

Australian Securities & Investments Commission v Rich [2009] NSWSC 1229 was concerned with the alleged failure of two executive directors to disclose to the board of directors the company's true financial position, which allegedly they should have known. ASIC lost the case because it failed to prove its contentions about the true financial position of the company. The decision highlights a common forensic problem in claims against directors of insolvent companies, namely that the plaintiff (whether a regulator or a liquidator) is typically reliant to a great extent on documents to prove its case, while those with the best knowledge of the relevant events are typically the defendant directors: see [7319], [7320] and [7548] of the judgment.

[180.50] Further reading

As a result of the exceptionally large amount of academic comment regarding directors' duties, the following journal references have been arranged thematically.

Duty of care

- Bednall T and Hanrahan P, "Officers' liability for mandatory corporate disclosure: Two paths, two destinations?" (2013) 31 C&SLJ 474.
- Bednall T and Ngomba V, "The High Court and the c-suite: Implications of Shafron for company executives below board level" (2013) 31 C&SLJ 6.
- Gummow W, "The equitable duties of company directors" (2013) 87 ALJ 753.
- Pearce M, "Company directors as 'super-fiduciaries'" (2013) 87 ALJ 464.

181 Good faith—civil obligations

Good faith—directors and other officers

- (1) A director or other officer of a corporation must exercise their powers and discharge their duties:
- (a) in good faith in the best interests of the corporation; and
 - (b) for a proper purpose.

Note 1: This subsection is a civil penalty provision (see section 1317E).

Note 2: Section 187 deals with the situation of directors of wholly-owned subsidiaries.

- (2) **[Contravention]** A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 79 defines *involved*.

Note 2: This subsection is a civil penalty provision (see section 1317E).

[Cross-references: ASIC:

- RG 16: External administrators: Reporting and lodging;
- RG 76: Related party transactions;
- RG 94: Unit pricing: Guide to good practice;
- RG 109: Assetless Administration Fund: Funding criteria and guidelines;
- RG 186: External administration: Liquidator registration.]

[181.10] Scope

A director or officer will contravene the requirements of this section if his or her involvement in certain actions was not in good faith or for a proper purpose for the benefit of the corporation. The test applied by the courts is objective, based on what a comparable person, having the same knowledge and skills as the director or officer, would reasonably have done in the circumstances. A detailed review of the law was undertaken by Owen J in *Bell Group Ltd (in liq) v Westpac Banking Corp (No 9)* (2008) 225 FLR 1; 70 ACSR 1; [2008] WASC 239 (see Ch 20 of the judgment). However, the subjective intentions and beliefs of a director are relevant, as discussed in *Bell Group Ltd* at [291]. In *Re S & D International Pty Ltd (No 4)* [2010] VSC 388, Robson J said, at [283]:

The basic common law duty of a director is that he or she must act bona fide in what he or she believes is in the best interests of the company as a whole. This duty is encompassed in s 181.

[181.20] Key cases

The duty to exercise powers for a proper purpose and the obligation to act in good faith are separate duties: *Bell Group Ltd (in liq) v Westpac Banking Corp (No 9)* (2008) 225 FLR 1; 70 ACSR 1; [2008] WASC 239 at [4456] per Owen J.

The key decision concerning this duty is *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] AC 821; [1974] 1 NSWLR 68; (1974) 48 ALJR 5 at 77 (NSWLR), where Wilberforce LJ proposed a two-step test for determining whether a director had acted improperly:

[I]t is necessary to start with a consideration of the power whose exercise is in question, in this case a power to issue shares. Having ascertained, on a fair view, the nature of this power, and having defined as can best be done in the light of modern conditions the, or some, limits within which it may be

exercised, it is then necessary for the court, if a particular exercise of it is challenged, to examine the substantial purpose for which it was exercised, and to reach a conclusion whether that purpose was proper or not.

See also *Mills v Mills* (1938) 60 CLR 150; 11 ALJ 527; *Permanent Building Society (in liq) v Wheeler* (1994) 11 WAR 187; 12 ACLC 674; 14 ACSR 109 at 137 (ACSR) per Ipp J (who delivered the reasons of the Court); *Bell Group Ltd (in liq) v Westpac Banking Corp (No 9)* (2008) 225 FLR 1; 70 ACSR 1; [2008] WASC 239 at [20.4.1] per Owen J.

The basic principle is that directors and other officers must use their powers for their intended purpose, not a collateral purpose: *Whitehouse v Carlton Hotel Pty Ltd* (1987) 162 CLR 285; 61 ALJR 216; 70 ALR 251; 11 ACLR 715; 5 ACLC 421; *Permanent Building Society (in liq) v Wheeler* (1994) 11 WAR 187; 12 ACLC 674; 14 ACSR 109. See also *Ngurl Ltd v McCann* (1953) 90 CLR 425; 27 ALJR 349.

In another leading decision concerning s 181, *Australian Securities & Investments Commission v Adler* (2002) 168 FLR 253; 41 ACSR 72; 20 ACLC 576; [2002] NSWSC 171 at [738], Santow J found that allowing the company to purchase high-risk assets at a time when the company wanted to reduce its risk exposure would breach the duties owed under s 181.

For a detailed discussion of the principles concerning directors acting under a conflict of interest by setting up a competing business, see *Southern Real Estate Pty Ltd v Dellow* (2003) 87 SASR 1; [2003] SASC 318; *Courtenay Polymers Pty Ltd v Deang* [2005] VSC 318.

The content of the duty in s 181(1)(a) corresponds to the fiduciary duty owed at common law by an employee to an employer: *Hodgson v Amcor Ltd* [2012] VSC 94) at [1339].

The best interests of the corporation

One of the key issues is defining the “best interests of the corporation”, particularly whether that phrase includes the interests of non-shareholders. The classic statement of the law was given in *Greenhalgh v Arderne Cinemas Ltd* [1951] Ch 286 at 291 where Evershed MR stated that the similar phrase “company as a whole” did not mean “the company as a commercial entity, distinct from the corporators: it means the corporators as a general body.” See further *Darvall v North Sydney Brick and Tile Co Ltd (No 2)* (1989) 16 NSWLR 260; 15 ACLR 230; 7 ACLC 659.

Even accepting that the best interests of the corporation will generally be linked with the best interests of the shareholders as a general body, it must be noted that the general body of shareholders is not always a homogenous group with identical interests. In the situation where the interests of the shareholders diverge, the directors should act fairly between the different classes of shareholders: *Mills v Mills* (1938) 60 CLR 150; 11 ALJ 527 at 164 (CLR) per Latham CJ.

A duty to creditors?

The High Court’s decision in *Spies v The Queen* (2000) 201 CLR 603; 173 ALR 529; 74 ALJR 1263; 35 ACSR 500; 18 ACLC 727; 113 A Crim R 448; [2000] HCA 43 confirms that the “best interests of the corporation” does not (while the company is solvent at least) involve a direct duty owed by directors to the company’s creditors.

However, that does not mean that the interests of the company’s creditors are wholly irrelevant to directors’ duties under s 181. There is authority for the view that the “best interests of the corporation” will involve creditors’ interests where the company is insolvent or approaching insolvency: *Kinsela v Russell Kinsela Pty Ltd (in liq)* (1986) 4 NSWLR 722; 10 ACLR 395; 4 ACLC 215. See also *Re New World Alliance Pty Ltd; Sycotex Pty Ltd v Baseler (No 2)* (1994) 51 FCR 425; 122 ALR 531; 13 ACSR 766; 12 ACLC 494 at 785 (ACSR); *Australian Securities & Investments Commission v Somerville* (2009) 259 ALR 574; [2009] NSWSC 934 at [35]; *Australian Securities & Investments Commission v Sydney Investment House Equities Pty Ltd* (2009) 69 ACSR 648; [2009] NSWSC 144. Furthermore, as Barrett J stated in *Hausmann v Smith* (2006) 24 ACLC 688; [2006] NSWSC 682 at [12]: “There is a difference between the beneficiary of a duty and the delineation of the interests to be taken account of in performing the duty”. See further the detailed review of the authorities by Owen J in *Bell Group Ltd (in liq) v Westpac Banking Corp (No 9)* (2008) 225 FLR 1; 70 ACSR 1; [2008] WASC 239 at [20.3].

Content of the duty where company is solvent and the directors are the shareholders

In *ASIC v Maxwell* (2006) 59 ACSR 373; [2006] NSWSC 1052, Brereton discussed the content of the duty under s 180, and as part of this discussion his Honour said:

103. The constitution of the corporation, and concomitantly the identity of those to whom the duty is owed, is of importance because the duties referred to in ss 180, 181 and 182 are not duties owed in the abstract, but duties owed to the corporation.

