490
- s 1317E, 36, 37, 278, 285, 293, 295, 482, 490
- s 1317E(1), 278, 520, 527
- s 1317G, 37, 278, 285
- s 1317G(1)(b), 279
- s 1317G(2), 37
- ss 1317G–1317HA, 285
- s 1317H, 37, 220, 294, 331
- s 1317H(2), 331
- ss 1317H–1317HA, 279, 285
- s 1317J, 278, 279, 294, 331
- s 1317J(1), 37, 294
- s 1317J(2), 35, 294, 331
- s 1317J(3), 294, 331
- s 1317J(4), 294
- s 1317K, 280
- s 1317L, 37, 278
- s 1317M, 37, 280
- s 1317N, 280
- s 1317P, 37, 280
- s 1317Q, 280
- s 1317S, 281, 283, 284, 285, 286, 297, 311, 358
- s 1317S(4), 283
- s 1318, 281, 283, 284, 285, 311, 358
- s 1318(2), 283
- s 1322, 183, 417
- s 1322(1)(b), 182
- s 1322(2), 182
- s 1322(3), 182
- s 1322(3A), 182
- s 1322(3A)(a), 182
- s 1322(3A)(b), 183
- s 1322(4), 183
- s 1322(6), 183
- s 1323, 417
- s 1324, 124, 167, 216, 217, 220, 225, 311, 232, 254, 285, 365, 379, 400–1, 582
- s 1324(1), 400
- s 1324(1A), 220, 225, 400
- s 1324(1B), 231
- s 1324(2), 400
- s 1324(4), 400
- s 1324(10), 401
- s 1325A, 542, 582, 583
- s 1325A(2), 583
- s 1325A(3), 582
- ss 1325A–1325D, 583
- s 1325B, 552, 582
- s 1325C, 569
- s 1325D, 583
- s 1337B, 35
- s 1337B(3), 35
- s 1337C, 35
- s 1337E, 35
- s 1337G, 35
- s 1337H, 35
- s 1337K, 35
- s 1337L, 35
- s 1337M, 35
- s 1338B, 36
- ss 1363–1369A, 31
- s 1378, 31
- Corporations (Aboriginal and Torres Strait Islander) Act 2006*, 91
- Corporations Amendment (Crowd-sourced Funding) Act 2017*, 257
- Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011*, 166
- Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Bill 2011*, 182
- Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*, 498
- Corporations Amendment (Repayment of Directors' Bonuses) Act 2003*, 453

- Corporations Amendment Bill 1991, 513
 Corporations Legislation Amendment
 (Deregulatory and Other Measures) Bill
 2014, 211
Corporations Regulations 2001, 31, 115
 reg 1.1.01, 187
 reg 2A.1.01, 115
 reg 2G2.01, 182
 reg 5.3A.02, 429
 reg 5.4.02, 446
 reg 5.6.12, 425
 reg 5.6.19, 430
 reg 5.6.21, 430
 reg 5.6.23, 430
 reg 5.6.27(5), 428
 reg 5.6.36, 182
 reg 6D.2.03, 242
 reg 6.10.01, 541
 reg 7.1.04, 477
 regs 7.1.8–7.1.22, 503
 reg 7.1.28, 504
 reg 7.2.07, 31, 479
 reg 7.2.08, 479
 reg 7.7.09A, 503
 sch 2 form 509H, 441
 sch 4 item 3(b), 187
 sch 8, 430
 Corporations and Securities Industry Bill
 1974, 22
Crimes Act 1914, 29
Criminal Code Act 1995, 89
 s 4B, 85
 s 12.1(2), 85
 s 12.2, 86
 s 12.3(1), 86
 s 12.3(2), 86
 s 12.3(6), 86
Customs Act 1901, 418
Evidence Act 1995, 29
Fair Entitlements Guarantee Act 2012
 s 28, 459
 s 29, 459
Federal Court of Australia Act 1976
 pt IVA, 529
 s 57, 418
Federal Court Rules 2011, 442
Federal Court (Corporations) Rules 2000
 r 5.5 form 8, 445
Financial Services Reform Act 2001, 30, 472,
 497, 498
First Corporate Law Simplification Act
 1995, 222
Foreign Acquisitions and Takeovers Act
 1975, 533
Freedom of Information Act 1982, 29
Futures Industry Act 1986, 23
High Court Rules 2004, 442
Income Tax Assessment Act 1936, 310
Insolvency (Tax Priorities) Legislation
Amendment Act 1993, 412
Judiciary Act 1903
 s 77R, 418
National Companies and Securities
Commission Act 1979, 24
Ombudsman Act 1976, 29
Parliamentary Service Act 1999
 s 13(7), 359
Personal Property Securities Act 2009, 194,
 204, 412
 pt 2.6, 206
 s 12, 204
 s 12(1), 204
 ss 19–21, 206
 s 30, 205
 s 55(2), 206
 s 55(3), 206
 s 55(4), 206
 s 55(5), 206
 s 57(1), 206
 s 267, 454, 457
 s 340, 205
Privacy Act 1988, 29
Proceeds of Crime Act 1987
 s 85, 86
Public Governance, Performance and
Accountability Act 2013, 96
 s 29(1), 359
Public Service Act 1999
 s 13(7), 359
Securities Industry Act 1980, 23
Trade Practices Act 1974
 s 52, 250, 522
Uniform Companies Acts 1961, 21, 273
 s 124, 331
- Australian Capital Territory**
Associations Incorporation Act 1991, 95
Court Procedures Rules 2006, 442
Territory Owned Corporations Act
 1990, 96

