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ARTICLES

In with the Old, Out with the New? The Rights of a Replaced Trustee Against its Successor, and the Characterisation of Trustees’ Proprietary Rights of Indemnity –
Diccon Loxton

Trustees who incur expenditure or liabilities have proprietary rights to use the trust assets to recoup that expenditure and discharge those liabilities – rights that are often described as a “lien”. This article explores the issues that may arise when a trustee that has those rights is replaced by another trustee that has such rights of its own. These issues include: the respective rankings of those rights; whether the replaced trustee can withhold assets from its successor; the respective rights and duties between the two trustees; the extent of the assets covered; and mechanisms for enforcing and protecting the rights. The article examines these issues both for trustees in general and responsible entities of managed investment schemes in particular. Before doing so it explores the characterisation of those proprietary rights when the assets are in the hands of the original trustee, and concludes that before transfer they are not a true lien or charge and that this arguably does not change when the assets are in the hands of the successor. Though it makes tentative suggestions as to the resolution of the issues, it concludes that the issues between trustees are unclear, and that parties should consider legislating the position in documentation. Finally, the article gives a summary of issues to be considered in doing so. 285

An Analysis of the Inconsistencies Regarding the Co-regulatory Environment for Registered Company Auditors in Australia –
Max Bessell, Lisa Powell and Grant Richardson

This article examines the inconsistencies regarding the co-regulatory environment for registered company auditors in Australia with particular reference to two regulator groups: (1) the Australian Securities and Investments Commission (ASIC); and (2) the professional accounting bodies. Francis framework for quality audits is used as a basis to analyse this co-regulatory environment. This article finds that this environment is inconsistent in terms of: the selection bias of the ASIC inspection program; access to client engagement documentation; interaction between professional accounting bodies and ASIC; non-*Corporations Act* audits and legal enforceability; differences in ASIC inspections versus quality reviews; and auditor option choice and stakeholder protection. Hence, there are registered company auditors (RCAs) who may be negligent (either intentionally or unintentionally) and have little possibility of being detected or if detected, may not be subject to legislative sanctioning. 322

Accountability and Retrospective Legislation – Implications for Directors, Officers and Third Parties – Julie-Anne Tarr and Gavin Nicholson

This article explores two recent Queensland enactments directed at achieving accountability for past and/or future actions or omissions. These Acts broaden the scope of liability beyond that which existed at the time at which the conduct or omission occurred, and impose new responsibilities and potential liabilities upon directors and officers and even third parties. The Acts in question operate in different societal and economic contexts – one in the resources and environmental protection space, the *Environmental Protection (Chain of Responsibility) Amendment Act 2016* (Qld), and the other deriving from the work of the Royal Commission into Institutional Responses to Child Sexual Abuse, being the *Limitation of Actions (Child Sexual Abuse) and Other Legislation Amendment Act 2016* (Qld). These legislative changes are examined and serve to highlight the tensions that arise between accountability and retrospectivity and the significant, and potentially far reaching, consequences for directors and officers and others where there is retrospective application of legislation. 337

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