

LAWS2301

Semester 2

Notes by Jacqueline Wong

12th November 2pm Winthrop Hall

Final examination: 60% weighting

2 hour examination

OPEN BOOK EXAM

Week 1

Introduction to Company Law

The Constitutional Framework

1. Corporations Act 2001
2. Case Law → precedents, interpretation of statutory provisions

Section 51 – formation power governed by states before 2001

The Corporations Act 2001 allows Commonwealth government to make laws in regards to companies

In 2000 states exercised referral of power allowed under **s 51(xxxvii)**

Administration of National Scheme

1. Administration on a national basis by ASIC
2. ASIC is subject to policy direction by 'The Minister' (C'wealth)

Functions; Enforce law, Ensure compliance, Investigate, Law reform, Public access

Incorporation and the types of companies (s112)

S114 Minimum no. of members is 1

S115 If more than 20, must incorporate (i.e. cannot form a partnership)

The liability of members can be limited by shares or by guarantee;

A. Proprietary Company (ss 9, 45A, 113) (Must have 'Proprietary' or 'Pty' in name: s148(2))

- No more than 50 non-employee shareholders (s113 (1))
- No public fundraising except for offer of shares to existing shareholders or employees s113(3)

Types: Limited by shares OR Unlimited with share capital

Small and Large Pty Co's ss9, 45A

- Revenue of less than \$25m?
- Gross Assets less than \$12.5m?
- Less than 50 employees?

2/3 Yes means company is small s45A(2)

A.1 Large proprietary company

Are required to prepare annual financial report and director's report – [s292](#); and

Financial reports must be audited – [s301](#)

A.2 Large proprietary company

Must meet these requirement only if ASIC ([s294](#)) directs or holder(s) of 5% of shares request ([s293](#))

B. Public Company [s9](#)

Company other than a proprietary company

Types of public companies:

- Limited by shares
- Limited by guarantee
- Unlimited with share capital
- No liability company

3 more directors and 1 company secretary

What is 'No Liability Company'?

s112(2)

- Share capital
- Mining purposes only s112(3), s9
- No right to recover call (but shares forfeited if calls are not met (s254Q))

Type	Liability	When
Limited by shares (ABC Pty Ltd) or (ABC Ltd)	Amount unpaid (if any) on shares held	Winding up or on a call
Limited by guarantee (ABC Ltd)	Amount of guarantee	Winding up
Unlimited (ABC Pty) (ABC)	Unlimited	Winding up
No Liability (ABC NL)	Nil	NA

Incorporation Process: s117,118

1) Lodge application with the following details:

- Type of Company
- Proposed name or ACN
- Details of member(s) who consent in writing
- Details of DIR(s) and CoSec who consent in writing (Pty Co need not have a CoSec)
- Registered office address

2) ASIC then:

- Gives company CAN
- Registers company
- Issues certificate of incorporation

Company comes into existence on day of registration: s119

Ongoing requirements to maintain registration: keep financial records, keep minute books, maintain register of members, option holders and debenture holders

Changing Company Type : ss162-167

Permitted Conversions : s162

E.g. Pty to Ltd

Ltd to NL

Method:

Pass a special resolution : s162(1)(a), s9

Lodge application with ASIC with copy of special resolution and other applicable documents : s163

ASIC gives notice on ASIC database and in the Gazette: s164(3)

After one month, ASIC alters details to reflect change : s164(4)

Gives company new certificate : s164(6)

NB: Does not create a new company : s166