VICTORIA COLLEGE

BOWATER FACULTY OF BUSINESS

MELBOURNE

INAUGURAL DISTINGUISHED LECTURE

FRIDAY 1 JULY 1988

"THE IMPACT OF LEGISLATION AND REGULATION ON BUSINESS - PAST, PRESENT AND FUTURE"

VICTORIA COLLEGE
BOWATER FACULTY OF BUSINESS
MELBOURNE

Inaugural Distinguished Lecture
Friday 1 July, 1988

THE IMPACT OF LEGISLATION AND REGULATION ON BUSINESS - PAST, PRESENT AND FUTURE

The Hon Justice Michael Kirby CMG Hon D.Litt.*

TURNING THE WORLD ON ITS HEAD

It is an honour to be invited to deliver this Inaugural Lecture. But I confess that it is a daunting task to survey the topic assigned to me in half an hour. Such an obligation reminds me of Oscar Wilde's aphorism when he wrote a long letter, that he did not have the time to write a short one. If, tempted by the title, you came along hoping, in this brief address, to hear a denunciation of all legislation affecting business, you will be disappointed. That is certainly not my thesis. I was not busily engaged in law reform for a decade to embrace such an unsophisticated notion.

Business operates to serve society, not vice versa. Accordingly, business operates in the environment of social values which are set, ultimately, by our law making institutions. The basic rules within which business operates

are determined, in the end, by our legal theory by Parliament representing the people. These rules are then elaborated by subordinate legislation or by decisions of the courts. They are administered by a myriad of regulatory bodies, established to attain particular specialized objectives. Business law and regulation provide a minefield to the entrepreneur, through which he or she must tread with dexterity on the path to attaining the elusive goal of profit.

One of the best things that has happened in Australia in the past few years has been the growing realisation that, in the field of business and entrepreneurship, we must do better. It is somewhat paradoxical that this realisation has been pressed upon the country by a Labor Government, ostensibly still committed to the socialist objective.

For some, the world has been turned on its head. The Party of Chifley (who sought to nationalise the airlines and the banks) now explores the idea of privatisation. The Party of Watson and Scullin (who preached the virtues of tariff barriers behind which local industry could flourish) urges international competitiveness and the freeing-up of the market, at home and abroad. The Party of labour, committed to the disadvantaged in society, embraces the principle of "user pays", even in the precious right of education.

I am not, of course, making comments upon any of these apparent changes of policy. But they draw attention, especially in combination, to the truly radical times in which we are living. Radical changes in practice and philosophy are not confined to Gorbachev's Russia.

The need for a radical shake-up of business in Australia was emphasised last month by the Acting Secretary of the Federal Department of Industry, Technology and Commerce.[1] Mr Alan Godfrey was specifically critical of the failure of companies in Australia to consider the impact of changing technology on their industries. Referring to a survey of companies in Melbourne and Sydney, he reported that only 20 per cent had boards which could be regarded as well informed on technological questions. Many were not even aware of the assistance which they could receive from Federal and State Governments to restructure their enterprise to take advantage of technological change. Such assistance ranges from tax concessions and support for training schemes to export assistance of various kinds. Only about a third of the companies surveyed took advantage of any of these schemes. Furthermore, just under a third were not even aware, or only dimly aware, of the help available. Mr Godfrey made the point that this picture emerging was not a "heartening picture for most of the firms, their employees and shareholders". Nor, he declared, was it good news for Australia as a whole. Although, under the incessant urging of Barry Jones and others, Australian business had lately improved its investment in research and development and the importation of technology from overseas, we are still performing well below the standard required by the achievements of our competitors.

It is possibly a realisation of this fact, of the changing terms of trade and of the continuing decline in our relative standard of living, that has stimulated the Federal Government

to the radical changes of policy which, it hopes, will ultimately benefit all Australians. But as Mr Godfrey pointed out, changes of policy and even of law, do not always have a rapid impact on business, and thus on the economy. Our malaise is more deep-seated.

A clue to the source of the malaise was given by Professor Simon Domberger, the Bowater Professor of Management at the Graduate School of Management and Public Policy of the University of Sydney.[2] Delivering an occasional address at that University on 7 May 1988, Professor Domberger pointed out that in Australia there are close to 500,000 people engaged in executive and management roles. Yet, of those joining this group each year, only about 5000 have degree level qualifications in business and economics. Those with post-graduate degrees in management form a tiny proportion of the executive and managerial cadres in Australia. This situation is very similar to that prevailing in the United Kingdom. It is precisely the reason which has led to two critical reports on management in Britain, published respectively by the business community and by government organisations in that country last year. These reports came to much the same conclusion. It was that, in the competitive conditions prevailing today, in countries such as the United Kingdom, and thus Australia, education and training for a high proportion of those entering a managerial career was no longer a luxury. It is an imperative necessity.

