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ARTICLES

Corporate Social Responsibility: Lessons for Australia – *Adefolake Adeyeye*

Corporate social responsibility (CSR) issues are now featuring strongly in law and governance reforms in a number of countries. However, the prevalent driver for CSR integration into business operations is the business case via the enlightened self-interest approach with strong links to shareholder primacy theory. With the perceived uncertainty as to what constitutes CSR, this article discusses emerging perceptions of CSR. It examines the drivers for CSR, core international standards for broader corporate social responsibilities and the application of such standards in Australia. The aim is to provide a clearer understanding of CSR generally and Australia's approach to CSR in order to ensure responsible business conduct adaptable to changing societal expectations. 66

Company Disclosure of Climate-Related Reputation Risks – *Andrew Belyea-Tate*

Activities of listed companies that may exacerbate climate change are increasingly subject to public and investor scrutiny. In Australia, recent shareholder resolutions demanding that listed companies improve their climate-related risk disclosure and review their public policy advocacy concerning climate change have received substantial support from institutional investors. Australian Securities Exchange (ASX)-listed companies may be exposed to material climate-related reputation risks. This article argues that Australia's disclosure laws do not adequately require ASX-listed companies to disclose their exposure to these risks. It proposes a reform that would require the disclosure of detailed information about a company's contribution to, or detraction from, the transition to a lower-carbon economy. 82

Australia's Modern Slavery Act: Towards Meaningful Compliance – *Justine Nolan and Nana Frishling*

Australia's *Modern Slavery Act 2018* (Cth) forms part of a growing global trend towards mandated corporate disclosures in respect of modern slavery risks. This article argues that meaningful compliance with the Act can only be achieved when businesses commit to implementing a comprehensive human rights due diligence program. The authors aim to provide practical guidance on what this means in the Australian context by outlining the UN Guiding Principles' concept of human rights due diligence, explaining how its key elements correspond with the Act's reporting requirements, and applying internationally recognised good practice to these requirements. 104

A Critical Analysis of the Rationales and Continuing Merit of the Unfair Preference and Uncommercial Transaction Provisions in Pt 5.7B of the Corporations Act 2001 – *William John Potts*

The unfair preference and uncommercial transaction provisions that apply for the benefit of creditors of insolvent companies via Pt 5.7B of the *Corporations Act 2001* (Cth) represent significant intrusions into the dealings and affairs of companies. There are four key rationales for such avoidance provisions: equality, deterrence, collectivism and unjust enrichment. Analysis of inconsistencies and competing tensions in the case law, including the running accounts principle, the peak indebtedness rule, third-party payments, the meaning of "undervalue" and "commercial quality", proof of insolvency and the protective provisions, reveal that the rationales have been substantially eroded. From a policy perspective, this is regrettable, but does it really matter? The rationales remain relevant, and continue to guide legislative and judicial reasoning in this area. A balancing act is in play in which a compromise has been reached between a host of competing interests to deliver relatively predictable and logical results in insolvency law. 127

TAKEOVERS AND PUBLIC SECURITIES – *Editors: Simon McKeon and Jonathan Farrer*

Class Divide: Different Forms of Scheme Consideration – *Oren Bigos and James Claridge*

Schemes of arrangement are a popular method of effecting a change in corporate control. Importantly, they involve the offer of consideration to shareholders of a "target company" in exchange for the transfer or cancellation of their shares. The consideration offered to target company shareholders need not be identical and may take different forms. This note considers whether target company shareholders constitute a single "class" for the purpose of voting on a proposed scheme in circumstances where consideration is offered in different forms. Although judicial clarification would be welcomed, it is argued that the offer of different forms of scheme consideration should not result in the creation of separate classes provided that the different forms of consideration are of approximately equivalent value. 147

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