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ARTICLES

“Fair” government contracts for community service provision: Time to curb unfettered executive freedom? – *Amanda McBratney and Myles McGregor-Lowndes*

All Australian governments are significantly increasing the use of contracted community service provision through not for profit organisations. These transactions occur through grant arrangements which take the form of standard contracts or deeds. Government inquiries have consistently reported on and raised concerns about the fairness of such standard grant contract terms, but failed to provide any mechanism whereby fairness can be assured. The Productivity Commission has suggested that the resulting poor relationship leads to inappropriate risk transfer, micro-management, disincentives to innovate and poor service provision. This article develops and tests a fairness measure based on the principles of the Australian Consumer Law which legislates fairness protections for standard consumer contracts.

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Business self-regulation – *Gail Pearson*

This article examines some contemporary features of business self-regulation, noting that there is some inter-penetration of the values of the state and the market, while tensions remain. This breakdown in a sharp distinction between state and market values has implications for the notion of public law and public law values and a clear demarcation of the provinces of public and private law. This has further implications for the notion of “public”, as an organising concept for deciding whether decisions made by self-regulatory bodies are within the domain of public law and its accountability doctrines developed for

articulating consonance with public values. The article explores where the power of a self-regulatory body to make a decision comes from and whether such decisions should be accountable through judicial review. 34

Particularisation of occupational health and safety breaches: A Queensland perspective after Kirk – *Kristy Richardson*

This article examines the issue of the particularisation of occupational health and safety breaches in Queensland following the decision of the High Court in *Kirk v Industrial Relations Commission (NSW)* (2010) 239 CLR 531. The author examines the impact in Queensland of the decision by following the progression of an occupational health and safety prosecution against *NK Collins Industries Pty Ltd*. The article suggests that the Queensland position on particularisation will be unsustainable under the nationally harmonised regime for occupational health and safety regulation in Australia. 46