New South Wales

Associations Incorporation Act 2009, 95
Civil Procedure Act 2005
pt 10, 529
Companies Act 1936, 20
s 129, 273
Co-Operatives (Adoption of National Law) Act 2012
s 10, 95
s 28, 95
Corporations (Commonwealth Powers) Act 2001, 29
Funeral Funds Act 1979, 323
Land Tax Management Act 1956
s 47, 418
Occupational Health and Safety Act 2000
s 8(1), 125
s 26, 125
Real Property Act 1900, 156
Securities Industry Act 1975
s 31, 492–3
Securities Industry Code
s 42, 493–4
State Owned Corporations Act 1989, 96
Supreme Court Act 1970
s 67, 418
Uniform Civil Procedure Rules 2005, 442

Northern Territory

Associations Act 2003, 95
Government Owned Corporations Act 2001, 96
Supreme Court Rules, 442

Queensland

Associations Incorporation Act 1981, 95
Companies Act 1931
s 379A, 379
Government Owned Corporations Act 1993, 96
Land Tax Act 1915
s 37, 418
Uniform Civil Procedure Rules 1999, 442

South Australia

Associations Incorporation Act 1858, 17
Associations Incorporation Act 1985, 95
Government Business Enterprises (Competition) Act 1996, 96

Land Tax Act 1936
s 66, 418
Supreme Court Act 1935
s 29, 418
Supreme Court Civil Rules 2006, 442
Supreme Court Civil Supplementary Rules 2014, 442

Tasmania

Associations Incorporation Act 1964, 95
Companies Act 1959
s 128, 379
Government Business Enterprises Act 1995, 96
Supreme Court Rules 2000, 442

Victoria

Associations Incorporation Reform Act 2012, 95
Children's Services Act 1996, 85
Companies Act 1896, 18
s 2, 19
s 116(2), 272
Companies Act 1910, 272
Companies Act 1938
s 149, 273
Companies Act 1958, 21
s 94, 379
s 107, 331
s 107(1), 273
s 107(2), 273
s 107(3), 273
s 107(4), 273
Companies (Mining) Act 1871, 18
Land Tax Act 1958
s 66, 418
Mining Companies Act 1871, 103, 272
State Owned Enterprises Act 1992, 96
Supreme Court (General Civil Procedure) Rules 2005, 442
Supreme Court Act 1986
pt IVA, 529
s 37, 418

Western Australia

Associations Incorporation Act 2015, 95
Corporations (Western Australia) Act 1990, 27, 28
Land Tax Assessment Act 1976
ss 14–15, 418

Rules of the Supreme Court 1971, 442
State Trading Concerns Act 1916, 96
Supreme Court Act 1935
 s 25, 418

Canada

Business Corporations Act 1982
 s 185, 389

New Zealand

Companies Act 1993
 ss 110–115, 389
 s 131, 316
 s 131(2), 333
 s 133, 316

United Kingdom

Bubble Act 1720, 8–10, 246, 271
Chartered Companies Act 1837, 11
Companies Act 1862, 14–15, 17, 69, 207, 272
Companies Act 1907, 15
Companies Act 1929, 20
 s 149, 273
Companies Act 1948, 382

 s 210, 379
Companies Act 1954
 s 54, 230
Companies Act 2006, 322
 s 4, 97
 ss 171–172, 316
 s 172, 333–5, 337
 s 172(1), 60, 335
Joint Stock Companies Act 1844, 12–13, 272
 s 20, 272
 s 33, 272
 s 36, 272
Joint Stock Companies Act 1856, 13–14
 s 3, 13
Judicature Act 1873, 341
Limited Liability Act 1855, 13
Trade Descriptions Act 1968, 84
Trading Companies Act 1834, 11

United States of America

Model Business Corporation Act, 21
Securities Act 1933
 s 11(b)(3), 255
 s 11(c), 255

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