In these circumstances, it is disappointing that the Green Paper on higher education, released by the Federal authorities

in Australia in December 1987, failed to address an issue central to the achievement of one of the major purposes accepted by the paper (namely a more dynamic, productive, creative and enterprising economy) against the background of apathy, ignorance and indifference painted by the survey of Australian business to which I have referred. The achievement of the turnabout of management in this country will depend upon more than speeches from politicians. It will even depend upon more than laws, which often take a long time to make their mark and sometimes miss the mark altogether. The best investment in the long-term regeneration of business in Australia may well be that accepted by the United States and Japan, our two most dynamic economic models. This is the rapid increase in management education so that we seed our business enterprises, both large and small, with people who have been trained in that self-critical, technologically alert and analytically rigorous approach to their functions which disciplined study of management issues can produce.

Professor Domberger offered three reasons why management education tended to suffer because of "benign neglect" in Australia as it had in Britain.[3] These are that management degrees in general and MBAs in particular, are thought to be curious American inventions from Harvard and Stanford, with no special relevance to management issues in Australia; that good managers are born, not made; and that, to expand management education, will entail commitment of unavailable funds from the public purse.

There is, of course, a grain of truth in each of these propositions. What works at Stanford and Harvard in the context of the United States may not be entirely suitable for the different social and economic environment of Australia. But we can certainly learn from them. It was disclosed in The Economist this month that even Hungary is now setting up a management school on the American model.[4] Perhaps they heard of the recent success of Mr Greiner, an MBA graduate of Harvard who is of Hungarian descent, who now seeks to apply management techniques to a whole State, NSW Inc. Flair, imagination and courage, which are vital elements in entrepreneurial success, cannot be inculcated by a series of lectures. They are, in part at least, features of human personality which are probably learned on the mother's knee, if not inherited. Likewise, these are certainly hard times to be seeking more resources from the public purse.

That is why the support of the Bowater Corporation for this Faculty (as for Professor Domberger's chair) is to be unreservedly applauded. Here is a corporation with the sufficient sense of responsibility and commitment to the future of the private sector in Australia, to put its dollars where its philosophy lies. I am thoroughly sick and tired of corporate lunches and business dinners where there are ringing panegyrics in favour of "Free Enterprise" and denunciation both of legislation and regulation of business, over the cigars and port. A much more useful investment in the long-term vitality of the market system in Australia is to be found, not in this rhetoric, but in practical measures for the training of the

next generation of more venturesome business leaders. If they are more self- critical, more technologically aware and more capable of analytical thinking, the long-term future of the corporation in Australia will be reassured. But not otherwise.

These are the reasons why I accepted the invitation to offer this address. The Bowater Corporation has made a considerable endowment to this Faculty to assist it in promoting cooperation between education and the private sector. The naming of the Faculty after a corporation is, so far as I am aware, unique in this country (though Mr Bond secured the name of a whole university). I applaud Bowater's corporate vision and their practical contribution to a more dynamic Australian business sector of the future. I hope that their example encourages others to go and do likewise.

THE IMPACT OF LEGISLATION

Company elections: One of the essential ingredients in any management or administration course today is close attention to the network of legislation - Federal, State and Local - which governs the conduct of the modern business enterprise in Australia. It is simply not possible in the time available to review the whole gamut of the applicable legislation. Clearly, it includes the Federal and State industrial relations laws, Federal and State consumer protection provisions, the Uniform Companies and Securities legislation, local legislation for the review of unfair contracts, Local Government regulation of the use of the environment and so on. A knowledge of the New Administrative Law, as it applies to the Federal and State public sectors, is also an important weapon in the armory of the modern manager who has to deal constantly with Governmental officials.

In the Court of Appeal, we are frequently faced with cases which concern the operation of management in the environment of legislation and regulation. Some cases involve the application of the Common Law, inherited for the most part from general principles developed by English judges in earlier times. But many such cases nowadays involve the application of the general legislation governing corporations and found principally in the Companies Codes. It is imperative that the modern manager should know, at least generally, the provisions of the Code and keep up to date with the major decisions of the courts, eliciting its meaning. Otherwise, things will be done which subsequently are found to be in breach of the Codes. This may render the corporation, and even the manager, liable in law.