...

104. One consequence of this, of present significance, is that where there is an identity of interest between the directors and the shareholders, so that in effect the directors are the shareholders,

the requirement to prevent self-interested dealing, constrain management and strengthen shareholder control — which is fundamental purpose and rationale of these duties — is much less acute. That is a circumstance which can impact considerably on the content of the duties. The significance of a correspondence between the identity of the directors and the shareholders is illustrated by the circumstance that, at general law, a fully informed general meeting can prospectively or retrospectively ratify the actions of directors of the company, though they involve negligence, breach of fiduciary duty or the exercise of the directors' powers for an improper purpose...Where the directors and the shareholders are one and the same, ratification is implicit. Although the shareholders of a company cannot release the directors from their statutory duties imposed by ss 180, 181 and 182, their acquiescence in a course of conduct can affect the practical content of those duties, including any question of whether directors acted with a reasonable degree of care and diligence, and whether they made improper use of their position.

104. There are cases in which it will be a contravention of their duties, owed to the company, for directors to authorise or permit the company to commit contraventions of provisions of the *Corporations Act*. Relevant jeopardy to the interests of the company may be found in the actual or potential exposure of the company to civil penalties or other liability under the Act, and it may no doubt be a breach of a relevant duty for a director to embark on or authorise a course which attracts the risk of that exposure, at least if the risk is clear and the countervailing potential benefits insignificant. But it is a mistake to think that ss 180, 181 and 182 are concerned with any general obligation owed by directors at large to conduct the affairs of the company in accordance with law generally or the *Corporations Act* in particular; they are not. They are concerned with duties owed to the company.

His Honour later pointed out (at [104]) that

[Sections] 180, 181 and 182 do not provide a backdoor method for visiting, on company directors, accessory civil liability for contraventions of the *Corporations Act* in respect of which provision is not otherwise made.

In *Australian Securities and Investments Commission v Cassimatis* [2013] FCA 641 the directors of a company, who were also its only shareholders, sought to have a claim by ASIC for breach of s 180(1) dismissed summarily. They argued that, as they were the company's only shareholders, and as it was admittedly solvent at the time of the relevant conduct, they were entitled to risk the company's capital as they wished. Reeves J declined to strike out the claim, on the basis that the issue was not one that was appropriate for summary determination.

Mixed purposes

Where the director's or company officer's conduct may be explained by a range of different purposes, the "but for" test is ordinarily used to determine what the relevant purpose was: *Mills v Mills* (1938) 60 CLR 150; 11 ALJ 527 at 186 (CLR) per Dixon J; later applied by the High Court in *Whitehouse v Carlton Hotel Pty Ltd* (1987) 162 CLR 285; 61 ALJR 216; 70 ALR 251; 11 ACLR 715; 5 ACLC 421 at 294 (CLR) per Mason, Deane and Dawson JJ. This means that the court will consider whether the director or officer would still have acted in the same manner had the collateral purpose not existed.

See further the discussion by Owen J in *Bell Group Ltd (in liq) v Westpac Banking Corp (No 9)* (2008) 225 FLR 1; 70 ACSR 1; [2008] WASC 239 at [4461]–[4465]; *Bell IXL Investments Ltd v Life Therapeutics Ltd* (2008) 68 ACSR 154; 26 ACLC 1,138; [2008] FCA 1457. See also *Short v Crawley (No 30)* [2007] NSWSC 1322 at [402]ff which discusses rules for establishing causation of loss in the context of breach of fiduciary duty.

Not surprisingly, a director cannot avoid liability for breach of ss 181 or 182 by claiming, in relation to a transaction between a third party and the company, that he or she was acting for the third party in the transaction, as this merely establishes that the person had conflicting duties. The Full Federal Court (Finn, Stone and Perram JJ) pointed out in *Grimaldi v Chameleon Mining NL (No 2)* (2012) 200 FCR 296; [2012] FCAFC 6 (at [430]):

It is a common, and rightly often deprecated, practice for persons to act in a dealing in which they owe conflicting duties to the several parties to the dealings.

Honest intentions

The law regarding the role of a director's subjective intention, in contrast to an objective assessment of the director's conduct, is not completely settled.

In *Marchesi v Barnes* [1970] VR 434, Gowans J held that a predecessor provision to s 181 required subjective dishonesty.

