
Index

Acquisitions

substantially lessening competition, 337-339

Airline industry

data dealing functions specific to, 394-397

information collection and related obligations, 392-393

notification of data breaches, 387-398

Anticompetitive conduct

boycotts, 335-336

collusion to restrict competition, 334-335

European Union regulation, 172-174

international cartels, 144

New Zealand regulation, 174-175

price fixing, 336-337

United States regulation, 171-172

Antitrust law

basic principles, 324-341

Australian Competition and Consumer Commission (ACCC)

cartels, jurisdiction to investigate, 144

market definition, 145, 166-167

prosecutorial discretion, 329

Australian Competition Tribunal (ACT)

market definition, 167-168

merger authorisation, 339

Australian Consumer Law

consumer contracts

regulation of unfair terms, 185-187

enactment, 184-187

Australian Law Reform Commission

privilege claims by in-house counsel, recommendations for, 283-284

Australian Securities and Investments Commission (ASIC)

James Hardie case

directors' duty of care, 312-323

market co-regulator, as, 75-82

Australian Securities Exchange (ASX)

listing rules, 78-80

market co-regulator, as, 75-82

sustainability reporting, requirements for, 362-364

Banking law

book review, 204

financial institutions *see* **Financial institutions**

Bargaining power

addressing imbalances of, 44

Index

Beneficiary

negligence of, 7-18

Book reviews

Australian Principles of Tort Law by P Stewart and A Stuhmcke, 379

Banking Law in Australia by A Tyree, 204

Mason and Carter's Restitution Law in Australia by K Mason, J Carter and G Tolhurst, 286

Boycotts

ban on, 335-336

Capital gains tax

goodwill, leasing of, 308-310

Cartels

international airline price-fixing, 144, 169-171

Class actions

Aristocrat class action settlement, 399-411

causation, 401-402

conflicts, potential and realised, 406-408

corporate governance, 409

damages, calculation of, 401-404

insurance, 410

opt out basis, 410-411

settlement, 404-408, 411

Climate change

banking sector initiatives, 347-348

disclosure of environmental information, 367-368

Climate Disclosure Standards Board, 348

Global Framework for Climate Risk Disclosure, 360

National Greenhouse and Energy Reporting Act 2007, 368-370

Commerce Commission (NZ)

powers, 329-30

Commercial litigation

bargain damages, loss of, 124-131

Company law

ASX listing rules, 78-82

directors

personal liability of, 63-67

disclosure listing rules, 78-82

dual-listed company arrangements

competition, substantially lessening, 150

sustainability reporting, 342-374

Competition law

acquisitions, 337-339

Australian Competition and Consumer Commission *see* **Australian Competition and Consumer**

Commission

Australian Competition Tribunal *see* **Australian Competition Tribunal**

- basic principles, 324-341
- boycotts, 335-336
- competition definition, 152
- demand and supply
 - cross-elasticity of, 154-155
- dual-listed company arrangements, 150
- effective competition, 152-153, 327
- “effects” doctrine, 181
- exclusionary provisions, 149, 335
- exclusive dealing, 150
- global markets, 160-162
 - exportation, 162
 - importation, 161
 - international airline services, 162, 169-171
- international cooperation, 182-183
- international market regulation, 143-183
 - European Union, 172-174
 - New Zealand, 174-175
 - United States, 171-172
- legislative history, 145-148
- market definition, 143-183
 - Dawson Committee, 145, 162-165
 - functional dimension, 156
 - geographic dimension, 157
 - product dimension, 156
 - Pt IV of *Trade Practices Act* see ***Trade Practices Act 1974 (Cth)***
 - substitutability, 154, 331
 - temporal dimension, 155-156
- mergers, 151, 330, 337-339
- misuse of market power, 150
- monopolisation, 332-334
- price-fixing, 149, 336-337
- proving a market, 159-160
- sub-markets, 157-159
- substantially lessening competition, 149-151
- takeovers, 337-339

