

- Finally, the Section Committee has been watching with interest, and some concern, the debate within the Law Council over the structure and organisation of that Council. I attended the Law Council's meetings in Adelaide in April, and in Melbourne in June, to consider the proposal for a policy group to supplement the deliberations of the Council, and the Chairman of the Section from time to time will attend those meetings immediately prior to future council meetings. The Business Law Section has not taken a stand on the issues referred to by the President of the Law Council in his messages in Australian Law News, dealing with the proposal to give voting rights to individual members and the like. The Section believes that it is inevitable that the individual members of the Law Council, many of whom are members of the Business Law Section, will acquire a greater voice in the affairs of the Law Council simply because of the role played by the Section in the affairs of the Law Council, but has not pressed, for example, for the immediate introduction of constitutional amendments in order to reflect that role.

Editorial

This issue of the Australian Business Lawyer contains two articles of interest to members. The first presents you with a picture of how the Trade Practices Committee took upon itself the role of a lobbyist in relation to the Trade Practices Act. Mr Ian Tonking has written a fascinating paper on the amendments to the Trade Practices Act and how lawyers on the Trade Practices Committee pursued their role in trying to amend the legislation to suit their perceptions of their clients' interests.

The second paper is on offers to the public and in particular the High Court decision in the *Central Credit Union* case.

On 27th and 28th of October there is the very important First Conference of the Business Law Section. This is to be held at the Hyatt Kingsgate Hotel. It will be sponsored by the National Mutual Royal Bank and we anticipate participation from a number of leading lawyers who will speak on items which are of direct relevance to the practising lawyer in the areas in which the Business Law Section operates.

We ask you to take note of the dates of this Conference and to ensure that you and your colleagues will be able to support the Conference.

Robert Baxt.

Investor Protection and the High Court — The A.C.C.U. Decision

by
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1. Introduction

The recent decision of the Full High Court in *Corporate Affairs Commission (S.A.) v. Australian Central Credit Union*¹ focuses attention on the scope for avoiding the requirement for a prospectus in the raising of finance. The decision, while concerned primarily with the meaning of "section of the public" in s.5(4) *Companies Code*², indicates the High Court's approach to the remainder of s.5(4). Indeed, given that it is not often that the High Court makes pronouncements in the field of securities regulation, the decision might be seen as reflecting the current judicial approach to investor protection generally. It will be argued in this article that *A.C.C.U.* represents a significant relaxation of the restrictions encompassed in the public offering provisions of the *Companies Code*. If the National Companies and Securities Commission is correct in stating that the "concept of offer or invitation to the public . . . remains the cornerstone of regulation of the distribution of corporate securities"³ in Australia, then it may well be that *A.C.C.U.* has damaged that cornerstone.⁴

The facts of *A.C.C.U.* were briefly as follows. The Australian Central Credit Union contracted to acquire the shares in a company which owned a building under construction in Adelaide. The *A.C.C.U.* planned to vest the building in a unit trust and on completion it intended to offer units to its members — who numbered some 23,000 — for purchase. The Registrar of Credit Unions declined to give his required consent until the *A.C.C.U.* obtained a declaration from the Supreme Court of South Australia that the proposed offer of units was not an offer to "the public" contravening s.169