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ARTICLES

Evaluating the Evolving Regulation of Corporations and the Environment; Protection of the Environment and Management of Climate Risk through Expanded Directors’ Duties and Liabilities – *Zoe Mountakis*

Historically corporations have not been held to account for the negative externalities they cause the environment. However, growing acceptance of the threat of climate change as a reasonably foreseeable scientific fact means Australia’s corporate directors’ duties (DD) and liabilities have begun to evolve and reflect the level of harm business operations pose to the environment, holding corporations accountable. As such, the interplay between corporate regulation and environmental protection has become more complex. This is evident through the expansion of directors’ duty of care (DOC) and good faith to the company extending to consideration of climate risk to ensure long-term commercial viability, and the prohibition on “greenwashing”. While DD indicate the paramount duty to ensure a company’s financial success, given success is inherently linked to the availability of exploitable natural resources, it has the unintended effect of ensuring long-term environmental protection and conservation. Further reflecting the contemporary attitudinal shift, law reform and judicial decision-making has extended liability for environmental offences committed by corporations to directors to serve as greater deterrence. Litigation overseas against companies in the business of engaging with non-renewable energy has signalled the evolution of environmental protection as companies who are most susceptible to climate risk are those most likely to be breaching DD through failure to take climate action. Thus, evolving regulation of DD will serve as a highly efficacious means of environmental protection as the imposition of personal liabilities enables an unparalleled level of accountability for the creation of negative externalities. 3

Sustainability in Vogue: Australia’s Opportunity to Set the International Standard for Environmental Regulation of the Fashion Industry – *Vincent Collins*

Without immediate and concerted climate change mitigation efforts across all sectors, achieving broader climate goals in the Paris Agreement is extremely unlikely. Despite the availability of scientific knowledge to support this notion, key contributors to anthropogenic climate change, such as the global fashion industry, remain largely unregulated. This article demonstrates that the proliferation of fast fashion practices and the rapid expansion of the global fashion industry has significantly compounded existing strains on systems that are inextricably linked to anthropogenic climate change. Through doctrinal analysis of extensive scholarly and industry commentary, this article uncovers the most critical inefficacies of current international mechanisms that attempt to improve the fashion industry’s sustainability. This article contributes to existing scholarship by presenting a novel argument for domestic intervention to resolve these issues. This article concludes that recent political developments position Australia to implement environmental regulations specific to the fashion industry. This assertion is substantiated by the provision of a blueprint from which policymakers may develop such an instrument. 12

Climate Change Litigation in Australia: The Potential of Restorative Justice –
Mark Hamilton

Given the dire nature of climate change and its potential impacts on the Earth, it is not surprising that litigation has been called in aid to try and arrest climate change. In the context of such litigation, restorative justice as a facilitated dialogue has a limited but important role. When what is at issue is a merit determination, and where exploration of harm and resolution of that harm is needed, then restorative justice has a role to play. Where the issue for resolution is a legal one, there does not appear to be an obvious role for restorative justice. Beyond climate change litigation, there is a role for restorative justice to preventatively avoid climate harm, and as a vehicle to address the harm arising from sanctioned activity which harms the climate. 30

Climate, Banking and Finance Law: Branching Disciplinary Divides to Address Climate Challenges – *Rebekkah Markey-Towler*

Climate change law and banking and finance law have evolved as separate legal sub-disciplines. Each has developed separate approaches to legal questions within their respective fields: problem-focused and institutionally and functionally focused respectively. However, in the face of climate change and threats to financial stability, there is a need to develop a research agenda at the intersection of these fields. This article starts this task. It reviews the emerging literature situated at the nexus of climate, banking and finance law, identifying four major themes, and outlining the basis for a future legal research agenda. 43

Does Arbitration Have a Role to Play in Climate Change Litigation? – *Alice Maxwell and Nastasja Suhadolnik*

It is now widely accepted that achieving net zero will require dynamic regulatory responses, proactive energy transition policies, international cooperation on emissions reduction, and tens of trillions in private capital investment towards decarbonisation. These economy-wide shifts are, in turn, expanding the scope for disputation on climate-related matters, as well as the fora in which climate-related disputes are being heard. In this article, we chart the rise and evolution of climate change litigation and the emerging role of arbitration as an important forum for climate change-related disputes. We contend that arbitration will be most appropriate in climate cases involving a transboundary, foreign investment and/or contractual dimension. In such cases, arbitration offers a neutral, flexible dispute resolution mechanism that can deliver timely, enforceable outcomes that are overseen by properly appointed adjudicators with relevant technical expertise. 58

Update: Executive Officer Liability Broadened Following R v Dumble – *Rebecca Hoare, Juliette King and Lauren Reddiex*

As a result of an amendment to the *Environmental Protection Act 1994* (Qld), from 5 April 2023, a person who is an executive officer of a corporation will be liable for an offence against the Act committed by the corporation where they held that office at the time of the corporation’s causative act or omission but no longer hold that office when the offence occurs later, such as when environmental harm materialises later. The amendment creates deemed liability for a new category of persons, for whom establishing one of the available statutory defences may be a complex and burdensome task. 69