
Index

ACCC. *see* **Australian Competition and Consumer Commission**

Accountability

“Big Society” reforms and, 280-302

Acquisitions. *see* **Mergers/acquisitions**

Advertising

restrictions on advertising by professions, 336-347

Anticompetitive behaviour. *see* **Competition**

APLA decision

restrictions on advertising by professions and, 346-347

ASX (Australian Stock Exchange)

draft Guidance Note on Continuous Disclosure, 453-454

Australian Competition and Consumer Commission (ACCC)

cartel conduct and, 458-459

editorial comments on, 219

Australian Competition and Consumer Commission v Metcash Trading Ltd [2011]. *see* **Metcash cases**

Australian Securities and Investments Commission (ASIC)

Fortescue continuous disclosure regime and, 424-454

Australian Stock Exchange. *see* **ASX (Australian Stock Exchange)**

Balance of probabilities

merger test under s 50:, 263-279, 363-381

Bankruptcy Act 1966 (Cth)

impact of COSL Rules on, 334

Behavioural economics

consumer credit reform and, 126-133

consumer policy and, 382-386

“Big Society” reforms

defining the “Big Society”, 283-288

procurement and, 280-302

Book reviews

Annotated National Credit Code, 312-313

The Law of Misleading or Deceptive Conduct, 460

Ong on Equity, 460-461

Schemes of Arrangement, 312

Breaches

franchising code of conduct, 387-391

liability for OHS breaches, 410-423

Carbon pricing

editorial comments on, 219

Cartels

cartel conduct as criminal offense, 455-459

Centralisation. *see* **Decentralisation**

China

sovereign investment in Australia, 105-125

Chinese walls. *see* **Insider trading and Chinese walls**

Citigroup case

Chinese walls and insider trading, 232-234

Codes of conduct. *see* **Franchising code of conduct**

Community

benefits from “Big Society” reforms, 280-302

procurement policies for community-based service provision, 288-295

Companies. *see* **Corporate law**

Competition

likelihood of lessening of, 263-279, 363-381

market power and, 348-362

restrictions on advertising by professions and, 336-347

Competition and Consumer Act 2010 s 50

interpretation of “likely”, 196-202

merger test under, 263-269, 363-381

Compliance

cartel conduct as criminal offense, 455-459

Constitution

s 109, restrictions on advertising by professions and, 343-346

Consumer credit. *see* **Credit**

Consumer policy

behavioural economics and, 382-386

Continuous disclosure regime

ASX draft Guidance Note on Continuous Disclosure, 453-454

need for practical guidance, 424-454

practical reality of, 447-453

Contracts

COSL interference with contractual rights, 330-333

interpretation of in New Zealand, 213-216

protecting the performance interest, 307-311

restitutionary claims and illegal contracts, 303-306

Co-operatives

“Big Society” reforms and, 296-298

Corporate law

corporate disclosure. *see* **Continuous disclosure regime**

editorial comments on, 221

Schemes of Arrangement, 312

situation in 2012, 49-54

Corporate officers

liability for OHS breaches under harmonised laws, 410-423

Corporate veil

as a rebuttable presumption, 64-76

Corporations Act 2001 (Cth)

