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Chairman's Message

Conference

Members will already have received an announcement of the first Bi-annual Business Lawyers Conference, to be held at the Hyatt Kingsgate Hotel on Monday and Tuesday, October 27 and 28, 1986. There should be several unusual features of the conference which I hope will make it attractive. First, it is a conference which is comparatively without frills. There are no social or sporting events, other than a short cocktail party on the only evening of the conference. We wish the conference to be as compact as possible, to enable those who do not have either the time or the inclination to treat this conference also as a social or sporting event, not to have to spend any further time on it than is needed. Another advantage is that it ensures that the conference will be reasonably priced. We have, on the other hand, ensured that it immediately follows a weekend, and interstate visitors may wish to come to Sydney for the weekend as well, if they have the time to do that.

The conference sessions have been structured as far as possible to make them both relevant and interesting. We have sought to adopt different and unusual formats, rather than the usual lecture or discussion style. The conference segments are basically being organised by our committees, and will provide an introduction to the work done by our committees.

We have included at the end of each day "open" meetings of the committees, to give members who do not serve on any of our committees the opportunity to meet the members of the committees in their areas of interest. Our committees are constituted annually by invitations being extended to practitioners with an accepted expertise in particular areas, but we are

keen to expand the range of potential members of those committees, and to expand the group of adherents who express an interest in the activities of the committees, without necessarily wishing to be considered for membership.

The Section acknowledges gratefully the support of National Mutual Royal Bank Limited, as sponsor of the Conference.

The Section Committee certainly hopes that many of the members of the Section will be able to attend. The expectation is that these conferences will continue to be held the year in which there is no Australian legal convention. Unlike Australian legal conventions, it is not expected that they will necessarily rotate between all capital cities.

Other Activities

- The Section Committee's activities in recent months have been devoted mainly to consideration for the plans for the October conference. We have in addition been giving attention to what ought to be planned for the 1987 Australian Legal Convention in Perth, to ensure that the Business Law Section activities on that day provide a worthwhile contribution to that convention.
- The Section did propose to the Section on Business Law of the International Bar Association that its 1989 conference might be held in Sydney but because the 1985 conference was held in Singapore, they have decided that the conference ought to be held in Europe.
- The Trade Practices Committee staged a successful travelling seminar dealing with the recent amendments to the Trade Practices Act — while attendances were not as good as we would have liked, we were nevertheless satisfied with those attendances. The Business Law Section's travelling workshop was the only one of the many such seminars organised by commercial and non profit organisations, which took place in all five of the mainland capital cities.

- 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
Michael Christie, B.Ec., LL.B.
**(Syd.) Solicitor of the Supreme
Court of New South Wales**
**Solicitor, Stephen Jaques Stone
James, Sydney.**

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