

# COMPANY AND SECURITIES LAW JOURNAL

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## ARTICLES

### **The Future of Clearing and Settlement in Australia: Part II – Distributed Ledger Technology** – *Christian Chamorro-Courtland*

Part I of this article analysed the legal and regulatory issues that exist in Australia’s current clearing and settlement infrastructure for shares. Part II of this article looks to the future and analyses the new system (CHES 2.0) that the Australian Stock Exchange (ASX) proposes to introduce. CHES 2.0 will use distributed ledger technology to process trades. This article will examine the mechanics for the clearing and settlement of shares in CHES 2.0 and some of the new features that the ASX proposes to introduce. It analyses the legal and regulatory framework in Australia and considers whether CHES 2.0 will be able to operate under the existing legal regime. It also examines how the new system will affect the rights of investors and provides recommendations for strengthening their rights. Moreover, it recommends that the ASX should implement a system of crypto-securities in the future. .... 462

### **The State of Executive Remuneration Disclosure in Australia** – *Felicity Maher, Warrick van Zyl and Marvin Wee*

This article examines the state of corporate executive remuneration disclosure in Australia. The article reviews the executive remuneration literature to determine areas of interest and concern to shareholders, and distils a checklist that reflects the disclosure items that address these areas. The article then compares this checklist with, first, the current disclosure requirements in Australia and, second, the disclosure given in a sample of Australian listed company annual reports. The review identifies significant gaps, particularly in the disclosure of overall remuneration philosophy and the links between remuneration and strategy. The article concludes by making suggestions for regulatory reform to remedy these gaps. .... 491

### **The Future of the Statutory Business Judgment Rule: Balancing Accountability and Protection** – *Nicholas Todd*

The statutory business judgment rule has little to show for 21 years in existence. The rule’s ability to exculpate a director from liability where that director has breached the statutory duty of care but acted in good faith and for the benefit of the company remains uncertain. This is significant amidst a current climate of increased accountability stemming from increasingly high accountability standards expected of directors and officers. Such standards manifest in reform proposals that expand the duty of care, ASIC’s renewed appetite for duty of care enforcement and the recent expanded application of the duty

of care following the High Court decision in *Australian Securities and Investments Commission v King* (2020). These factors create a renewed impetus to reform the statutory business judgment rule. This article considers 21 years of the statutory business judgment rule and existing reform proposals to present a new reform that is appropriate in the climate of increased accountability. .... 513

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**Three Types of Path Dependency in South Pacific Business Law Reform** – *Gordon Walker* ..... 537

#### **CORRECTION**

Please note that in “The Future of Clearing and Settlement in Australia: Part I – The Current System” by Christian Chamorro-Courtland in the previous issue of C&SLJ, Vol 38 No 6, the headings for Diagrams 8 and 9 were incorrectly given as “**Issuer Sponsored Subregister**.” The headings should have read:

**DIAGRAM 8. The Individual Model: The structure of the CHES Subregister and Issuer Sponsored Subregister where the Broker is an Agent.**

**DIAGRAM 9. The Omnibus Model: The structure of the CHES Subregister and Issuer Sponsored Subregister where the Broker is a Trustee.**