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EDITORIAL 411

ARTICLES

Another way forward? The scope for an appellate court to reinterpret the statutory business judgment rule – *Wesley Bainbridge and Tim Connor*

The statutory business judgment rule in s 180(2) of the Corporations Act 2001 (Cth) is controversial. Some critics argue that it does nothing to enhance directors' authority; others that it does too much. Whereas previous commentary has encouraged parliament to amend or replace the rule, this article considers the scope for an appellate court to reinterpret it. The article takes issue with three aspects of Austin J's seminal interpretation of the rule in *Australian Securities and Investments Commission v Rich* (2009) 236 FLR 1; [2009] NSWSC 1229. First, it argues that s 180(2) was introduced to clarify and confirm the courts' existing approach to reviewing managerial decisions, not to lower the standard of care expected of directors. Second, it argues that the provision should operate as a rebuttable presumption with the plaintiff bearing the onus of proof, not as a defence. Third, it disputes his Honour's argument that there can be no "degrees of reasonableness" and interprets s 180(2)(d) in light of corporate law cases that assume that possibility. It also proposes an additional nuance to Austin J's interpretation of s 180(2)(c). Finally it argues its proposed alternative interpretation has the potential to address the most significant policy concerns regarding the rule's current operation. 415

Duty to act in the best interests of the public entity: Control and the importance of values – *Marco Bini*

The duty to act in the best interests of the public entity is imposed on directors of government-owned corporations and in Victoria, on a wider range of directors of non-company public entities established by statute (such as the Public Administration Act 2004 (Vic)) or Ministers. The corresponding duty of directors to act in the best interests of the company in the private sector developed as a means of controlling director behaviour to ensure that directors did not seek to enrich themselves at the expense of the company. In the public sector however, the role of the duty as a control is not clear. This article considers whether the duty operates as a control by drawing on control frameworks developed for the public sector as discussed in articles by Hofstede and Ouchi ("Management Control of Public and Not-for-Profit Activities" (political controls) and "Markets, Bureaucracies and Clans" (clan controls)). This article discusses the importance of directors' values if the duty is seen as a control mechanism. 438

Sports governance reform: Analysis of FIFA's review process and the response to the threat of corruption and reforms – *Thomas Bragg*

This article considers the governance model of the Fédération Internationale de Football Association. It analyses the current governance structures and practices against established principles of good governance, and proposes areas for further consideration and reform. The key impediments to governance reform are identified and discussed in the context of

the “unique nature of sport” and international sporting organisations. It is argued that to pursue the objectives of the international governing body and further develop the sport, and to restore the credibility and integrity of the organisation, additional significant reforms are required. International sports bodies are particularly fertile settings for corruption to take root in and, accordingly, difficult to reform. Sports organisations have come to resemble corporations and other international institutions, but their governance practices, not only to address issues of corruption but beyond, have not kept pace. Although sports bodies play the role of international organisations, they are with very few exceptions neither governmental nor business operations, which helps to explain why their governance practices have developed in a unique fashion. 455

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