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ARTICLES

RISK AND REFORM IN AUSTRALIAN FINANCIAL SERVICES LAW

Nicholas Simoes da Silva and William Isdale

This article considers the role that differing understandings of, and approaches to, risk have played in the development of Australian financial services law. In particular, it is argued that there has been a change in the regulatory approach to risk being assumed by Australian consumers, involving greater regulatory intervention in managing and reducing risk. It is argued that legislation concerning prudential and systemic risk regulation has proved to be much more accommodating of such change than has the cornerstone Act of financial services law: the *Corporations Act 2001* (Cth). The article offers lessons that can inform potential law reform – in particular, by highlighting the importance of a clear legislative hierarchy. 408

POST-BREWSTER JURISPRUDENCE – THE FUTURE OF THE COMMON FUND DOCTRINE

Ben Slade, Simon Gibbs and Vince Morabito

In December 2019, the High Court of Australia held, in *BMW Australia Ltd v Brewster*, that the making of common fund orders in the early stages of class action litigation was not authorised by the federal legislative class action regime and its New South Wales equivalent. These orders, which were endorsed by the Full Federal Court in October 2016, had increased both the interest of funders in Australian class actions and the types of class proceedings that they funded. This seminal judicial pronouncement has been reviewed closely by a number of federal trial judges, primarily with a view to answering the crucial practical question of whether Brewster prohibits the making of common fund orders when approving a settlement. The principal aim of this article is to explore this post-Brewster jurisprudence. 430

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