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AVOIDING DIRECT INCONSISTENCY BETWEEN THE CORPORATIONS ACT AND STATE/TERRITORY LAWS – CORPORATIONS ACT SECTION 5G

In the decision of *Linc Energy Ltd (In Liq)* [2017] QSC 053, Justice Jackson found that the pre-existing Queensland environmental laws have priority over inconsistent Commonwealth *Corporations Act* disclaimer provisions.

The matter involved the liquidator's right under the *Corporations Act* to disclaim onerous property pursuant to sections 568 and 568D of the *Corporations Act*, and the pre-existing State-based environmental obligations imposed upon companies.

The default position in respect of conflict between State and Commonwealth laws, is to refer to section 109 of the Constitution, with Commonwealth laws (in this instance the *Corporations Act*) taking priority over State-based laws.

However, sections 5G(4) and (11) of the *Corporations Act* allow the priority of State laws over the *Corporations Act* provisions where there is a direct inconsistency.

This decision is now the subject of appeal.

Some subsequent State-based legislation, such as the *National Energy Retail Law 2012 (NSW)* and *Community Housing Providers (Adoption of National Law) Act 2012 (NSW)*, specifically have *Corporations Act* displacement provisions, upholding the priority of that particular State-based legislation over the *Corporations Act*.

This remains an area that corporate liquidators should be aware of, and check as part of their due diligence when being appointed company liquidators and dealing with company assets.

Please contact SRM Lawyers to answer any queries you have relating to statutory inconsistencies or interpretation.

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