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ARTICLES

“Why Not Litigate?” – The Royal Commission, ASIC and the Future of the Enforcement Pyramid – *Michael Legg and Stephen Speirs*

The Australian Securities and Investments Commission in response to the recommendations of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry has reconsidered its previous regulatory enforcement practice and adopted a new strategy that is summarised as “Why not litigate?”. This article critiques the new strategy from the perspective of its impact on the enforcement pyramid derived from the Responsive Regulation theory and considers the future of the lower levels of the pyramid, namely negotiated outcomes and the compliance approach to regulation. 244

The Lawfulness of the Dismissal/Termination of an Employee Who Has Expressed “Unwelcome” Religious Views – *Anthony Gray*

The question of the lawfulness of the termination of an employee in relation to their social media activity has been the subject of intense media interest in recent months. This article considers several legal arguments on point, including the possible question of unlawful termination in the Fair Work legislation, arguments about discrimination, breach of contract and other arguments. It concludes that, as the law presently stands, it would generally be difficult for an employee who has terminated in relation to unwelcome social media activity to successfully bring legal action against their employer, subject to a consideration of the specific terms of the employment agreement and facts of any given case. It considers relevant case law in other jurisdictions, accepting that these occurred within a different legal framework. 260

Online Auctions and Consumer Protection in the United Kingdom and Australia: The Value of Transparency – *Jodi Gardner and Kanchana Kariyawasam*

This article analyses the challenges associated with online auctions and consumer protection. Online auctions are increasing in popularity – however, they come with a range of potential legal issues. This article focuses on two potential concerns under the laws of both the United Kingdom and Australia: first, when an online auction fulfils the requirements of an auction for the purposes of consumer protection legislation; and second, when online auction sales occur “in trade or commerce”. Both of these – apparently simplistic – questions highlight the complexity of the laws surrounding online auctions. Such complexity undermines the transparency of the legal system and puts consumers at risk of not understanding or appreciating their rights. The article concludes by making some initial points on potential reforms to improve transparency in the regulation of online auctions. 281

The Legal Implications of E-commerce for the Australian Franchise Sector –
Zhanna Kremez, Kanchana Kariyawasam and Lorelle Frazer

Business-to-consumer electronic commerce plays a vital role in modern business practices throughout the world. Many traditional retailers ventured into the online transactional space decades ago, while franchise chains have taken a more conservative approach in e-commerce adoption due to potential encroachment and the history of franchisor–franchisee litigation, among other reasons. This study analysed Franchising Code of Conduct, the Australian Consumer Law, relevant case law, in addition to the data from the interviews with franchise experts, adding a rich practitioner insight to this article. It found that the revised Franchising Code may have wide implications for how Australian franchisors conduct e-commerce resulting in greater e-commerce adoption. In addition, due to the change in the legislation, franchisors are being forced to review their e-commerce strategy as well as their legal documents, which may give rise to further development of e-commerce in the Australian franchising sector. 293

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