

SUPREME COURT OF QUEENSLAND

Registry: Brisbane  
No. BS4023/23

**IN THE MATTER OF PCA (QLD) PTY LIMITED (SUBJECT TO A DEED OF  
COMPANY ARRANGEMENT)  
ACN 141 148 245**

**Destination Brisbane Consortium Integrated Resort Operations Pty Limited as trustee for  
The Destination Brisbane Consortium Integrated Resort Operating Trust and QWB  
Residential Precinct Operations Trust**  
Applicant

**PCA (Qld) Pty Limited (Subject to a Deed of Company Arrangement)**  
First Respondent

**Salvatore Algeri, Jason Tracy, David Orr and Matt Donnelly in their capacities as joint and  
several administrators of the Deed Companies**  
Second Respondents

**Dexus Funds Management Limited as trustee for the Dexus Martin Place Trust**  
Third Respondent

**THIRD RESPONDENT'S OUTLINE OF SUBMISSIONS**

**INTRODUCTION**

---

1. This outline is prepared on behalf of the Third Respondent, Dexus Funds Management Limited as trustee for the Dexus Martin Place Trust (**Dexus**).
2. Dexus supports the orders sought by the amended originating application filed 4 March 2024 on behalf of the Applicant and dated 4 March 2024 (**Amended DBC Application**) where a variation is sought in respect of a deed of company arrangement entered into on or about 21 July 2022 as between PCA (Qld) Pty Limited, its related companies (**DOCA Companies**), including Probuild Constructions (Aust) Pty Limited (**Probuild Constructions**) and their creditors.
3. The Second Respondents (**Deed Administrators**) make their own applications:
  - (a) filed on 7 June 2023 (**Deed Administrators' First Application**) for orders pursuant to s. 445A, s. 445G and s. 447A of the *Corporations Act 2001* (Cth) (**the Act**) in respect of their own proposed variations to the DOCA; and

(b) filed on 15 December 2023 (**Deed Administrators' Second Application**) made under s. 447A of the Act, sch. 2 to the Act, being the Insolvency Practice Schedule (Corporations) s.90-15 – seeking a direction that the Deed Administrators would be



justified in convening a meeting of creditors to consider and vote upon a resolution to vary the DOCA in terms of the proposed varied DOCA; or an order pursuant to s.447A of the Act.

4. The Amended DBC Application and the Deed Administrators' Second Application include competing proposed amended DOCAs. Dexus supports DBC's submissions filed 11 March 2024 and provides additional reasons as to why the orders sought in the Amended DBC Application are warranted. Dexus also opposes the Deed Administrators' First and Second Applications.

#### **BACKGROUND**

---

5. On 23 February 2022, the Deed Administrators were appointed as joint and several voluntary administrators in respect of the DOCA Companies.<sup>1</sup>
6. On 30 June 2022, the Deed Administrators convened the second creditors' meeting to vote on a Deed of Company Arrangement, which the creditors approved (**DOCA**).<sup>2</sup>
7. It was not the intention of the Deed Administrators to deprive the creditors of the DOCA Companies of the benefit of any contracts of insurance that may respond to claims against the DOCA Companies.<sup>3</sup> Implicitly, it would also not be the intention of the Deed Administrators to deprive the benefit of an indemnity for defence costs arising from such claims.
8. The extent of the Deed Administrators' consideration of the issue was to refer to s. 562 of the Act in the DOCA.<sup>4</sup>
9. On 30 June 2022, the creditors of the DOCA Companies passed a resolution pursuant to s. 439C of the Act. By that resolution, the creditors authorised the companies to enter into the DOCA in its current form and appointed the Second Respondents as Deed Administrators.<sup>5</sup>
10. The DOCA Companies remain in litigation in respect of claims that may respond to policies of insurance. The First Orr Affidavit indicates that "*the relevant DOCA Companies hold responsive insurance*"<sup>6</sup> yet Mr Orr does "*not make any admissions on behalf of any insurers in respect of any insured claims*".<sup>7</sup> Although notified of these applications, the relevant

---

<sup>1</sup> First Orr Affidavit, paragraph 2.

<sup>2</sup> First Orr Affidavit, paragraph 81.

<sup>3</sup> First Orr Affidavit, paragraph 65(iv)

<sup>4</sup> First Orr Affidavit, paragraph 93; and Second Orr Affidavit, 55(a).

