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

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Editorial

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Corporate responses to the T*reasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* (Cth) ('*TLA Act*') requirement to develop whistleblower policies are analysed using a sample of 66 Australian Securities Exchange (ASX) listed companies, stratified by industry sector and size. Forty criteria representing the *TLA Act* requirements and ASIC Guideline (2019) on whistleblower policy development are utilised to conduct a content analysis of the policies. The article finds that most companies developed their whistleblower policies as a 'tick-the-box' exercise to comply with the *TLA Act* requirements. This finding indicates low active engagement by those charged with governance, including directors and management, to introduce processes and mechanisms to ensure whistleblower protection at the corporate level. In most policies, 'how' the legal protection is operationalised to assure protection for whistleblowers is missing. This behaviour in developing policies could, at least in part, reflect deficiencies in the *TLA Act*. These findings should interest corporate and national-level public policymakers and regulators.

This article compares the approaches to insider trading enforcement in Australia and New Zealand. It finds that between January 2014 and October 2021, the Australian regulator ('ASIC') instigated 21 enforcement actions, while the New Zealand regulator ('FMA') instigated only four. All but two of ASIC's actions were criminal prosecutions. Of the four actions commenced by the FMA, two resulted in enforceable undertakings, one ended with a guilty plea, and the other concluded with an acquittal on retrial. Based on data from an official information request, this article finds that the FMA receives between 5–16 reliable insider trading referrals annually, indicating an underenforcement in New Zealand. Building on insights from an interview with senior FMA staff, this article finds that this underenforcement is owing to the notorious difficulty in proving insider trading; the regulator being frequently unable to find the requisite incriminating evidence to commence an enforcement action. This article submits two important reforms designed to mitigate these evidentiary challenges and suggests that greater application of the insider trading civil penalty regime may provide the FMA with greater success going forward.

The emergence of multijurisdictional bribery enforcement presents complex challenges to multinational corporations ('MNCs'). Multiple sovereigns have the jurisdiction to pursue criminal enforcement action against the same entities for the same underlying bribery. The existing legal framework is not sufficient for addressing this global challenge. The difference between theories of liability and double jeopardy across sovereigns inevitably poses challenges and complicates MNCs compliance strategies. Arguably, a global settlement regime would not only help make efficient use of precious judicial resources, but also incentivise the MNCs to self-disclose in furtherance of their cooperation.

The collapse of the US energy giant Enron was an unexpected systemic event upon the financial market. Deceptive accounting practices and a poor corporate governance structure led to inadequate disclosure and transparency of the company's affairs which ultimately caused Enron's eventual downfall. This disaster promoted a major overhaul of corporate governance practices, resulting in increased corporate regulation and greater government oversight as an attempt to circumvent corporate scandals of the same magnitude. While these detection mechanisms have cast a spotlight upon corporate obligations of disclosure to the market, they regrettably cast a shadow upon the foundation that corporate governance has been built upon, the concept of accountability. Rather than full accountability being borne by the directors of corporations, at least partial blame has shifted to the corporation's professional gatekeepers, including their inhouse counsel. Despite academic debate for the contrary, Australia's legal profession, unlike the United States, incurs no specific legal liability for failing to detect, report, or halt corporate misconduct. However, difficulty is encountered by the underlying assumption a US model can fit within the confines of the Australian framework, when in reality, they are irreconcilable. Australian legal professionals are mandated by legislation, and regulations directing their professional and ethical conduct, which is sufficient to enable satisfaction of any gatekeeping obligations. Therefore, this article critically examines the viability of imposing further obligations upon Australian in-house gatekeepers, and evaluates the effectiveness of Australia's current professional requirements in a corporate governance framework.

Insolvency Law Update