

# Australian Journal of Corporate Law (AJCL)

## Volume 34 Part 3

*(editorial, articles and insolvency law update included in this part are linked to the LexisNexis platform)*

### CONTENTS

**Editorial** 271

#### Articles

[The ASX, blockchain, and gatekeepers: The first step towards decentralising trust in Australia's financial markets?](#)  
— *Barbara Vrettos* 272

Financial systems have grown and developed on the basis that trusted, centralised, financial intermediaries would protect investors' interests. However, blockchain technology was designed to overcome the reliance on such intermediaries and thus challenges the structure of financial markets. This presents an opportunity to re-evaluate intermediary roles in a blockchain context and distinguish the value of true gatekeepers and roles that merely facilitate transactions. In Australia, legislation and regulation support innovations that update existing systems, rather than disrupting them, and thus restrict the potential of blockchain technology. This article explores the Australian Securities Exchange's proposal for the first large-scale replacement, internationally, of mission-critical market infrastructure with blockchain technology, and offers some insights into the future development of blockchain solutions in Australia's securities trade, clearing and settlement systems.

[The third wave of shareholder influence and the emergence of informational activism in Australia](#)  
— *Michael Jefferies* 305

The role and functions of the shareholder have continually evolved to adapt to changing commercial realities. The first two 'waves' or categories of shareholder influence are outlined in both theory and Australian law according to a proposed member-investor paradigm. Viewed through such a lens, this analysis exposes a steady downward trajectory of shareholder influence over time. A deconstruction of three prominent shareholder activism campaigns then reveals the emergence of a new form of 'informational activism' which is incompatible with prevailing contemporary views of the shareholder. Following its genesis in the United States and spreading as a global phenomenon, this new third 'wave' or category of shareholder influence represents an emerging view and function of shareholders as participatory investors with a substantial level of power in the market.

Mediating beyond the 'four corners' of insolvency litigation:  
An Australian perspective on mediator ethics

— *Pravin Athreya*

341

This article examines ethical challenges for mediators in insolvency-related mediations, particularly with respect to the potential effect on any settlement of the interests of third-party stakeholders in a liquidation who are not present at the mediation. The author contends that the public interest in the proper discharge of the liquidator's statutory duties in the best interests of creditors necessitates a focus in insolvency-related mediations beyond the interests of the parties to the dispute being mediated. The author also proposes particular reforms to court-administered mediation processes which may reduce the costs associated with liquidators' settlement approval applications and thereby deliver better returns to unsecured creditors.

## **Insolvency Law Update**

Dissatisfied creditors wanting the exercise of the court's  
discretion to terminate DOCAs: Elaborating on the basics  
of the s 445D discretion

— *Christopher Symes*

356