Take, first, the duty of directors in the conduct of an election to the Board of Directors of a company. To what extent may they expend the funds of their company, in a way favourable to their re-election and unfavourable to competing candidates? Is it a defence that they do so because they consider, quite sincerely, that what they are doing is in the best interests of their company? What should the directors do in such circumstances? What should those managing the company do?

This question arose in the context of an election in August and September 1986 for the Board of the Advance Bank Australia Limited. The full facts are set out in the law report.[5] I will not repeat them. The Board of the Bank comprised nine directors. Five were obliged to retire at the first Annual General Meeting, called for September 1986. Three

of the remainder favoured their re-election. FAI Insurances Limited held 9.65 per cent of the ordinary shares issued by the Bank. In July 1986, Mr L. Adler for FAI wrote to the Chairman of the Bank advising him of FAI's intention to nominate four persons as directors, including himself. The directors of the Bank considered that it was not in the best interests of the Bank that Mr Adler and his colleagues be elected. The trial judge found that, in reaching that conclusion, the directors had acted honestly and bona fide, believing that what they were doing was for the best interest of the company. The directors then authorised a number of steps. These were taken in the endeavour to dissuade the shareholders of the Bank from electing Mr Adler's team. A letter was sent by the Chairman to shareholders urging the merits of the retiring directors; a committee of directors was established to support their re-election; an organisation was recruited to canvass shareholders, using a script which suggested that Mr Adler and his nominees would end up controlling the Bank, if elected. FAI obtained orders restraining the Bank and its Chairman from continuing to issue, at the Bank's expense, the letters I have referred to and the other promotional activities. The Bank and the outgoing directors appealed. The appeal was dismissed.

In the course of argument on the appeal, FAI urged that there was an absolute prohibition forbidding the expenditure of funds of a corporation so as to influence the outcome of an election of directors of the corporation. A number of American legal authorities support this quasi-constitutional proposition.[6] Similarly, a number of cases in Australia, in

the context of the election of trade union officials, suggest the same conclusion.[7] The Court ultimately steered away from laying down any absolute rule. It held that each case depended upon a scrutiny, in its context, of its own relevant facts. Nevertheless, the Court stressed that directors of corporations exercise fiduciary powers. They may not act otherwise than bona fide in the interest of the company as a whole and for its corporate purposes objectively determined.[8] Particular care had to be taken in the expenditure of funds relevant to their own re-election, lest, objectively looked at, that expenditure involved the directors in a conflict of interest and duty. My conclusion was as follows:

> "However subjectively well-intentioned the appellants were, bona fide and convinced that what they were doing was in the best interest of the Bank, looked at objectively the only proper classification of their primary purpose, is that it was to secure the re-election of the Chairman and the other four retiring directors. Even if it were concluded that their primary purpose was the best interest of the Bank, the way the directors went about the achievement of that purpose fatally undermined its attainments. To that extent the directors abused their powers. They exceeded their authority."[9]

The case is an important one because it concerns the integrity of the composition of the governing body of corporations in Australia. It goes some of the way towards incorporating into company law the same rigorous standards as have been enforced by the industrial courts for many years in

relation to the integrity of the governing bodies of industrial organisations. The old days in which the great power of controlling the corporation could be used, effectively, to perpetuate a Board's control and power or that of current management, have gone. Courts in Australia will now scrutinise, with attention to detail, the integrity of corporate elections. If there is a misuse of office, the directors will be held accountable for it, however convinced they might have been, subjectively, that their own continued control of the corporation was for its best interest. After all, perception of one's own merits may occasionally cloud judgment.

No law is immutable. In respect of each of the cases I will mention it is necessary to ask: Is this a correct or desirable principle? Should it be modified?

Justice Mahoney, who took a view slightly different to myself, hints at such a modification:

> "In my opinion, a company is not required to stand neutral in a contested election. As I have suggested, a company may have a legitimate interest in the suitability and efficiency of those who comprise its board of directors. That interest does not, in my opinion, stop at the point of a contested election. If a nominee for election would, if elected, harm the business or reputation of the company, the company may, in particular circumstances, be entitled to take steps to inform the shareholders of that fact. If a criminal were seeking to control the company for organised crime, the existing Board would be entitled

to investigate the facts, present them to the shareholders, and do so with an appropriate degree of advocacy. If the election of a particular director would, because it would involve a contravention of a statutory provision, cause the company to lose a valuable asset, such as a banking or television licence, the company would be entitled to, and may have a duty to, inform the shareholders of this and to do what properly should be done to suggest that he be not elected."[10]

These observations simply demonstrate the subtlety of company law and the necessity of those concerned with corporations in Australia to have a proper understanding of the principles by which they should operate, particularly in company elections.

