```
Anticompetitive conduct
    market power
         causal connection, requirement for, 49-50
         constraint, degrees of, 45-47
         taking advantage of, 47-49
    predatory pricing, 50-61
    price squeezes, 61-63
    prohibition, 41
    "purpose", interpretation, 43-45
    s 46 Trade Practices Act 1974, under, 41
         new form of provision, 41-43
Asbestos
    Asbestos Injuries Compensation Fund, 352
    disease, liability for, 352
    scientific uncertainty concerning, 359-360
Assets
    definition, 242
    natural persons, whether capable of being, 242, 243, 245
Athens Convention on the Carriage of Passengers and their Luggage by Sea, 1974
    application under Australian law, 138-139
         Australian passengers, 132-133
                   exclusive jurisdiction clauses, 133-134
                   limitation amounts, 135
                   time limits, 135-136
         cruise ship operators, 137, 140-142
         expansion of scope, 137-138
         international voyage carriers, 129
    liability, 129, 130
    purpose, 129
    reform proposals, 131-132
         vicarious liability of medical staff, 138
    shipowner claims, limitations of, 129-130
Auditing services industry
    Australian market, 238, 240-241
         acquisitions and concentration, 241-242
                   audit partner rotations, effect of, 244
         concentration indexes, 241
         s 50 Trade Practices Act 1974 bar to increase, 242-245
                   avoidance mechanisms, 242-245
    Big Four firms, 238, 239, 240
         market share, 241
    statutory requirements, 239
    taking clients when switching firms, 240
```

Australian Competition and Consumer Commission (ACCC) Australian Consumer Law, administration of, 318 unfair contract terms, 318 foreign investment proposals, review of, 228 Immunity Policy for Cartel Conduct, 175, 192 objective, 193 market for retail products on the internet, 311-312 Merger Guidelines, 239 powers under new consumer legislation, 149, 251, 256 class actions, 253 disqualification orders, 252 pecuniary penalties, recovery of, 252 public warning notices, 254 substantiation notices, 253 price signalling, inability to target, 329 Australian Consumer Law administration of, 318 background, 318-319 consumer law and policy framework, 318 key elements, 319 legislation comprising, 81-82, 251, 318 Productivity Commission report, 5, 318-319 responses to, 321-322 unfair contract terms, 318, 319-321 **Australian Federal Government** federal election, inconclusive, 329 Australian financial services licence see Financial services Australian Law Reform Commission insurers, protection and risk bearing of, 343 Australian Securities and Investment Commission (ASIC) Australian financial services licence grant of, 339 guides concerning, 339, 349-350 exit fees, control imposition of, 330 insider trading, strengthening of power to tackle, 5 powers under new consumer legislation, 5, 149, 251, 256 class actions, 253 disqualification orders, 252 pecuniary penalties, recovery of, 252 public warning notices, 254 substantiation notices, 253 wire-tapping powers, 5

Banking sector enquiry regarding, 330 regulation of, 329

#### Binder

acting under, 340 definition, 340

# **Book reviews**

Australian Offshore Laws by M White, 143-144 Environmental Law by G Bates, 372 Ford's Principles of Corporations Law by R Austin, I Ramsay and H Ford, 372-373 Insurance – The Laws of Australia by A Tarr, J Tarr and M Clarke, 207 Statutory Demands, Law and Practice by F Assaf, 144

#### Broker see Insurance intermediary

# Business

Human Rights Act (HRA), and – business, impact on, 7-22 compliance by business with, 11-13 corporate social responsibility and, 18-22 cost of compliance, as concern of business, 13-14 economic benefits to business of, 16-17 human rights protected by, 9-11 ordinary Act of Parliament, as, 9 protection of individuals, as benefit to business of, 15-16 regulatory framework, and improved, 18 scope of, as concern of business, 14-15

