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Bachelor of Commerce (B2001) | Year 1 • Part A Core | Monash University

Commercial law

Course Code: BTC1110 • Module 4 Notes

Module 4: Privacy & Data Protection Law, Agency, Partnerships & Introduction to Company Law

4.1 Privacy and Data Protection Law in Australia

In a data-driven economy, commercial enterprises collect, store, analyse, and monetise vast quantities of customer, employee, and supplier data. Historically, Australian common law did not recognise a freestanding general tort of invasion of privacy (*Victoria Park Racing and Recreation Grounds Co Ltd v Taylor* (1937) 58 CLR 479; *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* (2001) 208 CLR 199), relying instead on breach of confidence, trespass, defamation, and copyright (though Parliament enacted a new statutory tort for serious invasions of privacy in late 2024 alongside ongoing Privacy Act reforms). The primary federal data-protection statute governing commercial enterprises is the ***Privacy Act 1988* (Cth)**, enforced by the **Office of the Australian Information Commissioner (OAIC)**.

Scope: APP Entities, Personal Information, and Sensitive Information

The *Privacy Act 1988* (Cth) binds **APP entities**, comprising Australian Government agencies and private-sector organisations (individuals, bodies corporate, partnerships, trusts, and unincorporated associations) with an **annual turnover exceeding $3,000,000** (s 6C–6D). Notably, several categories of small businesses with turnover of $3,000,000 or less are *still* bound, including private health service providers, businesses trading in personal information, credit reporting bodies, and entities handling Tax File Numbers. Employee records held by a current or former private-sector employer are subject to an exemption where directly related to the employment relationship (s 7B(3)).

Under **s 6(1)**, **personal information** is information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether true or not and whether recorded in a material form or not (including names, addresses, IP/device identifiers, and credit histories). A narrower subset —**sensitive information** (racial or ethnic origin, political opinions, religious beliefs, trade union membership, sexual orientation, criminal record, health, genetic, and biometric information)—attracts heightened consent and security protections.

The 13 Australian Privacy Principles (APPs)

Schedule 1 to the *Privacy Act 1988* (Cth) establishes **13 principles-based Australian Privacy Principles (APPs)** governing the complete information lifecycle:

APP	Principle Title	Core Commercial Obligations
APP 1	Open and transparent management	Maintain reasonable practices, procedures, and systems for compliance, plus an up-to-date, clearly expressed, and publicly accessible **Privacy Policy**.
APP 2	Anonymity and pseudonymity	Give individuals the option of dealing anonymously or via a pseudonym unless impracticable or unlawful (e.g., AML/CTF identity verification).

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APP	Principle Title	Core Commercial Obligations
APP 3	Collection of solicited personal information	Collect personal information only where reasonably necessary for a lawful business function/activity; collect **sensitive information** only with consent (absent limited exceptions).
APP 4	Dealing with unsolicited personal information	Assess unsolicited data promptly; if it could not have been collected under APP 3, destroy or de-identify it as soon as practicable.
APP 5	Notification of collection	Take reasonable steps at or before collection to notify the individual of identity, purposes, third-party disclosures, overseas transfers, and complaint rights.
APP 6	Use or disclosure of personal information	Use or disclose information only for the **primary purpose** of collection unless the individual consents to a secondary purpose or a related secondary purpose is reasonably expected.
APP 7	Direct marketing	Prohibits direct marketing use unless exceptions apply, and mandates a clear, simple, zero-cost **opt-out** mechanism in every marketing communication.
APP 8	Cross-border disclosure	Before disclosing personal information to an overseas recipient (e.g., offshore cloud vendor), take reasonable steps to ensure the recipient does not breach the APPs; the Australian entity remains accountable.
APP 9	Adoption, use, or disclosure of government identifiers	Restricts private businesses from adopting government identifiers (such as Medicare numbers or TFNs) as internal customer account numbers.
APP 10	Quality of personal information	Take reasonable steps to ensure collected, used, and disclosed personal information is accurate, up-to-date, and complete.
APP 11	Security of personal information	Take reasonable steps (technical, physical, organisational) to protect data from misuse, interference, loss, and unauthorised access, and destroy/de-identify when no longer needed.
APP 12–13	Access to and correction of personal information	Provide individuals with access to their personal information upon request (APP 12) and take reasonable steps to correct inaccurate or misleading records (APP 13).