<sup>5</sup> First Orr Affidavit, paragraph 3.

<sup>6</sup> First Orr Affidavit, paragraph 111.

<sup>7</sup> First Orr Affidavit, paragraph 112. See also the Second Orr Affidavit, paragraph 24.

insurers have not indicated their position.<sup>8</sup>

11. Dexus is in a position that is distinguishable from DBC for two reasons. First, Dexus was aware of the proposed DOCA. Second, Dexus contends that it has insured claims and had informed the Deed Administrators of facts and circumstances that could give rise to claims.
12. Dexus presently holds claims against Probuild Constructions, a DOCA Company, and is concerned that its claims against this company may be extinguished by the DOCA in its current form. Dexus contends that its claims may be the subject of a policy of insurance that may respond to indemnify Probuild Constructions.
13. Dexus also has corresponding but distinct claims against the insurers in respect of the insured losses arising from the *Civil Liability (Third Party Claims Against Insurers) Act 2017* (NSW) (**Claims Act**).<sup>9</sup> Unlike the other respondents, Dexus enjoys the benefits of the Claims Act in respect of its claims in New South Wales (there is no such equivalent section for other respondents that Dexus is aware of).
14. The Court has previously considered whether statutory provisions such as s. 601AG of the Act and the Claims Act create new, standalone, causes of action against insurers. While the Court has answered this question in the affirmative, the action against an insurer will be subject to the same limitation provisions as would have applied had the action been against the company: see *Mervyn Jonathan Kitay as liquidator of ACN 009 009 072 Pty Ltd -v- Chaucer Syndicates Limited (CRN 184915) as managing agents for Chaucer Syndicate 1084* [2021] WASC 450. In effect, the insurer steps into the shoes of the insured defendant.
15. DBC proposes that the Court make orders varying the DOCA in accordance with the draft deed comprising Annexure A to the Amended DBC Application.
16. The DOCA in its unamended form intends, relevantly, to achieve a better return than liquidation for all creditors.<sup>10</sup> The DOCA contemplates the establishment of a Deed Fund divided into four pools<sup>11</sup>:
  - (a) Pool A – for the payment of the Administrators’ Liabilities and Admitted Employee

---

<sup>8</sup> First Orr Affidavit, paragraphs [156] and [157]. See also the Second Orr Affidavit, paragraphs [85] and [86].

<sup>9</sup> *Chubb Insurance Co. of Australia Limited v Moore* (2013) 302 ALR 101, 143; [2013] NSWCA 212, [200] per Emmett JA and Ball J (Bathurst CJ, Beazley P and Macfarlan JA agreeing); and in respect of its predecessor, the *Law Reform (Miscellaneous Provisions) Act 1994*, see the dicta of McHugh and Gummow JJ in *Bailey v New South Wales Medical Defence Union Limited* (1995) 184 CLR 399, 446; and more recently *Koper v Zurich Insurance* [2021] NSWSC 1587.

<sup>10</sup> Clause 3.1(a) of DOCA.

<sup>11</sup> Clauses 8.1, 8.2 and 8.3 of the DOCA.

Creditors. Any surplus is to be transferred to Pool D and then to Pool C.

- (b) Pool B – payments to Admitted Small Creditors on a pro rata basis with the surplus transferred to Pool A.
  - (c) Pool C – payments in respect of Deed Administrators' Liabilities, Admitted Unsecured Creditors and Insurance Bond Creditors.
  - (d) Pool D – payments to the Australian Taxation Office in respect of GST liabilities and income liabilities.
17. As presently drafted, the DOCA provides as follows in respect of creditors' claims:
- (a) By clause 1.5, the Deed Companies and the Deed Administrators may plead the deed as a bar to any claim, subject to s. 444D of the Act.
  - (b) By clause 14.11, a Creditor will be deemed to have abandoned its Claim if, before the payment of a final dividend from the relevant Pool, the Creditor a) fails to submit a proof of debt in respect of the claim; or b) fails to appeal the rejection of the proof of debt.
  - (c) By clause 15.3(a), creditors must accept their entitlements under the Deed Fund in full satisfaction and complete release and discharge of all Claims which they have, or claim to have, against the Deed Companies on or before the Appointment Date.
  - (d) By clause 15.3(c), immediately upon and with effect from the Final Distribution, the Claims of all Creditors will be fully released and extinguished.
18. The Deed Administrators have made distributions to the creditors comprising Pools A and B in the amounts of \$12,044,647.62 and \$1,764,992.70 respectively,<sup>12</sup> and accordingly, their claims have been released.
19. The remaining unpaid creditors comprise Admitted Unsecured Creditors, Insurance Bond Creditors (being Pool C) and the Australian Taxation Office (being Pool D).

