

# COMPANY AND SECURITIES LAW JOURNAL

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## ARTICLES

### **Regulating financial assistance: An obsolete regime – Kate Wellington**

Since their conception, the financial assistance provisions in Pt 2J.3 of the *Corporations Act 2001* (Cth) have been scrutinised by academics, the legal profession and the business community alike. Over a number of decades, the legislature has refined the provisions in an attempt to achieve a balance between the protection of shareholders and creditors of companies providing financial assistance on the one hand, and the commercial practicalities of financing capital acquisitions on the other. There is debate as to whether the provisions as they stand today achieve either of those goals. Moreover, recent years have borne witness to a strengthening of legislation imposing responsibility on company directors for detrimental consequences of their actions and decisions. This article examines the evolution of Australia's financial assistance legislation and the inability of the current provisions to realise the protective goals they were designed to achieve. It concludes that in the face of an enhanced legislative regime of directors' duties, the financial assistance provisions of the *Corporations Act* have become not only ineffective but obsolete. ....

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