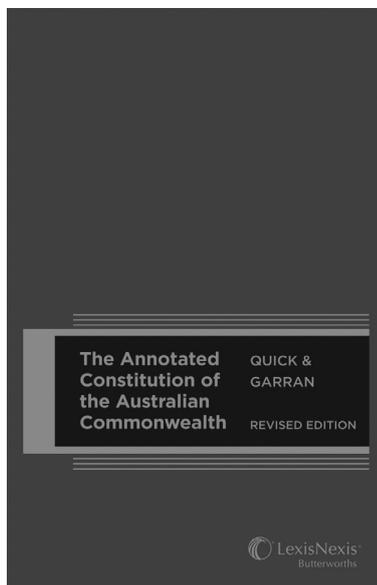


The Annotated Constitution of the Australian Commonwealth (Revised Edition)

John Quick and Robert Garran | LexisNexis Butterworths | 2014



The original edition of this text was published over a century ago yet remains widely consulted and cited in constitutional law cases. It has now been

published in a revised edition for the first time in some years. The text of the original work remains unaltered, but changes to the book's layout have been made and some useful additional features included.

Readers familiar with the work will be aware that it is divided into several parts. The first provides an invaluable historical introduction to the Constitution, covering ancient colonies, modern colonisation, colonial government in Australia, and the federal movement in Australia. Then follows a list of members of federal conventions and conferences, followed by the text of the Constitution as originally enacted. The bulk of the work consists of the original commentaries on each section of the Constitution, including references to the corresponding sections of other federal constitutions.

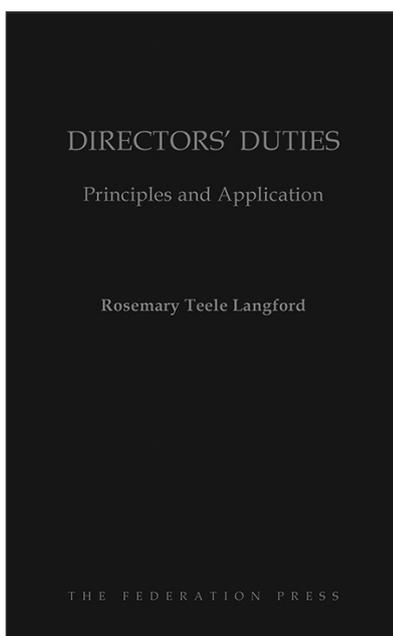
Features of the revised edition include the inclusion of a table of over 160 High Court decisions in which the 1901 edition has been cited, the text of the 2003 compilation of the Constitution showing all amendments in bold and ruled-through text, a new detailed index in addition to the original 1901 index, and the inclusion of the original 1901 edition page numbers in the margin of the commentaries for ease of cross-referencing to the original work.

This work remains a valuable addition to the library of any practitioner of constitutional law or enthusiast of Australian federation history.

Reviewed by Victoria Brigden

Directors' Duties: Principles and Applications

By Rosemary Teele Langford | Federation Press | 2014



The limited liability company has long been lauded as one of the law's most important inventions. It allows commercial people to take commercial risks – and bring rewards – that would be otherwise passed up. Over the years, there has been a growing focus on corporations being good citizens. This focus has brought with it an increasing array of obligations which are foisted upon those who control companies: directors.

Directors are now subject to common law, equitable and statutory duties. These are augmented by guidelines such as the ASX's Corporate Government Principles and Recommendations and those promulgated by the OECD. Directors' personal liability has been clarified and expanded in several areas (including,

effectively, guaranteeing certain of the company's taxation liabilities). Some argue that the volume of corporate regulation and the creeping personal liability of directors discourages qualified people from becoming directors and inhibits risk-taking.

The premise

In this book, Rosemary Teele Langford particularly explores the development of directors' fiduciary duties and the intersection of those duties with the statutory duties imposed by Part 2D.1 of the *Corporations Act 2001*.