## **PROVISIONS & PRINCIPLES**

---

### *Part 5.3A of the Act*

20. The DOCA provides, consistently with s. 435A(b) of the Act, that its commercial object is to obtain a better result for the DOCA Companies' creditors than would result from a winding up; and does so by adjusting creditors' rights.<sup>13</sup> The purpose of the scheme provided by Part 5.3A is to enlarge the benefits to creditors and avoid obstruction by those who wish to hold out to

---

<sup>12</sup> First Orr Affidavit, paragraph 96.

<sup>13</sup> *City of Swan and ors v Lehman Brothers Australia Limited* (2009) 179 FCR 243, 254; [2009] FCAFC 130, [44] per Stone J.

- maximise their own claims.<sup>14</sup>
21. Part 5.3A of the Act is silent as to the effect of a DOCA on claims against entities other than the company in administration,<sup>15</sup> save in respect of creditors' rights in respect of guarantees and indemnities provided by third parties directly to the creditor.<sup>16</sup> Consistently with those limitations, s. 444H of the Act releases debts so far as the DOCA provides for it. That is because it is not intended to effect a wholesale adjustment of creditors' rights.<sup>17</sup> Section 444D(1) of the Act binds creditors of the company "so far as concerns claims", which is interpreted to mean claims against the DOCA Companies exclusively.<sup>18</sup>
22. Part 5.3 provides, relevantly, two powers by which a Court may cause the amendment of the DOCA:
- (a) a Court may direct a further creditors' meeting be convened pursuant to s. 445A of the Act; or
  - (b) the Court may rectify the DOCA itself pursuant to s. 447A of the Act.
23. Paragraphs 30 to 36 further below address the principles governing the decision to make an order convening a further meeting or rectifying the DOCA.

*The Brandrill decision*

24. ***Brandrill v Newmont Yandal*** [2006] NSWSC 974 is a decision that DBC properly has regard to. There the plaintiffs sought orders pursuant to s. 445D and further sought orders pursuant to s. 447A. The application in *Brandrill* referred to the DOCA being misleading or unfairly prejudicial,<sup>19</sup> presumably because the creditors were led to believe that the DOCA would not release insured claims, whereas that was its precise effect.<sup>20</sup>
25. The vice in the DOCA at issue in *Brandrill* was that it intended, but arguably had failed, to preserve the creditor's underlying claim, amongst other things by replicating the terms and effect of s. 562 of the Act, with the result that the applicant's claims were unintentionally released.<sup>21</sup> With the release of the underlying claim against the debtor followed the *potential* release of the claim against the debtor's insurers.<sup>22</sup> Whether the DOCA had that effect was a

---

<sup>14</sup> *Re Bartlett Researched Securities Pty Limited* (1994) 12 ACSR 707, 709 per Derrington J.

<sup>15</sup> *Lehman Brothers*, 253; [39] per Stone J.

<sup>16</sup> Subject to s. 444H.

<sup>17</sup> *Lehman Brothers*, 254; [44] per Stone J.

<sup>18</sup> *Lehman Brothers Holdings Inc v City of Swan* (2010) 240 CLR 509, 527; [2010] HCA 11, [52] per French CJ, Gummow, Hayne and Kiefel JJ.

<sup>19</sup> *Brandrill*, [7] per Austin J.

<sup>20</sup> *Brandrill*, [24], [52] per Austin J.

<sup>21</sup> *Brandrill*, [24] per Austin J.

