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ARTICLES

The Mandatory Repair Scheme for Motor Vehicles 2019: Australia’s First Response to the International Right to Repair Movement? – *Leanne Wiseman, Kanchana Kariyawasam and Lucas Davey*

In February 2019, the Australian Treasury Department released a consultation paper on a mandatory repair scheme for motor vehicles in Australia. This followed the failure of a 2012 voluntary scheme in which the car industry agreed to share repair information. This article examines the key features of the proposed Australian mandatory car repair scheme, and critiques and contrasts the approach being proposed in Australia with its United States “Right to Repair” counterparts. While the Australian mandatory repair scheme can be criticised for being limited in its scope and application, the fact that the Australian Government is considering mandatory regulations to facilitate the sharing of information for repair is a positive sign for those supportive of the international Right to Repair movement. 218

Working for the Brand: The Regulation of Employment in Franchise Systems in Australia – *Tess Hardy*

In the past five years or so, there has been a never-ending stream of investigations and inquiries into so-called “wage theft” in franchise systems in Australia. This article seeks to go beyond these public accounts by considering key legislative provisions and recent case law that directly relates to the quality of franchise work and the regulatory behaviour of both franchisees and franchisors. In particular, the article considers three critical issues in this context: the legal classification of franchisees under the *Fair Work Act 2009* (Cth), including their possible employment status; the application of collective bargaining arrangements to franchise networks; and the ascription of liability for contravention of the civil remedy provisions of the Act, including 2017 reforms expressly directed at franchise relationships. This analysis reveals that while the regulation of work and employment in franchise networks has attracted much attention, it remains uncertain in many key respects and continues to be in a state of flux. 234

Fair Work Bargaining for Police: A Proposal for Reform – *Giuseppe Carabetta*

This article proposes an alternative model for the regulation of police collective bargaining disputes under the *Fair Work Act 2009* (Cth). Its central recommendation is that a North American-style mandatory interest arbitration model should be applied to police officers and other emergency services employees operating under the *Fair Work Act 2009* or analogous market-based bargaining regimes. Specifically, a mediation-arbitration model of interest arbitration – combined with “active” mediation and a tripartite arbitration panel design – is proposed, together with a number of related measures aimed at encouraging bargaining, such as, negotiation timelines. It is argued that as well as providing a guaranteed closure

mechanism for police collective bargaining disputes, the proposed model would give neutrals a better understanding of the underlying needs of the parties in a law-enforcement context; and simultaneously encourage negotiated or at least mediated outcomes for police officers. 253

Are the “Efficiently, Honestly and Fairly” and Unconscionable Conduct Civil Penalty Provisions Equally as Effective in Combating Unfair Practices By Licensees? – Jessica Zarkovic

In light of the “efficiently, honestly and fairly” provisions under the *Corporations Act 2001* (Cth) and *National Consumer Credit Protection Act 2009* (Cth) now being subject to civil penalties, this article compares and contrasts the utility and benefits of the Australian Securities and Investments Commission (ASIC) taking action under those provisions compared with an unconscionable conduct action under s 12CB of the *Australian Securities and Investments Commission Act 2001* (Cth). In doing so, the article focuses on the decision in *ASIC v Westpac Banking Corp (No 2)* in which the Federal Court determined contraventions of both provisions. It is concluded that ASIC would more efficiently pursue predatory and unfair conduct through litigating under the “efficiently, honestly and fairly” provisions than under s 12CB as the scope of those provisions captures a broader spectrum of conduct and behaviour, and is not limited to conduct that is against conscience or involves moral obloquy, as is the case in unconscionable conduct actions. 272

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