

An Introduction to the CLERP Act 1999: Australia's New Company Law

H A J Ford, R P Austin, I M Ramsay
Butterworths, 2000, pp 124, \$30

An Introduction to the CLERP Act 1999 is a new text that highlights recent changes made to the Corporations Law. The three authors, Professor Harold Ford, Justice Robert Austin and Professor Ian Ramsay are all authoritative experts in the field of commercial law, having also written the seminal text *Ford's Principles of Corporations Law*.¹

This concise and well laid out book aims to explain the significance of various new CLERP provisions in the key areas of takeovers, fund-raising, accounting standards, corporate governance and compulsory acquisition. *An Introduction to the CLERP Act 1999* is beneficial to students and practitioners of commercial law, especially those with a basic prior knowledge of Corporations Law.

The *Corporate Law Economic Reform Program Act 1999* ('CLERP Act 1999') enacts fundamentally important changes to the Corporations Law. The CLERP Act 1999 began from policy proposals announced by the Commonwealth Treasurer in 1997. CLERP was established by the Treasurer to conduct a review of regulation dealing with business and investment activity. At the forefront of the reform program was the notion of promoting economic efficiency and business flexibility. A reform proposal, emphasising the key principles of market freedom and promotion of competition, cost efficiency, investment protection, ethics, information and regulation was then tabled as a Bill on 2 July 1998. Various alterations were made to the Bill before it was passed by Parliament: (the CLERP Act 1999 commenced on the 13 March 2000). Thus *An Introduction to the CLERP Act 1999* explains the effect that the new CLERP provisions have on pre-existing Corporations Law.

The book is divided into six chapters. Chapter One gives an introduction as to how the CLERP provisions were enacted and the basic reasons why changes were needed. It highlights the content of the legislation, and gives a concise summary of the major alterations.

The second chapter deals with corporate governance specifically, and begins with a summary overview of the changes in corporate governance introduced by the CLERP Act 1999. These one-sentence, dot-

¹ Ford, Austin and Ramsay, *Ford's Principles of Corporations Law*, (9th ed, 1998).

point, summaries are then discussed one by one in the chapter, giving the reader a better understanding of such things as the business judgment rule and the definition of an officer.

The importance of, previous criticisms and additions to accounting standards are set out in Chapter Three. The conclusion of the author in terms of accounting standards is that the CLERP Act 1999 provisions are generally 'intended to establish an administrative structure and an environment for advancing policies about the accounting standard setting process and in particular, the importance of international developments.'²

Fundraising by issue and sale of securities is covered by Chapter Four. The alterations to fundraising provisions are more 'simplifications' than 'economic reform'. All changes are summarised in the introduction of the chapter, and then given more extensive coverage later in the chapter. A table clearly states the application of law in dealing with civil liabilities to pay compensation.

A similar table is set out in Chapter Five that deals with takeovers. Again this table establishes the application of law with regard to civil liability to pay compensation with specific regard to takeovers. Take-over reform is thought as being a fundamental part of CLERP and the economic policies that it reflects.

The book closes with Chapter Six, covering compulsory acquisition. Like the preceding chapters, a concise summary of alterations is given in the introduction of the chapter, followed by an evaluation. It is concluded by the authors that the 'power of compulsory acquisition serves the interest of economic efficiency, since it permits the majority shareholder to realize substantial financial economic advantages.'³

An Introduction to the CLERP Act 1999 achieves its goal of explaining the significance of the new CLERP provisions well. The writing is clear, succinct, direct and logical. The book is clearly laid out. The fact that each chapter begins with a dot-point summary of the main changes, with reference to where in the chapter that point is dealt with in more depth, allows the reader to easily access the information that is required. Statements are convincingly made, well backed up by citation of various reports, statutes and tables. The index, table of legislation and table of cases are more than adequate. Of particular help to the reader is the Table of Destinations set out in the beginning of the book. This table lists the various sections of the Corpora

² Ford, Austin and Ramsay, *An Introduction to the CLERP Act 1999* (2000) 40.

³ *Ibid* 107.

tions Law that have been completely repealed by the CLERP Act 1999, and indicated where the same matters can now be found. The book does a good job of explaining the basic changes logically and concisely.

However, due to the concise nature of the book, one must not expect any more than a mere introduction. In analysing the effects on the Corporations Law, the change in law is stipulated well: but rarely is analysis taken further to encapsulate the public policy considerations that are involved.

Though logical and easy to read, first time readers with no prior knowledge of commercial law may find it hard to grasp the importance of the changes to law. To have a full comprehension of the effects of the changes, one must fully understand the status quo of Corporations Law before such changes were implemented. Though the book does stipulate the law prior to the CLERP Act 1999, this is not done to any great length. This is not a fundamental flaw of the book however, as it is clearly stipulated in the preface that the authors assume that readers have an underlying knowledge of Corporations Law, and have read *Ford's Principles of Corporations Law*⁴ as numerous references are made to this text throughout the book. It is highlighted that the reader should gain the requisite background understanding from the reading of *Ford's Principles of Corporations Law*.⁵

An Introduction to the CLERP Act 1999 is clearly a guide for current students and practitioners of commercial law, with a pre-existing knowledge of Corporations Law. It's concise nature means it is not meant to be read as a complete authority on the far reaching effects of the CLERP Act 1999, but as a logical, succinct, easily readable introduction. Used in conjunction with *Ford's Principle of Corporations Law*,⁶ it clearly achieves its aims and is extremely useful in explaining the recent changes to Corporations Law.

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⁴ Ford, Austin & Ramsay, *Ford's Principles of Corporations Law*, above n 1

⁵ *Ibid.*

⁶ *Ibid.*

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