<sup>22</sup> *Brandrill*, [24] per Austin J.

question that Austin J expressly declined to answer.<sup>23</sup> His Honour was moved to make an order pursuant to s. 447A to “*put all parties in the position that they were led to expect would be the position obtaining under the Deed*”.<sup>24</sup>

26. There are two points to be made regarding *Brandrill*. The first is that the existence of the possibility that the DOCA may unintentionally release particular claims of creditors produced unfairness. The second is that Austin J was reticent to decide whether a DOCA can release a creditor’s claim against the debtor’s insurer by releasing the creditor’s underlying claim. That is an issue which, to this day, remains unresolved. The issue was further considered in *City of Swan and ors v Lehman Brothers Australia Limited* (2009) 179 FCR 243, 254, decided by the Full Court of the Federal Court three years after *Brandrill* and considered below.
27. Of all of the judges who heard *Lehman Brothers* (Stone, Rares and Perram JJ), only Rares J addressed the point described in paragraph 26 above. His Honour contemplated that it would be open to “*the insurer to plead the release in the deed in bar of the claim, even if the creditor dissented from the resolution*”.<sup>25</sup> That is because the insurer is conceivably a contingent creditor to the company in respect of the insured claim.<sup>26</sup> Furthermore, Part 5.3A does not exonerate the DOCA Companies from its liabilities arising from the relevant contract of insurance, or the Claims Act.<sup>27</sup>
28. The High Court did not resolve the question when *Lehman Brothers* was appealed.<sup>28</sup> The appeal concerned the scope of s. 444D of the Act: specifically whether the words “so far as concerns claims” in s. 444D could release creditors’ claims against entities related to the company in external administration the subject of the DOCA. The Court held that it could not.<sup>29</sup> Importantly, the DOCA dealt with insured claims particularly. The plurality did not address those provisions, save to caution that its reasoning in respect of s. 444D “may not necessarily lead to the same conclusion with respect to cl 7 of the Deed – the clause about insurance claims”.<sup>30</sup> Heydon J said nothing on the point.
29. It is Dexus’ submission that the same unfairness subsists within the DOCA.

#### *Amendment of the DOCA*

30. An amendment to a DOCA may be effected by way of creditors’ resolution pursuant to

---

<sup>23</sup> *Brandrill*, [30] – [31] per Austin J.

<sup>24</sup> *Brandrill*, per Austin J.

<sup>25</sup> *Lehman Brothers*, 272; [93] per Rares J.

<sup>26</sup> *Lehman Brothers*, 272; [93] per Rares J.

<sup>27</sup> *Lehman Brothers*, 272; [93] per Rares J.

<sup>28</sup> *Lehman Brothers Holdings Inc v City of Swan* (2010) 240 CLR 509; [2010] HCA 11.

<sup>29</sup> *Lehman Brothers* (2010) 240 CLR 509, 526 - 527; [2010] HCA 11, [50] - [52] per French, Gummow, Hayne and Kiefel JJ.

<sup>30</sup> *Lehman Brothers* [56] per French, Gummow, Hayne and Kiefel JJ.

- s. 445A<sup>31</sup> or by order made pursuant to s. 447A.
31. Subject to what follows, particularly in paragraph 36, an order pursuant to s. 445A is the usual means by which amendments are made to a DOCA, as the effect of an order under s. 447A would deny creditors the opportunity to vote on the amendments.<sup>32</sup>
  32. The power to vary a DOCA pursuant to s. 447A is a broad power that alters how Part 5.3A is to operate in relation to the Deed Companies.<sup>33</sup> As such it is a wide discretionary power.<sup>34</sup> It should be exercised to avert substantial injustice.<sup>35</sup>
  33. The decision as to whether to make an order pursuant to s. 447A should be made bearing in mind considerations such as those recently referred to in *Longley (deed administrator), in the matter of Dixon Advisory & Superannuation Services Pty Ltd (subject to deed of company arrangement)* [2024] FCA 570 per Beach J, namely that regard is to be had to the “practical commercial consequences” that would flow if the variation order were not made, and that the Court may be justified in making the order where “no prejudice to creditors is involved”<sup>36</sup> (see also *Re Concrete Supply Pty Limited* [2018] FCA 1003, [13] per Besanko J and *CCS Equipment Pty Limited (subject to a deed of company arrangement); ex parte Shaw* [2019] WASC 431, [21] per Vaughan J).
  34. The authorities since *Brandrill* support the proposition that an appropriate exercise of the power arises where there is a need to preserve creditors’ claims.<sup>37</sup> Indeed, in those circumstances an order pursuant to s. 447A is particularly apt as the amendments take effect from the date of the execution of the DOCA.<sup>38</sup>
  35. An order pursuant to s. 447A therefore forecloses questions as to the extinguishment and subsequent revival of the claims. That issue remains a live one where the variation to the DOCA is effected by a creditors’ resolution.
  36. A Court faced with a DOCA that should be varied is accordingly confronted with a choice as

---

<sup>31</sup> *Re Duggan in her capacity as deed administrator of Conomi Group Pty Ltd (Subject to Deed of Company Arrangement)* [2023] FCA 998, [47] per Halley J; *Re Derwent Howard Media Pty Limited* [2011] NSWSC 1164, [11] per Brereton J.

