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ARTICLES

Worker Co-operatives and Australian Law – *William Hall*

Worker co-operatives provide workers with the opportunity to manage their own workplace, address income inequality through more egalitarian pay ratios, and insulate local communities during times of economic uncertainty. Despite these advantages, Australian law at present is inadequate in facilitating the development of worker co-operatives. As the Constitution lacks an express power allowing the Federal Government to legislate for co-operatives, this jurisdiction remains with the various State governments. This vacuum has been filled by an attempt at co-operative federalism through the Co-operatives National Law, however, inconsistencies still arise between the States. This article will analyse the Co-operatives National Law as it relates to worker co-operatives and will examine the necessity of referring co-operatives matters to the Commonwealth. It will further consider whether any future Australian worker co-operatives legal scheme should encompass reforms modelled upon Italy’s *Legge Marcora* and other international examples. 4

Australian Investor Stewardship and Global Themes in Stewardship Regulation – *Natania Locke*

The UK Stewardship Code 2020 was published late last year. It provides an opportunity to identify global themes in the evolution of investor stewardship and to assess whether the Australian stewardship codes have kept up with these emerging themes. This article identifies seven emerging themes and reaches the conclusion that the bifurcated Australian system of investor stewardship codes is outdated even before they have been fully implemented. It recommends that a unified code be introduced that incorporates these emerging themes. The article further recommends that oversight of the disclosures of the stewardship codes be moved to a regulator, possibly the Financial Reporting Council, to remove possible conflicts that industry oversight present. This does not, however, mean that a move to hard law is recommended, but rather that a move to a regulator would encourage greater consistency in disclosures and facilitate a progression to “apply and explain”. 28

Out with the Old, in with the Askew? The Recent Crowd-sourced Equity Funding Reform Fails to Meet Expectations – *Hareesh Makam*

Recently, the Commonwealth Parliament passed the *Corporations Amendment (Crowd-sourced funding) Act 2017* (Cth), which introduced crowd-sourced equity funding to Australia. This was followed up by the *Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Act 2018* (Cth), which expanded accessibility to the regime to the vast majority of Australian companies. The provisions contained in the amending acts were incorporated into the *Corporations Act 2001* (Cth) under Pt 6D.3A. This article primarily analyses the recent amendment and compares the current law with two prominent

international counterparts. In particular, it explores the economic constraints, placed by the legislation, on three stakeholder groups including issuing companies, investors and intermediaries. It is hoped that this piece will highlight the complexity involved in generating short-term capital through what is sometimes mistakenly perceived as a simpler and more lucrative fundraising source. 46

TAKEOVERS AND PUBLIC SECURITIES – *Editor: Jonathan Farrer*

Money Lending Exceptions for Takeover Provisions – *Emma Armson*

The takeover provisions include two exceptions for money lending to allow financiers to take and enforce their security over shares. These exceptions have been modified by ASIC in a Class Order extending their application, including to arrangements involving security trustees. In a 2019 decision (*Re Donaco International Ltd*), the Takeovers Panel raised significant questions concerning the operation of the exceptions and recommended that ASIC review the Class Order. These concerns arose from secured lending arrangements over listed shares including an equity component granting options to the lender. 57