

COMPANY AND SECURITIES LAW JOURNAL

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EDITORIAL 145

ARTICLES

Enforceable undertakings and the court system – *Marina Nehme*

An enforceable undertaking is one of the many sanctions available to a number of Australian regulators. This sanction is widely used in the regulatory community for it allows regulators to reach expeditious solutions to alleged offences at minimal cost to their agencies and the courts. The regulators will usually enter into an enforceable undertaking when they believe that such undertakings will offer a more effective regulatory outcome than other sanctions. This article deals with the following question: Given the apparent popularity of the enforceable undertaking, are the courts in favour of this sanction? In discussing this matter, the author illustrates the support given by the courts to the use of undertakings by regulators and the position of the courts when regulators have sought to enforce undertakings. 147

The Public Administration Act 2004 (Vic): A new approach to the liability and duties of directors on government boards and authorities – *Marco Bini*

Victoria now has a generic piece of legislation, the *Public Administration Act 2004* (Vic) (PAA), which deals with the governance processes for a range of government boards and authorities. As well as providing for fundamental good governance practices, the PAA also addresses the specific duties of directors of these government boards, and the broader duties of these boards as a whole. The PAA also explicitly recognises the role of the minister in the oversight of these boards. This article briefly outlines the history of government boards in Victoria and examines the policy basis for the enactment of the PAA. Further discussion describes the taxonomy of entities found in the PAA, and in particular, what is a “public entity” for the purposes of the Act. The article describes how the key governance provisions of the PAA operate with a focus on the duties of directors of government boards and their potential liability. This liability is also relevant to the role of the minister responsible for the board. The article speculates on the change in liability for directors or ministers which might have resulted from the passage of the PAA. 172

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