

# AUSTRALIAN BUSINESS LAW REVIEW

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## ARTICLES

### **Do we need a better way for reviewing mergers?** – *Peter Strickland*

There are strong public and private interests in efficient, rigorous, fair and accountable ex ante merger review from a competition law perspective. The issue explored in this article is whether or not those interests are being sufficiently served by Australia's current processes for pre-merger review. In particular, this article considers why the "formal" clearance process has not been used, even although five years have passed since its introduction. This article concludes that Australia remains in need of a better pre-merger review process. It then suggests three areas in which the "formal" clearance process could be reformed in order to transform the formal process into one which would better serve both the relevant public and private interests. .... 143

### **Precluding prescriptive duties in fiduciary relationships: The problems with the proscriptive delimitation** – *Leon Firios*

This article seeks to highlight four problems created by the requirement that fiduciary obligations be proscriptive rather than prescriptive. First, a clear distinction cannot be made between positive and negative fiduciary duties. Secondly, the rejection of prescriptive fiduciary obligations creates an unsatisfactory divergence between the equitable obligations of trustees and fiduciaries. Thirdly, the proscriptive delimitation interferes with the conceptual basis of directors' equitable duties to act with care, in the company's best interests and for a proper purpose. Fourthly, there is no historical support for a proscriptive approach. .... 166

### **The SMSF trustee-members** – *Josephine Castillo*

With the huge proliferation and increasing popularity of self managed superannuation funds (SMSFs) in Australia, it is time to put the members of these funds under the microscope. Because by law each member must also be a trustee, these individuals show a level of involvement and control over their superannuation that is not necessary (or possible) in members of other types of superannuation fund. This article examines demographic and socio-economic characteristics of the people who establish their own superannuation funds and explores the reasons why they do so, including the perceived advantages of this type of superannuation vehicle. The article also considers the level of knowledge and understanding amongst the SMSF trustee cohort. .... 177

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