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ARTICLES

Capping and corporate governance: An analysis of executive remuneration in Australia – *Alissa Irgang*

This article examines whether capping executive remuneration in Australia would solve the issues identified with the current corporate governance system responsible for executive remuneration. To answer this question the article is split into three parts. The first part examines the issues associated with current corporate governance mechanisms to facilitate an efficient pay level for executives. The second part discusses how caps operate and argues that caps could create efficient pay outcomes. Additionally, it argues that the concerns that capping executive remuneration would cause internationally mobile executives to leave Australia in search of better salaries are unfounded. Finally, the third part of this article examines the corporate governance recommendations put forward by the Productivity Commission and the subsequent reforms to the *Corporations Act 2001* (Cth) as well as the future of capping in Australia. The article concludes by finding that market-friendly caps could be an effective corporate governance mechanism for the future. 145

Public company communication, engagement and accountability: Where are we and where should we be heading? – *Gill North*

The annual general meeting was introduced as an essential element of the public company governance model. However, the usefulness of these meetings is being increasingly questioned both in Australia and elsewhere. The article initially examines the role of annual general meetings in Australia. Proposals to enhance the value of these meetings are reviewed. The efficacy of annual general meetings is then discussed within the broader context of public company communication, engagement and accountability. Most listed company exchanges involving governance and operational matters occur during private meetings with institutional attendees. The public discourse tends to be limited and sanitised. The article argues that the rationales and assumptions underlying this hierarchical communication structure are deeply flawed. Annual general meetings provide a limited forum once a year for shareholders to meet and directly question company directors. Broader and more robust governance and accountability mechanisms will only emerge when listed companies are required to utilise available digital technologies to communicate and regularly engage with all of their stakeholders (and critics) in the public arena. Public corporations are privileged legal constructs, and as such, they should be compelled to communicate with, and to remain accountable to, the public at large. 167

What is inside "information"? Clarifying the ambit of insider trading laws – *Juliette Overland*

The recent decision in *Mansfield v The Queen* (2012) 87 ALJR 20; [2012] HCA 49 represents the first consideration of the offence of insider trading by the High Court of

Australia. The case itself focuses on one aspect of insider trading: what is "information"? In a controversial area of corporate law which presents infrequent opportunities for judicial clarification of complex statutory provisions, such a decision must be welcomed. This article examines the insider trading issues raised in *Mansfield v The Queen* and discusses the High Court's pronouncements on the meaning of the term "information". The key issues addressed in this case were whether false information or lies can amount to information; whether information must be confidential; and whether information must originate from the company to which it relates. Each of these issues is analysed and discussed in this article, concluding with comments about the implications for future insider trading cases. 189