Consumer contracts

- unfair terms, prohibition of, 184-198
 - assessing whether term is unfair, 190-193
 - detriment to consumer, 191
 - entire agreement clause, 193-194
 - exclusion clauses, 197
 - imbalance in parties’ rights and obligations, 190-191

Index

- price, 198
- procedural fairness and transparency, 188-189, 193
- regulation of, 185-187
- requirements of good faith, contrary to, 191-192
- substantive unfairness, 189
- termination provisions, 196-197
- UK case law, 188
- unilateral variation clauses, 194-196
- Victorian case law, 187-188

Consumer protection

- international consumer transactions, 83-109
- internet
 - electronic commerce, 239-254
 - intellectual property, 239-254

Consumer transactions

- international *see* **International consumer transactions**

Contracts

- commercial construction, 13
- consumer *see* **Consumer contracts**
- Delco principle, 13-16
- performance guarantees, 46
- unfair, 44
- “waiver”, interpretation of, 132-136

Corporate law

- Directors’ duty of care
 - James Hardie* case, 312-323
- employee share ownership, 215, 412-433
 - ASIC relief, 217-218
 - disclosure obligations, 216-219
 - Offer Information Statement, 218-219
 - regulatory obstacles, impact of, 215-231
- in-house counsel *see* **In-house counsel**

Corporations and Markets Advisory Committee

- Personal Liability for Corporate Fault* report, 63-67

Covenants

- competition, substantially lessening, 150

Damages

- shareholder class action, calculation of, 401-404

Dawson Committee

- market definition by, 145, 162-165

Directors

- duty of care
 - James Hardie* case, 312-323

personal liability, 63-67
reliance on third parties without verification, 317-319

Disclosure

airline industry
 data breach notification, 387-398
ASX listing rules, 78-82
employee share ownership, 216-219

Duty of care

directors', 312-23
 James Hardie case, 312-323

Electronic commerce (e-commerce)

protecting intellectual property on internet, 239-254
 legislation *see* **Intellectual property**
regulation of, 239

Employee share ownership plans

allocation of securities to individual employees, 426-427
eligible employees, 425-426
employee involvement, 428
equity offered, 423-424
holding period, 427
listed companies, use in, 412-433
 Employee Share Plan Survey, 416-418
 incidence of, 418-419
 objectives, 419-421
 reasons for not having broad-based plan, 421-422
 regulatory framework, 415-416, 430-432
 trust structure, 427
minimum period of employment required, 426
performance hurdles, link with, 426
restrictions imposed on entitlements, 427
structure, 422-428
 types of plans, 423
unlisted companies, use in, 211-238
 corporate law issues, 216-220
 objectives, 213-215
 regulatory reform, proposals for, 236-238
 tax law issues, 220-231
value of securities, 424-425
 company contributions, 424
 employee contributions, 425

Environment law

Climate Disclosure Standards Board, 348
Equator Principles, 350-353

Index

- Greenhouse Gas Protocol, 371
- National Greenhouse and Energy Reporting Act 2007*, 368-370
- sustainability reporting
 - financial institutions, role of, 342-374
- United Nations Environment Programme Finance Initiative, 353-354
- United Nations global compact, 349-350
- United Nations Principles of Responsible Investment
 - Carbon disclosure project, 355-356

Equitable relief

- influence, 22
- mistake, 22
- promissory estoppel, 22
- relief against forfeiture, 45
- unconscionable conduct, 20-23

Estoppel

- promissory, 22

Exclusive dealing

- competition, substantially lessening, 150

Fair Work Act 2009 (Cth)

- good faith bargaining, 255-262
- responsible unionism, 255, 264-266
- transferring a business, 199-203
- union, right of entry to, 263-264

Federal Court of Australia

- market definition, 168-171

Financial institutions

- environmental initiatives
 - carbon disclosure project, 355
 - climate change, 347-348
 - Equator Principles, 350-353
 - United Nations Environment Programme Finance Initiative, 353-354
- sustainability reporting, 342-374

Franchising

- franchise ending and reverting to franchisor, 309
- goodwill attached to, 296, 300-306
 - stamp duties, 310-311
 - taxation considerations, 308-310
- termination of franchise agreement, 305-306

