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EDITORIAL 267

ARTICLES

The significance of food fraud in Australia – *Janine Curll*

Food fraud is the intentional adulteration, substitution, dilution, mixing or adding of substances or ingredients to food in a manner that falsely describes the food to achieve an economic benefit. The 2010 discovery of diluted milk adulterated with melamine to artificially increase the measured protein yields, and the associated kidney illness in approximately 300,000 infants and the known deaths of at least six, demonstrated the potential for food fraud to cause serious public health consequences. The extent of food fraud in the Australian food industry and worldwide markets is unknown, and its incidence unclear. The activities of Australian State food regulators and the Australian Consumer and Competition Commission prosecuting false description offences in State Food Acts and the *Australian Consumer Law*, respectively, are discussed. A summary of the food and consumer regulatory and legal frameworks in Australia, as they relate to food fraud is presented; the complexities and challenges in the compliance and enforcement of food laws and regulations are examined. International efforts to characterise food fraud incidents, adulterants and detection methods enhance our understanding of the threat and the capacity of traditional food control systems to protect consumers and the reputation of food industry brands. Contemporary initiatives by international governments, academics and industry reveal food control systems are well informed by traditional food safety science and risk principles to control microbiological, physical and chemical hazards, but traditional food safety strategies are not adequate to control food fraud. The object of this article is to argue food fraud is a significant issue facing food regulators, the food industry and consumers in Australia, and present leading authority on international efforts to increase the capabilities of national food control systems in response. 270

Team-based professional sporting competitions and work, health and safety law: Defining the boundaries of responsibility – *Eric L Windholz*

The last few decades has witnessed the rise of professional sport as a significant and growing commercial industry. As professional sports have grown, so too have the points at which they intersect with the law. However, one area that has largely escaped the attention of practitioners and academics is the application of work health and safety (WHS) law to professional sport. This article contributes to filling this gap by examining the application of WHS law to team-based professional sporting competitions. The examination reveals multiple duty-holders owing concurrent and overlapping WHS duties that are broad and complex in their application. This breadth and complexity – which has not always been recognised – has important implications for those involved in professional team-based sporting competitions. 303

Force majeure clauses, multiple contracts and allocating shortfalls between customers – *Lynsey Edgar*

This article considers the difficulties that arise when a force majeure event affects a number of contracts, and sets out the practical matters to consider when drafting force majeure clauses to address these difficulties. The article goes on to analyse when and how a court should, as a matter of legal principle, allow a party affected by force majeure to allocate shortfalls between different customers. It is argued in this respect that Australian law should draw guidance from United States law, which offers a flexible, fair and pragmatic solution. 329

International commercial arbitration – a critique – *David Bailey*

The virtues of resolving international cross border commercial disputes by private arbitration are often extolled as convenient and effective. There is no doubt that the international arbitration regime established by the widely adopted New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards is supportive of this view. Recent litigation arising in the course of and out of an Australian based arbitration between an Australian company and a Chinese company illustrates that there can be significant problems in the course of international arbitration. Parties contemplating international arbitration need to be aware of and cognisant of issues such as the form and scope of the agreement to arbitrate, whether there will be parallel court proceedings, the seat of the arbitration and the likely place of enforcement. A key consideration is whether the enforcement jurisdiction subscribes to the New York Convention and fully supports its implementation within its domestic legal system. Such concerns are illustrated by the case history discussed in this article. 344

INDUSTRIAL AND WORKPLACE RELATIONS LAW – *Victoria Lambropoulos*

Discussion paper: Options for Law Reform, Royal Commission into Trade Union Governance And Corruption 350