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ARTICLES

Desegregating Business and Human Rights: Including Due Diligence in the Corporations Act – *Esmira Hackenberg, Tim Connor, Shelley Marshall and Claire Dudgeon*

The *Corporations Act 2001* (Cth) does not currently contribute to legislative efforts to hold companies accountable for human rights harms or to provide remedies for affected individuals. While the United Nations Guiding Principles on Business and Human Rights anticipate a central role for corporate law, international obligations have been implemented outside corporations law. Some jurisdictions – such as France, Germany, and the European Union – have introduced mandatory human rights due diligence (mHREDD) regimes. France embeds these in its corporate code; Germany’s regime operates alongside it. However, these reforms remain politically contested, with both the *German Act* and the EU Corporate Sustainability Due Diligence Directive facing delays. This article considers whether, and in what form, a due diligence obligation could be introduced into Australian corporations law. Drawing on international developments, it proposes a model requiring risk analysis, compliance systems, grievance mechanisms, and remedy access, and considers ASIC’s potential role in supervision and enforcement. 66

Mandatory Sustainability Reporting: Revisiting Directors’ Statutory Duty of Care Liability for Forward-looking Statements – *Sarah S Oh*

The climate-related financial risk disclosure regime was introduced in 2024 and has been in force since 1 January 2025. The law requires certain companies to disclose forward-looking statements, including climate-related risks and opportunities, in the new sustainability report. With the regime relying on the existing liability frameworks within the *Corporations Act 2001* (Cth), whether the statutory director’s duty of care liability in s 180(1) affords an effective mechanism for forward-looking statements arising from the new reporting regime is examined. The article evaluates the statutory duty of care for future statements and the potential application of the statutory business judgment rule to forward-looking disclosures both within and outside the sustainability report. By examining the narrow application of the duty of care in relation to forward-looking statements, the article argues that directors’ concern for potential breach of duty of care is unlikely to be heightened with the reporting regime. 94

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