Franchisor

- unconscionable conduct, 45-46

Fraud

- sham transactions (NZ), 375-378

Global markets

- characteristics of, 160-162
- exportation, 162
- importation, 161
- international airline services, 162, 169-171
- regulation, 143-183

Good faith bargaining

- fair work laws, 255-262

Goodwill

- franchising, 296, 300-306
- leasing of, 306-308
- licensing of, 296-300, 306-308
 - hotel licences, 298-300
- meaning and nature of, 297

Gross negligence

- beneficiary's, 7-18
- existence of, 10, 16-17

Indemnity

- "accidental insurer", 7-8, 16-18
- bare, 8-9, 16
- beneficiary's negligence, against, 7-18
- Brambles rule, 13-16
- Canada Steamship rules, 12, 15
- carve-outs, 8
- definition, 7
- guarantor, 9
- mandate letters and, 10
- negligence of beneficiary 7-18
- reverse, 8-13, 15

Industrial relations

- Fair Work Act 2009* (Cth) see *Fair Work Act 2009 (Cth)*
- transferring a business, 199-203

Influence

- equitable relief, 22

In-house counsel

- ethical challenges, 270
- privilege, scope for, 267-285
 - ALRC recommendations, 283-284
 - common law and statutory rules, 274-277
 - difficulties with claiming privilege, 277
- role of, 269
- special position of, 271-273

Insurer

- "accidental", 7-8, 16-18

Index

Intellectual property

- non-registrable rights
 - breach of confidence, 243-244
 - copyright, 240-243
- protection of
 - internet, on the, 239-254
 - legislation, 240-249
- registrable rights
 - patents, 244
 - trade marks, 246-249

International consumer transactions

- consumer protection
 - Australian law, 105
 - European models, 107-108
 - OECD Guidelines, 106-107
 - UN Guidelines, 106
 - US law, 108
- cost-effective redress for failed, 83-109
 - methodology for assessing, 85-87
- credit card terms, 93-95
- non-delivery or wrong-delivery of goods, 83-109
 - cost of litigation as redress for, 84, 87-102
- Vienna Sales Convention*, 101-104, 109

Internet

- e-commerce *see* **Electronic commerce**
- international consumer transactions
 - failure of, 83-109
- protecting intellectual property on, 239-254

Lawyers

- in-house *see* **In-house counsel**

Leases

- goodwill, 306-308
- stamp duties, 310-311
- taxation considerations, 308-310

Legal professional privilege

- in-house counsel, claims by 273-274
 - ALRC recommendations, 283
 - common law and statutory rules, 274-247

Lessee

- bargain damages, loss of, 123-131

Lessor

- unconscionable conduct, 45-46

Licences

goodwill, as source of, 297-300

hotel, 298-300

Market power

misuse of

competition, substantially lessening, 150

trans-Tasman market power, 150

proving a market, 159-160

Mergers

competition, substantially lessening, 150, 337-339

Misleading or deceptive conduct (s 52 TPA)

internet, on the, 249-250

Mistake

equitable relief, 22

Monopolisation

competition, effect on, 332-334

Moral fault

unconscionable conduct requiring, 27-29

Negligence

beneficiary, of, 7-18

gross, 10, 16-17

Organisation for Economic Co-operation and Development (OECD)

global competition concerns, 183

Guidelines for Multinational Enterprises, 356-357

Personal liability

corporate governance, 63-67

directors', 63-67

Predatory pricing

prohibition under *Trade Practices Act*, 115-122

selling at less than relevant cost, 118-121

substantial market power, 117-118, 120

Price-fixing

international airlines, 144, 169-171

Pt IV of *Trade Practices Act*, provisions in, 149

substantially lessening competition, 149

Privacy

airline industry

information collection and related obligations, 392-393

notification of data breaches, 387-398

unauthorised access to data, 387-392

Australian provision, 388-390

breach notification schemes, 391-392

Restitution law

book review, 286

Index

Restrictive trade practices

- legislative history, 145-146
- New Zealand regime, 174-175

Risk

- entrepreneurial risk taking, 319-321
- finance theory, in, 56-58
 - due diligence risk, 56
 - idiosyncratic risk, 56-57

