

# AUSTRALIAN BUSINESS LAW REVIEW

Volume 36, Number 2

April 2008

EDITORIAL ..... 77

## ARTICLES

### **Maritime law and the TPA as a “mandatory statute” in Australia and England: Confusion and consternation? – Kate Lewins**

This article is concerned with the clash between party autonomy in contracts and mandatory rules of a State in the context of maritime law. Where litigation takes place in Australia, the Trade Practices Act (TPA), as a mandatory law of the forum, applies to the contract. However, in many transnational contracts involving Australian parties, the parties have agreed that the law of a different country is to govern their contract or granted a non-Australian court exclusive jurisdiction over any disputes. Alternatively they may have agreed to submit disputes to arbitration outside Australia. Commonly the parties choose English Courts or London Arbitration. In doing so, the parties have exercised a choice, which, if permitted to operate, will take their contract out of the reach of the mandatory law of Australia. How do Australian and English courts treat this apparent clash of policies and what is the consequence for contractual parties who find themselves litigating a jurisdictional dispute both in Australia and England? .....

78

### **Environmental reporting in the Australian mining industry: Complying with regulation or meeting international best practice? – Michael Overell, Larelle Chapple and Peter M Clarkson**

It is nearly 10 years since the introduction of s 299(1)(f) Corporations Act, which requires the disclosure of information regarding a company’s environmental performance within its annual report. This provision has generated considerable debate in the years since its introduction, fundamentally between proponents of either a voluntary or mandatory environmental reporting framework. This study examines the adequacy of the current regulatory framework. The environmental reporting practices of 24 listed companies in the resources industries are assessed relative to a standard set by the Global Reporting Initiative (GRI) Sustainability Reporting Guidelines. These Guidelines are argued to represent “international best practice” in environmental reporting and a “scorecard” approach is used to score the quality of disclosure according to this voluntary benchmark. Larger companies in the sample tend to report environmental information over and above the level required by legislation. Some, but not all companies present a stand-alone environmental/sustainability report. However, smaller companies provide minimal information in compliance with s 299(1)(f). The findings indicate that “international best practice” environmental reporting is unlikely to be achieved by Australian companies under the current regulatory framework. In the current regulatory environment that scrutinises s 299(1)(f), this article provides some preliminary evidence of the quality of disclosures generated in the Australian market. ....

137

COMPETITION LAW AND MARKET REGULATION – <i>Stephen Corones</i>	
<b>Small business operators and professionals: Ignorance of the law is no excuse .....</b>	<b>155</b>
BOOK REVIEW – <i>Peter Lithgow</i>	
<i>The Law of Real Property Mortgages</i> by Duncan WD and Dixon WM .....	159

# Guidelines for Contributors

## Submission and licence agreement instructions

All contributions to the journal are welcome and should be sent, with a signed licence agreement, to the Production Editor, *Australian Business Law Review*, Lawbook Co., PO Box 3502, Rozelle, NSW 2039 (mail), 100 Harris St, Pyrmont, NSW 2009 (courier) or by email to [abl@thomson.com.au](mailto:abl@thomson.com.au), for forwarding to the Editor. Licence agreements can be downloaded via the internet at [http://www.lawbookco.com.au/authorsupport/d\\_authorJournals.asp](http://www.lawbookco.com.au/authorsupport/d_authorJournals.asp). If you submit your contribution via email, please confirm that you have printed, signed and mailed the licence agreement to the attention of the Production Editor at the mailing address noted above.

## Letters to the Editor

By submitting a letter to the editor of this journal for publication, you agree that Thomson Legal & Regulatory Limited, trading as Lawbook Co., may edit and has the right to, and may license third parties to, reproduce in electronic form and communicate the letter.

## Manuscript

- Manuscript must be original, unpublished work that has not been submitted for publication elsewhere.
- Personal details (name, qualifications, position) for publication and a delivery address, email address and phone number must be included with the manuscript.
- Manuscript must be submitted electronically via email or on disk in Microsoft Word format.
- Manuscript should not exceed 10,000 words for articles or 1,500-2,000 words for section commentary or book reviews. An abstract of 100-150 words is to be submitted with article manuscripts.
- Proof pages will be sent to contributors. Authors are responsible for the accuracy of case names, citations and other references. Excessive changes to the text cannot be accommodated.
- This journal complies with the Higher Education Research Data Collection (HERDC) Specifications for peer review. Each article is, prior to publication, reviewed in its entirety by a suitably qualified expert who is independent of the author.

## Style

1. **Levels of headings should be clearly indicated (no more than four levels).**
2. **Cases:**
  - Case citation follows case name. Where a case is cited in the text, the citation should follow immediately rather than as a footnote. Give at least two and preferably all available citations, the first listed being the authorised reference.
  - Australian citations should appear in the following order: authorised series; Lawbook Co./ATP series; other company series (ie CCH, Butterworths); media neutral citation.
  - “At” references should only refer to the best available citation, eg *Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 34; 66 ALJR 408; 107 ALR 1.
  - Where only a media neutral citation is available, “at” references should be to paragraph, eg *YG v Minister for Community Services* [2002] NSWCA 247 at [19].
  - For international cases best references only should be included.
3. **Legislation should be cited as follows:**  
*Trade Practices Act 1974* (Cth), s 51AC. The full citation should be repeated in footnotes.
4. **Books should be cited as follows:**  
Macken JJ, O’Grady P, Sappideen C and Warburton G, *The Law of Employment* (5th ed, Lawbook Co., 2002) p 55.
  - In footnotes do not use *ibid* or *op cit*. The following style is preferred:
    4. Austin RP, “Constructive Trusts” in Finn PD (ed), *Essays in Equity* (Law Book Co, 1985).
    5. Austin, n 4, p 56.
5. **Journals should be cited as follows:**  
Odgers S, “Police Interrogation: A Decade of Legal Development” (1990) 14 Crim LJ 220.  
Wherever possible use official abbreviations not the full name for journal titles.
  - In footnotes do not use *ibid* or *op cit*. The following style is preferred:
    6. Sheehy EA, Stubbs J and Tolmie J, “Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations” (1992) 16 Crim LJ 220.
    7. Sheehy et al, n 6 at 221.
6. **Internet references should be cited as follows:**  
Ricketson S, *The Law of Intellectual Property: Copyright, Designs and Confidential Information* (Lawbook Co., subscription service) at [16.340], <http://subscriber.lawbookco.com.au> viewed 25 June 2002. Underline the URL and include the date the document was viewed.

For further information visit the Lawbook Co. website at <http://www.lawbookco.com.au> or contact the Production Editor.

## SUBSCRIPTION INFORMATION

The *Australian Business Law Review* comprises six parts a year.

Customer service and sales inquiries:  
**Tel: 1300 304 195 Fax: 1300 304 196**  
**Web: [www.thomson.com.au/legal/p\\_index.asp](http://www.thomson.com.au/legal/p_index.asp)**  
**Email: [LRA.Service@thomson.com](mailto:LRA.Service@thomson.com)**

Editorial inquiries:  
**Tel: (02) 8587 7000**

**HEAD OFFICE**  
100 Harris Street PYRMONT NSW 2009  
Tel: (02) 8587 7000 Fax: (02) 8587 7100



© Thomson Legal & Regulatory Limited ABN 64 058 914 668 trading as Lawbook Co.

ISSN 0310-1053

Typeset by Lawbook Co., Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW