

# THE AUSTRALIAN LAW JOURNAL

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## ARTICLES

### INJUNCTING UNCONSCIONABLE CALLS OF DEMAND GUARANTEES IN CONSTRUCTION INDUSTRY: COMPARATIVE AND EMPIRICAL ANALYSES OF AUSTRALIAN PRACTICES

**Didi Hu**

Unconscionability is one of the three exceptions injuncting calls upon unconditional undertakings to pay on demand given under construction contracts. This article examines the Australian approach to the unconscionability exception, empirically by extracting four indicia from decisions granting or rejecting injunction applications, and comparatively by juxtaposing Australia’s eclectic position with Singapore courts’ vigorous use of the exception and English market’s reservation about the instrument itself. In doing so, this article proposes to demonstrate that Australia’s self-restrained approach to the unconscionability exception prescribes a normative standard of “conduct”, not merely proscribing a matrix of unfair, unreasonable or unjust “result”. .... 643

### TAKING THE KING’S HARD BARGAIN

**Samuel White**

Historically, personnel who join the armed forces agree to take what has been known as the King’s Hard Bargain – a unilateral contract to give all, and expect nothing. Little has been written however on the nature of this power, an arguably outdated concept inconsistent with modern concepts of employment law. This article looks to explore the notion of accepting the King’s Hard Bargain, and whether or not the Governor-General has, and retains in the face of Regulations, the power to dismiss members of the Australian Defence Force. In doing so, it challenges the notion that the Commander-in-Chief is merely titular, a line of thinking that has been twisted from its original meaning to a near-rule of constitutional interpretation, and concludes with questioning whether or not the King’s Hard Bargain should remain so, or whether or not the legislation should be amended to reflect the Public Service’s conditions. .... 666

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