

COMPANY DISCLOSURE IN AUSTRALIA

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The aphorism “scientia potentia est” (“knowledge is power”) when it comes to market-sensitive information about listed companies. Stock prices can plunge or soar rapidly in response to announcements or events, making and breaking fortunes. The timely, accessible and accurate release of such information to the public is vital in maintaining market integrity and investor confidence. In *Company Disclosure in Australia*, Dr Gill North engages critically with the underpinning rationales for, and content of, the disclosure obligations surrounding listed companies.

The book is divided into 20 chapters, which are grouped into six parts. Part 1’s single chapter briefly introduces the reader to the field and the topics that follow.

Part 2 comprises four short chapters that, following a succinct overview in Chapter 2, analyse three notions that inform the disclosure and insider trading regimes: efficiency, rationality and fairness. The explanations are sophisticated and appear to be pitched at readers who are already comfortable with economic and financial concepts.

Efficiency is explored in Chapter 3, with the author noting that the near-universal acceptance of the Efficient Capital Market Hypothesis has been eroded in the aftermath of the Global Financial Crisis. Chapter 4 deals briefly with rationality, discussing empirical challenges to the economic rationalism assumed in many financial models and consequent attempts to address investor irrationality.

Chapter 5 covers aspects of fairness, presenting equal access to information as the paramount goal. It is argued that equal access to information enhances market integrity and increases confidence among investors that they will not be defrauded or otherwise exploited. Increased confidence in turn reduces the costs of raising funds as more investors join the share market and boost the supply of capital.

Part 3 is the heart of the work. It delves into the regulatory mechanisms forming the Australian corporate disclosure framework. Following a brief introduction and concept chart in Chapter 6, the following six chapters turn to the positive obligations and major infringements which the corporate disclosure framework seeks to address. Each chapter discusses: the policy rationale, relevant regulation and guidance provided by regulators, enforcement examples, empirical results, a critique of the status quo and proposals for reform.

Chapter 7 covers periodic reporting requirements. These are an amalgam of obligations under the *Corporations Act 2001* (Cth) and Australian Securities Exchange (ASX) listing rules. The author proposes that preliminary final reports be standardised and brought under the jurisdiction of the Australian Securities and Investments Commission (ASIC). North also advocates the introduction of a mandatory quarterly reporting regime, similar to what exists in the United States.

Continuous disclosure obligations are then canvassed in Chapter 8. It touches on the ambiguities and difficulties in enforcement, inconsistencies between the listing rule and corresponding statutory provisions, unclear disclosure requirements and the sectoral quirks that may impact on what information is considered material and relevant.

Chapter 9 concerns management discussion and analysis (MD&A) – in other words, the qualitative information provided by a corporation’s executives about its past, present and future

performance. MD&A adds an important layer of understanding to bare quantitative financial results in valuing the company's overall worth. Further expansion of the reporting obligations and an enlarged enforcement role for ASIC is advocated, in what proves to be a recurring theme throughout the book.

Chapter 10 discusses misleading or deceptive conduct. The James Hardie and Fortescue Metals cases make for interesting enforcement examples.

Insider trading forms the focus of Chapter 11. This is a particularly complicated area. The statutory provisions are ambiguous and complex. The elements are difficult to prove in court. Finally debates rage over whether the criminalisation of insider trading is justified on a cost-benefit analysis. It was sobering to read how widespread this practice is believed to be in Australia, with one estimate suggesting that 80% of large company announcements were preceded by unusual trading activity. The book suggests significant amendments to the "published information" and "readily observable matter" tests to reduce their ambiguities.

Chapter 12 concerns selective disclosure, which is prohibited where it contravenes the disclosure or insider trading laws. Grey areas exist, including the blacklisting of critical analysts from a company's future briefings. Such conduct discourages frank and fearless assessments of the corporation's position.

The framework's strands are tied together in Chapter 13, with the links between them explored in detail. It becomes clear that corporate disclosure regulation is disjointed and poorly integrated, rather than forming a cohesive web of principle. For example, the materiality tests for insider trading and continuous disclosure regimes are different. The divergence between legislative provisions and the corresponding listing rules is another example where anticipated consistency has not yet materialised.

Part 4 contains three chapters exploring company disclosure in practice. Following a discussion of the system's efficacy in Chapter 14, Chapter 15 explores company reporting and communications and Chapter 16 covers company briefings.

Part 5 looks at the regulatory structures, beginning with a one page treatment of efficacy in Chapter 17. Chapter 18 investigates the co-regulatory model which sees the supervisory role shared between Australian Securities and Investments Commission (ASIC) and the Australian Securities Exchange (ASX), with the latter's performance facing particular criticism. The advent of Australian alternatives to the ASX, and associated developments such as the failed Singaporean takeover proposal for the ASX, are discussed in Chapter 19.

The book concludes with a recap of the underlying rationales and theories concerning company disclosure, together with suggested reforms. Transparency, fairness, standardisation and conciseness are all emphasised as important hallmarks of an effective disclosure regime.

Company Disclosure in Australia is an informative and insightful work. Rather than simply regurgitating the regulatory scheme, the author provides a normative analysis as well as a roadmap for reform where necessary – in a nutshell, a greater role for ASIC and more prescriptive reporting standards. This book is likely to require updating fairly often to maintain currency; the author acknowledges that corporate disclosure law is a dynamic area subject to frequent change. Notwithstanding that, this work marks an important contribution to corporate law that should interest scholars, practitioners and policymakers alike.

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