

Consolidated Index: D

Contains Ampla
Yearbooks (YB) 1993-2004
Bulletins (B) 1994-1996
Journals (J) 1997-2004

Dai Hung

acquisition, YB97.289-290
exit, YB97.292
legislative framework, YB97.290-292
questions about project, YB97.290-291

Damages, *see also* Compensation

agreement to negotiate, breach of, YB02.16
breach of duty, YB02.2
 good faith, YB02.2
breach of promise, for, YB02.14, YB02.16
consequential, YB04.561, YB04.565
 legal expenses, YB04.570
definition, YB04.124
duty of care, breach of, YB02.430
equitable compensation and, YB04.125
expectation, YB02.16
insurance against
 compensatory, YB95.212
 exemplary, punitive or aggravated, YB95.211-212
 joint venture context, in, YB04.140-1
liability for
 exercise of public functions, in, YB02.423
 public bodies, of, YB02.421
 public officers, of, YB02.421
measure of, YB02.16
misfeasance in public office, for, YB02.421, YB02.424
misleading or deceptive conduct, for, YB02.421
mitigation, YB04.126
natural resources project not complying with approval conditions
 common law action, YB00.277-280
negligence, for, YB02.421, YB02.430
personal injury to indigenous peoples, J99.259-260
reliance, YB02.16
sale of coal assets in breach of joint venture assignment restrictions, YB01.121
statutory corporation, immunity from liability, J99.205-206
statutory duty, breach of, YB02.424, YB02.429
water supply contamination, J99.205-206

Dampier to Bunbury Natural Gas Pipeline Scheme

access regime, YB95.361-362, YB95.363-364
 Competition Principles Agreement, comparison with, YB95.376-385
 Goldfields Gas Pipeline Agreement, interaction with, YB95.390-391
 Pt IIIA negotiation model, distinguished, YB95.373-376
accounting obligations, YB95.365
capacity, YB95.366-367
 application for and grant of, YB95.370
 needs, obligation to meet, YB95.364-365
charges for transmission, YB95.371-372
definitions, YB95.360-361, YB95.363
disclosure of information, YB95.367
dispute resolution process, YB95.363, YB95.372

Gas Referee Regulations 1995 (WA), YB95.373
enforcement, YB95.362
“essential terms”, YB95.370–371
exempted contracts, YB95.365–366
Gas Corporation Act 1994 (WA), provisions under, YB95.360–366
Gas Transmission Regulations 1994 (WA), YB95.366–373
non-discrimination between shippers, YB95.367–369
open access to, YB95.359-360, YB95.361-362
pricing scheme, YB95.361, YB95.365
regulation, YB95.363
report, obligation to, YB95.364
tranches, YB95.369–370

Debt

recovery, YB04.170

Debt service reserve account, YB03.99

Declaration on the Rights of Indigenous Peoples, YB94.135

Decommissioning and rehabilitation, *see also* **Mine closure**

acquiring a new site, YB96.432-434
Canadian experiences, YB96.442-443
commitments, YB96.434-435
community perceptions, YB96.447-448
contaminated land, YB96.459-460
costs, YB96.435
effective, YB96.432
environmental audit, YB96.432-433
environmental objectives, YB96.445
environmental planning, YB96.446
innovation, YB96.458
limitations, YB96.447
monitoring, YB96.460-461
need for planning, YB96.432
“polluter pays” principle, YB96.432
practices, YB96.457-458
research, YB96.460
standards, YB96.455-457
strategies, YB96.457
US experiences, YB96.439-441
voids, YB96.458-459
Windarra nickel project, YB96.436-438

Default

definition, YB03.164

Defence Practice Area land

exploration on, J99.101-104
whether Crown land or private land, J99.102-103

Defences

due diligence—*see* **Due diligence**
environment protection legislation, offences against—*see* **Environment protection legislation**