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Notifiable Data Breaches (NDB) Scheme and OAIC Penalties

Under **Part IIIC of the *Privacy Act 1988* (Cth)**, an APP entity experiencing an **eligible data breach** must notify the OAIC and affected individuals as soon as practicable. An eligible data breach occurs where: (1) there is unauthorised access to, unauthorised disclosure of, or loss of personal information; (2) a reasonable person would conclude that the breach is **likely to result in serious harm** to any affected individuals (assessing data sensitivity, encryption, and malicious actor intent); and (3) the entity has been unable to prevent the likely risk of serious harm through prompt remedial action. Suspected breaches must be assessed expeditiously within **30 days**.

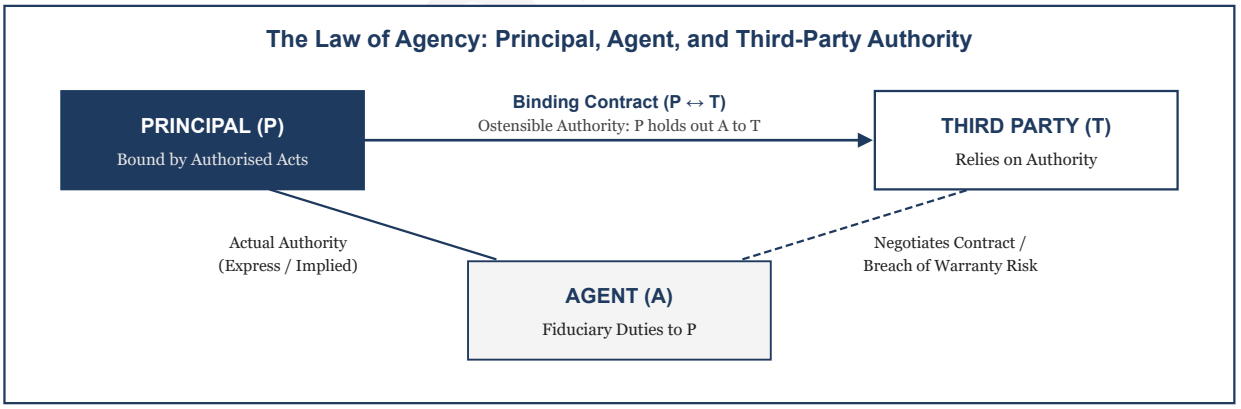
Following major Australian corporate cyber-incidents in 2022, Parliament enacted the *Privacy Legislation Amendment (Enforcement and Other Measures) Act 2022* (Cth), raising maximum corporate penalties under s 13G for serious or repeated interferences with privacy to the greatest of **$50,000,000**, **3 times the value of any benefit** obtained, or **30% of adjusted turnover** during the breach turnover period—aligning privacy exposure directly with the ACL penalty ceiling.

4.2 The Law of Agency

Commercial organisations—especially partnerships and corporations—cannot act physically on their own behalf; they act through human representatives. An **agency relationship** arises where one person (the **principal**) confers authority on another person (the **agent**) to act on the principal's behalf so as to create, alter, or terminate legal relations between the principal and a **third party** (*International Harvester Co of Australia Pty Ltd v Carrigan's Hazeldene Pastoral Co* (1958) 100 CLR 644). Once an authorised agent executes a contract on behalf of a disclosed principal, the contract binds the principal and third party directly, and the agent drops out of the contractual relationship.

Creation of Agency and Types of Authority

Agency may be created by express agreement (oral, written, or power of attorney), implied agreement from conduct, operation of law (agency of necessity in genuine commercial emergencies where communication with the principal is impossible, *Great Northern Railway Co v Swaffield* (1874) LR 9 Ex 132), or **ratification**. Ratification occurs when a principal retrospectively adopts an unauthorised act done on their behalf—provided the agent purported to act for that identifiable principal (*Keighley, Maxsted & Co v Durant* [1901] AC 240), the principal existed and had capacity at the time (*Kelner v Baxter* (1866) LR 2 CP 174; modified for pre-registration companies by s 131 *Corporations Act 2001* (Cth)), and the principal ratifies the entire transaction within a reasonable time with full knowledge of material facts.



