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EDITORIAL – *General Editor: Michael Terceiro* 3

ARTICLES

“Culture” Is Key – An Analysis of Culture-focused Techniques and Tools in the Regulation of Corporations and Financial Institutions – *Vicky Comino*

Responses to the COVID-19 “systemic shock” include signs of a corporate governance shift away from short-termism and generating returns for shareholders towards a broader corporate “purpose” that better meets the interests of society. However, this trend was already apparent in the wake of the Global Financial Crisis, which illustrated the damage that “defective” corporate cultures can wreak on stakeholders and communities, trust and corporate reputations. As such, this article focuses on the link between defective culture and unethical conduct and wrongdoing in banks and financial institutions. It examines recent regulatory initiatives that seek to address critical defective culture issues, especially those uncovered by the Banking Royal Commission, with the aim of determining whether they may be used to redirect and improve the culture of an organisation. These include embedding the Australian Securities and Investment Commission specialist staff in the major Australian banks, the BEAR/FAR and the deployment of administrative tools, such as enforceable undertakings. 6

Security for Workers in an Insecure World of Work: Establishing Freedom of Association and Collective Bargaining as Fundamental Rights for Australian Workers – *Nicholas Saady*

Independent contractors comprise an increasing proportion of the workforce in common law countries, and often fall outside the scope of employment and labour laws. As a result, their work has become increasingly insecure and often unsatisfactory. The International Labour Organization sought to temper such precariousness with its 1998 Declaration, which established five fundamental rights of workers, notably including the freedom of association and the right to collectively bargain (together, the “Two Rights”). This article argues that the proper meaning of the term “workers” includes employees and independent contractors, and that the Two Rights apply to both as a matter of international law. It argues for Australian legislation to be amended so that a defined group of independent contractors, determined using a modified version of the Californian Assembly Bill 5 test of employment, are provided with the Two Rights. 26

COVID Conundrum: The Influence of Regulatory Regimes on Cross-Border Mergers and Acquisitions in Australia and India – *Zubin Bilimoria*

The COVID-19 pandemic has resulted in a policy conundrum. Economic activity has been brought to a near standstill as countries have imposed unprecedented restrictions to control the spread of the virus. However, the pandemic has also resulted in significant share market declines, enabling foreign companies to acquire financially distressed domestic companies. This article analyses the legal regimes of Australia and India, illustrating how

mergers and acquisitions laws can encourage or inhibit cross-border transactions. While Australia's regime prioritises efficiency and flexibility, India's capital market structure has resulted in increased formality and significant powers conferred on regulatory bodies. It is pertinent that policy-makers balance the desire to increase foreign investment with the need to protect domestic industries and national security. 52

INSURANCE AND TRANSPORT – *Editor: Julie-Anne Tarr*

Business Interruption Insurance and the COVID-19 Pandemic – *Samuel Walpole and William Isdale* 73