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ARTICLES

Directors’ duties to creditors: Walker v Wimborne revisited – *Rebecca Maslen-Stannage*

In the 30-plus years since Mason J’s iconic judgment in *Walker v Wimborne* (1976) 137 CLR 1, his Honour’s statement that directors of distressed companies must take into account the interests of creditors has been much analysed and interpreted. Recently this interpretation has taken an alarming turn towards a direct duty owed to individual creditors. To interpret the duty in that way would both depart from sound authority and cut across solvent reconstruction efforts which benefit companies and their stakeholders, including creditors. This issue is in particularly sharp focus since the recent arrival in Australia of “loan to own” investors who buy distressed debt and seek solvent reconstruction rather than insolvency processes. If the original manifestation of *Walker v Wimborne* – Mason J’s simple statement – is applied, the right balance is struck between the interests of companies and their creditors. Furthermore, to avoid undermining appropriate solvent reconstruction efforts, insolvent trading laws should be reformed. 76

Crowd funding: Regulating the new phenomenon – *Terence W Wong*

The rise of social media has driven rapid growth in a new phenomenon known as crowd funding. Crowd funding sources venture capital from the internet rather than from an established capital market or financier, and has in a sense become a new “capital market”. It allows entrepreneurs to quickly, and at low cost, raise substantial amounts of capital from millions of internet users attracted to a great idea. This article suggests that crowd funding is incompatible with Australia’s current laws, and that specific regulations for crowd funding should be introduced in Australia so that it does not become confused with other investment and fundraising methods. This must be done to protect and nurture the vast untapped potential of crowd funding, to compete with the global crowd funding market, and ultimately to encourage new products and services to be created in Australia. 89

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