Determining whether the principal is bound depends on the agent's **authority**:

- **Actual Express Authority:** Authority explicitly conferred on the agent by words or written mandate (e.g., an employment contract or board resolution authorising a procurement manager to sign orders up to $50,000).
- **Actual Implied Authority:** Authority reasonably necessary to carry out express instructions, incidental to the transaction, or customarily attached to a particular corporate office—such as a

managing director having implied authority to enter ordinary trading contracts, though not an isolated chairman acting alone (*Hely-Hutchinson v Brayhead Ltd* [1968] 1 QB 549).

- **Apparent (Ostensible) Authority:** Even where actual authority is absent or secretly restricted, a principal is estopped from denying authority where three requirements are met (*Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480; *Crabtree-Vickers Pty Ltd v Australian Direct Mail Advertising & Addressing Co Pty Ltd* (1975) 133 CLR 72): (1) a **representation** (by words or conduct, such as permitting someone to act as managing director) was made to the third party that the agent had authority; (2) the representation was made by someone possessing **actual authority** (an agent with only ostensible authority cannot self-authorise another agent—*Crabtree-Vickers*); and (3) the third party relied on that representation to enter the contract.

Duties, Rights, and Liabilities of Agents

Agents owe strict duties to their principal: to obey lawful instructions, exercise reasonable care, skill, and diligence (*Mitor Investments Pty Ltd v General Accident Fire & Life Assurance Corp Ltd* [1984] WAR 365), act personally (*delegatus non potest delegare*), and comply with **fiduciary duties**—to avoid conflicts of interest (*Dargusch v Sherley Investments Pty Ltd* [1970] Qd R 338), make full disclosure, accept no secret commissions or bribes (*Regal (Hastings) Ltd v Gulliver* [1967] 2 AC 134), and keep principal's property separate. In return, agents hold rights to agreed remuneration (if effective cause of sale), reimbursement/indemnity for authorised expenses, and a lien over principal property. If an agent falsely represents having authority they lack, the third party may sue the agent personally for **breach of warranty of authority** (*Collen v Wright* (1857) 8 El & Bl 647). Under the **undisclosed principal doctrine**, where an agent contracts in their own name without revealing they act for a principal, the undisclosed principal may later intervene and sue on the contract provided the agent had actual authority and the contract terms are not inconsistent with agency (*Siu Yin Kwan v Eastern Insurance Co Ltd* [1994] 2 AC 199).

4.3 Business Organisations and Partnerships (*Partnership Act 1958* (Vic))

Selecting an appropriate business structure profoundly affects personal asset exposure, taxation, governance complexity, capital raising, and succession.

Structure	Legal Personality	Owner Liability	Key Commercial Features & Trade-Offs
Sole Trader	No separate legal entity.	Unlimited personal liability for all business debts.	Simplest setup (ABN/business name); total control; taxed at individual marginal rates; ceases on death.
Partnership	No separate legal entity (aggregate of partners).	Unlimited joint (contract) & joint and several (tort) personal liability.	Governed by *Partnership Act 1958* (Vic); generally capped at 20 partners under s 115 *Corporations Act* (exceptions for lawyers/accountants); flow-through tax.

Structure	Legal Personality	Owner Liability	Key Commercial Features & Trade-Offs
Joint Venture	Contractual arrangement only (or JV company).	Several liability for own share of product/costs.	Formed for a single specific project (e.g., mining exploration), sharing output rather than net profit (*UDC v Brian* (1985) 157 CLR 1).
Trust (Trading / Discretionary)	Not a legal entity (trustee holds legal title for beneficiaries).	Trustee personally liable (with right of indemnity from trust assets).	Widely used in Australian SMEs and family groups for asset protection and flexible income distribution; often uses a corporate trustee.
Company (Pty Ltd / Ltd)	Separate legal entity (*Salomon*).	Limited to unpaid issue price on shares (for companies limited by shares).	Perpetual succession; superior equity/debt capital raising; flat corporate tax rate; higher ASIC compliance and statutory directors' duties.

