

# AUSTRALIAN BUSINESS LAW REVIEW

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## ARTICLES

### **Section 46: Its Purpose and the Proposed New Effects Test** – *Julie Clarke*

The *Competition and Consumer Amendment (Misuse of Market Power) Act 2017* (Cth) will give effect to the Harper Report recommendation to introduce an effects test for Australia’s misuse of market power prohibition to replace the existing purpose-based test. Commencement of the effects test is contingent on the passage of the *Competition and Consumer Amendment (Competition Policy Review) Bill 2016*. This proposed change has generated more political debate and public commentary than any other aspect of the proposed Harper reforms. This article examines the convoluted process that has led to the introduction of the effects test, before identifying the object of Australia’s misuse of market power law and examining the existing and proposed laws against that objective. It concludes that the existing law is misdirected as a matter of policy and is ineffective in practice. The proposed law will, by removing the “take advantage” element and shifting the focus from competitors to competition, be more aligned with the object of the provision and with international best practice. .... 364

### **Beyond Lawyers: Legal Literacy for the Future** – *Brett Freudenberg*

Modern life demands literacy in many areas beyond reading and writing. Legal literacy has been argued as an access-to-justice issue and required to ensure a healthy democracy. Further, being able to engage with the economy through a business can be an important avenue to access economic opportunities. However, the world of commerce is underpinned by legal requirements, an understanding of which may assist with compliance behaviour. This article reflects upon the sources of legal literacy, especially in business circumstances, and considers the function of non-lawyer advisers in this area. Evidence suggests that non-lawyer intermediary advisers, such as accountants, play an important role in assisting individuals who are faced with legal problems. Consequently, it is crucial that the legal literacy of these non-lawyer intermediaries is adequate. .... 387

### **The Contract Risks to Universities of Work-Integrated Learning Programs** – *Craig Cameron*

Work-integrated learning (WIL) placements are generally contingent upon the host organisation, the student and/or the university entering a written contract, which creates legal rights and binds the parties to legal obligations. Contract is a mechanism used by universities to manage legal risks associated with WIL; however, it can also be a source of risk. A case study involving 13 Australian university lawyers represents the first systematic research of contract risks in relation to WIL programs. The contract risks described by university lawyers were found in contract terms involving intellectual property, employment, disciplinary action, insurance, indemnities and warranties about students,

as well as the contract practices of academic disciplines delivering WIL programs. The research findings can be applied by universities to educate stakeholders about contract risks in WIL programs, and to assess and evaluate risk management frameworks. .... 405

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