Denmark

law establishing safety zones around offshore oil rigs, J99.249, J99.250

Depreciation

calculation of royalties, YB93.269

Deregulation

electricity market, *see* **Energy industry reform**
Victoria, in, *see* **Energy industry reform (Victoria)**
facilities of national significance, YB04.181–2

Derivative

contract for sale of RECs, YB03.277
financial product, as, YB03.276
meaning of, YB03.277

Derivatives—*see also* **Caps, Financial risk management, Futures, Hedging, Options, Securities, Swaps**

- alternative risk transfer, YB02.403
- Bankers Trust v Dharmala, YB97.369
- characteristics, YB93.101–103
- controls, YB97.353-365
 - external, YB97.353
 - internal, YB97.367-369
 - management, YB97.367-368
- Corporations Law, application of the, YB97.355-358
- Crown immunity, YB02.694-695
- dealers' duties to end-users, YB97.369-371
- defined, YB93.74, YB93.101, YB97.349
- gaming and betting exemption, YB93.114–115
- inherent risk, YB02.630, YB02.647
- licensing, YB93.113–114
- regulation of, YB02.639-640
- reporting of, YB02.646-647
- risk management method, YB02.629
 - use of, YB02.623-625, YB02.630

Design

- construction contracts, YB04.163

Designs, YB00.347-348

- see also* **Intellectual property rights**
- copyright, overlap with, YB00.357
- infringement, YB00.357
- new mining technologies, YB00.342-358

Developing countries

- ethnic divisions, YB04.61
- institutional weakness, YB04.60
- international standards and, YB04.60–2
- local or indigenous communities, YB04.61
- weak state powers, YB04.61

Development consent

- conditions attached to, YB95.45
 - explicit power to express, YB95.54–55
- conflict with other approvals, YB95.32
- de facto power of veto, YB95.45
- documentation, YB97.371-376
 - checklist, YB97.376
 - content, YB97.375-376
 - form of, YB97.372
 - ISDA, YB97.372-374
 - advantages, YB97.372
 - disadvantages, YB97.373
 - electricity transactions, in, YB97.381
- electricity market, and, YB97.377-384
 - insurance contracts, YB97.366
 - legal regulation in Australia, YB97.354-356
 - regulatory framework, YB97.355
 - risks, against, YB97.354-355
 - licensing regime, YB97.360-361
 - netting, YB97.367
 - off-exchange, YB97.353
 - on-exchange, YB97.352
 - Proctor & Gamble v Bankers Trust, YB97.370
 - reform, outlook for, YB97.364
 - uses of, YB97.349
 - hedging, YB97.349
 - trading, YB97.351
- electricity market, hedging and, YB97.377-384

- end-users, by, YB97.382
- hedging contracts, YB97.379-381
 - New South Wales, YB97.380
 - Victoria, YB97.379
- ISDA documentation, YB97.381
- Sydney Futures Exchange, YB97.383
- vesting contracts, YB97.378
- futures contract, YB97.356-359
 - adjustment agreements, YB97.357
 - consequences of treatment as, YB97.359
 - eligible commodity agreements, YB97.356
 - eligible exchange-traded options, YB97.357
 - futures options, YB97.357
- futures market, YB97.361
 - ASC exempt, YB97.362
- gaming and wagering legislation, application of, YB97.365
- hedging, YB97.349
- integrated system of approvals, establishment of working party, YB95.55-56
- invalid, J01.206-209
- land purchase condition, YB95.32-33
 - Barry v The Minister for Environment and Planning, YB95.32
- success, key components in, YB95.58
- uncertainty in terms, YB95.31
- unnecessary or excessive detail, YB95.32

