

# AUSTRALIAN BUSINESS LAW REVIEW

Volume 42, Number 6

December 2014

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## ARTICLES

### **The ACCC: Roots and branches – proposals to enhance ACCC effectiveness** – *Caron Beaton-Wells*

The Australian Competition and Consumer Commission is a crucial body in Australia's economic landscape. It has wide-ranging responsibilities, principally concerned with enforcing the laws in the *Competition and Consumer Act 2010* (Cth) – laws that affect almost every aspect of commercial activity in this country – and has extraordinary powers, backed up significant sanctions, to ensure that businesses and individuals comply with their legal obligations. The effectiveness of the ACCC in performing its functions is a matter being considered by the Competition Policy Review, a review described as a root and branch inquiry into Australian competition policy, law and enforcement. This article makes two proposals, aimed at deepening the ACCC's roots (through ex post review and evaluation of its enforcement activity) and connecting its branches (through a consolidated program of market studies). If adopted, these proposals would strengthen the ACCC's standing and capacity as an institution that is central to enhancing the welfare of Australians and our economy. .... 414

### **Roots, branches and other objects – one step beyond the Harper Review?** – *I S Wylie*

The Harper Review Panel is currently finalising its “root and branch” review of the *Competition and Consumer Act 2010* (Cth), having made a series of draft recommendations for significant changes to its competition provisions. It has not explicitly revisited the object of the Act as specified in s 2, although its Terms of Reference and Draft Report contain various statements as to the objects and purposes of the Act's competition provisions. Given the wide-ranging nature of the Harper Review and the Panel's related proposals for reform, and tensions between some objects and some provisions, this article advocates the need to revisit the primary objects clause in the Act and specify the object(s) of its competition provisions with greater clarity to facilitate their effective future operation. .... 436

### **Online dispute resolution: The advantages, disadvantages, and the way forward** – *Anthony John Sissian*

This article outlines the current advantages, disadvantages, and challenges faced by online dispute resolution. This article also recommends the most effective regulatory framework to ensure online dispute resolution earns the trust and confidence of participants worldwide. .... 445

**Challenges facing the notariat in Australasia in the 21st century – Noel Cox**

The office of notary is in a time of considerable change, and also opportunities. These are domestic, regional and international in nature. The specific challenges include the new *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), in force from December 2008. Equivalent legislation is likely to apply to New Zealand notaries. The continuing development of electronic transactions provides more opportunities, if not technical challenges. The immediate effect of this is that the notariat must strengthen its professional discipline and education. The longer term effect may include a reduction in the opportunities for “part-time” notaries, and a greater professionalisation of the office. .... 456

**Dashed expectations? The impact of civil liability legislation on contractual damages for disappointment and distress – Sonia Walker and Kate Lewins**

This article argues that contractual claims for disappointment and distress ought not to be caught by the provisions of *Civil Liability Act* legislation. An award of damages for disappointment and distress is based not on personal injury, but on a plaintiff’s lost expectations of contractual performance. To apply Civil Liability legislation to such a claim is counter to legal principle and reflects an unjustified application of the tortious concepts of pain and suffering to the contractual concept of disappointment and distress damages. The authors argue the application of Civil Liability Legislation to this head of damage needs to be reconsidered to ensure that defendants are not able to breach contractual obligations with impunity. .... 465

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