

# COMPANY AND SECURITIES LAW JOURNAL

Volume 26, Number 7

October 2008

EDITORIAL ..... 417

## ARTICLES

### **Climate change: Corporate liability, disclosure requirements and shareholders' remedies – Riccardo Troiano**

Companies operating within Australia are not yet subject to a definitive governmental policy and regulatory framework in relation to the disclosure and management of climate change risk. In this regulatory climate, it is difficult for company boards to know precisely what actions to take and what timeframe to act within to mitigate the risks potentially posed by climate change. In turn, climate change has emerged as a genuine shareholder value issue in the minds of shareholders. This article shows that there are real questions of corporate liability for companies and directors if they do not recognise and manage climate change risk in their overall business strategies. It highlights that, in preparation for the future regulatory environment, Australian companies and directors should assess and understand the risks associated with climate change for their company and appropriately respond to these risks in order to mitigate the possibility of shareholder action. .... 418

### **Are the financial services external complaints resolution schemes subject to judicial review? – Denise McGill**

In Australia seven schemes (apart from the Superannuation Complaints Tribunal) provide alternative dispute resolution services for complaints brought by consumers against financial services industry members. Recently the Supreme Court of New South Wales held that the decisions of one scheme were amenable to judicial review at the suit of a financial services provider member and the Supreme Court of Victoria has since taken a similar approach. This article examines the juristic basis for such a challenge and contends that judicial review is not available, either at common law or under statutory provisions. This is particularly the case since *Financial Industry Complaints Service Ltd v Deakin Financial Services Pty Ltd* (2006) 157 FCR 229; 60 ACSR 372 decided that the jurisdiction of a scheme is derived from a contract made with its members. The article goes on to contend that the schemes are required to give procedural fairness and that equitable remedies are available if that duty is breached. .... 438

## SECURITIES INDUSTRY AND MANAGED INVESTMENTS – Ann O'Connell

**Are we there yet? The journey of the insider trading provisions – Jennifer Butler .....** 460

## DIRECTORS' DUTIES AND CORPORATE GOVERNANCE – Geof Stapledon and Jon Webster

**ENT Pty Ltd v Sunraysia Television Ltd: A positive fiduciary duty of disclosure – Rosemary Teele Langford .....** 470



# Guidelines for Contributors

## Submission and licence agreement instructions

All contributions to the journal are welcome and should be sent, with a signed licence agreement, to the Production Editor, *Company and Securities Law Journal*, Lawbook Co., PO Box 3502, Rozelle, NSW 2039 (mail), 100 Harris St, Pyrmont, NSW 2009 (courier) or by email to [cslj@thomson.com.au](mailto:cslj@thomson.com.au), for forwarding to the Editor. Licence agreements can be downloaded via the internet at [http://www.thomson.com.au/support/as\\_contributors.asp](http://www.thomson.com.au/support/as_contributors.asp). If you submit your contribution via email, please confirm that you have printed, signed and mailed the licence agreement to the attention of the Production Editor at the mailing address noted above.

## Letters to the Editor

By submitting a letter to the editor of this journal for publication, you agree that Thomson Legal & Regulatory Limited, trading as Lawbook Co., may edit and has the right to, and may license third parties to, reproduce in electronic form and communicate the letter.

## Manuscript

- Manuscript must be original, unpublished work that has not been submitted for publication elsewhere.
- Personal details (name, qualifications, position) for publication and a delivery address, email address and phone number must be included with the manuscript.
- Manuscript must be submitted electronically via email or on disk in Microsoft Word format.
- Manuscript should not exceed 15,000 words for articles or 3,000 words for section commentary or book reviews. An abstract of 100-150 words is to be submitted with article manuscripts.
- Proof pages will be sent to contributors. Authors are responsible for the accuracy of case names, citations and other references. Excessive changes to the text cannot be accommodated.
- This journal complies with the Higher Education Research Data Collection (HERDC) Specifications for peer review. Each article is, prior to publication, reviewed in its entirety by a suitably qualified expert who is independent of the author.

## Style

1. **Levels of headings should be clearly indicated (no more than four levels).**
2. **Cases:**
  - Case citation follows case name. Where a case is cited in the text, the citation should follow immediately rather than as a footnote. Give at least two and preferably all available citations, the first listed being the authorised reference.
  - Australian citations should appear in the following order: authorised series; Lawbook Co./ATP series; other company series (ie CCH, Butterworths); media neutral citation.
  - “At” references should only refer to the best available citation, eg: *Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 34; 66 ALJR 408; 107 ALR 1.
  - Where only a media neutral citation is available, “at” references should be to paragraph, eg: *YG v Minister for Community Services* [2002] NSWCA 247 at [19].
  - For international cases best references only should be included.
3. **Legislation should be cited as follows:**  
*Trade Practices Act 1974* (Cth), s 51AC. The full citation should be repeated in footnotes.
4. **Books should be cited as follows:**  
Macken JJ, O’Grady P, Sappideen C and Warburton G, *The Law of Employment* (5th ed, Lawbook Co., 2002) p 55.
  - In footnotes do not use *ibid* or *op cit*. The following style is preferred:
    4. Austin RP, “Constructive Trusts” in Finn PD (ed), *Essays in Equity* (Law Book Co, 1985).
    5. Austin, n 4, p 56.
5. **Journals should be cited as follows:**  
Odgers S, “Police Interrogation: A Decade of Legal Development” (1990) 14 Crim LJ 220.  
Wherever possible use official abbreviations not the full name for journal titles.
  - In footnotes do not use *ibid* or *op cit*. The following style is preferred:
    6. Sheehy EA, Stubbs J and Tolmie J, “Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations” (1992) 16 Crim LJ 220.
    7. Sheehy et al, n 6 at 221.
6. **Internet references should be cited as follows:**  
Ricketson S, *The Law of Intellectual Property: Copyright, Designs and Confidential Information* (Lawbook Co., subscription service) at [16.340], <http://subscriber.lawbookco.com.au> viewed 25 June 2002. Underline the URL and include the date the document was viewed.

For further information visit <http://www.thomson.com.au/legal/> or contact the Production Editor.

## SUBSCRIPTION INFORMATION

The *Company and Securities Law Journal* comprises eight parts a year.

Customer service and sales inquiries:  
**Tel: 1300 304 195 Fax: 1300 304 196**  
**Web: [www.thomson.com.au/legal/p\\_index.asp](http://www.thomson.com.au/legal/p_index.asp)**  
**Email: [LRA.Service@thomson.com](mailto:LRA.Service@thomson.com)**

Editorial inquiries:  
**Tel: (02) 8587 7000**

**HEAD OFFICE**  
100 Harris Street PYRMONT NSW 2009  
Tel: (02) 8587 7000 Fax: (02) 8587 7100



© Thomson Legal & Regulatory Limited ABN 64 058 914 668 trading as Lawbook Co.

ISSN 0729-2775

Typeset by Lawbook Co., Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW