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EDITORIAL 3

ARTICLES

Materiality in corporate continuous disclosure: Historical uncertainty, current challenges and future opportunities – Danielle McFarlane

The continuous disclosure of information is integral to the regulation of the Australian Securities Exchange. Central to the continuous disclosure requirements is the obligation to disclose material information to the market. However, the threshold for what qualifies as material information, that is, the “materiality threshold”, has been an historically uncertain element of the requirements. Further, the application of the threshold is becoming more challenging due to developments in the way information is communicated and traded. While these developments offer an opportunity for increased efficiency and communication in the market, they must be regulated appropriately so as to not threaten market integrity. This article explores the historical uncertainty of the materiality threshold and its application in the current disclosure environment. It suggests that the existing materiality threshold has the capacity to accommodate these changes in the market but that investors may need to accept greater responsibility for their interests going forward. 7

Pollution on the PPSR – and what to do about it – Nicholas Mirzai

Since its commencement in Australia, it is fair to say that advice when approaching the *Personal Property Securities Act 2009* (Cth) has been to “register first and ask questions later”. Whilst this is an effective way of ensuring a secured party has a relatively better chance of preserving its priority over particular personal property should the debtor fail to pay or perform its obligation(s), it has quickly led to an increase in traffic on the Personal Property Securities Register. This article discusses whether or not the PPSA, as it presently stands, is sufficiently equipped to deal with the ever increasing quantity of registrations whilst maintaining the clarity and transparency rationales which underpin the PPS regime. It also considers what can potentially be done to achieve these objectives to the extent that they are not being met. 30

Revisiting the direct liability of parent entities following *Chandler v Cape plc* – Ryan J Turner

The Court of Appeal of England and Wales in *Chandler v Cape plc* [2012] 1 WLR 3111; [2012] EWCA 525 held that a parent company owed a duty of care to an employee of its wholly-owned subsidiary. The leading judgment of Arden LJ, however, overlooked similar jurisprudence in Australia, particularly the judgment of the New South Wales Court of Appeal in *CSR Ltd v Wren* (1997) 44 NSWLR 463. This article analyses and compares the judgments in these two cases in order to illustrate how Arden LJ’s approach to the knowledge and control of the parent company in *Chandler* increases the risk that parent entities will be liable in tort for the harmful activities of their subsidiaries. Although *Chandler* is not binding on Australian courts, the risk of cross-jurisdictional pollination in the development of the common law encourages caution in the exercise of control by a parent entity over its subsidiaries. This article concludes by considering the private international law rules that impede parent liability claims against multinational corporate groups for wrongs occurring in foreign jurisdictions. 45

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