Offers to public: A second case concerns a tax avoidance scheme organised to take advantage of the 1981 amendments to the Income Tax Assessment Act 1936 (Cth) to provide a deduction of 150 per cent of the capital expenditure in new Australian films. It was this incentive which produced a number of successful films, including Breaker Morant. But there were also a few unsung failures.

There are many complex questions raised by this second case. Those who are particularly interested can read it.[11] One of the questions concerned the application to the scheme of the requirement by the then companies law (continued by the Companies Code) that certain steps should be taken when offers are made "to the public", inviting the public to subscribe for or purchase an interest in a company. The tax avoidance scheme

was contained in a letter which was distributed by mail. The letter began with the salutation "Dear Member". But the evidence showed that the recipients of the letter were not "members" of anything which had previous connections with the organiser of the scheme - unless of that vast club of citizens anxious to minimize their tax. None of the recipients had initiated enquiries themselves. Some of them were clients of the organisers of the scheme. Others were not. The requirements of the law attaching to offers to the public were not complied with.[12] Specifically, a prospectus disclosing the required information had not been made available to the investing public. Certain minimum standards imposed upon those raising funds from the investing public had not been complied with. The first question in the case was whether the circular letter, addressed as it was, escaped the statutory obligations attaching to offers "to the public".

That phase has been the subject of many legal decisions.[13] But as the Court said, the words are imprecise. After weighing the evidence, two members of the Court (Justice McHugh and I) concluded that the evidence established that an "offer to the public" had been made. Another member of the Court (Justice Mahoney) reached the opposite conclusion. The case illustrates the great care that must be taken by corporators in raising funds from the public. But the differences of view within the Court require the question to be asked: Is the regulation provided by the Companies Code effective and suitable? Indeed, is it necessary? Do any members of the investing public ever actually read all the

material in the prospectus? Is there some more effective way of providing those who effectively make investment decisions with more relevant data, whilst avoiding the cost burden presently imposed by law upon those who raise investing funds from the public? Would a simplification of company law in this respect, and the cost savings and advantages secured thereby, outweigh the occasional harm done to some members of the public and they complain when the investment goes wrong? Cost effectiveness in law making is a general obligation upon all engaged in that function, as we are now increasingly realising.[14] In no area of activity should it be more stringently required than in corporate regulation.

Personal liability of officers: A third case saw me in dissent. It is a recent decision. Special leave to appeal to the High Court of Australia has been sought, so I must be circumspect in what I way. The case illustrates quite clearly the way in which the regulation of directors and officers of companies by the Companies Code may sometimes inhibit the entrepreneurial activities which is the very heartbeat of the corporation.

A wife was, with her husband, the sole shareholder and director of a company. It was ordered to be wound up less than a year after her husband, who was managing director, had ordered $104,000 worth of goods which were never paid for. The supplier sued the couple claiming that they were personally liable under Section 556 of the Companies Code. That section provides that, if a company incurs a debt, and immediately before the debt is incurred there are reasonable grounds to

expect that the company will not be able to pay all of its debts as and when they become due, any person who is a director of the company at the time when the debt was incurred is guilty of an offence and, moreover, is liable for the payment of the debt. But, it is a defence to an action, including for recovery of the debt, if the defendant proves that the debt was incurred "without his express or implied authority or consent". The husband had consented to the judgment against him. But he had no assets, the family assets being in the name of his wife. The wife claimed that the husband had told her not to be concerned about financial matters because she was a director "for signing purposes only". The trial judge found that the defence was established in the wife's case. A majority of the Court of Appeal (Justices Mahoney and McHugh) dismissed the supplier's appeal. They held that, in the circumstances, the wife was not directly liable for the debt. The majority concluded that the mere appointment of the wife to the office of director did not mean that she was authorising each and every debt of the company incurred by her husband. In the present case, the husband had incurred the debt on behalf of the company in his capacity as managing director. The wife had no power to prevent him from exercising that authority to contract the debt. She knew nothing about it. Accordingly, she had proved that she neither "authorised nor consented to" the incurring of the debt. She was therefore not liable for it.