Formation and Existence of a Partnership

Under **s 5(1) of the *Partnership Act 1958* (Vic)**, partnership is defined as "the relation which subsists between persons carrying on a business in common with a view of profit." All three elements must be satisfied: (1) **carrying on a business** (continuity or repetition of commercial activity, though a single preparatory venture can suffice once trading commences—*Khan v Miah* [2000] 1 WLR 2123; contrast preparatory incorporation steps in *Keith Spicer Ltd v Mansell* [1970] 1 WLR 333); (2) **in common** (mutual agency where each acts on behalf of all); and (3) **with a view of profit** (excluding charities and non-profit clubs). Under **s 6**, joint ownership of property or sharing gross returns does *not* by itself create a partnership, while sharing *net profits* is *prima facie* evidence of partnership unless paid merely as debt repayment, employee remuneration, annuity, or goodwill sale price (*Cox v Hickman* (1860) 8 HL Cas 268). Crucially, parties cannot avoid partnership liability simply by labelling their contract a "joint venture" if the substance satisfies s 5 (*United Dominions Corporation Ltd v Brian Pty Ltd* (1985) 157 CLR 1).

Mutual Agency, Liability to Third Parties, and Fiduciary Duties

Every partner is simultaneously a principal and an agent of the firm and co-partners. Under **s 9 of the *Partnership Act 1958* (Vic)**, an act of any partner for carrying on in the **usual way** business of the kind carried on by the firm binds the firm and all partners, unless the acting partner lacked authority AND the third party either knew of that lack of authority or did not know or believe them to be a partner (*Mercantile Credit Co Ltd v Garrod* [1962] 3 All ER 1103). Under **ss 13–16**, partners are **jointly liable** for contractual debts of the firm (s 13) and **jointly and severally liable** for torts or wrongful acts committed in the ordinary course of the firm's business or with co-partners' authority (ss 14–16; *Polkinghorne v Holland* (1934) 51 CLR 143). Under **s 18**, a non-partner who represents themselves—or knowingly suffers themselves to be represented—as a partner is liable as a partner by **holding out** to anyone giving credit on the faith of that representation. Incoming partners are not liable for prior firm debts (s 21(1)), while retiring partners remain liable for pre-retirement debts and must notify existing customers directly and advertise in the Government Gazette/newspaper (s 40) to avoid liability for post-retirement debts.

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Internally, partners owe strict fiduciary obligations codified in **ss 32–34**: to render true accounts and full information (s 32), account for any private benefit derived without consent from partnership transactions or property (s 33), and refrain from competing with the firm (s 34). In *Chan v Zacharia* (1984) 154 CLR 178, a medical partner who secretly renewed the clinic lease in his sole name after dissolution held the lease on constructive trust for the dissolved partnership. Partnership property brought into the firm or acquired on firm account must be applied exclusively for partnership purposes (s 24; *Harvey v Harvey* (1970) 120 CLR 529). Subject to contrary partnership agreement, **s 28** establishes default internal rules: equal sharing of profits and losses, no entitlement to salary or interest on capital prior to profit division, indemnity for firm expenses, equal management rights, and majority rule for ordinary business decisions (unanimity for changing business nature or admitting new partners).

Quantitative Example: Partnership Profit Allocation and Section 48 Dissolution Settlement

Where a partnership agreement specifies partner salaries (S_i), interest on contributed capital ($r \cdot C_i$), and a residual profit-sharing ratio (p_i), each partner's total profit entitlement E_i from net partnership profit Π is computed as:

$$E_i = S_i + (r \times C_i) + p_i \left(\Pi - \sum_{k=1}^{n} S_k - r \sum_{k=1}^{n} C_k\right)$$

Where:

- E_i = total annual profit distribution allocated to partner i (AUD).
- S_i = agreed annual partner salary allowance for partner i (AUD).
- r = agreed annual interest rate on capital contributions (decimal).
- C_i = fixed capital contribution of partner i (AUD).
- Π = net partnership accounting profit before partner appropriations (AUD).
- p_i = residual profit/loss-sharing fraction for partner i ($\sum p_k = 1$).

