

AUSTRALIAN BUSINESS LAW REVIEW

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EDITORIAL 73

ARTICLES

The corporate disclosure co-regulatory model: Dysfunctional and rules in limbo – Gill North

Issues around potential or actual conflicts of interest of the Australian Securities Exchange (ASX) as a monopoly market operator and market co-regulator have received considerable academic and media attention. However, there are other significant issues arising from the co-regulatory framework that have not been discussed in the public arena. The ASX disclosure listing rules are integral to an informed market. However, these rules might best be described as in limbo. Neither the ASX nor the Australian Securities and Investments Commission seem to be responsible for administering or enforcing the rules as stand-alone regulation. Policy clarification is therefore sought on the status of the ASX listing rules and the extent to which these rules can be, and are in fact, monitored and enforced within the current regulatory structure.

75

Cost-effective redress for disputed/failed low-value international consumer transactions: Current status and potential directions – Daril Gawith

This article is concerned with whether or not a consumer who engages directly with a foreign vendor in an international consumer transaction (ICT), via the Internet or otherwise, has any cost-effective means of redress in the event of non-delivery or wrong-delivery of goods by a vendor, where the vendor fails to perform for any reason other than non-performance by the consumer. The cost of litigation and all other existing forms of ICT redress are not cost-effective: in the best case, redress would cost more than the value of most ICTs, even those worth tens of thousands of dollars. This issue is important because the growth of global e-commerce is being retarded as a result. The article concludes that the solution is a new international convention involving original consumer protection legislation including transborder enforcement provisions which would be made cost-effective for low-value ICTs through the provision of an appropriately efficient infrastructure, namely an automated cyberjurisdiction.

83

Sections 46(1) and 46(1AA) of the TPA: The struggle of the small against the large – Stephen Corones

The purpose of this article is to highlight the conflict in the policy objectives of ss 46(1) and 46(1AA) of the *Trade Practices Act 1974* (Cth). The policy objective of s 46(1) is to promote competition and efficient markets for the benefit of consumers (consumer welfare standard). It does not prohibit corporations with substantial market power using cost savings arising from efficiencies such as economies of scale or scope to undercut small business competitors. The policy objective of s 46(1AA), on the other hand, is to protect

small business operators from price discounting by their larger competitors. Unlike s 46(1), it does not contain a “taking advantage” element. It is argued that s 46(1AA) may impair consumer welfare by having a chilling effect on price competition if this would harm small business competitors. 110

COMMERCIAL LITIGATION – *Ian Turley*

Loss of bargain damages: What happened when push came to Shevill? – *Roger Gamble* 124

CONTRACTS AND RESTITUTION – *Michael Borsky*

“Waiver” in the High Court: Agricultural and Rural Finance Pty Ltd v Gardiner – *Paul Liondas* 132

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