

# COMPANY AND SECURITIES LAW JOURNAL

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EDITORIAL – *Editor: Edmund Finnane* ..... 595

## ARTICLES

### **The Corporation and Corporate Culture: A New Paradigm?** – *Andrew Clarke*

This article focuses on the terms “corporate culture” and “community expectations”. It finds they are problematic, inherently vague, and ambiguous. In particular, “corporate culture” lacks conceptual clarity so as to readily and effectively form part of a legal regulatory matrix. Ultimately, the term may be more useful as part of a managerial approach, and of an industry-by-industry stance, than as a legal or regulatory mechanism. For the current corporate epoch, the phenomenon of the tailored review of a corporation, as enunciated by the Australian Prudential Regulation Authority (APRA), is in the ascendant. The APRA-based approach encapsulates the contemporary community concern arising from recent reports of corporate malaise and misconduct. The APRA Review of the Commonwealth Bank of Australia, for example, was speedy, cost effective, and gave rise to measurable outcomes. In particular, this methodology obviates the need to define “corporate culture” within the strictures of legal and prosecutorial settings. .... 596

### **Knowing Assistance: Disgorgement of Future Anticipated Profits, Causation and Quantum** – *James O’Hara*

A person who knowingly participates in a breach of fiduciary duty is liable to account to the person to whom the duty was owed for any benefit they have received as a result of such participation. Once it has been determined that a benefit or advantage has been caused by the acts of knowing assistance, there remains the question of quantification of the benefit to be disgorged. Account of profits is a prophylactic rather than a restitutionary remedy. Complex questions of causation arise in cases of multiple contributing causes. Equity fashions the remedy to fit the case. A significant aspect of this case is that anticipated or unrealised future profits, rather than actual profits, are recoverable. .... 613

### **Crowd-sourced Equity Funding in Australia – Getting It Right** – *Georgia Parletta*

Crowd-sourced equity funding (CSF) is a new form of capital-raising that allows small companies, unable to obtain traditional funding, to finance their businesses. It has recently received significant attention in Australia with the passing of the *Corporations Amendment (Crowd-sourced Funding) Act 2017* (Cth), which came into force on 29 September 2017, and the *Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Act 2018* (Cth), which came into force on 18 October 2018 (together Amendment Acts), as well as consideration of previous unsuccessful Bills. The Amendment Acts have since been incorporated in the *Corporations Act 2001* (Cth). Despite the delays and haphazard approach by which the CSF framework has been introduced in Australia, the current legislation has the potential to create a meaningful and effective CSF market, increasing access to funding and providing sufficient investor protection. However, some provisions

are overly restrictive, which may make it difficult for small companies to engage with it. This article explores the implementation of CSF in Australia, critically analysing the recent amendments and considering the approaches adopted in other jurisdictions. On that basis, it considers the effectiveness of the Australian CSF framework. .... 628

HONG KONG, SINGAPORE AND MALAYSIA – *Editor: Say Goo*

**More Business Opportunities or Higher Legal Risks under the Belt and Road Initiative and the Greater Bay Area Initiative? Rethinking of Information Disclosure for Chinese Companies** – *Professor Say H Goo and Dr Heather Lee* ..... 656

CORPORATE GOVERNANCE AND CORPORATE SOCIAL RESPONSIBILITY –  
*Editor: Jean du Plessis*

**Companies, Corporate Officers and Public Interests: Are We at a Legal Tipping Point?** –  
*Pamela Hanrahan* ..... 665

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#### VOLUME 36 – 2018–2019

Table of Authors – Articles ..... 679  
Table of Authors – Sections ..... 683  
Table of Cases ..... 685  
Index ..... 701