# Canada

banker's right of set-off in Drummond, 162-166
direct foreign investment proposals in Australia, rejection of, 235
floating charges under *Personal Property Security Act 1993* in Credit Suisse, 171-173
passing-on defence in antitrust proceedings, 185-186
priority of security interests in GE Canada Equipment, 166-171
Capital maintenance doctrine
development, 85

shareholder claims against insolvent companies, application to, 89-92

# **Carbon trading**

legislation, enhanced, dealing with, 6

# **Cartel prohibitions**

ACCC, publication of guides in respect of, 26-28

Immunity Policy for Cartel Conduct, 175, 192-193

capacity limitations, what are, 30-31

construction of, 25-30

damages under s 82 Trade Practices Act 1974, 175-176, 178, 190-192, 193

Dawson Review, as ultimate outcome of, 26

```
new prohibitions on output restrictions, extension by, 23-40
         ordinary meaning of output restrictions, 29-30
    passing-on cartel overcharges
         defence, 174, 178
         distribution chain, in, 176
         economic impact, 177-178
                   "output effect", 178
         effect, 176
         estimation approaches, 194
    production limitations, what are, 30
China
     Australia, investment in, 221
         considerations, 234-235
         resource sector case studies, 228-234
     Australia-China Free Trade Agreement (ACFTA), 257
         negotiation concerns, 258-259
         resistance from protectionist interest groups, 261-263
    China-New Zealand FTA, 257, 263-264
    SOEs regulation
         foreign investments, in, 220
         regulatory bodies, 220-221
Collusion
    existence of, 329
Commercial dealings
    equitable relief in, 365-367
    primacy of contract in, 365-367
Commercial litigation
    remoteness of damage in Transfield Shipping Inc v Mercator Shipping Inc, 65
         application of decision, 67-68
          "assumed responsibility test", 65-66, 68
         "contemplation test", 66, 68
         "reasonable foreseeability test", 65, 67
                   effectiveness, 66-67
Commercial morality
    concept of, 360-364
Common law and equity
    merger of, 370
Company law
    book review, 372-373
Competition and Consumer Act 2010
    amendments, 81-82, 213
    Senate Economics Legislation Committee, review by, 149
```

# Competition law and market regulation

anticompetitive conduct see Anticompetitive conduct biomedical patent licensing under s 133 Patents Act 1990 (Cth), 100-126 consumer law reform in Australia see Consumer law contracts under Pt IVB Trade Practices Act 1974 (Cth), legality of, 69 decisions in Master Education Services v Ketchell, 69-70, 72-73 commercial viability, 72 franchisee-franchisor relationship, equality of, 71-72 opportunistic litigation, reduced scope for, 70-71 Trade Practices (Industry Codes - Franchising) Regulations 1998 (Cth), and, 69, 70, 73 enforcement regime, elements of, 192-193 passing-on defence, recognition of, 187-188, 194-195 Construction Trade Practices Act, principles of, 24-25 cartel prohibitions, 25-30 **Consumer** law Australian Consumer Law see Australian Consumer Law class actions, 253 Competition and Consumer Act 2010, 81-82, 213 consumer guarantees, 252 disqualification orders, 252 pecuniary penalties, 252 reform in Australia, 251-256 concerns, 255-256 legislative changes, 251 substantiation notices (SNs), 253 infringement notices, 253-254 continuous disclosure regime, in, 255-256 onus of proof standards, reversal of, 255 public warning notices, 254-255 Trade Practices Amendment (Australian Consumer Law) Act (No 1) 2010, 81, 251, 318 Trade Practices Amendment (Australian Consumer Law) Act (No 2) 2010, 251, 318 Trade Practices Amendment (Australian Consumer Law) Bill 2009, 81 Trade Practices Amendment (Australian Consumer Law) Bill (No 2) 2010, 81 Contracts cruise ship and passengers, between, 127-142 employment, of acquisition of assets, whether, 243 chose in action, as, 243 Trade Practices Act 1974, under s 45, application of, 243 s 50 prohibitions, 243-244 s 51(2) exemptions, 243-244