Dewatering of underground workings

- contribution of neighbouring mine owners to cost, B95.100

Diesel fuel credits

- GST reduction, J99.61

Directors

- authorisation of offence, YB03.503-505
 - best interests of company, acting in
 - power of members to override, YB03.549-550
- business expenses, YB96.420
- confidential information, disclosure of, YB03.548
 - confidentiality, duty of, YB03.542-548
 - conflicts of interest, avoiding, YB03.534
 - connivance, concept of, YB03.507-509
 - consent, concept of, YB03.506-507
- diligence, concept of, YB03.497-499
 - due precautions, taking, YB03.510
- duties at common law, YB95.181-182
 - extension of, YB95.182
 - Re City Equitable Fire Insurance Company Ltd, summary in, YB95.181-182
- environment, liability for, *see* **Environment**
- environmental checklist, YB93.42
- environmental liability, YB93.11, YB93.57, YB93.332
- exercise of powers for a proper purpose, YB03.534
- fiduciary duties, YB03.533
 - good faith, duty to act in, YB03.533
- indemnity—*see* **Indemnity**
- independence of, YB03.551
 - interest, disclosure of, YB03.554
- knowingly concerned in, or party to, YB03.499-503
- liability, personal and joint venture, YB95.182
 - environment protection legislation, breach of—*see* **Environment protection legislation**
- nominee, *see* **Nominee directors**
 - permitting, concept of, YB03.505
 - personal liability, YB03.481
 - Australian Capital Territory, YB03.495-497
 - common law, YB03.482

- Commonwealth, YB03.484–485
- lack of uniformity in provisions, YB03.482
- New South Wales, YB03.485–487
- Northern Territory, YB03.495
- other jurisdictions, YB03.497
- Queensland, YB03.489–492
- South Australia, YB03.493
- statute, YB03.482, YB03.484
- Tasmania, YB03.494
- Victoria, YB03.487–489
- Western Australia, YB03.493–494
- potential conflicts, resolution of, YB03.553–554
- recklessness, concept of, YB03.509–510
- regulation, YB93.340
- remuneration, YB96.419-420
- taxation, liability for, *see* **Taxation**
 - third parties challenging actions of, YB03.550–551
 - uniform liability, need for reform, YB03.526–528
- valuation of assets, YB93.354–356
 - workplace health and safety, *see* **Workplace health and safety**

Disbursement account, YB03.99

Disclosure—see also Continuous disclosure, Inspection

- corporations, by, YB04.73–4
- foreign company listing in Australia, by, YB94.249
- hedging, for, YB02.640-642, YB02.647
 - ASX listing rules, YB02.646
 - financial reports, YB02.646
 - rules, YB02.643-646
 - standards, YB02.644-646
- limiting, after production, YB04.92–5
- powers of regulators, YB04.81
- standards
 - cross border mergers and acquisitions, YB02.330-331
 - forecasts, YB02.320-331
 - schemes of arrangement, YB02.324
 - takeovers, YB02.330-331
- unauthorised exploration by resources company, YB94.337, YB94.385
 - bases of obligation, YB94.338
 - code of conduct, relevance, YB94.376, YB94.385
 - confidential information, YB94.338
 - fiduciary duty, breach of, YB94.339, YB94.369
 - Barnes v Addey, rule in, YB94.375
 - misrepresentation under s 52 *Trade Practices Act*, YB94.343
 - statutory duty, breach of, YB94.343

Disclosure of discoveries, YB97.433-452

- Australian Securities Commission, action by, YB97.449
- Australian Stock Exchange, action by, YB97.448
- “aware”, YB97.434
- BHP, YB97.439-443
- Corporations Law
 - civil liability for non-disclosure, YB97.439
 - criminal liability for non-disclosure, YB97.438
- Cultus, YB97.443-448
- effect of information, expected, YB97.435
- exceptions to requirements, YB97.435
- integrity of regime, YB97.451
- listing rules, YB97.434-438
 - future of, YB97.449
 - waivers, when to grant, YB97.451
- “material”, YB97.435

