AUSTRALIAN BUSINESS LAW REVIEW

Volume 49, Number 5

2022

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ARTICLES

The Devil is in (Not Disclosing) the Detail: How Transparency Creates Public Legitimacy – The Introduction of a Deferred Prosecution Agreement Scheme in Australia – *Patrick Gardiner*

In December 2019, the Australian Government proposed to introduce a Deferred Prosecution Agreement (DPA) scheme through the *Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019* (Cth). Though a comparison with existing DPAs schemes in the United States and in England and Wales, this article argues that Australia's proposed DPA scheme provides greater judicial oversight of the DPA process than occurs in the United States. However, to ensure that there is public confidence in the legitimacy of the DPA process, Australia's proposed DPA scheme should be amended to ensure the entirety of the DPA process is transparent and publicly accessible. Amendments should reflect existing features of the English and Welsh model, these include provisions that require the mandatory publication of DPAs, the reasons for their acceptance, and reports on how corporations have complied with the terms of their agreement. 277

"Strong Reasons": The Epic Litigation and the Primacy of Public Policy over Exclusive Jurisdiction Clauses – *Brandon Smith*

Since the High Court's decision in *Akai Pty Ltd v People's Insurance Co Ltd*, Australian courts have taken a cautious approach to departing from exclusive jurisdiction clauses, requiring "strong reasons" to be demonstrated. In its recent decision in *Epic Games, Inc v Apple Inc*, the Full Court of the Federal Court overturned a decision staying proceedings brought by Epic Games, the developers of the popular video game "Fortnite", against Apple. Contrary to the primary judge, the Full Court found that there were "strong reasons" to refuse to grant a stay, relying heavily on the unique statutory remedies and framework of the *Competition and Consumer Act 2010* (Cth) (CCA) and to a lesser extent the Australian Consumer Law (ACL). This article will explore the ramifications of this decision, as part of a trend of Federal Court case law, for the efficacy of exclusive jurisdiction clauses in Australia in commercial litigation for proceedings including a CCA and/or ACL cause of action. While the Full Court's decision is a welcome development, this article argues that its unique factual circumstances mean that future courts must be careful not to apply its reasoning too broadly. Furthermore, this article will also seek to use the Epic litigation to highlight the problems associated with the continued use of the concept of "juridical disadvantages" within the "strong reasons" doctrine. 291

Growing Pains: The Challenge for Franchising from Increasingly Complex Stakeholder Relationships – *Andrew Terry and Cary Di Lernia*

Franchising originated as an expansion strategy for a small business with a proven concept and the ambition to grow. For the start-up business today with expansion aspirations, franchising remains the most effective growth strategy. But franchising is no longer exclusively a small business strategy. Somewhere along the way franchising got big. Inevitably, with growth comes growing pains. This article addresses a particular challenge in the transformation of franchising – that of increasingly complex relationships for all stakeholders posed by the increasing influence of private equity in contemporary franchising. 308

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