franchise sector, in Trade Practices (Industry Codes - Franchising) Regulations 1998 (Cth), under, 69-73 interference with contractual relations, 244-245 unfair contracts regime, 81-82, 149, 251-252, 318-322 **Contractual interpretation** methods of, 370 Contractual Remedies Act 1979 (NZ) cancellation of contract, 368-371 common law concept of "condition", preservation of, 370 contract law, change in, 368 substantive performance, 369 **Corporate fault** Corporations and Markets Advisory Committee report on, 5 onus of proof, reversal in respect of, 6 strict liability in respect of, 6 Corporate responsibility Human Rights Act (HRA), and corporate social responsibility, 18-22 Corporations Act 2001 (Cth) financial market for purposes of, 336 financial products and services protection of funds, 341-343 regulation of, 332, 333 insurance intermediaries, regulation of, 335-345 offences under, 341 public policy, concerns in relation to, 363 Corporations Amendment (No 1) Bill 2010 reintroduction to Parliament, 330 Corporations Amendment (Sons of Gwalia) Bill 2010 reintroduction to Parliament, 330 **Corporations and Markets Advisory Committee (CAMAC)** company directors, guidance for, 330 corporate fault, government response to report on, 5 infringement notice regime, criticism of, 255 insider trading, report on, 5 insolvent trading, report on, 6, 86-88 market integrity, report on, 5 Cost measuring, 53-55 pricing and see Prices raising rival's, 47 "relevant cost", what is, 53, 55-57 **Creeping acquisitions** proposed legislative changes, 5, 149, 213

# **Cruise ship contracts**

Athens Convention, application of see Athens Convention on the Carriage of Passengers and their Luggage by Sea, 1974

terms and conditions of operators, comparison of, 140-142

#### CSR Ltd, Re

```
asbestos liabilities, 352
background to, 351-352
commercial morality 353-355, 360-363
expert evidence, treatment of, 354-355
material prejudice standard, 355-357
primary decision, 353-355
schemes law, consideration of, 351-364
s 411(1) hearing, scope of, 357-358
```

#### Damage

```
assessment of remoteness in Transfield Shipping Inc v Mercator Shipping Inc, 65
application of decision, 67-68
"assumed responsibility test", 65-66, 68
"contemplation test", 66, 68
"reasonable foreseeability test", 65, 67
```

```
effectiveness, 66-67
```

#### Damages

cartel conduct, for enforcement regime, role in, 192 passing-on defence, under, 193-194 s 82 *Trade Practices Act 1974*, 175-176, 178, 193

loss of bargain in commercial or retail lease, 152, 154

### **Dawson Review**

cartel prohibitions as ultimate outcome of, 26

#### Defences

passing-on, 174-195 antitrust enforcement proceedings, in, 179 Canada, in, 185-186 Europe, 182-185 United States, 179-182 *Cadbury Schweppes Pty Ltd v Amcor Ltd* case, 178-179 definition, 175, 178 deterrent effect, 177, 188 private damages actions for price fixing under Part IV of *Trade Practices Act 1974*, 175 calculation, difficulties in, 193-194 recognition of defence, 194-195 s 82 *Trade Practices Act 1974*, consistency with, 187-194 deterrence of cartel conduct, 190-192

