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ARTICLES

The long-run efficiency gains in public-to-private transfers – new evidence from earnings announcements – *Paul Docherty* and *Steve Easton*

There is ongoing debate with regards to the efficacy of the privatisation of government assets. This article contributes to this debate from an economic perspective by asking two questions. First, do Australian governments systematically under (or over) price assets when they are privatised and secondly, are these assets operated more efficiently in private hands. The authors report that privatised initial public offerings yield statistically and economically significant positive abnormal returns both on their listing day and over the five years post-listing. These positive returns indicate that governments privatise assets for less than their market values. The authors examine whether long-run efficiency gains are generated post-privatisation by adopting the novel approach of using short-run returns around earnings announcements to measure efficiency gains – a methodology not affected by problems associated with long-run returns estimation. Consistent with theoretical predictions of efficiency gains in public-to-private transfers, the average earnings-announcement-day returns for these firms are significantly positive. The results yield important implications for the ongoing privatisation debate. While governments, on average, leave money on the table when privatising companies, the authors also report evidence to suggest that these companies are operated more efficiently in private, as opposed to public, hands. 227

Twin peaks – the legal and regulatory anatomy of Australia's system of financial regulation – *Andrew Godwin* and *Ian Ramsay*

The relevance of Australia's experience with its "twin peaks" model of financial regulation is becoming greater as an increasing number of jurisdictions have adopted, or are considering adopting, this model. Adopting a broad perspective that outlines the context in which the system operates in Australia, this article examines the legal and regulatory anatomy of the twin peaks model and how it deals with fundamental regulatory issues. Two features stand out as being of critical importance to the effective operation of the model. The first is clarity in terms of the responsibilities and objectives of each regulator, which requires a clear demarcation between the roles of the regulators and the minimisation of regulatory overlap. The second, which is closely related to the first, is a framework of coordination that encourages both regulators to share information proactively and to cooperate in the performance of their supervisory and enforcement functions. 240

Debt for equity swaps and corporate restructuring under s 444GA of the Corporations Act – *Ryan J Turner*

Section 444GA(1)(b) of the *Corporations Act 2001* (Cth) has risen in prominence as a mechanism to effect a restructure or change of control transaction following its use in the high profile cases concerning the listed companies Mirabela Nickel Ltd and Nexus Energy Ltd. The power of deed administrators to effect a non-consensual share transfer with leave

of the court has, however, remained under-studied and courts have, with few exceptions, omitted to contextualise s 444GA within the broader scheme of corporations law. This article offers a comprehensive analysis of the jurisprudence and history of s 444GA and suggests a revised interpretation of the orthodox two-stage analysis that better accounts for the nature and treatment of shareholder rights under both the *Corporations Act 2001* (Cth) and the general law. 269

Surcharging for payment: Payment systems regulation and the constitution of a new economic norm – *Ann Wardrop*

This article discusses the regulation of surcharging for payment in Australia. It has two aims. First, it observes the process of regulating payment surcharging and makes some comment about financial regulation generally. Secondly, it critically discusses current regulation and proposals for reform. It argues that difficulties regulating in this area are, in part, related to an insistence on measuring success only by reference to orthodox economic theory; that current surcharging regulation provides an example of how decentred regulation can be rendered ineffectual through the presence of conflicts of interest; and that surcharge regulation has inadvertently constituted a new economic norm in Australia. Finally, the article argues for a prohibition on surcharging for debit cards, eftpos and cash together with hard cap limits on surcharging for credit cards combined with the introduction of regulation providing enforcement powers to a regulator. 290

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