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EDITORIAL 205

ARTICLES

Two steps forward, one step back: Assessing recent developments in the fight against insider trading – *Juliette Overland*

After many years of infrequent prosecutions and few convictions for insider trading, the Australian Securities and Investments Commission had some recent successes. This article will review the decisions in *R v Doff* (2005) 23 ACLC 317; [2005] NSWSC 50 – a criminal prosecution resulting in a conviction – *ASIC v Petsas and Miot* (2005) 23 ACLC 269; [2005] FCA 88 – the first set of civil penalty proceedings for insider trading – and *ASIC v Vizard* (2005) 145 FCR 57; [2005] FCA 1037 – a somewhat contentious case involving civil proceedings for breaches of directors' duties in respect of conduct which appears to amount to insider trading – and will also consider the civil penalty proceedings for insider trading which ASIC instituted against Citigroup in March 2006. These cases have brought issues concerning insider trading into the public arena once more and this article will examine their contribution to the law of insider trading in Australia, in particular in relation to the elements of the insider trading offence and sentencing and penalty considerations relevant to convicted insider traders, as well as to the debate on insider trading regulation. The likely future impact of these cases will also be considered, as each of these cases has the potential to have a significant effect on future insider trading cases, either in the way in which such proceedings are likely to be pursued or in relation to their possible outcomes. 207

The use of character and reputation in sentencing white collar criminals: The ultimate contradiction? – *Ivan Rubinstein*

Recent corporate scandals in Australia have seen a number of high profile corporate offenders sentenced to prison, being penalised by fines and being disqualified from directorships of companies to which they were previously appointed to very senior positions. This article examines four of the most notable of those cases – those involving Messrs Williams, Rivkin, Adler and Vizard, and deals with two primary issues. The first is the impact of character and reputation in sentencing white collar criminals and the way that the court in each proceeding has used the good character and reputation of the offender to impose more severe sentences than it would otherwise impose. The second issue is whether the sentences imposed by Australian courts for white collar offences are the most appropriate sentences, and in this respect commentary from the Australian and international academy that discusses so called "non-traditional" punishments is examined. Finally, after concluding that the courts have not properly applied legislative guidelines regarding sentencing and that punishments typically imposed by Australian courts may not be the most effective in preventing white collar crime from occurring or in punishing those that have already committed offences, a method to address the problems discussed is proposed. 223

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