operation of s 82, 188-190, 193

unjust enrichment, application to, 186-187 **Discounting see Predatory pricing Dispute resolution service** insurance industry, in, 338, 350 **Environmental law** book review, 372 Equitable fraud principle of, 366 Equitable relief commercial dealings, in, 366-367 Exit fees control imposition of, 329 **Fiduciary relationship** existence of, 366 **Financial product** advice, provision of, 336, 343-344 product disclosure statement (PDS), 344-345 dealing in, 336 definition of, 335 exemptions from, 335-336 hawking of, 343 **Financial services** disclosure provisions non-compliance, 341 Financial Services Guide (FSG), 340 alteration of, 341 content requirements, 341 licence across-the-board licensing 349-350 ASIC guides concerning, 339, 349-350 grant of, 339 requirement of, 335, 336 licensee authorised representative of, 340 binder, where acting under, 340 disclosure requirements, 340 funds in hands of, protection of, 341-343 insolvencies, 343 obligations of, 337, 338 personal advice provided, where, 341 representative's conduct, liability and responsibility for, 344 statutory regulation of, 343 unconscionable conduct, not to engage in, 343

```
product disclosure statement (PDS), 344-345
    provision of, 336
    Statement of Advice (SOA), 341
Foreign direct investments
    ACCC, review by, 228
    Australia, benefits for, 216
    "foreign government investor", 227
    "foreign governments and their agencies", conditions for, 226
    GFC, impact of, 221
    Guidelines for Foreign Government Investment Proposals, 226-227
    "national interest" test, 222
         assessment criteria, 227-228
    "prescribed corporations", in, 224
    public perceptions, 217
    regulation
         acquisition of assets, 224-225
         assessment, 235-236
         "controlled" by foreign persons, 225
         FIRB, role of, 221
         Foreign Acquisitions and Takeover Act 1975 (Cth), under, 221, 222
                   application process, 226
                   pre-approval requirement for foreign persons, 223-224, 227
                   Treasurer's powers, 224-225
         Foreign Investment Policy, 221, 222, 226-228
         IMF's Santiago Principles, 218, 219, 236
         OECD principles, 216-217
         rationale, 215
         recommendations, 236-237
    restrictions, 226, 228
    SOEs investments, 215, 220-221, 227
         resource sector case studies, 228-234
                   considerations, 234-235
    SWFs investments, 215, 218-219, 227
Foreign Investment Review Board (FIRB)
    role, 221
Franchising
    equality of franchisee-franchisor relationship, 71-72
    legality of contracts under Pt IVB Trade Practices Act 1974 (Cth), 69-73
    Trade Practices (Industry Codes - Franchising) Regulations 1998 (Cth), application of, 69, 70, 72, 73
Human rights
    Human Rights Act (HRA) -
         business, impact on, 7-22
         compliance by business with, 11-13
```

corporate social responsibility and, 18-22
cost of compliance, as concern of business, 13-14
economic benefits to business of, 16-17
human rights protected by, 9-11
ordinary Act of Parliament, as, 9
protection of individuals, as benefit to business of, 15-16
regulatory framework, and improved, 18
scope of, as concern of business, 14-15
protected rights –
courts, requirement to address, 10
Federal Parliament, requirement to address, 10
public authorities, requirement to act compatibly with11
protection and promotion of, 7-8
voluntary standards, international, 19
what is a Human Rights Act, 8-11
popular support for, 8
Industrial law
decision on duties under NSW OHS legislation in Kirk v Industrial Relations Commission of New South Wales; Kirk Group Holdings Pty Ltd v WorkCover Authority of New South Wales (Inspector Childs), 82, 196- 206
appeals, 198

application to subsequent cases, 204-205	
defence, 197-198	
facts, 196-198	
WorkCover charges, 197	
High Court decision, 198-201	
Industrial Court of NSW's approach, criticism of, 200-201	
jurisdictional errors of Industrial Court of NSW, Supreme Court of NSW power to	review,

# 198

managerial and supervision duties of directors, 201-202 procedural errors in conviction, 199

prosecution's duty regarding identifiable risks, 199-200

implications of decision, 202-203

Twigg decision on QLD OHS legislation compared, 203-204

decision on particulars of charge in Inspector Hamilton v John Holland Pty Ltd, 205-206

employer's statutory duty under NSW OHS legislation, 203

#### **Insolvent trading**

company directors liability for, 330

# Insurance

agents and brokers see Insurance intermediaries

dispute resolution process, 338, 350

General Insurance Code of Practice, 350

#### Insurance (Agents and Brokers) Act 1984 (Cth)

repeal of, 333

Insurance intermediaries
agents and brokers, 333
common law duties, 345-348
due care and diligence, 345-347
duty of disclosure, 347-348
distinction between, 333-335
assessors, 333
categories of, 333-335
insurance broker
binder entered into by, 334, 340
number registered, 335
liability of insured to insurer, 342
marine insurance, in, 343
loss adjusters, 333
principal's common law duties, 348-349
regulation of, 332-350
types of, 332
Insider trading
Corporations and Markets Advisory Committee report on, 5
Insolvency
tenants of commercial or retail leases, 156
companies under external administration, 157
liquidation, 159-160
receivership, 158-159
voluntary administration, 157-158
Insolvent trading
statutory business judgment rule, and discussion paper on, 6
Insurance law
book review, 207
Intellectual property law
biomedical patent licensing under s 133 Patents Act 1990 (Cth), 100-126
International Covenant on Civil and Political Rights 1966 (ICCPR)
ratification of, 7
International Covenant on Economic, Social and Cultural Rights (ICESCR)
ratification of, 7
International Monetary Fund (IMF)
"Santiago Principles" for SWF investments, 218, 219
John Alexander's Clubs Pty Ltd v White City Tennis Club Ltd, 365-367
Liquidation
insolvent tenants under commercial or retail leases, 159
landlord, consequences for, 157-158
liquidator's role, 159

ultimate effect doctrine under Corporate Law Reform Act 1992 (Cth), 314, 315

payments by insolvent company in McKern v the Minister administering the Mining Act 1978 (WA), 314-317
past indebtedness payments, whether unfair preference, 314
Lloyd's
insurance with, 333
Mana Property case, 368-371
Marine insurance
responsibility of broker to insurer, 343
Market integrity
Corporations and Markets Advisory Committee report on, 5
Market power
access regime under s 46 Trade Practices Act 1974 (Cth), 123-125
anticompetitive conduct
causal connection, requirement for, 49-50
constraint, degrees of, 45-47
auditing services, 238-241
acquisition of audit partners, liability for, 244-245
restrictions on concentration, 242-244
biomedical field
accumulation of patents, 113-114
licensing amendments under s 133 Patents Act 1990 (Cth), 125-126
market definition, 106-108
oligopolies, 114
patents over fundamental research tools, 113
Birdsville amendment, 51
"creeping acquisitions"
proposed legislative changes, 5, 149, 213
intellectual property context, 109, 114-115
barriers to entry, 109
single markets, 109-111
two market requirement, 111-113
market share prohibition, 51-52
predatory pricing and, 50-51
"taking advantage", 47-49, 115-117
downstream markets, in, 120
patent holders competing with potential licensees, 122-123
efficiency considerations, 118-120, 120-121
finding, making, 48
intellectual property and market power compared, 117
Markets
definition under Trade Practices Act 1974, 309-310
digital music
geographic dimension, 310-311

```
product dimension, 310
    e-commerce, in
         business-to-business (b2b), 309
         business-to-consumer (b2c), 309
    global presence, 312-313
    hypothetical monopolist test (HMT), 310
    retail product market
         ACCC's approach to, 311-312
         competitive constraints imposed by online retailers, 312, 313
    small but significant non-transitory increase in price (SSNIP) test, 309-310
         qualitative application, 311
Mergers and acquisitions
    ACCC Merger Guidelines, 239
    acquisitions
         natural persons, of, 243
                   growth via acquisition, cautions regarding, 244-245
         purpose, 242
    auditing services industry, 238
         prohibitions under Trade Practices Act 1974, 242-243
                   employment contracts, whether contravention avoided, 242-244
                   market concentration, effect on, 245
                   s 45 exemption, 243
Mining resources tax
    introduction of, 330
Mortgages
    exit fees for, 330
National Human Rights Consultation
    final report, release by, 7
    launch of, by Federal Government, 7
National Insurance Brokers Association (NIBA)
    chief executive of, 335
Offshore law
    book review, 143-144
Organisation for Economic Co-operation and Development (OECD)
    foreign investment
         principles, 216-217
         recommendations, 236-237
Parallel behaviour
    existence of, 329
Partnerships
    Australian and United States approach, comparison of, 246, 247
    Australian companies with US operations
         reducing "upstream" liability, 249-250
```

