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ARTICLES

The ACCC immunity policy for cartel conduct: Due for review – Caron Beaton-Wells

The Australian Competition and Consumer Commission regards its Immunity Policy for Cartel Conduct as its most important tool in detecting, stopping and prosecuting cartel conduct and as significant also in deterring such conduct. The ACCC has announced that it is conducting a review of the policy. The review is significant because, amongst other things, it will examine the way in which dual civil/criminal applications for immunity are being handled in a process involving the Commonwealth Director of Public Prosecutions, introduced in 2009. Drawing on a broader research project relating to immunity policies, this article seeks to provide substantial input to and prompt informed debate concerning issues that should be regarded as relevant in the review. 171

Chattel paper – Anthony Duggan

Chattel paper is one of the categories of personal property identified in the *Personal Property Securities Act 2009* (Cth) (PPSA). The concept derives from Art 9 of the United States *Uniform Commercial Code* and it appears also in all the Canadian provincial personal property security statutes and the New Zealand *Personal Property Securities Act 1999*. The main reason the PPSA distinguishes between chattel paper and other types of personal property is that, following the United States and Canadian lead, PPSA, s 71 enacts special priority rules for security interests in chattel paper. The purpose is to facilitate chattel paper financing which, in the United States and Canada, is the primary method for financing the purchase of motor vehicles and other large-ticket consumer durables. In Australia, chattel paper financing traditionally has not been used, at least on a large scale, to finance consumer purchases, and alternative financing techniques have been employed instead. This article argues that, given the prevalence of these other methods, there is no particular need to encourage chattel paper financing in Australia and, in any event, the chattel paper financier is sufficiently protected by other provisions in the statute. Therefore, PPSA, s 71 could safely be repealed. The article also identifies drafting defects in PPSA, s 71, some inherited from the Art 9 and Canadian models, which should be corrected if the provision is to be retained. Finally, the article discusses the provisions in PPSA, ss 37-38 and 76 governing security interests in returned or repossessed goods and their application to chattel paper, with particular reference to the failure of these provisions to account for the standard methods of financing motor vehicle and other large-ticket consumer purchases in Australia. 214

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