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(Articles and Case Note included in this part are linked to the LexisNexis platform)

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Articles

Misleading and deceptive conduct in financial services with reference to emission reduction commitments: Seeing the wood for the trees

— *Natania Locke*

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Enforcement action for misleading and deceptive emission reduction statements has so far mostly used s 1041H of the Corporations Act 2001 (Cth). This article argues that s 12DA of the Australian Securities and Investments Commission Act 2001 (Cth) is a better option for private and public enforcement of misleading and deceptive representations about emission reduction commitments of corporations. The main reasons for this view are that: s 12DA is served by s 12BB, which puts an evidentiary burden on the respondent to show that representations about future matters were made on reasonable grounds; and the remedies attached to s 12DA are broader. The adoption of the Australian Law Reform Commission's recommendations for the simplification of these provisions is supported, with the inclusion of s 12BB in its current form. It is suggested that emission reduction statements made before the commencement of mandated climate-related financial disclosures already benefited from ample scientific guidance of what would be objectively reasonable. There is some evidence that applicants are already making use of scientific guidance in framing their complaints.

Annual super fund members' meetings: The evidence so far

— *M Scott Donald*

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The trustees of Australia's superannuation funds have been required to hold formal members' meetings annually since 2019. This article analyses the questions posed by members at the Annual Members' Meetings of the largest 20 superannuation funds over the past three years in order to engage, for the first time, with the question whether the meetings are merely performative, or whether they provide an effective mechanism for communication between the funds' trustees and members that has value in the governance of the funds.

AI risks, failures and consequences: Corporate governance for the AI era

— *Zofia Bednarz and Susan Bennett*

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Artificial intelligence (AI) tools can bring undeniable benefits for private sector organisations, however, they can also lead to significant harms. Focusing on the example of the financial industry, this article explores how these harms translate into risks for organisations in the context of AI applications that have direct implications for consumers. We ask what the use of such AI tools means in terms of risks for companies under current and emerging risk and governance frameworks, and what it means for

directors discharging their duties under the Corporations Act 2001 (Cth) and general law. Drawing on practical examples and recent cases, we examine ways in which the risks of harm can arise and analyse the challenges organisations face when implementing AI governance systems to adequately reduce risks.

Case Note

The duty of care and the BJR during takeovers

— *Professor Jason Harris*

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