Secondary boycotts

- competition, substantially lessening, 150

Shareholders

- class actions *see* **Class actions**

Small businesses

- Employee Share Ownership Project, 211-212
- Trade Practices Act*
 - policy objectives, conflict in ss 46(1) and 46(1AA), 110-123
 - protection under, 23-24
- unconscionable conduct, protection from, 23-24

Stamp duties

- leasing goodwill, on, 306-308

Superannuation funds

- corporatisation of, 59-60
- Fund Choice, 59
- governance, 55
- risk in finance theory, 56-58
- trustees
 - caution, 58
 - competence and diligence required, 50-62
 - “ordinary prudent person”, 51-56, 62
 - remuneration of, 60

Sustainable development

- see also* **Climate change; Environment law**
- ASX requirements, 362-364
- CAMAC report, 366-367
- Corporations Act* requirements, 360-361
- Equator Principles, 350-353
- financial institutions, role of, 342-374
- future trends in Australia, 370-372
- Parliamentary Joint Committee report, 364-366
- United Nations Environment Programme Finance Initiative, 353-354
- United Nations global compact, 349-350

Takeovers

- substantially lessening competition, 337-339

Taxation

- capital gains tax *see* **Capital gains tax**
- employee share ownership *see also* **Employee share ownership plans**
 - exemption conditions, 224-231
 - legal framework, 235-236, 430-432
 - tax concessions, 220-224
 - United Kingdom regulatory regime, 231-233
 - United States regulatory regime, 233-235

Tort

- book review, 379
- passing off, 250-252

Trade Practices Act 1974 (Cth)

- consumer protection under, 105-109
 - misleading, deceptive or false conduct, 249-250

Part IV

- covenants and secondary boycotts, 150
- distinction between ss 5 and 4E, 151
- dual-listed company arrangements, 150
- exclusionary provisions, 149
- exclusive dealing, 150
- exemptions, 151
- market definition, 143-145, 148-151, 176-181
- mergers, 151, 337-339
- misuse of market power, 150
- price-fixing, 149
- rules of interpretation, 176

purpose of, 177

ss 46(1) and 46(1AA)

- conflict in policy objectives of, 110-123
- predatory pricing prohibition, 115-122
- taking advantage, 121-122
- unconscionable conduct under s 51AC, 19-49
 - cases contravening, 42-44
 - context and purpose, 33-39
 - definition, 31
 - equitable doctrines differing from, 29-30
 - foundational cases, 24-27
 - protecting small business, 23-24
 - statutory construction principles, 31-33, 48

Trade Practices Amendment Act 1977 (Cth)

- enactment of
 - market definition, effect on, 147-148

Trade unions

Index

- responsible unionism, 255, 264-266
- security measures
 - right of entry, 263-264
- Young, James and Webster* decision, 265-266

Trustees

- superannuation funds, of
 - caution, 58-59
 - competence and diligence required, 50-62
 - “ordinary prudent person”, 51-56, 62
 - remuneration of, 60

Unconscionable conduct

- bank guarantees, 46-48
- definition, 31, 39-42
- equitable doctrine of, 20-22
 - s 51AC interpretation differing from, 29-30
 - special disadvantage, 21
- moral fault or obloquy, requiring, 27-29
- small business protection, 23-24
- Trade Practices Act, under, 19-49
 - cases contravening s 51AC, 42-44
 - context and purpose of construing s 51AC, 33-42

United Nations

- environmental initiatives
 - United Nations Environment Programme Finance Initiative, 353-354
 - United Nations global compact, 349-350
 - United Nations Principles of Responsible Investment

Unlisted entities

- employee share ownership plans, use in, 211-238

Vienna Sales Convention

- international consumer transactions, provision of code for, 101-104

Waiver

- interpretation of, 132-136