

Australian Journal of Corporate Law (AJCL)

Volume 37 Part 3

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

CONTENTS

Editorial

Editorial 201

Articles

Corporate response to modern slavery risks induced by
COVID-19: Business as usual?

— *Shakoor Ahmed and Larelle (Ellie) Chapple* 203

The inaugural round of Australia's modern slavery reporting in December 2020 coincided with the COVID-19 global pandemic. COVID-19 has disrupted the usual reporting obligations by companies required to address the risk of modern slavery in their supply chains. This article focuses on Australian companies' compliance with their disclosure obligation by specifically testing whether and how companies responded during the first year of the COVID-19 pandemic with the key aim to recommend improvement to future reporting. Using content analysis to examine the first modern slavery statements submitted by Australian companies, the research finds more than half of the modern slavery statements did not disclose COVID-19 issues related to modern slavery risk. The findings inform the public demand for improved accountability and transparency to ensure the human rights of vulnerable workers. This article provides an overview of modern slavery risk challenges due to COVID-19 and how companies can improve their resilience and reduce modern slavery risks related in modern slavery reporting.

Good faith and faith's goods: Exploring the application of the
best interests duty for religious charities

— *Caleb J Simmons* 230

This article considers the duty owed by controllers of incorporated religious charities to act with good faith in the best interests ('GFBI duty') of the charity. Through an analysis of the GFBI duty in the corporations and charity context, it is suggested that the 'best interests' of a charitable entity refers to its charitable purpose. Against the background of *Commissioner of Taxation v Word Investments Ltd* (2008) 236 CLR 204, the article then moves to discuss how this understanding of the GFBI duty might constrain the types of non-charitable activities in which a religious charity can engage in order to fund charitable activities. It is argued that, in the context of a religious charity, the GFBI duty requires that such activities should not extend beyond what is consistent with the fundamental beliefs and practices of the religion, or extend to matters that would bring the charity into disrepute. A case study is used to interrogate the practical operation of this understanding of the GFBI duty in the charity context.

Activist short sellers and the problem of 'bad' activism

— *Kin Pan*

260

Activist short selling describes the practice of short selling coupled with the publication of negative information about target companies. The success of activist short sellers in driving and profiting from share price declines has attracted much criticism, particularly where it involves the dissemination of false or misleading information about target companies. This article analyses some important ways in which this problem of 'bad' activism is addressed in Australia. It explores how market manipulation laws and the Australian financial services licence regime serve to deter bad activism and identifies issues and opportunities with current regulatory approaches. It also argues that target companies and the ASX have a role in mitigating the harm caused by bad activism.

Insolvency Law Update

When the new model meets the classic: Creditor-defeating dispositions

— *Christopher Symes and Jason Harris*

289