

# THE AUSTRALIAN LAW JOURNAL

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### **CYBER RISK, CYBER PREPAREDNESS AND CYBER RESILIENCE – CHALLENGES FOR CORPORATE LAW AND FINANCIAL REGULATION**

#### **Paul Latimer and Michael Duffy**

Corporations today operate as much in cyberspace as they do in the physical world. Recent high-profile hacking and data loss from Australian corporates including financial services licensees demonstrate how ASIC, other regulators, government departments and stock exchanges regulate companies and financial markets in relation to issues in cyberspace and play a role in fostering cyber security and resilience. This article traces the fast-developing

duties of financial services licensees and the related duties of directors and managers in relation to cyberspace risk management. It follows the RI Advice case in 2022 which confirmed that administration and enforcement of cybersecurity is now no longer a matter solely for information technology departments. Obligations of licensees, directors and management in relation to cyberspace risk management under the Corporations Act 2001 (Cth) now include cybersecurity and cyber resilience controls and documentation to manage cyber risk as the world continues to move into a digital future. .... 978

**LESS THAN MEETS THE EYE: FEDERAL COURT’S COSTS ORDERS IN MUNKARA v SANTOS AND THEIR RELEVANCE FOR LAWYERS AND EXPERT WITNESSES**

**John Southalan**

The Federal Court has ordered the Environmental Defenders Office (EDO) to pay \$9 million in indemnity costs to Santos NA Barossa P/L (Santos) following failed legal proceedings. This was the final event of a years’ litigation which started with an interlocutory injunction (preventing Santos work in the Timor Sea), before a full hearing and dismissal of the claims (with criticism of the applicant’s lawyer and experts), then interlocutory proceedings (with Santos contemplating costs against the EDO and other parties) and concluding with the costs order. Commentary on these proceedings sees the costs implications as significant but overlooks that the final orders were made by consent. Given concerns about SLAPP lawsuits and “lawfare”, this article explains the precedent from these proceedings is limited to its unusual combination of features. Nevertheless there are important implications – for advocacy organisations, but also for companies and regulators – and their lawyers and expert witnesses. .... 993

**A LITIGATION CLAIM VALUATION MODEL TO RESOLVE THE SETTLEMENT DILEMMA**

**Hugh Stowe**

A prudent party should settle if (but only if) they receive an offer which exceeds the projected value of litigating. However, there is no conventional theory or practice for quantifying that value. This article proposes a methodology for identifying, quantifying and aggregating the myriad components of the value of litigating. The methodology typically generates a value of litigating which is drastically worse than the intuitions of a party or its lawyer. It facilitates precise determination of a prudent “bottom line” in negotiations, exposes the broad range of mutually advantageous settlement, and provides a tool to deflate an opponent’s unreasonable settlement demands and advance fair settlement. .... 1016

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