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The case for increased private enforcement of cartel laws in Australia – Sarah Lynch

In 2009, the Australian Parliament enacted the “protected cartel” information scheme in response to successful attempts by private parties to gain access to documents obtained by the Australian Competition and Consumer Commission under its Immunity Policy. This article examines the competing public interests in facilitating private actions on the one hand, and protecting the Australian Competition and Consumer Commission’s Immunity Policy on the other hand. Using the United States as a comparison, it concludes that the protected cartel scheme may have struck the incorrect balance. 385

Deductibility of interest: A comparative perspective – conceptual issues – Chris Ohms and Karin Olesen

Interest payable on borrowed funds or on amounts owing by reason of the operation of the law (for example interest that may be payable on statutory debts such as tax owing) in relation to an income earning activity is a significant (potential) deductible expense throughout the Commonwealth. The traditional “form” approach derived from the leading decision *Inland Revenue Commissioners v Duke of Westminster* [1936] AC 1 requires that the underlying transaction giving rise to the interest, and the interest itself, be characterised according to the legal rights and obligations created evident from the objective intention of the parties. On the other hand, an “economic substance” approach allows for the same characterisation to arise having regard to the economic consequences that flow from the transaction. These issues have been considered and the movement towards the development of a conceptual framework which relies on commercial legal forms and absorbs this into its measurement and recognition basis. 406

The evolution of Australia’s harmonised OHS laws: Questions for today and tomorrow – Eric Windholz

Australia’s new harmonised occupational health and safety (OHS) regulatory regime is scheduled to commence operation on 1 January 2012. The new harmonised regime is the most significant reform to OHS regulation in Australia since the adoption in the 1970s and 1980s of the Robens reforms. Yet such has been its evolution and the nature of the final product, that questions about its sustainability and future are already being asked. This article examines the new harmonised regime and concludes that much of the skepticism surrounding it is well founded: that the regime may not deliver the uniformity of law and consistency of experience its advocates seek; that it may prove slow and cumbersome in maintaining its currency; and that it is vulnerable to the introduction of new jurisdictional differences over time. Experience across a range of other regulatory regimes teaches us that when concerns such as these materialise, the alternative to which governments often turn is greater centralisation. With this possibility in mind, the article reflects upon the lessons of the past and asks some important questions that should be answered before we

commit to that future. The answers to these questions are relevant not only to the future of OHS regulation in Australia, but to all areas of business regulation that are – or may in the future be – the subject of centralising forces. 434

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