I took a different view. As it seemed to me, Section 556 is a novel and exceptional provision, particularly when viewed in the context and provisions of company law. In the past, the

corporation was seen as something entirely separate from the directors and officers. This separation of the corporation from the entrepreneurs behind it and officers of it had provided the "essential impulse" to the most remarkable economic development of the past 200 years:

> "Although those dealing with the corporation would sometimes suffer upon its insolvency and liquidation, a social judgment was made that their losses were the price occasionally to be borne, where the protective mechanisms of company law had earlier failed, upon the basis that the generally the immunity of directors, as of investors, from liability for the debts of the corporation promoted the innovation, investment and risk-taking by the corporation essential to economic progress ... there are some who, today, hold to a similar philosophy. Moves towards 'deregulation' reflect the opinion that the pendulum of legislative controls over corporations and their officers may have gone too far and, as a consequence, may have dampened excessively the valuable enthusiasm of corporate venturers".[15]

Having said this, I expressed the opinion that the new and exceptional provisions of s.556 of the Code, by rendering directors and officers liable in some circumstances personally for the debts of the corporation, must be seen for what they are: exceptional, reformatory provisions deliberately introduced by Parliament, which must be given their full effect. Presumably they were introduced to try to help inculcate in directors and officers, at a time of possible

insolvency of the company, a greater sense of responsibility for fear that they might, in some circumstances, otherwise become personally liable. Accordingly, it seemed to me that to allow the wife, in this case, to escape personal liability by the simple expedient of her taking no interest in the affairs of the corporation frustrated the achievement of the very purpose for which Parliament had introduced the provision for personal liability.

> "It scarcely seems credible that Parliament would have intended the blanket operation of this defence to the frustration of the obvious scheme of the section and the achievement of its purpose, by the simple expedient of a director's surrendering all of his or her powers to a co-director or managing director. This would involve the possibility of completely frustrating the operation of the Act in every case by the simple device of donning the blinkers of indifference to, and assuming the bridle of neglect of, the interest in the company's affairs."[15]

I must resist the luxury of using this occasion to parade my own dissenting opinion. In due course, the High Court of Australia will consider whether there was sufficient merit in it to require re-consideration of the Court of Appeal's decision.

The point being made is that, on many fronts, the corporate veil has been lifted. This is another reason for directors and officers of corporations in Australia to be alert to the principal developments of company law. But it is equally a reason for legislators and judges to be alert to the

impact of their decisions on corporations and businesses generally. Such decisions necessarily have an economic ripple effect. It is important that law makers be aware of the economic consequences of what they do. For example, in making directors and officers of corporations sometimes personally liable in the subsequent insolvency of the corporation, we have to weigh the benefits and burdens. Do the benefits of occasionally inculcating more responsibility to suppliers and protecting the innocent person dealing with the corporation outweigh the burden of generally inhibiting corporate venturing, for fear of personal liability? Courts and even legislatures have tended to avoid the consideration of such policy questions.[16] But such decisions have direct and indirect economic implications. It is my view that the law makers and judges of the future will need to expose more clearly the policy foundations and implications of their decisions. Then, if it is considered that they are wrong or have undesirable consequences, the law makers and judges who follow can more readily correct them.

ROLE OF NATIONAL COMPANIES COMMISSION

This brings me to my final point. In a number of cases before the Court, including the three that I have mentioned, reference has been made by me to the failure of the National Companies and Securities Commission to take part in the proceedings in the Court, although large and general questions of company law are involved.

I am aware of the limited resources of that Commission. I realise the many other pressing obligations upon it. I also realise that views differ concerning the desirability and

usefulness of the intervention in private litigation between parties of a body such as the Commission.[17] However, if we are to secure from the courts of Australia a coherent development and application of company law, it seems to me that the national corporations authority has a legitimate function, and proper role, to assist the courts to fulfil their functions. With such assistance, it is possible that the courts will more readily see the significance of the decision in hand for the general body of corporations and securities law. It is also possible that, with such assistance, courts would develop the company law of Australia in a more coherent and structured way - and in a way more alive to the inescapable economic and policy implications of individual decisions.

