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Directors' duty of loyalty and ESG considerations: Aotearoa New Zealand's controversial Companies (Directors' Duties) Amendment Act 2023
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Debate surrounding directors' duty of loyalty and its relationship to environmental, social and governance (ESG) considerations recently came to the fore in Aotearoa New Zealand with a controversial amendment to the statutory statement of the duty in s 131 of the Companies Act 1993. The Companies (Directors' Duties) Amendment Act 2023 inserted a new subsection, s 131(5), it reads: 'To avoid doubt, in considering the best interests of a company ... a director may consider matters other than the maximisation of profit (for example, environmental, social, and governance matters)'. The purpose of the amendment was to clarify the concept of the best interests of the company and dispel uncertainty surrounding directors' duties in cases where financial or profit-related considerations appear to conflict with ESG-related ones. But has this amendment succeeded in providing such clarity? Was it a missed opportunity for more radical change? And what, if any, are likely to be its practical implications?

Corporate purpose as committing, communicating and contracting: Perspectives from B Corps
— *Alice Klettner* 344

Corporate purpose, in the sense of a pro-social organisational mission, has been touted as a potential solution to the long-standing debate between shareholder primacy and stakeholderism. This article explores the purpose of corporate purpose from a business perspective by drawing on empirical evidence from B Corps. These firms have voluntarily chosen to adopt a model of purpose-oriented corporate governance, entrenching this in their corporate constitution. This article shows that the value in this model arises through committing, communicating and contracting. It helps the firm to commit to a pro-social purpose, communicate this to others and thereby build contractual relationships with all types of stakeholders that reinforce its purpose. A progressive version of the contractarian theory of the firm best explains the potential of corporate purpose while also predicting its limitations. This has implications for legal reform, suggesting that any mainstreaming of corporate purpose must leave room for differentiation.

'Greenwashing' and enforcement — The regulator and private litigation
— *Michael Legg* 366

Corporate stakeholder concern with climate change and sustainable development has seen demand for corporations to address environmental, social and governance (ESG) issues. However, corporations may engage in misleading conduct about their environmental impact or credentials which is called 'greenwashing'. In Australia, both regulators and private litigants (using test cases, representative actions and class actions) have been active in addressing greenwashing. This article examines the ramifications of the combination of regulatory action and private litigation. This combination of public and private enforcement can increase the resources for enforcement and therefore improve detection and deterrence. It also permits an additional or alternative view of a regulated entity's actions and a regulator's responses. However, private litigation may also disrupt the regulator's preferred approach to enforcement and impose unneeded extra costs on regulated entities.

Do the ends justify the means? Whistleblower protection for preparatory acts
— *Olivia Dixon* 389

Whistleblowing is one of the most effective ways to detect and prevent misconduct that undermines the public good. Yet blowing the whistle is becoming an increasingly risky proposition due to opaque legal protection. Most federal and state statutes prohibit retaliation against whistleblowers, safeguard their identities and offer several reporting avenues. However, the law is presently silent as to whether a potential whistleblower is protected for preparatory acts, including collecting evidence proportionate and necessary to the making of a protected disclosure. It is axiomatic that evidence is required to substantiate any claim. What measures may a potential whistleblower take to obtain such evidence? With reference to Boyle v DPP (Cth), this article explores whether whistleblowers should be protected for preparatory acts, and, if so, how best to incorporate the limits of any such protections into Australian law.

An appraisal of Australia's corporate collective investment vehicles
— *Dr Tamara Wilkinson* 415

On 1 July 2022, Australia introduced a new corporate form: the corporate collective investment vehicle (CCIV). Collective investment vehicles allow passive investors to pool their funds and have those funds managed and invested by a professional funds manager. CCIVs were introduced in Australia in response to the perception that Australia's existing collective investment vehicle, a managed investment scheme structured as a unit trust, was not sufficiently competitive in the international market because of its unfamiliarity to foreign investors. As such, CCIVs were designed to work with the new Asia Region Funds Passport regime to facilitate the marketing of Australian-run collective investment schemes to foreign investors. However, CCIVs have experienced slow uptake in the time since their introduction, and it is unclear whether their design responds to market needs. As such, this article examines the rationale for the introduction of CCIVs, how these vehicles operate in practice and how they compare with international alternatives. It looks at possible reasons for the slow uptake of the vehicle and lends support to a suggestion that the Australian government continue to expand its suite of collective investment vehicles if it wants to capitalise on the possibility of becoming a leading foreign investment jurisdiction.