

# COMPANY AND SECURITIES LAW JOURNAL

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## ARTICLES

### **Information access denied ... Is the Australian takeovers market really “efficient, competitive and informed”? – Rebecca Langley**

A target company is generally not required to provide equal access to information about the target company to rival bidders. As a result, in practice, there are often substantial differences in information provided by a target to rival bidders, especially where bids are made with insider participation. It is the submission of this article that the current state of the law governing access to corporate information for rival bidders is fundamentally incompatible with the policy objective of an efficient, competitive and informed market for corporate control. This article analyses the current Australian regulatory framework and the practical issues that arise as a result of information asymmetry between rival bidders, including preventing an effective auction for control and interfering with the target shareholders' opportunity to consider a rival offer. The article explores whether the regulatory framework relating to access to corporate information is adequate in its current form to meet the underlying policy objectives of Ch 6 and to address the conflicts of interest where target company management participates in a bidding consortium. Takeover competitiveness must be encouraged to promote the efficient allocation of scarce resources and greater investment in Australia's capital markets. .... 344

### **The regulatory dilemma: The choice between overlapping criminal sanctions and civil penalties for contraventions of the directors' duty provisions – Michelle Welsh**

Since 1993 the Australian Securities and Investments Commission (ASIC) has had at its disposal overlapping criminal sanctions and civil penalties for the enforcement of the directors' duty provisions. This article examines ASIC's enforcement of alleged contraventions of the directors' duty provisions between 2001 and 2006. The examination reveals that criminal sanctions are utilised by ASIC in situations where the Commonwealth Director of Public Prosecutions believes there is sufficient evidence to sustain a criminal prosecution. The civil penalty regime is utilised by ASIC in situations where a criminal prosecution could not be sustained or is not available. Despite the perceived inadequacies of the criminal regime, the perceived advantages of the civil penalty regime and the predictions of some commentators, the provision of overlapping criminal sanctions and civil penalty provisions has not resulted in a reduction of criminal prosecutions in favor of civil penalty applications. .... 370

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