mining companies, requirements of, YB97.437
“spirit” of disclosure, YB97.436

Disclosure by companies

Australian companies, YB00.502-503
ASX Listing Rules, YB00.495-496, YB00.497, YB00.512-513
continuous disclosure requirements, YB00.495-496
 civil liability for contravention, YB00.500
Corporations Law provisions, YB00.495, YB00.497
disclosure documents, YB00.410
 advertising restrictions, YB00.420
 lodgment, YB00.421
 offer information statements, *see* **Offer information statements**
 profile statements, YB00.410
 prospectus, *see* **Prospectus**
 publicity restrictions, YB00.420
failure to disclose, YB00.497
 civil liability, YB00.500
 intentional or reckless, YB00.497
initial public offer, *see* **Initial public offer (IPO)**
insider trading, YB00.497-498
native title disclosures, YB00.515
oil and gas exploration results, YB00.496
selective, YB00.493-503
 examples, YB00.493-495, YB00.499-500
selective briefings, YB00.498-499
tipping, YB00.497-498
US approach, YB00.501-502

disclosure requirements

regulatory response to crisis, J02.162-178

Discovery

arbitrator’s approach to, YB03.22–23
 civil proceedings, YB04.105
 cost of, YB03.23, YB04.107
 failure to make, YB04.107
 international arbitration, YB03.23
 nature of, YB04.86, YB04.105
 non-party
 costs, YB04.110
 court’s discretion, YB04.109
 definition, YB04.107
 pre-requisites for application, YB04.109
 purpose, YB04.108
 reasons for using, YB04.107
 subpoenas, distinguished, YB04.108
 objects, YB04.105
power to order, of application and objection, B94.14
 preliminary, YB04.110
 costs, YB04.111
 when available, YB04.110
 relevance test, YB03.22
 time for, YB04.105–6
 use of discovered documents, YB04.106
 volume of, YB03.23
 what documents must be discovered, YB04.106

Discretionary power

Petroleum (Submerged Lands) Act (PSLA), *see* **Petroleum (Submerged Lands) Act (PSLA)**
rule of law, contrary to, YB04.38

Discrimination

unjust, YB02.102

Dispute resolution

- access to upstream facilities, YB99.204-205
- agreement provisions, YB99.188
- UK code of practice, YB99.193-194
 - adjudication
 - challenges, YB04.178–9
 - consequences of determination, YB04.175–6
 - procedure, YB04.171–175
 - responses, YB04.176–7
 - administrative law remedies, YB04.178–9
- alternative dispute resolution, YB99.357-358
- arbitration—*see* **Arbitration**
 - AUSFTA, under, YB04.581–3
- injunctions, YB04.179
- Dispute Review Board, *see* **Dispute Review Board**
- Dispute Settlement Body, *see* **Dispute Settlement Body**
- engineering and construction contracts, YB03.220, YB03.232–238
- mediation—*see* **Mediation**
- on site, YB99.495-509
- procedures, YB02.59, YB02.62, YB02.65
- royalty disputes, YB93.254–255
 - World Trade Organisation, under, YB02.49, YB02.51, YB02.58-59
- Dispute resolution specialists**
 - international standards, role of, YB04.49
- Dispute Review Board**
 - advantages, YB99.506-507
 - case studies, YB99.503-505
 - comparison with other ADR forms, YB99.508-509
 - composition, YB99.497
 - costs, YB99.500
 - decisions
 - enforceability, YB99.502-503
 - whether binding, YB99.500-501
 - disadvantages, YB99.507
 - endorsement, YB99.503
 - formation, YB99.498
 - legal representation, YB99.501
 - liability of members, YB99.501
 - meetings, YB99.498-500
 - mini-DRB, YB99.505
 - multi-DRB, YB99.505
 - procedure, YB99.498-500
 - standby-DRB, YB99.505
 - success, YB99.506-507
 - use of, YB99.495
 - variations on standard, YB99.505-506
 - what is, YB99.495, 496
- Dispute Settlement Body (DSB)**, YB02.49, YB02.51
 - applications to, YB02.65, YB02.68
 - compulsory dispute resolution, YB02.49, YB02.51, YB02.59
 - decisions of
 - binding, YB02.49, YB02.51, YB02.59
 - enforceability of, YB02.59
 - determinations, YB02.62
 - establishment of, YB02.59
 - procedures, YB02.59, YB02.62, YB02.65
 - compulsory, YB02.59
 - quasi-judicial court, YB02.59
 - success of, YB02.65
- Disputes**
 - transnational

international standards, relevance of, YB04.47–54
mediation, YB04.49
recent examples, YB04.50–4

