



## Role and Legal Liability of Non-Executive Directors

Tuesday, 15th November 2011

The recent cases of *ASIC v Healey* (Centro case), *ASIC v Fortescue Metals Group Limited*, *ASIC v Rich* and *Western Areas Exploration Pty Ltd v Streeter* have examined the liability of directors as the directors in each of those cases sought to deal with various transactions. These cases follow on from the examination of the potential liability of a non-executive chairman in the case of *ASIC v Rich* (Greaves case).

Non-executive directors are “non-working” directors of a firm and do not participate in the day to day management of the company. They are often involved in planning and policy making and sometimes appointed to lend “prestige” to the company.

Whilst non-executive directors are expected to monitor and challenge the performance of executive directors and management, they are generally not as involved in the day to day operation of the company as executive directors.

Justice Middleton has described a director's role as that “essential component of corporate governance”.

What does that mean?

This seminar will cover the following topics and will examine the role and liability of the independent director in each.

1. Appointment and Removal of the Non-Executive Director (getting in and getting out)
2. Relationship of the Board, the Non-Executive Director and the Chief Executive Officer (when should the director take a closer look?)
3. Duty of Care and Diligence of Non-Executive Director (when can the NED rely on third parties?)
4. Some real life situations:
  - Continuous Disclosure
  - Insolvent Trading
  - Nominee Directors

## The New Australian Consumer Law

Tuesday, 15th November 2011

### From the Trade Practices Act to the Competition & Consumer Act

The new *Australian Consumer Law* (“ACL”) is an important legislative development in the area of Trade Practices and Consumer Law.

It has been described by the Australian Government as

“... a single, national law covering consumer protection and fair trading which will apply nationally and in each State and Territory”.

The legislation implementing the ACL will result in the *Trade Practices Act 1974 (Cth)* being renamed the *Competition and Consumer Act 2010 (Cth)*.

Whilst the ACL carries over and substantially adopts many of the provisions in Part V of the Trade Practices Act, it also introduces many new important provisions.

This seminar will cover the following areas:-

- The background of the new ACL
- The structure of the ACL
- The persons to whom and the circumstances in which the ACL applies
- The differences (and similarities) between the provisions of Part V of the Trade Practices Act and the ACL
- The new provisions in the ACL, including:
  - The *unfair terms* provisions relating to consumer contracts
  - Statutory consumer *guarantees* provisions
  - The product safety regime

- The revised statutory unconscionable conduct provisions
- The new offences, enforcement and remedy provisions
- The new powers conferred upon the ACCC
- Likely future developments in relation to the ACL



**Competency Area 3**  
**Legal Knowledge - Substantive Law**  
**CPD Points: 3.0**

### About the Presenter

The presenter at this seminar will be Jason MacLaurin. Jason is a barrister at Francis Burt Chambers. Prior to joining the Bar, Jason worked for Clayton Utz, Bennett & Co and the Crown Law Department (now State Solicitors' Office). Jason lectures in Trade Practices Law at Notre Dame University and is an adjunct associate professor at Notre Dame University. Jason has also been a sessional lecturer in Competition Law at Murdoch University.

[www.cpd.com.au](http://www.cpd.com.au)

## CPD Information

### Mandatory Continuing Education Scheme

There is a mandatory continuing education scheme in operation in Western Australia. To comply with this scheme, most certified practitioners are required to earn a minimum of 10 CPD points in each CPD period (1 April to 31 March).

### Competency Areas

CPD points are to be made up from three Competency Areas:

#### Competency Area 1 - Legal Skills and Practice

Those skills and attributes relevant to or necessary for an individual practitioner's practice

#### Competency Area 2 - Values

Ethics and professional responsibility

#### Competency Area 3 - Legal Knowledge

Substantive Law

Practitioners of less than five years post-admission experience, are required to complete a minimum of 4 CPD points in Competency Area 1 and a minimum of 4 CPD points in Competency Area 2 in each CPD period.

Practitioners of five years or more post-admission experience are required to complete a minimum of 2 CPD points in Competency Area 1 and a minimum of 2 CPD points in Competency Area 2 in each CPD period.

### QA Provider

CPDS is an organisation that has been approved by the Legal Practice Board of Western Australia as a quality assured provider of professional development activities.

### Enquiries

For all enquiries regarding application of CPD points to individual seminars:

Continuing Professional Development Seminars

Postal Address: PO Box 598, North Melbourne, VIC 3051

Telephone: (03) 9328 2688

Facsimile: (03) 9328 4688

Email: [seminars@cpds.com.au](mailto:seminars@cpds.com.au)

Website: [www.cpd.com.au](http://www.cpd.com.au)

Please note that the above is provided for informational purposes only and is based on information supplied by the Legal Practice Board of Western Australia at the time of publication. Practitioners should make their own enquiries before relying on the information supplied above.

[www.cpd.com.au](http://www.cpd.com.au)



- The New Australian Consumer Law
- Role and Legal Liability of Non-Executive Directors
- Cross Examination
- Fair Dealing in the Life Cycle of a Contract

CPDS Seminars November 2011

## Perth

Duxton Hotel  
1 St Georges Terrace