Worked Numerical Example: Aria, Ben, and Chloe operate a Melbourne architectural practice as a partnership under an agreement providing: fixed capital contributions $C_A =$ \$120,000, $C_B =$ \$80,000, $C_C =$ \$50,000 (total \$250,000); annual interest on capital $r = 6\%$; an active managing salary to Aria of $S_A =$ \$60,000 ($S_B = S_C =$ \$0); and residual profits shared 40% : 35% : 25%. Net profit for the year is $\Pi =$ \$275,000.

1. **Step 1 (Interest on Capital):** Total interest $= 0.06 \times$ \$250,000 = \$15,000 (Aria \$7,200; Ben \$4,800; Chloe \$3,000).
2. **Step 2 (Residual Profit Pool):** Subtract salary and capital interest: \$275,000 − \$60,000 − \$15,000 = \$200,000.
3. **Step 3 (Total Partner Allocations):** Aria: $E_A =$ \$60,000 + \$7,200 + $(0.40 \times 200{,}000) =$ \$147,200. Ben: $E_B =$ \$0 + \$4,800 + $(0.35 \times 200{,}000) =$ \$74,800. Chloe: $E_C =$ \$0 + \$3,000 + $(0.25 \times 200{,}000) =$ \$53,000. Check: \$147,200 + \$74,800 + \$53,000 = \$275,000.

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If the firm subsequently dissolves and sells all assets realising $340,000, **s 48(b) of the *Partnership Act 1958* (Vic)** prescribes the strict statutory order of asset application: (1) pay external firm creditors (say $70,000, leaving $270,000); (2) repay partner advances/loans (say $20,000 to Ben, leaving $250,000); (3) repay each partner's capital contribution ($120,000, $80,000, $50,000); and (4) divide any remaining ultimate surplus according to the profit-sharing ratio.

4.4 Introduction to Company Law and Corporate Personality

The dominant vehicle for medium-to-large Australian enterprise is the registered company governed by the ***Corporations Act 2001* (Cth)** and administered nationally by the **Australian Securities and Investments Commission (ASIC)**. Companies are classified principally into **proprietary companies (Pty Ltd)**—restricted to no more than 50 non-employee shareholders and barred from public fundraising (s 113), divided further into small and large proprietary companies under **s 45A** (meeting at least two of: consolidated revenue $\geq$ $50 million, gross assets $\geq$ $25 million, or $\geq$ 100 employees)—and **public companies (Ltd)**, which may raise capital from the public and list on the ASX.

Separate Legal Personality and Piercing the Corporate Veil

Upon registration by ASIC (s 119), a company becomes a **separate legal entity** distinct from its shareholders, directors, and employees. In the foundational House of Lords authority *Salomon v A Salomon & Co Ltd* [1897] AC 22, Aron Salomon incorporated his bootmaking business, taking 20,001 shares and a secured debenture while six family members held one share each. When the company collapsed, the liquidator argued Salomon and the company were one and the same. The House of Lords rejected that claim: provided statutory incorporation formalities were satisfied, the company was a separate legal person at law, its debts were its own, and Salomon was entitled to rank as a secured creditor. Australian courts apply *Salomon* strictly: a sole director-shareholder can simultaneously be an employee of their own company (*Lee v Lee's Air Farming Ltd* [1961] AC 12), and a sole shareholder lacks an insurable interest in corporate timber owned by the company (*Macaura v Northern Assurance Co Ltd* [1925] AC 619).

Courts only disregard separate legal personality—**piercing the corporate veil**—in exceptional circumstances: at common law where a company is formed as a sham or facade to evade an existing legal obligation or perpetrate fraud (*Gilford Motor Co Ltd v Horne* [1933] Ch 935; *Jones v Lipman* [1962] 1 WLR 832; contrast corporate group independence in *Briggs v James Hardie & Co Pty Ltd* (1989) 16 NSWLR 549), and under express statutory provisions such as **s 588G** (imposing personal liability on directors for insolvent trading) and **s 588V** (imposing liability on a holding company for insolvent trading by a subsidiary).