impact of COSL Rules on, 334

Counterfactual issues

Metcash case, 269-279, 363-381

Credit

Annotated National Credit Code, 312-313

external dispute resolution schemes, 322-335

legal proceedings against debtors, 330-333

-
- regulation of the credit card industry, 126-133
 - Credit Ombudsman Service Limited (COSL)**
 - amendment of rules without consultation, 327
 - business entities and, 333
 - credit providers and, 322-335
 - decisions final and binding, 328-330
 - impact on existing legislation, 333-334
 - powers and accountability, 324-327
 - relationship with members and members' legal rights, 327-328
 - Criminal laws**
 - cartel conduct, 455-459
 - liability of corporate officers for OHS breaches, 410-423
 - Damages**
 - diminution of value or cost of cure, 308-310
 - De facto directors**
 - Full Federal Court "definition" of, 209-212
 - Debtors.** *see* **Credit**
 - Decentralisation**
 - "Big Society" reforms and, 296-302
 - Deutsche Post/DHL**
 - financial power and its treatment in Europe, 352-353
 - Direct investment**
 - by State Owned Enterprises in Australia, 105-125
 - Directors**
 - corporate law scene, 49-54
 - de facto, Full Federal Court "definition" of, 209-212
 - prescriptive or proscriptive fiduciary duties, 166-176
 - Disclosure.** *see* **Continuous disclosure regime**
 - Dispute resolution schemes, external**
 - consumer credit protection and, 322-335
 - Dodd-Frank Wall Street Reform and Consumer Protection Act**, 26-42
 - in comparison with the *Corporations Act*, 40-42
 - Due diligence**
 - liability of corporate officers for OHS breaches, 410-423
 - Economics.** *see* **Behavioural economics**
 - Efficient markets hypothesis**
 - use by judges in fraud-on-the-market cases, 77-105
 - Enforcement**
 - cartel conduct, 457
 - continuous disclosure contraventions and, 424-454
 - Equity**
 - Ong on Equity*, 460-461
 - Europe**
 - financial power and its treatment, 351-353
 - Expectation interest.** *see* **Performance interest**

Fiduciary duties

proscriptive or prescriptive, 166-176

Financial power

relationship with market power, 353-357

taking advantage of market power, 357-360

Foreign acquisitions

costs of current law on, 403-407

editorial comments on, 317

legal and administrative barriers to, 400-403

reform proposal for, 408-409

restrictions on, 398-409

Foreign investment regimes

direct investment by State Owned Enterprises in Australia, 105-125

Forrest v Australian Securities and Investments Commission

continuous disclosure regime and, 424-454

decision at first instance, 428-432

Full Court decision, 432-437

High Court decision, 437-447

Fortescue litigation. *see Forrest v Australian Securities and Investments Commission*

Franchising code of conduct

penalties for breaches, 387-391

Fraud-on-the-market theory

potential adoption in Australia, 77-105

Freedom of contract

unconscionable demands and, 12-20

GE-Honeywell

financial power and its treatment in Europe, 351-352

Government contracts

“Big Society” reforms and, 280-302

Harmonised laws

liability of corporate officers for OHS breaches, 410-423

Illegal contracts. *see Contracts*

Insider trading and Chinese walls

best practice guidelines, 238-240

Chinese walls as defence, 229-231

Citigroup case, 232-234

inside information defined, 226-228

insider trading defined, 225-226

nature of Chinese walls, 228-229

proposal for reform, 234-238

regulation of, 223-240

Interest in personal property. *see Security interests*

Lawyers

restrictions on advertising by, 336-347

Legislation

- corporate law scene, 49-54
- impact of COSL Rules on, 333-334

Lending obligations. *see* **Responsible lending obligations****Liability**

- of corporate officers for OHS breaches, 410-423

Likelihood. *see* **Balance of probabilities****Litigation**

- corporate law scene, 49-54

Localised service provision. *see* **Decentralisation****Loss causation**

- class actions and, 79-84

Market integrity

- Chinese walls and insider trading, 223-240

Market power

- competition and financial power, 348-362
- relationship with financial power, 353-357
- taking advantage of, 357-360

Market sharing. *see* **Cartels****Materialisation of risk**

- reliance and loss in cases involving, 96-98

Mercantilism, new. *see* **Sovereign Wealth Funds****Mergers/acquisitions**

- existing merger review processes, 143-162
- likelihood of lessening of competition, 363-381
- merger test under s 50, 196-202, 263-269, 363-381
- potential reform to the review of, 55-57, 143-165
- restrictions on foreign acquisitions, 398-409
- standard of proof after *Metcash* case, 263-279

***Metcash* cases**

- mergers, counterfactuals and proof after, 263-279, 363-381
- potential change after, 55-57
- restrictions of foreign acquisitions and, 363-381

Mining industry. *see* ***Forrest v Australian Securities and Investments Commission*****Misleading and deceptive conduct**, 77-105

- continuous disclosure regime and, 447-453
- The Law of Misleading or Deceptive Conduct*., 460

Monetary penalties

- for breaches of the franchising code of conduct, 387-391

Money had and received

- action for, 303-306

***National Consumer Credit Protection Act 2009* (Cth)**

- responsible lending obligations, 43-48

National Credit Code

- Annotated National Credit Code*, 312-313
- external dispute resolution schemes and, 322-335