Distributorship

contractual obligation, YB02.34
good faith, of, YB02.34
termination of, *see* **Termination of contract**

DLC structures

approval, YB02.321
cross border regulation, YB02.332-333
establishment of, YB02.321
features, YB02.324-325
implementation of, YB02.321
separate entities, YB02.321

Diversified Mineral Resources v CRA Exploration Pty Ltd

claim for misleading and deceptive conduct, basis of, YB95.558–559
decision, YB95.560–562
disclosure of information, obligations, YB95.561–562
facts of case, YB95.559–560
fiduciary duty in contractual relationship, examination of, YB95.561–562
joint venture agreement, YB95.562–563
plaintiff, argument of, YB95.560
s 52, *Trade Practices Act 1974* (Cth), claim for damages for breach, YB95.558–559

Dividends

dual listed company structure, YB01.461
taxation, YB00.472-473
franking rebates, YB00.473
imputation credits, YB00.473
incorporated joint ventures, YB00.472
unfranked, paid to non-resident parent company, YB00.473

Documents

discovery, YB04.86
fishing expeditions, YB04.87
production of, *see* **Production of documents**
subpoenas, YB04.86

Dollar pits, YB93.372–373

Douglas Apsley National Park

Shell Company Ltd licence to mine, B94.9

Downstream petroleum industry

ACCC inquiry, YB96.351, YB96.379-380
Ampol/Caltex merger, YB96.355
changes, YB96.350, YB96.362
characteristics, YB96.352, YB96.381
competition, YB96.350, YB96.381-382
definition, YB96.350
features, YB96.371-372
geographic market, YB96.352-353
investment, YB96.380
marketing, YB96.380
mergers, YB96.355
Mobil purchase of Amgas, YB96.355-357
multi site franchising, YB96.358-361
benefits, YB96.363-364
concerns, YB96.365-366
contracts, YB96.367-369
effects, YB96.366
fiduciary relationships, YB96.377
perspective of franchisees, YB96.364-365
power of oil companies, YB96.364
promissory estoppel, YB96.369-371

- questions, YB96.366-367
- Trade Practices Act, YB96.371-376
- Oilcode, YB96.357, YB96.383-384
- participants, YB96.352-352, YB96.381
- price monitoring, YB96.354
- PRMFA, YB96.351, YB96.354-355, YB96.366
- profitability, YB96.382-383
- public perception, YB96.379, YB96.381
- refining companies, YB96.380
- regulation, YB96.353-355, YB96.379, YB96.383-384
- scrutiny, YB96.351, YB96.381
- Sites Act, YB96.351, YB96.354-355
- structural changes, YB96.351-352

Drafting

- mutual interest provisions, YB93.240-241

Drugs in the workplace, YB97.231-245

- confidentiality, YB97.238
- consequences, YB97.243
- duties of employer, YB97.232
- education, YB97.244
- employment contracts, YB97.233
- impairment, YB97.231
- observation as detection, YB97.234
- policy, implementation of, YB97.243
- rehabilitation, YB97.244
- testing
 - blood, YB97.236
 - collection and handling, YB97.237
 - cut-off levels, YB97.238
 - frequency, YB97.239
 - performance, YB97.234
 - specific, YB97.235
 - types of, YB97.235
 - urine, YB97.236
 - who to test, YB97.241-242

Dual listed companies (DLC)