Internal Governance and Corporate Contracting (Sections 124–129)

A company's internal governance is regulated by **replaceable rules** in the *Corporations Act 2001* (Cth), a bespoke **constitution**, or a combination of both (ss 134–136), operating as a statutory contract binding the company, directors, and members (s 140). Externally, companies contract directly under **s 127** (executed by two directors, a director and company secretary, or a sole director/secretary of a proprietary company, with or without a common seal) or indirectly through authorised agents under **s 126**.

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To protect outsiders dealing in good faith against unknown internal irregularities—codifying and expanding the common law **indoor management rule** (*Royal British Bank v Turquand* (1856) 6 El & Bl 327)—**ss 128–129** entitle a third party to make statutory assumptions: that the company's constitution/replaceable rules have been complied with (s 129(1)), that persons listed on ASIC records as directors/secretaries have been duly appointed and possess customary authority (s 129(2)), that anyone held out as an officer or agent has customary authority (s 129(3)), and that documents apparently signed under s 127 are validly executed (s 129(5)–(6)). These assumptions hold even if a corporate officer acted fraudulently or forged a signature (s 128(3)), and are lost only if the outsider *knew or suspected* the assumption was incorrect (s 128(4); *Brick and Pipe Industries Ltd v Occidental Life Nominees Pty Ltd* [1992] 2 VR 279).

4.5 Directors' Duties, Insolvent Trading, and Business Ethics

Because shareholders entrust corporate capital to board control, both equity (fiduciary duties) and **Part 2D.1 (ss 180–184) of the *Corporations Act 2001* (Cth)** impose rigorous duties on **directors** (including *de facto* directors who act as directors without valid appointment and *shadow directors* whose instructions the board is accustomed to act upon—s 9, *Buzzle Operations Pty Ltd v Apple Computer Australia Pty Ltd* (2011) 250 FLR 242) and senior **officers**.

Provision	Statutory & General Law Duty	Core Standard & Landmark Australian Cases
s 180(1)	Care and diligence	Objective standard of a reasonable person in the corporation's circumstances holding that office. Directors must maintain financial literacy and critically scrutinise financial statements (*ASIC v Healey* (2011) 196 FCR 291 [Centro]) and not expose the company to foreseeable regulatory breaches (*ASIC v Cassimatis* (2016) 336 ALR 209).
s 180(2)	Business Judgment Rule (Safe Harbour)	Defends informed business judgments made in good faith for a proper purpose, without material personal interest, rationally believed to be in the company's best interests (*ASIC v Rich* (2009) 236 FLR 1). Does *not* apply to non-decisions or statutory compliance failures.
s 181	Good faith & proper purpose	Act honestly in the best interests of the company as a whole (shareholders collectively, and creditors when approaching insolvency—*Kinsela v Russell Kinsela Pty Ltd* (1986) 4 NSWLR 722) and exercise powers only for proper corporate purposes (not diluting control—*Howard Smith Ltd v Ampol Petroleum Ltd* [1974] AC 821).
ss 182–183 & s 191	No improper use of position/information; disclose conflicts	Officers and employees must not improperly use position (s 182) or inside information (s 183) to gain an advantage or cause detriment (*ASIC v Adler* (2002) 168 FLR 253; *ASIC v Vizard* (2005) 145 FCR 57). Material personal interests must be disclosed to the board (s 191).

