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EDITORIAL 313

ARTICLES

Commercial in Confidence and public accountability: Achieving a new balance in the contract State – *Moirra Paterson*

Because Commercial in Confidence is ill defined and poorly understood, it has the potential to undermine the operation of traditional accountability mechanisms. This article explains why it is that Commercial in Confidence claims may pose a substantial threat to public accountability. It suggests that what is required is a clarification of the circumstances in which confidentiality should take precedence over the need for accountability, and also the introduction of measures, including effective implementation of properly drafted guidelines and positive disclosure requirements to ensure that confidentiality clauses and undertakings are used only where absolutely necessary. 315

The decision of the High Court in *Rural Press*: How the literature on credible threats may have materially facilitated a better decision – *Joshua S Gans, Rajat Sood and Philip L Williams*

The decision of the High Court in *Rural Press* found that Rural Press and Bridge did not take advantage of their market power in issuing a threat to Waikerie to withdraw from the Murray Bridge market. The High Court adopted the reasoning of the Full Federal Court in finding that the threat was credible because any firm with the material and organisational assets of Rural Press and Bridge would have found it profitable to enter the Riverland market. The game theoretical literature on the credibility of threats demonstrates that this logic is flawed in that only non-profitable entry would have given credibility to the threat. In addition, that literature shows how the ACCC might have gone about trying to satisfy the courts that the conduct of Rural Press and Bridge might have constituted a taking advantage. 337

Super blooper? Time to halt the superannuation juggernaut? – *Rami Hanegbi and Mirko Bagaric*

The superannuation industry has increased almost exponentially in Australia over the past decade. The main reason for this is because government regulation *compels* employers to pay a fixed portion of employees' salary towards superannuation. In this article we suggest that the unremitting government policy of coercing money towards superannuation is flawed. Superannuation is wrong at two levels. First, on an economic analysis, the evidence does not suggest that (i) individuals who invest in superannuation

are necessarily better off than those who apply their income elsewhere; and (ii) there is no evidence that absent a coercive superannuation scheme the government will be unable to sustain people into their old age. Second, at the human and societal level, studies of human well-being show that coercing people to make spending decisions is inimical to human happiness. People flourish best when they are in control of their activities, including their finances. Left to their own devices, many people will not save for a rainy day; however, on balance it is probably better off to be a bit poorer in retirement than to have been deprived of the opportunity to spend 9% of one's income over the period of one's working life – when one's needs are the greatest. Compulsory superannuation should be abolished. Money currently paid as a compulsory superannuation contribution should instead be paid to the employee as a salary. 345

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