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## ARTICLES

### **Corrupt Benefits for Trustees and Others – The Scope of the Offence under s 249E of the Crimes Act 1900 (NSW) – Allison Silink**

*Section 249E of the Crimes Act 1900 (NSW)* provides that it is an offence to offer or give a benefit to a person entrusted with property, or for such a person to solicit or receive a benefit by way of inducement or reward for the appointment of a person to be entrusted with the property, if done without unanimous beneficiary consent or the consent of the court. It is punishable by a term of imprisonment of up to seven years. By its terms, the offence has no express mens rea. It has been recently construed in the Supreme Court of New South Wales as applying in the absence of any dishonest or corrupt intention, requiring only an intention to engage in conduct that falls within its scope. The ramifications of this construction are widespread, requiring applications to court for consent to any transaction under which a form of benefit is provided in connection with the appointment of a trustee if unanimous beneficiary consent is not obtained, even where there is no impropriety and the parties are acting in the best interests of the beneficiaries. This article considers the available constructional choices in construing the mental element of s 249E. It argues that the legislative history supports a finding that the purpose of these offences was to prohibit secret commissions only where the person is acting with an improper purpose. This supports the implication into s 249E of a mens rea of dishonest intention, or acting “corruptly”. Given the significant implications of the offence, legislative amendment to clarify the mens rea of s 249E is desirable. ....

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### **Regulating Buy-Now, Pay-Later Products under the National Consumer Credit Protection Act 2009 (Cth) – Daniel Beratis**

Buy-now, pay-later (BNPL) products, which allow consumers to immediately obtain goods or services and repay in instalments, are increasingly popular, despite the risks associated with BNPL products. Such products are not regulated as they fall within exceptions to the *National Consumer Credit Protection Act 2009 (Cth)* (NCCPA) and National Credit Code, leading to significant debate and government attention on whether and, recently, how regulation should occur. This article critically contributes to that debate by analysing the underlying purposes of the consumer credit framework; the risks and benefits of BNPL products; and current regulatory responses, both available and proposed, by both industry and government. It concludes that full regulation of BNPL products under the NCCPA is the most desirable path forward given its expected impacts on consumers, providers and retailers, and that other industry and government proposals, including self- and tailored regulation, fall short of the NCCPA’s remedial, uniform aims. ....

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