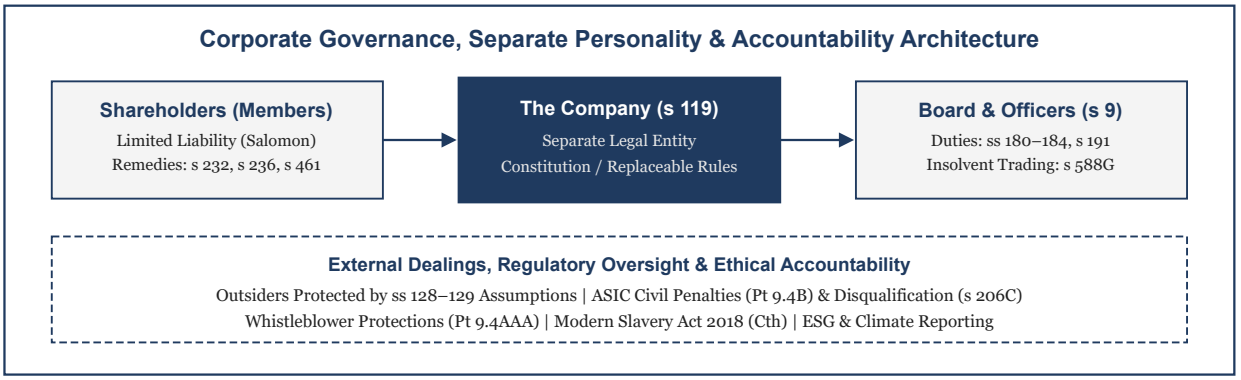
Provision	Statutory & General Law Duty	Core Standard & Landmark Australian Cases
s 184	Criminal offences	Reckless or dishonest breach of s 181, or dishonest use of position/information under ss 182–183, attracts severe criminal fines and imprisonment.
s 588G	Duty to prevent insolvent trading	Director is personally liable if company incurs a debt while insolvent (unable to pay debts as they fall due, s 95A) and reasonable grounds existed to suspect insolvency (*ASIC v Plymin* (2003) 175 FLR 124). Statutory defences (s 588H) and restructuring **safe harbour (s 588GA)** apply where directors develop a course of action reasonably likely to lead to a better outcome.

Enforcement, Insolvent Trading Defences, and External Administration

Breaches of ss 180–183 and s 588G are **civil penalty provisions** (Part 9.4B): ASIC may seek court declarations of contravention, pecuniary penalties (up to the greater of $1,565,000 or 3× benefit derived for individuals under s 1317G, and substantially higher corporate caps), compensation orders payable to the company (s 1317H), and orders disqualifying the director from managing corporations (s 206C). Under **s 588G(2)**, a director commits a civil penalty contravention if the company is insolvent when incurring a debt (or becomes insolvent by incurring it) and a reasonable person in a like position would have suspected insolvency (*ASIC v Plymin* (2003) 175 FLR 124, identifying 14 commercial indicators of insolvency including overdue taxes, dishonoured cheques, and unpaid creditors). A director may resist s 588G liability under four statutory defences in **s 588H**: (1) reasonable grounds to expect solvency; (2) reasonable reliance on a competent, reliable person informing the director of solvency; (3) non-participation in management due to illness or other good reason (not passive "sleeping" deference, *Deputy Commissioner of Taxation v Clark* (2003) 57 NSWLR 113); or (4) taking all reasonable steps to prevent incurring the debt. Additionally, the **safe harbour (s 588GA)** protects directors who start developing one or more courses of action reasonably likely to lead to a better outcome for the company than immediate administration or liquidation, provided employee entitlements and tax reporting remain up to date.

When a company faces financial distress, Australian insolvency law provides four distinct external regimes under Chapter 5 of the *Corporations Act 2001* (Cth): **Voluntary Administration** (Part 5.3A—an independent administrator investigates and proposes a Deed of Company Arrangement [DOCA] to rescue the business or achieve a better return than immediate winding up); **Small Business Restructuring** (Part 5.3B—debtor-in-possession restructuring for eligible companies with liabilities under $1,000,000); **Receivership** (appointment of a receiver by a secured creditor holding a security interest perfected on the Personal Property Securities Register [PPSR] under the *Personal Property Securities Act 2009* (Cth)); and **Liquidation** (winding up assets and distributing proceeds strictly in statutory priority under ss 555–556: secured creditors, liquidation expenses, employee entitlements, then unsecured creditors *pari passu*).

