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COMPANY DIRECTORS

PRINCIPLES OF LAW AND CORPORATE GOVERNANCE



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COMPANY DIRECTORS

PRINCIPLES OF LAW AND CORPORATE GOVERNANCE

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Preface

There has been no new Australian textbook on the principles governing the conduct of company directors for many years. An early counterpart to what we have endeavoured to achieve in this book, Allen B Afterman's *Company Directors and Controllers*, which deals with the duties of controlling shareholders as well as the duties of directors, was published as long ago as 1970.

The absence of a recent textbook is surprising, given the economic importance of the role of company directors, the intensity of the modern debate about their functions and accountability, and the breadth of public interest in the subject. In the words of Sir Laurence Street in his foreword to the book by S R Brown and P R Grogan, *Company Directors*, 3rd ed, 1974, "the role of the company director is critical in the effective and efficient operation of the company as a social mechanism". Thought about the functions and legal position of the directors of public companies has evolved rapidly in recent decades. No longer is it possible to perceive directors merely as fiduciary agents who manage businesses with other people's money. No one now pretends that the directors of a modern public company (other than the executive directors) are its managers, but there is great uncertainty about just what their functions are or should be. Yet everyone agrees that their responsibilities are more demanding than ever. Complex statutory duties have been entwined with the fiduciary role, and the standard of care has been elevated even for non-expert non-executive directors. Significantly, the strictly legal responsibilities are now supplemented by an amorphous array of corporate governance principles, some of which may eventually be acknowledged by the courts.

In its original conception, now several years ago, this book was to be based fairly closely upon the chapters on the duties of directors found in our treatise on general company law, *Ford's Principles of Corporations Law* (LexisNexis Butterworths, Australia, looseleaf). However, when we set our minds to the task of writing a work that would focus on the position of company directors and take into account the developments specific to them, it became evident that rather more would be required than the occasional adjustment to and expansion of the company law treatise. The result is that, although there are areas of similarity, much of what we have done in this book is new work going well beyond the general company law treatise.

Australian company law long ago achieved the status of an independent and vibrant body of legal principle, no longer beholden to the mother country but open to influences from ideas that have succeeded overseas. Our focus of attention has been on the Australian law, and (unlike Mr Afterman) we have not purported to present a comparative analysis. However, from time to time we have commented on the ideas of other places, especially the United States and the United Kingdom, the two systems that are nowadays the most influential in this country.

Company Directors: Law and Corporate Governance

Justice Austin was responsible for Chapters 4, 8, 9, 11, 12, 13 and 15. Professor Ford was responsible for Chapters 3, 10, 14, 16, 18 and 19. Professor Ramsay was responsible for Chapters 1, 2, 5, 6, 7 and 17. Justice Austin has not reviewed the chapters prepared by Professors Ford and Ramsay (other than Chapter 1) and his responsibility is limited to the chapters allocated to him.

In writing this book we have continued to enjoy the support and assistance of the staff of LexisNexis Butterworths, who also publish the looseleaf and student editions of the general company law treatise. We particularly thank Rosemary Langley for her careful and patient work on our manuscript.

Justice Robert Austin

Professor Harold Ford

Professor Ian Ramsay

December 2004

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