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ARTICLES

The Law of Unintended Consequences: The Effects of Voiding Ipso Facto Clauses in Business Format Franchise Agreements – *Rob Nicholls and Jenny Buchan*

The “essential facilities” doctrine has been implemented in Australia through Pts IIIA and XIC of the *Competition and Consumer Act 2010* (Cth). Concurrently, the concept of an “essential service” in s 600F of the *Corporations Act 2001* (Cth) limits the extent to which suppliers of critical services can cease supply to a business solely on the basis that it has experienced an insolvency event. Contract clauses that permit termination of an agreement based on an insolvency event are often referred to as “ipso facto” clauses. The Productivity Commission has recommended these clauses be made void, arguing that they limit the prospect of an entity recovering from an insolvency event. Recent analysis by Treasury adopts the same line of reasoning. This article considers ipso facto clauses in the franchising sector, and the effect of making them void in contracts between franchisees and franchisors in the context of both the essential facilities doctrine and the anti-deprivation rule. A doctrinal analysis is used to examine a contract based on an unequal power relationship, where the value of the contract may mean that the recently extended unfair contract provisions of the Australian Consumer Law may not apply. A series of recommendations are made to address the power asymmetry between franchisors and franchisees in the case of franchisor insolvency. 433

Empowering Workers: Avenues of Legal Redress for Victims of Workplace Cyberbullying – *Colette Langos and Mark Giancaspro*

The global prevalence and negative implications of traditional (face-to-face) workplace bullying are well documented and understood. However, the same cannot be said of workplace bullying facilitated through Information Communication Technologies, commonly referred to as “cyberbullying”. From an Australian perspective, preliminary data indicate that workplace cyberbullying occurs across various industries and demonstrate that serious psychological injuries are associated with victimisation. This behaviour costs the economy billions of dollars each year, with workers and employers having to administer a growing number of “mental stress” workers’ compensation claims. The implications for employees and the businesses they work for are therefore highly significant. To date there is no scholarly literature which describes the various avenues of legal redress available to workers who have been cyberbullied. This article provides a useful guide for employees in this regard. Further, the article offers a practical analysis of how the bullying provisions within the *Fair Work Act 2009* (Cth) apply to instances of cyberbullying, providing workers with useful insight into when a “stop bullying order” may be issued. 448

Recent PPSA Reform Initiatives in Canada – *Anthony Duggan*

The Canadian Conference on Personal Property Security Law (CCPPSL) recently released a report making 21 recommendations for amending the provincial Personal Property Security Acts. This article discusses five of the recommendations, selected for their likely interest to an Australian readership: refinancing purchase money security interests; the time for determining priorities; licences as collateral; payment of debts and transfers of negotiable property; and mandatory serial number registration. The CCPPSL Report’s discussion of these and other issues should be of interest to Australian law-makers as they work towards implementation of the recommendations contained in the Whittaker Report. 467

COMPETITION LAW AND MARKET REGULATION – *Editor: Brent Fisse*

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