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Member Remedies, Related Party Transactions, and Business Ethics

Although majority rule generally governs corporate affairs (*Foss v Harbottle* (1843) 2 Hare 461), the *Corporations Act 2001* (Cth) protects minority shareholders against abuse of board or majority voting power through four primary statutory remedies:

- **Oppression Remedy (ss 232–234):** Where corporate affairs or a resolution are contrary to the interests of members as a whole, or oppressive, unfairly prejudicial, or unfairly discriminatory against a member (*Wayde v New South Wales Rugby League Ltd* (1985) 180 CLR 459), the court may order a share buyout at fair value, modify the constitution, or regulate future conduct.
- **Statutory Derivative Action (ss 236–242):** A member or officer may seek court leave to bring proceedings on the company's behalf—for instance, to sue directors for breach of duty where the board refuses to act—if acting in good faith and in the company's best interests.
- **Just and Equitable Winding Up (s 461(1)(k)):** Courts may wind up a solvent "quasi-partnership" company where mutual trust has irretrievably broken down (*Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360).
- **Statutory Injunction (s 1324):** ASIC or any person whose interests are affected may obtain an injunction restraining actual or proposed contraventions of the Act.

In addition, **Chapter 2E (ss 208–229)** prohibits public companies (and entities they control) from giving financial benefits to **related parties** (directors, spouses, controlling entities) without disinterested shareholder approval unless an arm's-length commercial exception applies. Contemporary corporate governance also embeds explicit ethical duties across Australian statutes: **Part 9.4AAA of the *Corporations Act 2001* (Cth)** shields corporate whistleblowers who report misconduct in good faith from identity disclosure and workplace retaliation; the ***Modern Slavery Act 2018* (Cth)** mandates annual supply-chain due diligence statements from entities with consolidated revenue of $100,000,000 or more; and mandatory climate-related financial disclosures under recent corporations amendments align board stewardship with long-term environmental, social, and governance (ESG) risk management. Integrating statutory compliance with principled ethical judgment represents the core capability demanded of Australian commerce graduates.

4.6 Worked Corporate & Agency Problem Analysis (IRAC)

Fact Scenario: Southern Cross BioTech Pty Ltd has three directors: Elena (Chief Executive), Marcus (Finance Director), and Priya (Non-Executive Director). Although the company's constitution requires board approval for any capital expenditure above $100,000, the board has allowed Elena for two years

to negotiate and sign supplier contracts alone without seeking formal board minutes, and ASIC records list Elena and Marcus as directors. Without board knowledge, Elena signs a $240,000 equipment lease with Metro Lab Finance Ltd under s 127 (signed by Elena as director and forged with Marcus's signature as second director), while secretly receiving a $15,000 introductory commission from Metro Lab's sales agent.

Corporate Contracting & Statutory Assumptions (ss 127–129): Under s 127(1) of the *Corporations Act 2001* (Cth), a company executes a document if signed by two directors. Even though Elena forged Marcus's signature and exceeded the internal $100,000 constitutional limit, Metro Lab Finance Ltd is entitled under s 128(1) and (3) to rely on the statutory assumptions in s 129(1) (constitution complied with), s 129(2) (Elena and Marcus are directors per ASIC records), and s 129(5) (document appears duly executed under s 127)—unless Metro Lab *knew or suspected* the forgery or lack of authority under s 128(4). Because Metro Lab's sales agent paid a secret commission to Elena, Metro Lab faces grave risk that its agent's knowledge of Elena's improper dealing precludes reliance on s 129 assumptions and renders the contract voidable for bribery/fiduciary breach.

Directors' Duties (ss 180–183) & Governance Failures: Elena has breached s 181 (failing to act in good faith in the company's best interests), s 182 (improperly using her position to obtain a $15,000 secret commission), and s 191 (failing to disclose a material personal interest), alongside criminal dishonesty exposure under s 184. She must account to the company for the $15,000 secret profit. Meanwhile, Marcus and Priya risk liability under **s 180(1)** (duty of care and diligence): allowing an executive to contract unchecked for two years without board oversight or internal financial controls falls below the objective standard expected of diligent directors (*ASIC v Healey*), and the business judgment rule (s 180(2)) offers no protection because failing to monitor compliance is a governance omission, not an informed business judgment.

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