However, in *Australian Growth Resources Corporation Pty Ltd v Van Reesema* (1988) 13 ACLR 261; 6 ACLC 529, King CJ was of the view that a later predecessor to s 181 did not require any subjective dishonesty.

In *Permanent Building Society v Wheeler* (1994) 11 WAR 187; 12 ACLC 674; 14 ACSR 109 at 137 (ACSR), Ipp J (who delivered the reasons of the Court) said that honest or altruistic behaviour by directors will not prevent a finding of improper conduct on their part, if that conduct was carried out for an improper or collateral purpose. His Honour also said that, whether acts were performed in good faith and in the interest of the company is to be objectively determined, although “statements by directors about their subjective intentions or beliefs will be relevant to that inquiry.”

In *Australian Securities & Investments Commission v Adler* (2002) 168 FLR 253; 41 ACSR 72; 20 ACLC 576; [2002] NSWSC 171 at [738]–[740], Santow J seems to have favoured an objective test, or at least a minimal role for subjective intentions, expressing the view (at [738]) that

the standard of behaviour required by s 181(1) is not complied with by subjective good faith or by a mere subjective belief by a director that his purpose was proper, certainly if no reasonable director could have reached that conclusion.

In *Australian Securities & Investments Commission v Maxwell* (2006) 59 ACSR 373; 24 ACLC 1,308; [2006] NSWSC 1052, Brereton J followed the subjective approach outlined in *Marchesi v Barnes* [1970] VR 434. His Honour said (at [109]):

In my opinion, s 181 is contravened only where a director engages deliberately in conduct, knowing that it is not in the interests of the company.

However, in *Australian Securities & Investments Commission v Sydney Investment House Equities Pty Ltd* (2008) 69 ACSR 1; [2008] NSWSC 1224, Hamilton J considered that s 181(1) required an objective test.

In *Bell Group Ltd (in liq) v Westpac Banking Corp (No 9)* (2008) 225 FLR 1; 70 ACSR 1; [2008] WASC 239 at section 20.7 [4589]–[4619], Owen J considered the authorities at length. His Honour set out his conclusions at [4619]:

1. The test whether directors acted bona fide in the interests of the company as a whole is largely (though by no means entirely) subjective. It is a factual question that focuses on the state of mind of the directors. The question is whether the directors (not the court) consider that the exercise of power is in the best interests of the company.
2. Similar principles apply in ascertaining the real purpose for which a power has been exercised.
3. It is the directors who make business decisions and courts have traditionally not pronounced on the commercial justification for those decisions. The courts do not substitute their own views about the commercial merits for the views of the directors on that subject.
4. Statements by the directors about their subjective intention or belief are relevant but not conclusive of the bona fides of the directors.
5. In ascertaining the state of mind of the directors the court is entitled to look at the surrounding circumstances and other materials that genuinely throw light upon the directors’ state of mind so as to show whether they were honestly acting in discharge of their powers in the interests of the company and the real purpose primarily motivating their actions.
6. The directors must give real and actual consideration to the interests of the company. The degree of consideration that must be given will depend on the individual circumstances. But the consideration must be more than a mere token: it must actually occur.
7. The court can look objectively at the surrounding circumstances and at the impugned transaction or exercise of power. But it does so not for the purpose of deciding whether or not there was commercial justification for the decision. Rather, the objective enquiry is done to assist the court in deciding whether to accept or discount the assertions that the directors make about their subjective intentions and beliefs.
8. In that event a court may intervene if the decision is such that no reasonable board of directors could think the decision to be in the interests of the company.

In *Australian Securities & Investments Commission v Macdonald (No 11)* (2009) 230 FLR 1; 256 ALR 199; 71 ACSR 368; 27 ACLC 522; [2009] NSWSC 287, Gzell J (at [657]) (NSWC) followed the subjective approach in *Marchesi v Barnes* [1970] VR 434.

In *Australian Securities & Investments Commission v Somerville* (2009) 259 ALR 574; 74 ACSR 89; [2009] NSWSC 934, at [37], Windeyer AJ did not decide between the competing tests, although his Honour appears to have favoured the objective test, at least in relation to the “proper purpose” limb of s 181(1).

The statement of a subjective test in *Australian Securities & Investments Commission v Maxwell* (2006) 59 ACSR 373; 24 ACLC 1,308; [2006] NSWSC 1052, was cited with approval by Gordon J in *Digital Cinema Network Pty Ltd v Omnilab Media Pty Ltd (No 2)* [2011] FCA 509 at [158] (which decision was upheld on appeal: *Omnilab Media Pty Ltd v Digital Cinema Network Pty Ltd* [2011] FCAFC 166).

