

# AUSTRALIAN BUSINESS LAW REVIEW

Volume 47, Number 1

2019

EDITORIAL – *General Editor: Michael Terceiro*..... 3

## ARTICLES

### **Cartel Conduct or Permissible Joint Venture?** – *Ian Wylie*

Australian competition law continues to struggle to draw a bright line between permissible pro-competitive joint venture activity and illegal anti-competitive cartel conduct. This article examines the legal scope and likely practical application of the joint venture defences or exceptions to cartel conduct in the *Competition and Consumer Act 2010* (Cth) in light of their statutory terms, the Federal Court decision of *ACCC v Cascade Coal Pty Ltd*, the Australian Competition and Consumer Commission’s succinctly stated position, and other competition regulators’ detailed guidelines and alternative approaches. It concludes by suggesting that the ostensibly broader exceptions applying to conduct from 6 November 2017 may in practice be more difficult to prove, and considering the alternative more flexible approach introduced in New Zealand in August 2017. .... 7

### **The Origins and Evolution of the Statutory Duties of Trade Union Officers** – *Ian Ramsay and Miranda Webster*

In Australia, statutory duties are imposed on trade union officers in several jurisdictions. In the 1990s, New South Wales, Queensland and Western Australia introduced duties for officers of employee and employer organisations registered under industrial relations legislation. In 2002, the Federal Government introduced officers’ duties for federally registered organisations. These federal and State duties have been modelled on the directors’ duties that are found in corporations legislation. This article examines the origins and evolution of these duties at the New South Wales and federal level and also considers the debates regarding the appropriateness of applying corporate law duties to trade union officers. The article shows how the introduction and development of the duties imposed on trade union officers, and the penalties for contravening them, have been politically contentious – much more so than the development of the duties imposed on company directors. .... 23

### **Chains, Coins and Contract Law: The Validity and Enforceability of Smart Contracts** – *Buwaneka Arachchi*

This article considers the validity and enforceability of smart contracts under Australian contract law. Smart contracts are agreements, expressed at least partially in computer code, that utilise distributed ledger technologies such as blockchain to interpret, perform and enforce their terms without human intervention. Smart contracts have already been used in the structure of conditional payments, financial derivatives and investment mechanisms, with scope for much broader application in the near-term. The recent emergence of smart contracts and absence of legislative or judicial intervention has left uncertainty as to their legal validity and position relative to conventional contracts. After outlining the technology’s characterisation and operation, this article turns to the question of whether

smart contracts are capable of meeting the doctrinal requirements for an enforceable contract in Australian law. In finding that they are, it supports their continued usage and adoption. .... 40

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

**Should Penalties Under the Competition and Consumer Act Be Increased?** – *Luke Woodward* ..... 59

BOOK REVIEW POLICY OF THE AUSTRALIAN BUSINESS LAW REVIEW ..... 68