<sup>32</sup> *Ansett Australia Ground Staff Superannuation Plan Pty Limited (as trustee) v Ansett Australia Limited (subject to a deed of company arrangement)* (2004) 49 ACSR 1, 15; [2004] FCA 130, [59] per Goldberg J.

<sup>33</sup> *Australasian Memory Pty Limited v Brien* (2000) 200 CLR 270, 279; [2000] HCA 30, [18] per Gleeson CJ, McHugh, Gummow, Hayne and Callinan JJ.

<sup>34</sup> *Australasian Memory Pty Limited v Brien* (2000) 200 CLR 270, 280; [2000] HCA 30, [20] per Gleeson CJ, McHugh, Gummow, Hayne and Callinan JJ.

<sup>35</sup> *Gandel Metals v Centennial Mining* [49]; *Calabretta v Redpen Developments Pty Limited (in liq)* (2010) 183 FCR 47, [37] per Yates J.

<sup>36</sup> *Longley (deed administrator), in the matter of Dixon Advisory & Superannuation Services Pty Ltd (subject to deed of company arrangement)* [2024] FCA 70, [51] per Beach J.

<sup>37</sup> *Longley* [2024] FCA 70, [50] - [53] per Beach J.

<sup>38</sup> *CCS Equipment Pty Limited (subject to a deed of company arrangement); ex parte Shaw* [2019] WASC 431, [21] per Vaughan J.

to how to vary it. The Court may make an order pursuant to s. 445A or s. 447A. In *Re FEA Plantations Limited (administrators appointed)* [2013] FCA 469, Kenny J articulated some considerations that a Court may consider in making that choice.<sup>39</sup> Those considerations include the difficulty associated with convening the meeting; whether more than one meeting is required; the cost of convening the meeting or meetings; the date on which the DOCA terminates; the nature of the variations involved (whether very simple or particularly complex); the attitudes of creditors; and the attitudes of the relevant insolvency practitioners and their appointors.

## CONTENTIONS

37. As indicated above, the Amended DBC Application and the Deed Administrators' Applications include competing proposed DOCAs.
38. The Deed Administrators' proposed DOCA begins at page 29 of Exhibit DMO-3 to the Third Orr Affidavit.
39. The hallmark of the Deed Administrators' proposed DOCA is that it requires the insured creditors to fund the policies of insurance upon which they wish to claim, and if they do not, they are penalised. So much is said to be justified by reference to *Matheson Property Group Pty Limited v Virgin Australia Holdings Limited* (2022) 165 ACSR 550. There, Lee J remarked approvingly that a DOCA avoided the costs and expenses or judgments associated with insured claims being "visited upon the Deed Companies".<sup>40</sup> *Matheson* provides limited (if any) assistance given that (a) it concerned an application for a declaration as to the proper construction of a DOCA; and (b) the terms of the DOCA (as far as reported in *Matheson*) at issue do not reflect the terms of the Deed Administrators' proposed DOCA.
40. Considering the provisions, the Deed Administrators' proposed DOCA should be rejected for the following reasons.
41. *First*, proposed clause 13.11 provides that an Insured Creditor is liable to pay a share of the Holding Costs (capped at \$10,000 a month)<sup>41</sup> and a flat \$5,000 payment by way of advance payment.<sup>42</sup> In such circumstances, the creditors would be effectively funding their own claims, which is contrary to the commercial purpose of a contract of insurance. This funding

---

<sup>39</sup> *Re FEA Plantations Limited (administrators appointed)* [2013] FCA 469, [16] per Kenny J; *Re Campbell-Wilson (administrator) of Ceres Agricultural Co Pty Limited (subject to a deed of Company Arrangement)* [2020] FCA 4, [13] per Griffiths J; *Longley* [2024] FCA 70, [16].

<sup>40</sup> *Matheson Property Group Pty Limited v Virgin Australia Holdings Limited* (2022) 165 ACSR 550, 556; [2022] FCA 1243, [26] per Lee J.

