COMPANY AND SECURITIES LAW JOURNAL

Volume 33, Number 3

May 2015

EDITORIAL 141

ARTICLES

The duty to act in the best interests of the public entity in Victoria: Legal and empirical meanings – *Marco Bini*

In a number of Australian jurisdictions, the duty to act in the best interests of the public entity is imposed on government owned corporations, while in Victoria it is also imposed on a wider range of non-company public entities established by statute or by Ministers. In contrast with the corresponding duty to act in the best interests of the company in the private sector, the meaning of the duty in the public sector is unclear. This article examines the background and policy rationale for the application of the duty to public entities in Victoria through the use of a variety of primary material, including survey and interviews. This examination reveals that the history, case law and statutory provisions provide little insight into how the duty might operate in the public sector context. This empirical work finds that directors have varying understanding of what the duty means but tend to consider a wide range of stakeholders when applying the duty. This suggests the entity does have interests of its own separate from those of the Minister. Directors also think the duty has little or no effect but that it is valuable for a range of differing reasons. Overall, the empirical work supports to an extent a stakeholder view of the duty in the public sector which is an option for reform if required. 144

Equitable money remedies against financial advisers who give "advice about advice" – *Simone Degeling* and *Jessica Hudson*

A financial advisor may be in breach of their fiduciary obligations arising from the giving of advice about advice. Substantive advice concerns recommendations by the financial adviser about actual investment decisions and strategies that are capable of implementation by the client. Advice about advice is early guidance by the adviser about the selection of topic areas on which the client will later receive substantive advice. This article considers the ambit and scope of equitable money remedies that might be available to a client against the financial adviser who breaches their fiduciary obligation in relation to the provision of advice about advice. 166

Integrated reporting and directors' concerns about personal liability exposure: Law reform options – *Anna Huggins*, *Roger Simnett* and *Anil Hargovan*

Integrated reporting (<IR>) holds significant promise as a new reporting paradigm that is holistic, strategic, responsive, material, and relevant across multiple time frames. However, its uptake in Australia is being hampered by directors' concerns about personal liability exposure, particularly for forward-looking statements that subsequently prove to be unfounded. This article seeks to illuminate the bases for these liability concerns by outlining the similarities between <IR> and the operating and financial review requirements under the *Corporations Act 2001* (Cth), and the relevant grounds for liability for misleading and deceptive disclosures, and breach of directors' duties. In light of this discussion, this article proposes four possible reform options, ranging from minor adaptations to the <IR> Framework to far-reaching reforms of the Corporations Act. As assurance is desirable to ensure that reliance can be placed on integrated reports, the development of a legal safe harbour for auditors of forward-looking information is also canvassed. 176

COMPANY LAW – *Robert Baxt AO*

Enforcement of continuous disclosure laws by the Australian Securities And Investments Commission – *Ian Ramsay* 196

DIRECTORS' DUTIES – *Rosemary Teele Langford*

Conflicts, proactive disclosure and s 181 of the Corporations Act – *Rosemary Teele Langford* 205