In *Holyoake Industries (Vic) Pty Ltd v V-Flow Pty Ltd* [2011] FCA 1154 at [150]–[151] Tracey J applied the subjective approach and stated that the weight of authority favoured it.

In *Mernda Developments Pty Ltd v Rambaldi* [2011] VSCA 392, the Victorian Court of Appeal (Warren CJ, Mandie JA and Judd AJA) stated (at [33]):

While there has been some debate about the application of an objective test, and whether it is appropriate to consider whether in fact the directors considered the interests of the company, it is now generally accepted that an objective test ought to be applied.

The authorities cited for that proposition were *Linton v Telnet Pty Ltd* (1999) 30 ACSR 465; 17 ACLC 619; [1999] NSWCA 33 at 472 (ACSR); *Farrow Finance Co Ltd (in liq) v Farrow Properties Pty Ltd (in liq)* [1999] 1 VR 584; (1997) 26 ACSR 544; 16 ACLC 897 at 581 (ACSR); and *Equiticorp Finance Ltd (in liq) v Bank of New Zealand* (1993) 32 NSWLR 50; 11 ACSR 642; 11 ACLC 952 at 1019 (ACLC). There was no reference to the more recent decisions referred to above, and it is difficult to see how the Full Court could have reached the view that “it is now generally accepted that an objective test ought to be applied” if its attention were drawn to them.

In *Re Wan Ze Property Development (Aust) Pty Ltd* [2012] NSWSC 722 Black J said, at [35], that whether a director acted for a proper purpose is to be determined objectively.

Corporate groups

The basic principle that the officers must act in the best interests of the company does not prevent an officer from engaging in an activity that would benefit an entity within the same corporate group, as the benefit accruing to the company may be direct or indirect: *Maronis Holdings Ltd v Nippon Credit Australia Ltd* (2001) 38 ACSR 404; 10 BPR 18,717; [2001] NSWSC 448 at [190] per Bryson J. Bryson J went on to comment at [191] (after a discussion of *Walker v Wimborne* (1976) 137 CLR 1; 50 ALJR 446; 3 ACLR 529) that “regard for group interest is not a vitiating element and in my understanding it has not been judicially so treated; what would vitiate is lack of regard for the interest of the company entering the transaction”.

As Owen J said in *Bell Group Ltd (in liq) v Westpac Banking Corp (No 9)* (2008) 225 FLR 1; 70 ACSR 1; [2008] WASC 239 at [4621]:

The law does not require directors of a group of companies to ignore the interests of the wider group. But it does demand that where one or more companies in a group enter into a transaction or transactions, consideration must be given to the interests of that company or those companies. Most commercial transactions involve both benefits and detriments and, in considering the interests of the participants and those affected by the transaction, it will usually be a case of balancing the two.

See also *Mernda Developments Pty Ltd (in liq) v Rambaldi* [2011] VSCA 392, and *Mills Oakley Lawyers Pty Ltd v Huon Property Holdings Pty Ltd* [2012] VSC 39 at [70].

Share issues

The power to issue shares has generated a significant amount of case law concerning the duties in s 181 and its predecessors. In light of the guiding principle that directors and other officers must not use their powers for collateral purposes, the key question is whether the company has a genuine commercial need for issuing new shares, given that it would be an improper exercise of power, and probably a breach of the duty of care and diligence, to issue shares for no good reason.

The leading decision is *Harlowe’s Nominees Pty Ltd v Woodside (Lakes Entrance) Oil Co NL* (1968) 121 CLR 483; 42 ALJR 123, where it was held that the primary purpose of the power to issue shares is to raise necessary capital for the company. However, that case also recognised that there may be legitimate commercial reasons to issue shares other than for capital raising (eg to preserve the long-term financial stability of the company or to take advantage of some genuine commercial opportunity). See also *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] AC 821; [1974] 1 NSWLR 68; (1974) 48 ALJR 5; *Teck Corp Ltd v Millar* (1973) 33 DLR (3d) 288; *Darvall v North Sydney Brick & Tile Co Ltd* (1989) 16 NSWLR 260; 7 ACLC 659; 15 ACLR 230; *Bell Group Ltd (in liq) v Westpac Banking Corp (No 9)* (2008) 225 FLR 1; 70 ACSR 1; [2008] WASC 239 at Ch 20; *Bell IXL Investments Ltd v Life Therapeutics Ltd* (2008) 68 ACSR 154; 26 ACLC 1,138; [2008] FCA 1457.

