

# **BUSINESS LAW OF AUSTRALIA**

**R.B. Vermeesch  
K.E. Lindgren**

**4th Edition**

**Butterworths**



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**OF**

# **AUSTRALIA**

by

**R B VERMEESCH**

**K E LINDGREN**

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## Preface

Change in business law is so rapid that no apology is needed for a new edition of a work published almost five years ago.

The dilemma which faces the authors of a work such as this is that in order to cover in a worthwhile manner areas of law central to business while keeping the size (and thus the cost) of the book within set limits, some topics of unquestioned importance **must** be omitted. Since the 3rd edition there has been, in addition to much important case law, legislation of fundamental importance in the areas of companies and securities industry, industrial property, consumer protection, consumer credit and bankruptcy. After discussion with the publishers a decision was taken to omit the chapter on Administrative Law. This chapter was inserted for the first time in the 3rd edition. It is omitted now, not because the authors consider that the importance of the law controlling administrative decision-making affecting business is any less significant than it then was, but because, within the constraints mentioned, it would not be possible to deal adequately with this greatly expanded area of the law. This omission has enabled the authors to expand their discussion of the topics dealt with in the remaining 27 chapters. For example, the *Mareva* injunction and the *Anton Piller* order are discussed in Chapters 1 and 13 respectively, demonstrating the extension of established remedies to new situations, and white collar and computer crime are discussed in Chapter 11.

Some chapters have been expanded and appropriately re-titled. "Sale of Goods" becomes "Supply of Goods and Services", "Credit and Securities" becomes "Business and Consumer Credit, Secured and Unsecured" and "Non-Commercial Succession to Property" becomes "Non-Commercial Succession to Property, especially Executors and Trustees".

In order to facilitate production, references to specific statutory provisions have been prefixed by "s", the usual abbreviation for a section of an Act. It will be obvious from the reference itself whether a section, sub-section, paragraph or sub-paragraph is referred to. Thus paragraph 47(4) (a) of the *Trade Practices Act 1974* (Cth) appears as "s 47(4) (a)". For the same reason, all legislation, state as well as Commonwealth, is cited by reference to the year of enactment only.

An author's note has been included in this edition in order to deal with significant changes in the law occurring too recently to be incorporated in the text.

As in previous editions, the chapter distribution is as follows: Mr Vermeesch, Chapters 1-11, 13, 21, 27; Professor Lindgren, Chapters 12, 14-20, 22-26.

Mr Vermeesch records his thanks to Mr L J Vermeesch, BEc, to Mr Paul Vermeesch, BA for research assistance, to Mr S Bottomley, BA, LLB for assistance with Chapter 11, and to Ms Julie Greig and Ms Joan Huggett for typing. Professor Lindgren records his thanks to Melissa Crogan for research assistance, to Mrs Carol Isaacs for research assistance and typing, to Mr B L Cleary of the New South Wales Bar for comments on a draft of paras [1917]-[1922] and to Mr A C De Govrik, Executive Legal Officer of the Sydney Stock Exchange for comments on a draft of

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Chapter 17. The authors acknowledge having received helpful comments and suggestions from Messrs BJ Blight, Alan Davidson, WAG Enright, Lionel Farrell, Daryl Nolch, and Michael Powell. Of course the authors do not attribute responsibility for the book or any part of it to any of the persons named.

R B VERMEESCH

K E LINDGREN

*May 1982*

## About the authors

Bob Vermeesch holds the degree of Master of Laws from the University of Sydney. He spent a number of years in private practice as a solicitor. Before joining the Australian Graduate School of Management as senior lecturer in charge of legal studies he was in the Department of Legal Studies and Taxation in the University of New South Wales. He is, currently, the Head of the Department of Legal Studies at Kuring-gai College of Advanced Education. He is the co-author of *Trade Practices and Consumer Protection*.

Kevin Lindgren holds the degrees of Bachelor of Arts from the University of New South Wales, Bachelor of Laws from the University of London, Master of Arts (on a thesis in English Literature) from the University of Newcastle and Doctor of Philosophy (on a thesis on company contracts) from the University of Newcastle. For a number of years he practised as a solicitor and is now a barrister. He holds the foundation Chair in Legal Studies at the University of Newcastle. Professor Lindgren is the author or editor, alone or jointly, of six books and numerous articles.

*Notes containing a short reference to significant matters recorded after the manuscript went to press*

Para [306]: The position with respect to Privy Council appeals from state courts may change, the Attorneys-General of the states having announced their joint intention to abolish such appeals.

Para [926]: The reference to the landlord's obligation to mitigate his loss in the event of the abandonment of a tenancy is now to be read in the light of the decision of Myles J in *Francis May Pty Ltd v Tikitere Pty Ltd*: not yet reported, NSW Ct, 2 April 1982. There it was held that the liability for rent continues until forfeiture of the lease by the lessor. The lease involving a demise of an interest in land, it is not to be treated in the same way as a simple contract. After forfeiture the lessor has a claim for damages subject to the duty to mitigate.

Paras [2112] & [2165]: The constitutional extent of the constitution s 51 (xx) power was again considered by a full bench of the High Court in *Actors and Announcers Equity Association of Australia v Fontana Films Pty Ltd*: not yet reported, 11 May 1982. The court took the view that a provision regulating the action of non-corporate actors in order to protect the trading activities of a trading corporation is a valid exercise of the s 51 (xx) power.

Para [2113]: The Victorian State Superannuation Board's appeal was dismissed by a full bench of the Federal Court. Northrop J adopted the test proposed by Deane J in the *Ku-ring-gai Building Society* case, rejecting the argument that the reference to financial corporation in the Constitution (s 51 (xx)) should be construed in light of the express reference to banking and insurance corporations contained in ss 51 (xiii) and 51 (xiv) respectively. Ellicott J, with whom Franki J concurred, agreed with the analysis made by Brennan J at first instance. He rejected the argument that because the Board had not borrowed the money which it invested it should not be categorized as a financial corporation.

Para [2144]: In *Actors Equity v Fontana Films* the court, by a majority, found that s 45(5) was not valid as it did not have a sufficient connection with corporations power. Mason J would have categorized the sub-section as a law dealing not with corporations but with trade unions. Section 45(6) was invalid to the extent that it had an operation consequential upon s 45(5).

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