- accounting
 - accounting standards, YB01.472
 - merger accounting, YB01.467-468
- advantages of structure, YB01.46, YB01.466-470
- agreements implementing, YB01.463-464
- approvals
 - regulatory, YB01.465-466
 - shareholder, YB01.465
- assets, YB01.460
- BHP/Billiton model, YB01.45, YB01.457
- boards and management, YB01.461
- Brambles-GKN merger, YB01.457
- break fees, *see* **Break fees**
- capital markets, access to, YB01.467
- capital reduction, YB01.461
- complexity of structure, YB01.471
- constitutions, YB01.462
 - amendments to, YB01.464-465
- corporate governance, YB01.472
- corporate identities, preserving, YB01.466
- cross guarantees, YB01.462
- deed poll guarantees, YB01.464
- dividends, YB01.461
- domicile, continuity of, YB01.466

- drawbacks of structure, YB01.470-471
- equalisation ratio, YB01.459
 - inability to maintain, YB01.470
- examples of, YB01.45-46
- features, YB01.458
- flexibility of structure, YB01.467
- franking credits, preservation of, YB01.468
- goal, YB01.458
- history of structure, YB01.458
- implementation, YB01.463-466
 - simplicity of, YB01.469
- implications for operations, YB01.460
- increased compliance costs, YB01.471
- legal entity, YB01.460
- low premium merger, YB01.469
- management inflexibility, YB01.471
- merger accounting, YB01.467-468
- merger implementation agreement, YB01.463
- merger ratio, YB01.459
- minimised tax consequences, YB01.468
- operational delays, YB01.471
- pre-emption, no trigger of, YB01.469
- ratio
 - equalisation, YB01.459
 - merger, YB01.459
- regulatory approvals, YB01.465-466
- regulatory framework, cross application of, YB01.472-473
- requirements for creation of, YB01.45-46
- share issues, YB01.461
- share price disparities, YB01.470
- shareholder approvals, YB01.465
- sharing agreement, YB01.463-464
- special voting shares deed, YB01.464
- structure, YB01.44, YB01.458-462
- takeover defence, YB01.469-470
- takeovers effected through, YB01.44-47
- valuation, impact on, YB01.471
- voting, YB01.461-462
 - class rights actions, YB01.462
 - joint electorate actions, YB01.461-462
 - special voting shares deed, YB01.464

Due diligence, YB93.17-18, YB93.57, YB93.58-59

- coal assets, sale or purchase of
 - bidder, by, YB01.130
 - detailed, YB01.129-130
 - initial, YB01.126
 - inquiries by purchaser, YB01.143-153
 - packaging the assets, in, YB01.128
 - process, YB01.133
 - targeting of purchasers, YB01.129
 - vendor, by, YB01.130

- obtaining environmental report, YB93.26-28

“Dutch disease”, YB04.67

Duty of care

- breach of, YB02.430, YB02.435-437
- damages for, YB02.430
- negligent, YB02.430
 - commercial premises, YB04.526
 - Bryan v Maloney*, YB04.528
 - economic loss, YB04.527, YB04.529

subsequent purchasers, YB04.526–7
Woolcock Street Investments Pty Ltd v CDG Pty Ltd, YB04.528–9
implications of decision, YB04.532–3

establishment of, YB02.430
Longford case, YB03.571
pre-purchase inspection, YB04.532–3
proximity, YB04.528
vulnerability, YB04.530–2

Duty of care of joint venture participants, YB01.128

Duty to negotiate

breach of, YB02.13, YB02.14, YB02.17, YB02.18
liability for, YB02.13
repudiation for, YB02.18
good faith, in, YB02.1, YB02.3, YB02.13-15, YB02.45
arbitrary clause, YB02.17
customs, YB02.17
misrepresentation, YB02.14
specific performance, YB02.14
unjust enrichment, YB02.14
usage, YB02.17
withdrawal from, YB02.17
enforcement of, YB02.45
fair dealing, YB02.17
imposition of, YB02.13
pre-contractual, YB02.14, YB02.15, YB02.45-46
refusal, YB02.18
scope of, YB02.17-18
withdrawal from, YB02.14