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A trial of preliminary issues – *Katja Levy*

In all jurisdictions in Australia, case management rules exist which enable a court, in appropriate cases, to order that certain issues in dispute between the parties be tried as preliminary questions. More recently, given modern case management considerations, including matters of proportionality where the economic prospect of a full-blown trial is undesirable, the utility of these provisions has been brought into focus. This article reviews the more recent Western Australian cases which have considered the traditionally expressed competing factors, in light of the more flexible and liberal approach arising from legitimate public concerns regarding the time and cost involved in commercial litigation. 120

From NW Frozen Foods to CFMEU via Ingleby and Barbaro: Changing judicial attitudes to “agreed” civil penalties – *Grant Mason*

Recent judicial authority indicates a changing approach to the determination of outcomes under civil penalty regimes. These regimes have been a key tool in the arsenal of corporate regulators, and, perhaps unsurprisingly, those regulators have sought a preservation of the status quo. Courts though, in weighing relative policy considerations, appear to be moving away from any involvement by non-judicial players in the determination of civil penalties, a move which causes civil penalties to be determined in a manner more similar to criminal sentences. The most recent case affecting civil penalty regimes, CFMEU, is currently the subject of appeals to the High Court for which special leave has been granted. This has caused uncertainty for regulators and litigants and that uncertainty is likely to remain, at least, until those appeals are determined by the High Court (at the time of press, the High Court indicated that it would hand down judgment in this proceeding on 9 December 2015). If the changes are upheld, it is expected that this

area of the law will continue to develop, and the role of corporate regulators will continue to be refined. In circumstances where recent changes have followed almost 20 years of settled judicial authority, the changes have occurred with relative speed. 127

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