

# AUSTRALIAN BUSINESS LAW REVIEW

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EDITORIAL ..... 65

## ARTICLES

### **Providing your legal advice to the regulator** – *Andrew Eastwood*

In December 2012, the Australian Securities and Investments Commission (ASIC) issued Information Sheet 165, explaining how it approaches claims of legal professional privilege. One significant matter identified in the Information Sheet is the possibility that ASIC may elect to receive privileged information, voluntarily provided by a party, on written terms of confidentiality. In that context, this article seeks to explore policy issues such as whether it is appropriate for regulators to encourage the voluntary provision of a party’s legal advice, and whether a willingness to produce such advice should be seen as a necessary aspect of “full cooperation” with the regulator’s investigation. The article also examines the important question of whether privileged information can be provided to a regulator without effecting a wider waiver of privilege. .... 66

### **Regulating the coal industry – striking a balance between commercial and public interests: A Queensland case study** – *Julie Anne Tarr*

The coal industry in Queensland operates in a very complex regulatory environment with a matrix of Federal and State laws covering the environment, health and safety, taxation and royalties, tenure, and development approvals. The Queensland Government in 2012 recognised the validity of certain industry concerns and passed two Acts being the *Environmental Protection (Greentape Reduction) Amendment Act 2012* (the Greentape Act) and the *Mines Legislation (Streamlining) Amendment Act 2012* (the Streamlining Act). Other changes are foreshadowed in relation to overlapping tenure and in the development of common resources legislation. Accordingly there is a great level of activity and change that has occurred or which is on the horizon. This article focuses upon these regulatory changes and foreshadows other areas requiring consideration. It commences with a consideration of the changes that have already occurred, examines those regulatory amendments that are on the drawing board and concludes with suggestions as to further interventions and amendments that have the potential to enhance the efficiency and effectiveness of the legislative framework in which coal mining is conducted. .... 84

### **The counterfactual test in s 46** – *Philip Williams*

This article explores the range of meaning given to the words “take advantage” as they appear in the monopolisation provisions of the competition laws of Australia and New Zealand. The phrase is a key discriminator between conduct that is legal and that which is proscribed by the statutes. Although the meaning of the phrase is clear, the courts have used a range of phrases to explain that meaning. In contrast to this single meaning, the ways in which it can be demonstrated to the courts are many; and there may well be more ways to be discovered. Courts would be unwise to rule out of consideration new ways of demonstrating that the test has or has not been satisfied. .... 93

**The importance of a culture of compliance!** ..... 106