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EDITORIAL 151

ARTICLES

Keeping Good Company in the Transition to a Low Carbon Economy? An Evaluation of Climate Risk Disclosure Practices in Australia – *Anita Foerster, Jacqueline Peel, Hari Osofsky and Brett McDonnell*

Private sector action to reduce carbon emissions and increase uptake of clean energy practices is critical to achieving the goals of the 2015 Paris Agreement and averting dangerous climate change. An important driver is disclosure of the business risks posed by climate change (including physical risks to company assets or supply chains and financial transition risks, associated with changing law and policy, markets and technology). For companies, climate risk disclosure focuses attention internally on managing risk and harnessing associated market opportunities. Disclosure is also essential to market transparency, providing external stakeholders, such as institutional investors, with the information required to manage long-term investment risks. This article canvasses legal and policy frameworks for carbon risk disclosure in Australia, and samples the disclosure practices of a group of large Australian companies. It argues that current regulations and associated practices are not fit for purpose and proposes reforms to bring Australia into line with comparable jurisdictions internationally. 154

Illegal Phoenix Activity: Is a “Phoenix Prohibition” the Solution? – *Helen Anderson, Jasper Hedges, Ian Ramsay and Michelle Welsh*

Phoenix activity is not inherently illegal but illegal phoenix activity is generally understood to be those actions, undertaken in the phoenix context, that breach laws because they involve wrongdoing. Because illegal phoenix activity continues to cause significant harm to creditors of companies, employees and revenue authorities, it is not surprising that many continue to suggest a specific phoenix prohibition as the answer. To date, however, this has not been achieved. This article considers attempts to define or proscribe illegal phoenix activity before examining the existing laws – including directors’ duties – that already prohibit this behaviour. Working on the belief that illegal phoenix activity continues because these “generalist” laws are under-enforced in the phoenix context, this article suggests a new approach. Rather than devising a new prohibition that describes the circumstances of illegal phoenix activity, the enforcement of the existing directors’ duties should be bolstered by removing the financial benefits of phoenix activity and by substantially increasing the relevant penalties. The amendments suggested herein – if taken up by the government – send a valuable signal to wrongdoers that their behaviour will be severely punished, and to ASIC that this is an area in which enforcement can produce significant benefits. 184

**Recent Developments in Corporate Liability for Insider Trading: ASIC v Hochtief
AG – Juliette Overland** 204