<sup>41</sup> Exhibit DMO-3 to the Third Orr Affidavit, page 37.

<sup>42</sup> Exhibit DMO-3 to the Third Orr Affidavit, page 57.



arrangement seeks to circumvent the Claims Act whereby Dexus does not require the existence of Probuild Constructions in order to proceed against its insurer. Further, it does not properly contemplate and deal with an insurer being liable to meet the defence costs of the entity.

42. *Second*, proposed clause 14.11(b) of the Deed Administrators' proposed DOCA contemplates that insured creditors would make an Insured Claim Election (defined by clause 1.1),<sup>43</sup> which is an irrevocable election between, on the one hand, accepting the proceeds of any Applicable Insurance or on the other hand, waiving any right to prove in the administration.<sup>44</sup> The election is unfair because it is impossible to know at the stage of making the election whether a policy responds, nor whether the insurer will grant indemnity in respect of the claim, noting the points made in paragraph 10 above. An insured creditor who makes the wrong election may end up with nothing: it could waive its right to prove in the administration and yet, by operation of a contract of insurance it has not seen, fail to obtain a payment from the insurer or have the insurer decline indemnity.
43. *Third*, proposed clause 13.11(e) provides that an insured creditor who fails to pay an Insured Claim Contribution Amount may be subject of a default notice. If the insured creditor does not comply with the demand for payment set out in that default notice, the Deed Administrators may issue an Insured Claim Termination Notice that would release the relevant Deed Company from any claim, and waive any entitlement to the proceeds of any insurance policy that the insured creditor may enjoy by way of clause 8.1 of the DOCA in its extant form.<sup>45</sup>
44. These proposals are objectionable. First, they may be unenforceable penalties in the sense contemplated by *Paciocco v Australia and New Zealand Banking Group Limited* (2016) 258 CLR 525; [2016] HCA 28 because there is no relationship between the consequence that befalls the insured creditor and the loss that the Deed Administrators suffer (if any). Moreover, an insurer may be able to plead the effect of the Insured Claim Termination Notice as a defence to a claim pursuant to the Claims Act. The insured creditors should not have to litigate these questions in subsequent disputes.
45. The Amended DBC Application proposes a Deed that is unaffected by these issues.
46. In summary and for the reasons set out above, Dexus contends that:
  - (a) The DOCA as presently drafted is prejudicial to Dexus by releasing (or at the very least jeopardising) the claims (including statutory claims under the Claims Act) that Dexus

---

<sup>43</sup> Exhibit DMO-3 to the Third Orr Affidavit, page 38.

<sup>44</sup> Exhibit DMO-3 to the Third Orr Affidavit, page 60.

<sup>45</sup> Exhibit DMO-3 to the Third Orr Affidavit, page 58.

enjoys in relation to its claims against Probuild Constructions. These are claims that Dexus holds otherwise than in its capacity as creditor.

- (b) Moreover, there is no evidence that the Deed Administrators and the creditors intended to bring about this result.
- (c) An order to vary the DOCA as per the terms proposed by DBC instead of an order convening a meeting pursuant to s. 445A is clearly to be preferred course having regard to:
  - i. the changed composition of the creditors eligible to vote, noting that certain creditors have been paid (and their claims extinguished) so they would lack standing to vote<sup>46</sup>, and so are not entitled to the “opportunity to decide whether and how to vary the DOCA” as suggested by the Deed Administrators;<sup>47</sup>
  - ii. the risk that the claims would remain released for a period and then be revived after the creditors vote to approve the revised DOCA;
  - iii. the technical complexity of the revised DOCA; and
  - iv. the saving in cost and time that flows from an order pursuant to s. 447A as the Deed Administrators are relieved of the trouble of convening a meeting, with all that entails.

## CONCLUSION

---

47. It is respectfully submitted that the Court should vary the DOCA in accordance with the proposed Deed annexed to the Amended DBC Application.

J. Hynes  
Ninth Floor Selborne Chambers  
Tel: 02 8915 2138  
hynes@selbornechambers.com.au

9 April 2024

---

<sup>46</sup> *Re Dionys Civil Engineering Pty Limited* (1998) 28 ACSR 83, 91 per Santow J.

<sup>47</sup> Second Respondents' Submissions in support of the Deed Administrators' Application, [37].