The cases clearly state, however, that issuing shares to manipulate or control voting power within a company is an improper purpose: see *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] AC 821; [1974] 1 NSWLR 68; (1974) 48 ALJR 5; *Whitehouse v Carlton Hotel Pty Ltd* (1987) 162 CLR 285; 61 ALJR 216; 70 ALR 251; 11 ACLR 715; 5 ACLC 421.

For a decision where a company secretary withheld information from the board so as to facilitate a share issue to themselves, which was held to be a breach of both ss 181 and 182, see *Biodiesel Producers Ltd v Stewart* [2007] FCA 722 (affirmed on appeal in *Stewart v Biodiesel Producers Ltd* [2008] FCAFC 66).

Transactions with the company

Hodgson v Amcor Ltd [2012] VSC 94 concerned the sale of certain businesses by a company, in transactions which permitted persons who were employees of the company at various levels to acquire the businesses. The case usefully illustrates the analysis for determining whether a person is an “officer” within s 9, and thus attracts the duties in s 181. Whilst a number of the employees were not at a sufficiently senior level to fall within that definition, they were held liable for breach of their fiduciary duties, as well as for breach of s 183, which extends to employees. As regards the one employee who was found to be an officer and to be liable under s 181, his liability arose from his failure to disclose his personal interest in the transactions, which deprived the company of the opportunity to take steps to protect its interests.

Defences – Disclosure

In *Australian Securities & Investments Commission v Adler* (2002) 168 FLR 253; 41 ACSR 72; 20 ACLC 576; [2002] NSWSC 171 at [735] Santow J stated that:

in certain circumstances, such as a director in “a position of power and influence” over the board, mere disclosure of a conflict between interest and duty and abstaining from voting is insufficient to satisfy a director’s fiduciary duty. The director may also be under a positive duty to take steps to protect the company’s interest such as by using such power and influence as he had to prevent the transaction going ahead.

Defences – Prior consent

See above at [180.30].

Extraterritoriality

Sections 180, 181, 182 and 183 apply to acts and omissions occurring outside of Australia: *PCH Offshore Pty Ltd v Dunn* (2009) 72 ACSR 99; 27 ACLC 752; [2009] FCA 553.

Receivers

The duty of a receiver and manager, appointed by a secured creditor, to exercise his powers in good faith and for a proper purpose, including the duty not to sacrifice the mortgagor’s interests recklessly, may be subsumed within the duty in s 181: *Forest Marsh Pty Ltd v Pleash* [2011] FCA 134 at [80].

[181.30] Further reading

The following journal articles may be of assistance on this topic:

Fiduciary duties

- Bathurst TF and Merope S, “It tolls for thee: Accessorial liability after *Bell v Westpac*” (2013) 87 ALJ 831.
- Bednall T and Ngomba V, “The High Court and the c-suite: Implications of *Shafron* for company executives below board level” (2013) 31 C&SLJ 6.
- Butler D, “Equitable remedies for participation in a breach of directors’ fiduciary duties: The mega-litigation in *Bell v Westpac*” (2013) 31 C&SLJ 307.
- Conaglen M, “Interaction between statutory and general law duties concerning company director conflicts” (2013) 31 C&SLJ 403.
- Gummow W, “The equitable duties of company directors” (2013) 87 ALJ 753.
- Langford RT, “Directors’ fiduciary duties: The relationship between conflicts, profits and bona fides” (2013) 31 C&SLJ 423.
- Langford RT, “Solving the fiduciary puzzle – the bona fide and proper purposes duties of company directors” (2013) 41 ABLR 127.
- Turner RJ, “Directors’ fiduciary duties and oppression in closely-held corporations” (2013) 31 C&SLJ 278.

Duties owed to creditors?

- Bathurst TF and Merope S, “It tolls for thee: Accessorial liability after *Bell v Westpac*” (2013) 87 ALJ 831.
- Maslen Stannage R, “Directors’ duties to creditors: *Walker v Wimborne* revisited” (2013) 31 C&SLJ 76.

182 Use of position—civil obligations

Use of position—directors, other officers and employees

- (1) A director, secretary, other officer or employee of a corporation must not improperly use their position to:
- (a) gain an advantage for themselves or someone else; or