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EDITORIAL 3

ARTICLES

Legislating for co-operative identity: The new co-operatives national law in Australia – Ann Apps

Co-operatives and mutuals are the main types of member-owned businesses in Australia. Co-operatives are usually registered as co-operative societies under State-based legislation. Co-operatives may also register as companies under the Corporations Act 2001 (Cth) but are distinguished from companies and mutuals by their commitment to co-operative principles. On 2 March 2015, the Senate referred an inquiry into the role of co-operatives and mutuals in the Australian economy to the Economics Reference Committee. The terms of reference include “barriers to innovation and growth” and the “impact of current regulations”. This article examines the Co-operatives National Law (CNL) which has recently been introduced in some Australian States. The article will analyse the key aspects of the new law that will have the maximum impact on co-operative identity – control, governance and finance. The CNL will be compared with the Corporations Act 2001 to evaluate its effectiveness in articulating the co-operative’s distinct identity and promoting co-operative growth. 6

Corporate and personal liability for “culture” in corporations? – John HC Colvin and James Argent

The Australian Securities and Investments Commission (ASIC) has proposed introducing personal and corporate liability for the culture of a corporation. This article argues that ASIC’s position should be rejected. First, culture cannot be effectively defined. Culture is also not capable of precise measurement. The need for certainty in defining and measuring culture is necessary for culture to be a basis for individual or corporate liability. Secondly, culture is not a concept that should be regulated. Thirdly, the proposed laws could significantly expand ASIC’s powers and such powers may be open to abuse. 30

Are directors liable in negligence for misstatements in a prospectus? – Victoria Stace

This article considers the issue of whether company directors owe a duty of care to retail investors in relation to misstatements made in offer documents. A recent New Zealand High Court decision said the answer was no. This article suggests that the reasons given by the High Court for its decision on this issue were not well grounded. It identifies and discusses the policy considerations relevant to finding whether directors owe a duty of care to retail investors in relation to negligent misstatements made in disclosure documents. Those policy considerations provide strong indicators in favour of finding a duty. 48

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