

COMPANY AND SECURITIES LAW JOURNAL

Volume 32, Number 5

August 2014

EDITORIAL 309

ARTICLES

The payment of dividends: Legal confusion, complexities and the need for comprehensive reform in Australia – *Stephen Alevras and Jean du Plessis*

Submissions have closed on exposure draft legislation intending to amend the test for payment of dividends under s 254T of the *Corporations Act 2001* (Cth). Until 2010, a dividend could only be paid out of profits of a company. Since then, the dividends provision has been repealed and replaced with a new provision, which allows a company to pay dividends if it satisfies an “assets greater than liabilities”, “fair and reasonable to shareholders” and “no material prejudice to creditors” test. This article first examines why the profits test was omitted from s 254T, before examining the current dividends provision, identifying the shortcomings of the 2010 reforms and critically evaluating the provisions proposed to replace the current s 254T. The article then considers international developments, with a focus on New Zealand and a look at South Africa, as examples of dividends tests in overseas jurisdictions, before proposing how to address the current confusion and uncertainty. The article concludes that the proposed amendments to s 254T will only partly address existing problems. Thus, comprehensive reform in this area of the Australian corporation’s law is recommended. 312

The financial literacy of young Australians: An empirical study and implications for consumer protection and ASIC’s National Financial Literacy Strategy – *Paul Ali, Malcolm Anderson, Cosima McRae and Ian Ramsay*

The Australian Securities and Investments Commission (ASIC) has stewarded the Australian National Financial Literacy Strategy since 2011. Financial literacy is increasingly recognised as an essential part of consumer protection, complementing traditional consumer protection mechanisms such as disclosure. Increased financial literacy has significant benefits including the potential to reduce the need for regulatory intervention and enhance economic participation. While much attention has focussed upon the financial literacy of adults, young people are active consumers and it has been suggested that their levels of financial literacy are not consistent with their extensive consumer activities. Currently a research gap exists regarding the financial literacy levels and attitudinal/behavioural aspects of young people’s financial decision-making. This article discusses the results of a financial literacy survey of senior students in Australian secondary schools. The survey tested six key areas of financial literacy skills, including their knowledge of consumer rights. The analyses tested for demographic factors and attitudes that are related to financial literacy. The study contributes important findings that can assist ASIC’s ongoing work promoting consumer protection through financial literacy policies and can also assist in the development of financial literacy education programs in schools. 334

The possession and materiality of information in insider trading cases – Juliette Overland

Dr Stuart Fysh was convicted of two counts of insider trading in November 2012, but in July 2013 the New South Wales Court of Criminal Appeal quashed his conviction, with the reasons for that decision published in November 2013 as *Fysh v The Queen* [2013] NSWCCA 284. The court’s decision in this case turned on two primary issues – whether it is necessary to prove that an accused insider trader possessed all of the information alleged to be in his or her possession, and how the materiality of information is to be assessed. In deciding this appeal, the court made pronouncements on issues highly relevant to insider trading cases – the nature of the possession of information, the impact of future share price movements on the assessment of the materiality of information, and whether the materiality of information should be considered to be a matter of “common sense” or the subject of expert evidence. These issues will be analysed and discussed in this article in the context of previous insider trading cases and the current focus on insider trading by the Australian Securities and Investments Commission. 353

DIRECTORS’ DUTIES – Rosemary Teele Langford

Directors’ fiduciary duties in the Western Australia Supreme Court – again – Rosemary Teele Langford 362