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EDITORIAL 3

ARTICLES

The effectiveness of the best interests duty – enhancing consumer protection?
– *Stephen Corones and Thomas Galloway*

This article considers the uncertainty surrounding the scope of the best interests duty which forms part of the Government’s Future of Financial Advice (FOFA) reforms. It is likely to be many years before the courts can interpret and clarify the content of the duty. Under the new regime, the provision of personal financial advice will be made more difficult, complex and costly and these costs will be passed on to consumers. The article also considers whether there will still be scope for delivering standardised, non-tailored advice in the light of the best interests duty. In the past standardised advice has allowed large amounts of low-level, generic advice to be delivered very efficiently. However, great care will need to be taken under the best interests duty: personal advice by definition requires that the objectives, financial situation and needs of the particular person seeking the advice be taken into account. In order to avoid breaching the best interests duty standardised advice should only be used rarely, and only after a careful assessment has been made to ensure that a standardised approach is appropriate.

5

Volunteers “piggy-backing” on their private insurance: An uncertain protection against liability – *Julie-Anne Tarr*

Volunteering is a very important part of life in Australia with an estimated 36% of the adult population volunteering in 2010. Voluntary work generates economic benefits, addresses community needs and develops the social networks that form the backbone of civil society. Without volunteers, many essential services would either cease to exist or become too expensive for many people to afford. These volunteers, who by definition are not in receipt of any remuneration for their work and services, are exposed to personal injury and to legal liability in the discharge of their functions. It is therefore appropriate that statutory protection is extended to volunteers and that volunteer organisations procure public liability and personal accident cover where possible. However, given the patchwork quilt of circumstances where statutory or institutional cover is available to volunteers and the existence of many and diverse exclusions, it is important to have regard also to what scope a volunteer may have to avail themselves of protection against liability for volunteering activity by relying upon their own personal insurance cover. This article considers the extent of private insurance cover and its availability to volunteers under home and contents insurance and under comprehensive motor vehicle insurance. The most common policies in the Australian market are examined and the uncertain nature of protection against liability afforded by these policies is discussed. This uncertainty could be reduced should the Federal Government through amendments to the Insurance Contracts Regulations standardise the circumstances and extent to which liability protection was afforded to an insured holding home and contents insurance and comprehensive motor vehicle insurance cover.

30

COMPANY LAW AND SECURITIES – <i>Robert Baxt AO</i>	
The final chapter in the James Hardie litigation	40
CONSUMER DEALINGS – <i>Chris Field</i>	
The role of the Western Australian Energy Ombudsman and its relationship with regulators, industry and consumers	43
FRANCHISING – <i>Frank Zumbo</i>	
The 2013 Review of the Federal Franchising Code of Conduct: Challenges and opportunities	48
PRIVACY – <i>Normann Witzleb</i>	
Halfway or half-hearted? An overview of the Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth)	55