

BOOK REVIEW*

Company Directors: Principles of Law & Corporate Governance
by R P AUSTIN, H A J FORD and I M RAMSAY
(Australia: LexisNexis Butterworths, 2005), lxxxiv + 822 pages
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In a 1998 speech to the Australian Institute of Company Directors, titled ‘The Company Director: Past, Present and Future’, Justice Michael Kirby commented on the changing community expectations of directors. He remarked that directors ‘need to lift their game’ and improve their standards of vigilance and competence ... and the superintendence by them of effective, honest and diligent management’.¹ Since 1998 there have been major corporate collapses – HIH and One-Tel in Australia - that have largely been attributed to poor corporate governance practices, the implementation of the ASX Corporate Governance Council’s Principles of Good Corporate Governance and Best Practice Recommendations, the significant CLERP 9 amendments to the Corporations Act 2001 (Cth) and well known directors’ duties cases, for example, *ASIC v Adler*,² *ASIC v Rich*,³ *ASIC v Vines*⁴ and *ASIC v Plymin*.⁵ These various developments have each contributed in various ways to the perception that responsibilities of directors are more onerous than ever before. In light of these developments it is surprising that there have been no recent Australian textbooks dealing specifically with directors.

The publication of *Company Directors: Principles of Law & Corporate Governance* (‘*Company Directors*’), therefore, is timely and makes an important and outstanding contribution to this theme particularly in its exposition of the legal principles relating to directors. Its authors are well-known and respected. There would be few corporate lawyers in Australia who would be unfamiliar with their other work, *Ford’s Principles of Corporations Law*, a work published both as a textbook as well as an extended looseleaf treatise. While many of the chapters in *Company Directors* are largely replicated from *Ford’s Principles of Corporations Law*,⁶ there is sufficiently new material in *Company Directors* to make it a worthwhile addition to the corporate lawyer’s library.

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1 See Justice Michael Kirby, ‘The Company Director: Past, Present and Future’ (Speech delivered at the Australian Institute of Company Directors, Hobart, 31 March 1998).

2 *Re HIH Insurance Ltd and HIH Casualty and General Insurance Ltd; Australian Securities and Investments Commission (ASIC) v Adler* (2002) 168 FLR 253.

3 *Australian Securities and Investments Commission (ASIC) v Rich* (2003) 174 FLR 128.

4 *Australian Securities and Investments Commission (ASIC) v Vines* (2003) 182 FLR 405.

5 *Australian Securities and Investments Commission (ASIC) v Plymin (No 1)* (2003) 175 FLR 124.

6 H A J Ford, R P Austin and I M Ramsay, *Ford’s Principles of Corporations Law* (12th ed, 2004).

Company Directors is divided into three parts.

Part A – ‘Structure and Powers of the Board of Directors’ – consists of four chapters. Chapter 1 provides an overview of various corporate governance issues. While the non-legal corporate governance issues (for example, the various best practice codes) are touched on in this book, readers wanting more in-depth coverage of these aspects should look at Professor Farrar’s book, *Corporate Governance: Theories, Principles and Practice*.⁷

Chapter 4 of *Company Directors* is particularly noteworthy. This chapter comprehensively covers the rights of directors and deals with matters such as directors’ rights to have the company’s affairs administered in accordance with its constitution, rights to remain in office, rights of access to financial records and other corporate information, as well as rights to assistance and advice.

Part B – ‘The Duties of Directors’ – consists of 13 chapters and is the core of this book. While there is considerable overlap with the equivalent chapters in *Ford’s Principles of Corporations Law*, several of the central themes of directors’ duties are expanded upon in greater depth in *Company Directors*. For example, Chapter 8 – The Duty to Avoid Conflicts of Interest and Conflicts of Duty – contains a comprehensive discussion of the range of persons who are subject to the various fiduciary responsibilities and their statutory supplements. It also looks at the disclosure obligations where companies with common directors are involved in mutual business dealings. In addition, the disclosure obligations in s 191 of the *Corporations Act 2001* (Cth) are extensively examined in that chapter. Chapter 15 is particularly noteworthy. Amongst other things it considers the financial benefits to related party provisions of ch 2E of the *Corporations Act 2001* (Cth) and insider trading. While these provisions have broad application, this particular chapter extensively reviews the relevant laws from the perspective of their impact on directors.

Chapters 12 and 13 adopted a thematic approach and dealt with meetings and financial statements (Chapter 12) and capital raising. The focus in these chapters is on the directors’ duties and liabilities. Readers are directed to *Ford’s Principles of Corporations Law* for the in-depth coverage of the other aspects of these themes. It is unfortunate that the authors did not adopt a similar approach to takeovers. While takeovers are considered in Chapter 7 within the context of share issues and the proper purpose duty, a chapter dedicated to directors’ duties in takeover situations would have been extremely valuable.

Part C – ‘Remedies for Breach of Duty and Enforcement’ – consists of two chapters on remedies and penalties (Chapter 18) and members’ derivative litigation (Chapter 19) that round off the book.

In summary, *Company Directors* is an outstanding work and is a valuable addition to the library of anyone interested in a detailed exposition of the legal regulation of directors.

7 John Farrar, *Corporate Governance: Theories, Principles and Practice* (2nd ed, 2005).