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ARTICLES

The "Safe Harbour" Reform of Directors' Insolvent Trading Liability in Australia: Insolvency Professionals' Views – *Ian Ramsay and Stacey Steele*

Directors of Australian companies are subject to a duty to prevent their company trading while it is insolvent. The duty is controversial. Over a period of at least 10 years, a series of reforms have been proposed, leading to the introduction, in 2017, of a safe harbour for directors where directors undertake a restructure of the company outside of external administration. There are important questions relating to the safe harbour reform. To assist in answering these questions, the authors undertook a survey of insolvency professionals. The study had three main goals – to obtain insight into the experience of practitioners with the safe harbour reform, to obtain the views of these practitioners on whether the reform has achieved its objectives, and to obtain their views on whether any changes should be made to the safe harbour provisions in light of the independent review of the reform that the government is required to commission. 7

To Bar Order, or Not to Bar Order: Facilitating Settlement in Australian Anti-Cartel Class Actions – *Bethany Moore*

Bar orders provide settling respondents with certainty and finality by prohibiting contribution claims against them. This article explores the availability of bar orders in Australia as a mechanism to resolve some of the obstacles currently facing privately enforced anti-cartel class actions. It does this by analysing bar orders in the United States and Canada, as well as recent developments in Australian class actions jurisprudence. It contends that the power to make bar orders in Australia is available, and that the application of this power in anti-cartel class actions would facilitate resolutions jithat are consistent with the overarching purpose of Australia's representative proceedings regime, while also improving access to justice for cartel victims and strengthening existing deterrence measures. 27

Reforming Private Whistleblower Protections – What Next in Australia? – *David A Chaikin*

The *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* (Cth) reformed whistleblowers' rights, remedies and immunities by altering the balance of power between employee whistleblowers and corporate employers. The next step is for corporations to design and implement effective whistleblower policies, processes and controls so to as to meet their new legal responsibilities. The corporate duty to protect and support whistleblower employees and mandated whistleblower policies are analysed through the prism of a positive corporate culture in favour of whistleblowers. A case study involving the attempt by a Chief Executive Officer of a major British bank to identify an anonymous whistleblower is used to illustrate the weaknesses in internal governance systems. Whether Australia should enact further reforms, such as the creation

of a Whistleblower Protection Authority or allow a system of whistleblower rewards, is critically examined from a policy perspective. It is argued that the case for an independent regulatory authority to protect and support whistleblowers is powerful, particularly if regulators do not improve their enforcement performance. The case for a general rewards system for whistleblowers is more problematic, as a rewards system cannot be effective in Australia without the active support of law enforcement and regulatory agencies. 50

Financial Reporting and Disclosure of Intangible and Intellectual Property Assets by Australian Listed Entities Between 2004 and 2018 – *Tony Ciro and Bülend Terzioglu*

The adoption of International Financial Reporting Standards (IFRS) became mandatory for Australian reporting entities on or after 1 January 2005. The transition to IFRS has changed the way in which intangible and intellectual property (IP) assets are recognised, measured and disclosed by listed entities. Although previous studies have examined effects of the adoption of IFRS standards in Australia from various perspectives, this study investigates the effects of regulation on corporate practices of financial reporting of intangible and IP assets. In doing so, the article assesses the impact of the transition to IFRS reporting for intangible and IP assets of ASX/S&P 100 companies prior and subsequent to the move to IFRS. The study expands the existing literature by shedding light on trends and patterns associated with intangible and IP asset reporting over the 15-year period from 2004–2018 inclusive. 67

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