

CORPORATE LAW NOTES

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VARIATION OF CLASS RIGHTS**(1) Variation of class rights?****General law?***Greenhalgh v Arderne Cinemas**White v Bristol Aeroplane Co*

No variation to strict legal rights

246C: Deemed variation?

Variation		Classes varied	SR required
(1) splitting a class into two	246F(1)(a) lodge notice with ASIC	All holders of share in the original class	Company Each class existing after the division
(2) varying the rights of some members only		All holders of share in the original class	Company Members whose rights were varied Members whose rights were not varied
(5) company with 1 class of shares issues new shares	(a) new share rights are not the same (b)(i) constitution (b)(ii) lodged with ASIC	Holders of existing shares	Company
(6) new preference shares ranking equally	(a) terms of issue (b) constitution 254A(2) & 254G(2)	Holders of existing preference shares	Company Holders of existing preference shares

Crompton v Morrish Hall Pty Ltd

Members with different share rights are treated as being in different classes

(2) Procedure? Contingent on being considered a variation

246B(1): constitution sets out procedure

246B(2): constitution does not set out procedure or provision for class rights

(c) SR (*See table*)

(d) written consent of members with > 75% votes in the class

246B(3): notice to members must be given within 7 days of variation or cancellation

246F(3): Ltd must lodge notice with ASIC regarding variation

(3) Unfair prejudice? Contingent on variation actually occurred

246D(1): without unanimous support of class

(a) variation or cancellation of their rights

(b) modification of the company's constitution to vary or cancel their rights

Members with > 10% of the votes may apply to the Court to have the variation, cancellation or modification set aside246D(2): application must be made within 1 month of variation246D(5): Court may set aside if satisfied it would unfairly prejudice applicants