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Duties of Nominee Company Directors: Is Reform Needed to Better Adapt to Commercial Practice? – *George Calman*

Nominee directors are appointed as a means of ensuring the representation of their appointor’s interests on a company’s board. They are not an uncommon fixture on the boards of Australian companies, particularly in the joint venture and private equity contexts. However, their position at law is underdeveloped and does not reflect the commercial realities and potential benefits of such an appointment. This article examines the position of nominee directors as a matter of commercial reality and in the general law. It discusses the difficulty of reconciling the law and commercial reality and posits several means of achieving that reconciliation.

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The Design and Distribution Obligations: An Effective Tool for Consumer Protection? – *Caroline Chong*

In October 2021, the Australian Government introduced the Design and Distribution Obligations (DDO) – a regime designed to strengthen consumer protections by creating additional product governance obligations for issuers and distributors of financial products. While the DDO regime remains relatively new, since its commencement, Australian Securities and Investments Commission (ASIC) has indicated that enforcing the regime is currently one of its key strategic priorities and will remain so in the next few years. This article assesses the potential for the DDO regime to achieve its stated objective, namely: to assist consumers to obtain appropriate financial products, and reduce consumer harm. It does so by examining the design of the regime, the policy debate that informed the regime’s design, and ASIC’s enforcement of the DDOs to date. This is the first scholarly study to comprehensively examine the merits and limitations of the DDO regime’s design and to assess the potential effectiveness of ASIC’s enforcement of the regime.

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From the Ashes of the Anti-Phoenix: A Critique of Australia’s Illegal Phoenixing 2020 Reforms – *Clinton Free, Juliette Overland and Charlie Guerit*

The aftermath of the Plutus Payroll tax scandal brought renewed attention to illegal phoenix activity. While various past reforms and government initiatives had aimed to curb this misconduct, significant legislative changes were made in 2020 with the introduction of the *Treasury Laws Amendment (Combating Illegal Phoenixing) Act 2020* (Cth) (2020 Reforms). These reforms included the creation of new offences (such as involvement in a company making “creditor-defeating” dispositions), the introduction of the “last director rule”, and the provision of new recovery powers for Australian Securities and Investments Commission and liquidators. In this article, the 2020 Reforms will be described in detail,

with their impact to date considered, and comparisons made with related reforms to combat illegal phoenix activity which have been pursued in other jurisdictions. The article puts forward key critiques of the 2020 Reforms, and suggests possible changes for more effective prosecution and prevention of illegal phoenix activity. 101

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