entity partnerships, 247-248
general partnerships
characteristics, 246
entity treatment under Revised Uniform Partnership Act, 248
formation, 246
separate legal entities, as, 246, 247
statutory partnerships, 248
limited liability company (LLC), 249
limited liability limited partnership (LLLP), 249
limited liability partnership (LLP), 249
limited partnership (LP), 248
Predatory buying
sale at below cost, 61
Predatory pricing
below cost, 52-57
market power and, 50-51
market share prohibition, 51-52
recoupment, 58-61
Price adjustment mechanism
existence of, 369
Price-fixing
cartel arrangements, under, 176, 329
damages under s 82 Trade Practices Act 1974, 174, 175, 176, 178, 193
passing-on defence for cartel overcharges see Defences
Price signalling
ACCC's inability to target, 329
Prices
below "relevant cost" for "sustained period", 52
inefficient pricing below cost, 57
matching, 57-58
parallel, 329
predatory pricing, 50-61
squeezes, 61-63
Product disclosure statement (PDS)
content of, 344-345
offences in relation to, 344
Product ties or bundles
taking advantage of market power, 47
Productivity Commission
Australian Consumer Law and, 318-319
executive remuneration, report on, 5
Property
right to purchase, abandonment of, 366

```
Public policy
    commercial morality, incorporation of, 360-364
    limits of, 363
Real property
    commercial or retail leases
         characteristics, 151
         common covenants, 154
                   enforcement procedures, 154-155
          insolvent tenants, 156
                   external administration, subject to, 157-160
          landlord, considerations for, 151-153, 157-158, 159-160
          lease, nature of, 151
         notice of breach, 152, 154
         rent default by tenant, 151
                   forfeiture proceedings, 151-153
                   payment of rent, whether fundamental term, 152
                   termination by landlord, 153
          Retail Leases Act 1994 (NSW), under, 151, 154-155
          right of re-entry, 153, 155
          title to goods left by tenant, 155
                   abandoned goods, 156
                   non-abandoned goods, 156
Receivership
    receiver's role, 158
    tenants under commercial or retail leases, of, 158-159
         landlord, consequences for, 158-159
Recoupment
    predatory pricing and, 58-61
Refusal to deal
    taking advantage of market power, 47
Restitution law
    passing-on defence for unjust enrichment, denial of, 186-187, 193
Schemes of arrangement
    approval of, 352-353
         s 411(1) discretion, 351, 356
    commercial morality
         notions associated with, 361-363
          whether consistent with, 353-355, 360-363
    legislation concerning, 352-353
    make up of, 351-352
    material prejudice standard, 355-357
    principles concerning, 353-354
```

public policy, whether consistent with, 353-355

scientific uncertainty, where, 359-360 Securities Australian and Canadian PPSA jurisprudence compared, 173 Credit Suisse case, 171-173 Australian and New Zealand law, application to, 173 floating charges under Personal Property Security Act 1993, 171-173 Drummond case, 162-166 Australian and New Zealand law, application to, 165-166 PPSA implications, 164-165 set-off rights in security transactions, 163, 165 GE Canada Equipment case, 166-168 perfection of security interests, 169-170 priority of securities under s 9(1) PPSA, 168-169 protection for insurers under s 4(1)(c) PPSA, 168-169 Personal Property Security Act 1993, 161 Australian PPSA, departure of, 161 **Senate Economics References Committee** report of, 330 Share registers access to, 330 Shareholders CAMAC review, 83, 84 claims in corporate bankruptcy, 83-99 capital maintenance doctrine, 85, 89-92 capping, 98 parity between shareholders, 93-96 complications, 96-98 partial subordination, 92-93 Sons of Gwalia decision, 83-84 government's response, 83 consent regarding investment, nature of, 93-94 Sons of Gwalia (admin apptd) v Margaretic CAMAC review of decision and government's response, 86-88 government response to High Court decision in, 6 High Court decision on shareholder ranking in insolvency, 83 Houldsworth rule, application of, 84-86, 87, 88 Sovereign Wealth Funds (SWFs) concerns, 218-219 definition, 218 "national interest" test, 227 "Santiago Principles" of IMF, 218, 219 SOEs distinguished, 219 types, 218

# China, in, 215, 220-221 Australian resource sector investments, 228-234 China Non-Feous Metals and Lynas, 233 Chinalco and Rio Tinto, 228-229 considerations, 234-235 Hunan Valin and Fortescue, 232-233 Minmetals and OZ Minerals, 231-232 Sinosteel and Murchison Metals, 230