It is particularly relevant to have the assistance of the authority because of the duty of the courts as stated by Parliament. Thus by the Companies and Securities (Interpretation and Miscellaneous Provisions) Code 1981 it is enacted in s 5A that:

> "5A In the interpretation of a provision of a relevant Act, a construction that would promote the purpose and object underlying the relevant Act (whether that purpose or object is expressly stated ... or not) shall be preferred to a construction that would not ppromote that purpose or object."

How much more readily may a Court perform the function envisaged by Parliament if it has assistance from those whose statutory responsibility is to superintend the achievement throughout the country of the purposes and objects of national companies and securities law.

In the end, the duty of the court is to the language and apparent purpose of the legislation. But language - especially the English language - is inescapably ambiguous, calling for choices of interpretation. Language may be unravelled and its purpose more readily discovered if the courts were to have (at least in important cases) the assistance of the National Companies and Securities Commission, or its successor. In essence, that authority should, in my view, make a more useful macro contribution in the future to the effective operation of company law while assisting the courts in the interpretation of companies and securities legislation in a way consistent with a coherent and well thought-out legislative philosophy. Courts have to perform their functions, often in great haste and with limited assistance from the parties. Those parties may have reasons of their own to confine their arguments. Individual decisions may thus distort the consistent development of companies and securities law. A more vigorous role on the part of the national corporations authority, be it as intervenor or amicus curiae in the courts, could be a particularly useful function. It is one which could influence beneficially the coherent development of this body of the law, so vital to the economic well-being of the country. Especially at the appellate level, the decision of a court might influence corporate activity for years to come. It is often difficult (particularly with a uniform law) to secure amendment of legislation if a court's decision "get's it wrong". This is a pressing reason for a more active role by the corporations authority in litigation of general importance in the future

than has been the case in the past, in assisting courts to discharge their functions. Those functions, although performed by the independent branch of Government, cannot be seen as isolated from their social and economic effects. This is a time when so much is happening to force the pace of restructuring management and the economy in Australia. The courts, and other law makers, cannot hide away from reality in a distant ivory tower. They must play their proper part.

The need for more modern approaches to management and to company law go hand in hand in our country. It was briefly to expound some of my perceptions of that need that I accepted your generous invitation to deliver this Inaugural Lecture.

FOOTNOTES

* President of the Court of Appeal of New South Wales; Chancellor of Macquarie University; Past Chairman of the Law Reform Commission of Australia.

The views stated are personal.

1. A Godfrey. Address at the opening of the Australian International Technology Exhibition, reported The Australian, 14 June 1988, 45.

2. S Domberger. Occasional Address, Sydney University, 7 May 1988, noted The University of Sydney News, 7 June 1988, 82.

3. Ibid.

4. The Economist, 11 June 1988, 68.

5. Advance Bank of Australia Limited & Ors v FAI Insurance Limited & Anor (1987) 9NSWLR 464.

6. e.g. Laywers' Advertising Co v Consolidated Railway Lighting and Refrigerating Co 80 ME 199; 187 MY 395 (1907), discussed ibid 467.

7. e.g. Short v Wellings (1951) 72 CAR 84; Scott v Jess (1984) 3 FCR 263; 57 ALR 379, noted ibid 478.

8. Advance Bank Ibid 485.

9. Ibid 487.

10. Ibid 493.

11. Hurst & Ors v Vestcorp Limited, Unreported CA, 24 February 1988; (1988) NSWJB 26.

12. See now Companies (NSW) Code, SS.34, 169.

13. e.g. Corporate Affairs Commission (SA) & Anor v Australian Central Credit Union (1985) 157 CLR 201, 213; in Re: South of England Natural Gas and Petroleum Company Limited [1911] 1 Ch 573, 577; Securities and Exchange Commission v Ralston Purina Co 346 US 119 (1953).

14. e.g. Observations concerning the economics of procedural fairness in Johns v Release on Licence Board (1987) 9 NSWLR 103, 113. See also Matthews v Eldridge 424 US 319 (1976); J L Mashall, "The Supreme Court's due process calculous for administrative adjudication", 44 Uni of Chicago L Rev 28 (1976).

15. See Metal Manufacturers Limited v Lewis, unreported, CA (NSW) 17 May 1988; (1988) NSW JB 77. See brief note in the Australian Law Report, 23 May 1988, 2.

16. U S Sealy, Directors' "Wider" Responsibilities - Problems Conceptual, Practical and Procedural (1987) 13 Monash Uni L Rev 164, 185.

17. CF Corporate Affairs Commission v Bridley; Commonwealth of Australia (intervenor) (1974) 1 NSWLR 391, 405.