

# AUSTRALIAN BUSINESS LAW REVIEW

Volume 41, Number 5

October 2013

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## ARTICLES

### **Consumer leases and consumer protection: Regulatory arbitrage and consumer harm** – *Paul Ali, Cosima McRae, Ian Ramsay and Tiong Tjin Saw*

Consumer leases are regulated in Australia separately from credit contracts. This has created opportunities for regulatory arbitrage and has resulted in significant harm to consumers. Recent reforms, which commenced on 1 March 2013, have addressed this problem by applying to consumer leases many of the statutory protections available to consumers under credit contracts. However, the distinction between consumer leases and credit contracts has been retained. We argue in this article that that distinction is artificial and should be abandoned. We also examine how the uneven regulation of consumer leases and credit contracts has harmed consumers and we assess the recent reforms to the regulation of consumer leases. Finally, we investigate the practice of consumer leasing in Australia by reference to our survey of the consumer leasing industry, the cost of consumer leases, and selected “real life” case studies. .... 240

### **Wrestling with Giants – a critical account of supermarket power and competition law in Australia and the United Kingdom** – *Madeline Taylor*

On 13 February 2013 at the Senate Additional Budget Estimates, the Australian Competition and Consumer Commission (ACCC) Chairman Rod Sims, announced the ACCC will investigate the grocery supply chain and anti-competitive behaviour of Woolworths and Coles accused of “bullying” producers. The sentiment underlining the ACCC announcement is the expectation that this behaviour is unwarranted, anti-competitive and must be adequately regulated. This article will establish that the Australian and United Kingdom national governments must ultimately enact new mandatory competition legislation governing the entire grocery supply chain to regulate the anti-competitive practices of supermarkets. The United Kingdom regulatory Ombudsman model is likely to be replicated in Australia and is an initial step in the right direction during the interim to monitor supermarket practices. However, there is compelling evidence to suggest the current environment of self-regulation requires a major review and restructure of current supermarket codes, encompassing the reform of competition legislation to develop a sustainable food supply chain. .... 270

### **Bounty hunters, whistleblowers and a new regulatory paradigm** – *Vivienne Brand, Sulette Lombard and Jeff Fitzpatrick*

United States and European reforms designed to encourage whistleblowing by the offer of financial rewards may indicate a new era of regulation of corporate behaviour. The opaque nature of much wrongdoing within the corporate sector suggests that the work of public regulators would benefit from increased access to “inside information”. Initial data from the United States demonstrate that accessing such inside information may be easier where private rewards are offered. The Organisation for Economic Cooperation and Development

(OECD) has recently criticised Australia’s record in combating bribery of foreign public officials. In light of the OECD’s requirement that the Government respond to the criticisms within a one to two-year period, the urgent need to improve this aspect of the Australian corporate regulatory model is apparent. It may be that the United States and European reforms offer a way forward, and one that is consistent with a widely accepted model of regulatory theory. .... 292

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