#### Yanzhou and Felix, 233-234

State-owned enterprises (SOEs)

"national interest" test, 227

SWFs distinguished, 219

#### Statutory business judgment rule (sbjr)

corporations legislation, introduction of expanded to, 6

discussion paper on, 6, 330

# Superannuation

Cooper Review of Superannuation, 213

**Telecommunications industry** 

# Trade law

legislative reform, 82 Australia-China Free Trade Agreement (ACFTA), 257 Australia's concerns, 259 challenges, 259 General Agreement on Trade in Services (GATS), 259-260 solutions, 263-264 Trade-related Aspects of Intellectual Property Rights (TRIPS), 260-261 China's concerns, 258 definition, 258 impetus for negotiation, 257-258 resistance in Australia, 263 resistance in China, 261 agricultural sector, from, 261-262 policymakers, from, 262-263 services and investment sector, from, 262 social and political differences, 261 Australia-US Free Trade Agreement, 263, 264 China-New Zealand Free Trade Agreement, 257, 263-264 foreign direct investment, benefits of, 216 free trade agreement (FTA) definition, 258 operation, 258 rules, 258

```
Trade Practices Act 1974
    anti-competitive conduct, damages for, 174
    Competition and Consumer Act 2010, amendments under, 81-82, 213, 251-252
    competition and passing-on defence, 187-188
         remedies under s 82, 188
                   compensatory nature, 188-190
                   deterrence, 188, 190-193
    construction, principles of, 24-25
    consumer law amendments, 251
    market power of auditing services, effect of s 50 on, 242-245
    price fixing, target practice of, 329
    s 46, 41-64
         alternative "access regime" to s 133 Patents Act 1990 (Cth), 123-125
         prohibitions, 270
         Sherman Act (US) compared, 270
         strengthening, 5
         "taking advantage" of market power, 115-123
    understanding, and concept of, 5
    unfair contracts regime, introduction of, 81-82, 149, 251-252, 318-322
Trade Practices Amendment (Australian Consumer Law) Act (No 1) 2010, 81, 251
Trade Practices Amendment (Australian Consumer Law) Act (No 2) 2010, 251
Trade Practices Amendment (Australian Consumer Law) Bill 2009, 81
Trade Practices Amendment (Australian Consumer Law) Bill (No 2) 2010, 81
    Senate Economics Legislation Committee, review by, 81, 149
    statutory consumer guarantees, introduction of, 81
Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009
    cartel conduct provisions, 174
Trade Practices (Industry Codes – Franchising) Regulations 1998 (Cth)
    franchise contracts, application to, 69, 70, 72, 73
Unfair contracts
    terms, regulation of, 318
United Kingdom
    passing-on defence in antitrust proceedings, 184-185
United States
    Australian companies use of partnership structure in, 246-250
         upstream liability, means to reduce, 249-250
    direct foreign investment proposals in Australia, rejection of, 235
    partnerships
         general, 246
                   characteristics and formation, 246
                   "entity" treatment, 247-248
                   Revised Uniform Partnership Act, under, 247
         statutory, types of, 248-249
```

```
passing-on defence in antitrust proceedings, 179, 181-182
         Hanover Shoe case, 179-180, 193
         Illinois Brick case, 180-181
    Sherman Act, 270-
         exclusive dealing in Microsoft case, 292-296
         legitimate business purpose, 290-292
         Obama administration proposals, 307-308
         objectives, 274-281
         predatory pricing, 296-298
                   cost-based test, 298-301
                   intent, 301-305
                   recoupment test, 305-307
         s 2, 271-274
                   conduct characterisation, 289-290
                   intent requirement, 281-288, 308
Universal Declaration of Human Rights 1948 (UDHR)
    Australian Government as signatory to, 7
    governments, and impact of, 22
Voluntary administration
    insolvent tenants under commercial or retail leases, 157
         landlord, consequences for, 157-158
Wallis recommendations
    regulatory reform of financial products, 333
Wire tapping
    ASIC powers in respect of, 5
```