

AUSTRALIAN BUSINESS LAW REVIEW

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EDITORIAL 149

ARTICLES

Unfair terms in “clickwrap” and other electronic contracts – *Dale Clapperton and Stephen Corones*

Clickwrap and other electronic contracts are in widespread use in markets for computer software and for many online services. When confronted by a lengthy and incomprehensible contract, the response of many, if not most, consumers is to click “yes” – without reading the contract or giving it careful consideration. We have moved away from the traditional model of negotiated agreement on terms to the unilateral imposition by suppliers of terms, many of which are unfair. This article considers the failure of existing Commonwealth and State laws to deal with the problem and concludes that legislative intervention is necessary to protect consumers. 152

Regulating genetically modified organisms: A case study assessing regulatory quality and performance – *Charles Lawson and Richard Hindmarsh*

This article examines the recent statutory review of the *Gene Technology Act 2000* (Cth) (GT Act) and the *Gene Technology Agreement* as a case study of the analytical approach that might be applied to assessing the quality and performance of regulation. The conclusion is that by failing to apply an analytical approach according to the Australian Government’s commitment to the *Competition Principles Agreement*, or take into account the results of applying that approach in developing and implementing the GT Act, there has been a failure to adequately address both the operation of the GT Act and its ongoing justification as a means of efficiently and effectively regulating genetically modified organisms. 181

Good faith in superannuation: Where does it end? – *Andrew Stewart*

The obligation to exercise powers in good faith is an established feature of superannuation schemes, and of insurance contracts taken out to provide benefits to scheme members. But the scope of this duty remains controversial. This article considers recent case law extending the duty of good faith beyond the immediate parties to an insurance contract, and even suggesting a new tort of bad faith administration of insurance claims. It also examines the uncertainty over whether an obligation of good faith and fair dealing should be implied into all commercial contracts. It asks whether there is any difference between obliging a party to behave in good faith and requiring them to act “reasonably”, and if not, what that may mean for the sustainability of a general principle of fair dealing in contractual relations – especially if and when the High Court is called upon to rule on the matter. 204

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