Ms Langford's book is argumentative in that it seeks to rationalise the law concerning directors' fiduciary duties. The High Court case of *Breen v Williams*

BOOK REVIEWS

Directors' Duties: Principles and Applications (Federation Press, 2014)

(1996) 186 CLR 71 marked a shift in Australian fiduciary theory. The court's insistence in the proscriptive (as opposed to prescriptive) nature of fiduciary duties has narrowed the scope of such duties considerably. Indeed, as Ms Langford demonstrates, academics and judges since *Breen* have often treated fiduciary duties as being limited to the 'no conflicts' and 'no profits' rules.

Ms Langford argues strongly against the limitation of fiduciary duties to being solely proscriptive. She states, with considerable force, that the director's duty to act bona fide in the interests of the company is the fundamental fiduciary duty from which other duties spring. This prescriptive (i.e. positive) duty seems to be excluded by *Breen* (which the High Court has followed since). Yet, the argument is so inherently attractive that it has found favour in intermediate appellate courts since (and in apparent disregard of) *Breen*.

The structure

Directors' Duties is structured in such a way as to bring the reader along as the argument builds momentum. After an introduction, the book sets out the history and jurisprudence of directors' fiduciary duties. It then outlines the jurisprudential shift since *Breen*. The following chapters examine particular fiduciary duties by which, Ms Langford argues, directors are bound. It must be acknowledged that certain of these duties are prescriptive in nature and therefore might be somewhat controversial. The book then devotes a chapter to the nature and characterisation of directors' duty of care, skill and diligence. The penultimate chapter is devoted to remedies. In particular, the author engages in a useful discussion of the differences between the remedies which flow from a breach of directors' statutory duties and the much broader array of remedies which a court of equity has at its discretion. The final chapter evaluates the Australian trend of jurisprudence against other jurisdictions, particularly the United Kingdom.

Conclusion

Directors' Duties is a monograph, rather than a textbook. It is clearly the result of a deep study of cases and academic writings on the subject. It is of great assistance in gaining an understanding of the modern evolution of fiduciary duties in general and those that relate to directors in particular.

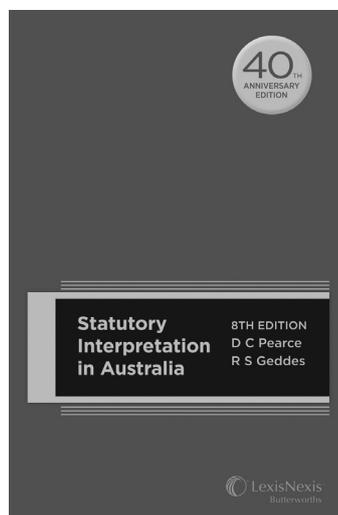
As persuasive as the book is, the reader must bear its argumentative nature in mind. The author is arguing for a more uniform, cohesive and rational treatment of directors' duties – particularly their fiduciary duties. This means that 'dipping in' to the book and reading only a section may paint a misleading picture of the law in the reader's mind.

Practitioners will find the author's discussion of fiduciary duties particularly useful as the remedial differences between a statutory and fiduciary breach may have significant consequences for their clients.

Reviewed by Nicolas Kirby

Statutory Interpretation in Australia (8th Edition)

By Dennis Pearce AO and Robert Geddes | LexisNexis Butterworths | 2014



It has been 40 years since the publication of the first edition of this book. Sir Garfield Barwick wrote the foreword to the first edition. Chief Justice Robert French wrote the foreword to this edition, the eighth. The present chief justice writes of the book's enduring utility to judges, practitioners, teachers and students alike. Its status as the definitive word on the approach to its subject is reflected in the sheer number of cases that reference it: according to Westlaw, more than a 1600 references in the period 3 October 1975 to 16 March 2015.

The first edition was published at a time of great legislative output in Australia. The Whitlam government was notorious for the volume of legislation that it passed. Such seminal instruments as the *Trade Practices Act 1974* (Cth), the *Family Law Act 1975* (Cth), the *Racial Discrimination Act 1975* (Cth) came into force at about this time. The need for a resource to tie together the various principles of statutory interpretation, both legislative and common law, was clear: as the authors note in the preface to this edition, Australian lawyers were forced to have recourse to the leading