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CONTENTS

Articles

[The Australian Securities and Investments Commission's new immunity policy: An evaluation](#)

— *Ian Ramsay and Mihika Upadhyaya*

1

In February 2021, the Australian Securities and Investments Commission ('ASIC') launched an immunity policy for market misconduct offences. The immunity policy is likely the first to be introduced outside the anti-cartel enforcement context. This article considers the available literature on immunity policies and discuss what lessons may follow for ASIC's immunity policy. It outlines the ASIC Immunity Policy, including the eligibility criteria for immunity and the application process; considers the advantages and disadvantages of immunity policies identified in the literature on immunity policies; discusses the available empirical data on the effectiveness of the cartel immunity policies of Australia, the United States, the European Union and Korea; and highlights some of the potential issues in the design of the ASIC Immunity Policy. It concludes that it is highly uncertain that the ASIC Immunity Policy will work effectively to enhance the detection and deterrence of market misconduct.

[Human rights and the corporation in the 21st century: A humanist-concession perspective](#)

— *Jonathan Barrett*

29

The most significant development in corporate governance and company law in the first decades of the 21st century has been the emergence of the business and human rights agenda. United Nations-led initiatives, including the Guiding Principles on Business and Human Rights, and the Principles of Responsible Investment, have normalised human rights discourse in the boardrooms of major corporations. Following other jurisdictions, Australia has introduced legislation to combat forms of modern slavery. This development, in particular, transforms respect for fundamental human rights from an expression of progressive corporate social responsibility into positive legal obligations for large companies with complex supply chains. This article outlines how human rights have moved into the corporate mainstream in the new millennium. Adopting a 'humanist-concession' approach, the article seeks to justify these developments and to oppose corporate claims to human rights. In a period of monopolistic capitalism and global domination by a relatively small number of massive companies, the business and human rights agenda may present a compelling counter-narrative to neoliberal globalisation.

Insolvency and the Australian safe harbour reforms of 2017 —
Do they adequately support all Australian directors in fulfilling
their role as a fiduciary of their company in 2021?

— *Lidia Xynas and Alexander Xynas*

46

As fiduciaries, Australian company directors will be acting in best interests of their company and for a proper purpose where they use their management powers to maximize profits for its shareholders, considering all of the interests of the corporation, including its continued existence and its interest in pursuing lawful activity. However, upholding these duties was negatively impacted by the apprehension of insolvency under the Australian insolvent trading laws as they were prior to the 2017 legislative reforms. The fear of associated personal liability that directors could face disincentivised them from taking appropriate business risks outside of formal insolvency situations. The 2017 reforms went some way to addressing some of these concerns. Following the temporary support measures implemented by the Australian Government in March 2020 to assist companies in financial distress due to the economic impact of the COVID-19 pandemic, additional legislative reforms were introduced to assist small company businesses experiencing financial distress in January 2021. Whilst these new reforms are welcome, this article presents suggestions for further reform in order to provide additional support for all Australian company directors so that they can confidently fulfill their fiduciary duties to their companies, and to broaden much needed entrepreneurialism and innovation approaches for all Australian company businesses.