

# Expert reports in corporate transactions

The securities industry has needed a better guide to writing expert reports, says **PETER PONTIKIS**.

**I**t's long overdue that the Australian securities industry had a more contemporary guide for expert report writers. This book by McDonald et al goes a long way to fill the void between past experience and current best practice. By reference to case law and current ASIC policy statements and notes, it situates itself well in the tradition and precedence of immediate corporate and regulator experience and the interpretations of the judiciary.

The team of authors provides the reader with a broad grasp of the salient aspects of the expert's definition and tasks, as well as the downside of liability and the defences provided at law and in contract.

Of course the whole point of an expert's report is to provide the 'good' report. What constitutes a good expert report, be it fair and reasonable, fair value or some such other concept (and for whom?) is given ample scope in the text. (One minor criticism would be the lack of international comparatives for this search for definition, but this is by no means a handicap to the text's utility). For the non-legal reader it stands as a fascinating reading of successive distinctions of the versions

of the 'good'; to the point where one could not be blamed for a mild version of decision paralysis!

The book itself acknowledges the in-practice general reluctance of experts to actually to give a recommendation – seemingly content to merely report only facts.

Unsurprisingly the risk of liability is what is cited by the authors as the likely reason for this reluctance. This is a shame – as it acts as a 'muzzle' on information transfers in the market place and arguably detracts from the goal of market efficiency as opposed to making the world a safer place to invest in. It is, in a word, about risk.

The irony is that for an 'industry' of report writing that generates something like \$8.4 million in revenue a year, the routine application of hundreds of million dollar law suits is clearly a hapless (and mispriced) disproportion of risk & return. The way current legal treatment and protection of experts is framed has all the hallmarks of a sold put option.

For all its good work, one could not help but notice the quantitative difference in chapter sizes. It is hard to ignore that the largest chapter in the book (and probably rightly so in these litigious times) is the one on 'liability of experts'. It is, of course,

immediately followed logically by a forthright and concise chapter on defences and limitations of liability, though as a practitioner one comes away asking the question: is it worth it? Auditors would likely nod in shared experience and agreement.

The book is not afraid to explore issues for which practice often only provides inconclusive counsel. The ambiguity of many corporate situations aside, the book does a good job of highlighting the grey areas that demand all the more acute attention in the practicing real world.

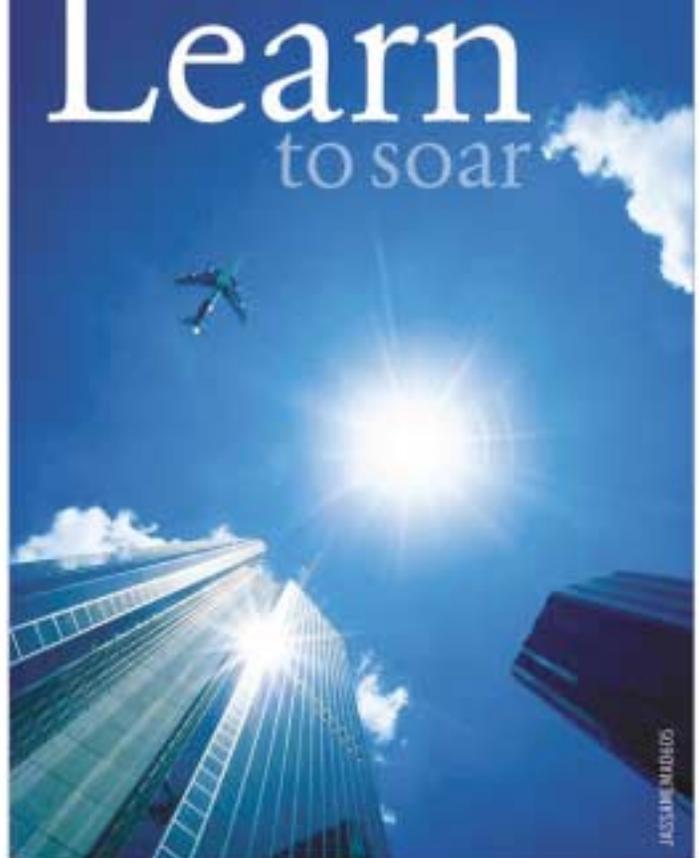
The book's concluding chapter on independence is an excursion into the nuances (such as the Valmin code) and the legal implications of various remuneration and contractual retention strategies for experts. As such the book is worth its weight for the first time report writer and an eye opener for even the more weathered of us authors.

The book is a valuable addition to the library of the specialist practitioner report writer, to those who seek to engage them and to the legal professional who may be called upon to defend a client or test a report. It is very much a text that regulators should take serious note of in their framing of policy, around the practice-related difficulties of report writing. **J**

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*Experts' Reports in Corporate Transactions*, by Laurie McDonald, Grant Moodie, Ian Ramsay and Jon Webster. 239pp. Sydney: Federation Press, 2003



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