

**Finding the Fiduciary:**

**Recognition of the Director-Shareholder Relationship in Closely Held Companies**

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## ABSTRACT

The fiduciary obligation is an accepted equitable doctrine within Australian law. Its role within the corporate field, as a duty applied to directors and owed to the company, is also well accepted. This thesis examines the role of the fiduciary obligation in general, and specifically in relation to directors.

The examination begins with the development of the fiduciary obligation in equity, and addresses the difficulty of developing a doctrinal definition for the obligation. This is useful when analysing the most recent High Court decisions on this obligation, and applying the obligation to directors within corporate law, particularly in light of inconsistent use of language in that field.

The thesis clarifies the content of the obligation, and recognises exceptions to the default position that fiduciary obligations are owed to the company. The thesis proposes a definition of a closely held company, which encompasses these exceptions, and recognition of the relationship between directors and shareholders in a closely held company as subject to fiduciary obligations.

Finally, the thesis makes recommendations as to the method of recognising this relationship at law within Australia, to provide greater clarity to both directors and shareholders.



## THESIS DECLARATION

I certify that this work contains no material which has been accepted for the award of any other degree or diploma in any university or other tertiary institution to Beth Nosworthy and, to the best of my knowledge and belief, contains no material previously published or written by another person, except where due reference has been made in the text. In addition, I certify that no part of this work will, in the future, be used in a submission for any other degree or diploma in any university or other tertiary institution without the prior approval of the University of Adelaide and where applicable, any partner institution responsible for the joint-award of this degree.

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