National interest test

for sovereign investment, 118-120

New Zealand

contract interpretation in, 213-216

protecting the performance interest, 307-311

Non-disclosure. *see* **Continuous disclosure regime**

Occupational health and safety (OHS) laws

harmonised laws, liability of corporate officers for OHS breaches, 410-423

OECD

foreign direct investment principles, 121-122

Officer duties

liability of corporate officers for OHS breaches under harmonised laws, 410-423

On-demand guarantees

restraining unconscionable demands under, 5-25

Opening hours

restrictions on, 203-208

Output reduction. *see* **Cartels**

Penalties

for breaches of the franchising code of conduct, 387-391

Performance interest (Expectation interest)

protecting, in New Zealand, 307-311

Personal property

interest in personal property as security for payment or performance, 241-262

Pilbara case

editorial comments on, 317-319

Prescriptive fiduciary duties

of directors, 166-176

Price responses

in fraud-on-the-market cases, 77-105

Price-fixing. *see* **Cartels**

Private Securities Litigation Reform 1995 (US)

caps on damages under, 92-94

Probability. *see* **Balance of probabilities**

Procurement

“Big Society” reforms and, 280-302

community-based service provision and policies for, 288-295

Professions

restrictions on advertising by, 336-347

Proof. *see* **Standard of proof**

Psychology

behavioural economics and consumer policy, 382-386

Public service

decentralisation of service provision, 296-301

Reasonableness

protecting the performance interest, 310

Regulation

- “Big Society” reforms and, 280-302
- Chinese walls and insider trading, 223-240
- corporate law scene, 49-54
- enforcement of continuous disclosure regime, 424-454

Reliance

- distinction between it and loss causation, 80-82

Responsible lending obligations

- assessing whether substantial hardship could result, 44
- consequences of breach, 47-48
- new national legislation on, 43-48
- obligation to meet the consumer’s requirements, 44-46
- when switching or refinancing, 46-47

Restitutionary claims

- illegal contracts and, 303-306

Retail industry

- editorial comments on, 220-221

Salomon v Salomon & Co Ltd

- corporate veil as a rebuttable presumption, 64-76

Schemes of arrangement

- Schemes of Arrangement*, 312

Security interests

- application of definition, 251-262
 - deposits, 259-262
 - insurance, 254-255
 - powers of attorney, 251-254
 - retention of purchase price, 255-256
 - step-in and other related rights, 257-259
 - suspense accounts in guarantees, 256-257
- concept of, 242-250
- interest in personal property as security for payment or performance, 241-262
- working definition of, 250-251

Self managed superannuation funds

- demographic and socio-economic characteristics of trustee-members, 177-195

Separate entity doctrine

- Salomon* litigation, 70-71

Shareholder benefits

- restrictions of foreign acquisitions and, 398-409

Sims, Rod

- editorial comments on, 219

Siu Yin Kwan v Eastern Insurance Co Ltd

- elements of an undisclosed principal in contract, 68-69

Social enterprises

- “Big Society” reforms and, 296-298

Sovereign Wealth Funds

- direct investment by, 105-125

Standard of proof

- in mergers/acquisitions, 196-202, 263-279, 363-381

State Owned Enterprises

direct investment by, 105-125

Subsidiary companies

relationship to the corporate veil, 72-75

Superannuation

characteristics of trustee-members of, 177-195

Takeovers. *see* **Mergers/acquisitions**

Trading hours

reform of in Western Australia, 203-208

Transactions

interest in personal property as security for payment or performance, 241-262

Unconscionable demands

costs relating to, 20-24

opportunistic advantage-taking and, 22-24

restraining under on-demand guarantees, 5-25

Undisclosed principal

doctrine of, 64-76

United Kingdom

“Big Society” reforms, 280-302

United States

restrictions on advertising by professions and, 340-343

Unjust enrichment

restitutionary claims and illegal contracts, 303-306

Warehouse case

mergers, counterfactuals and proof after *Metcash*, 267-269

Western Australia

penalties for breaches of the franchising code of conduct, 387-391

Westpac New Zealand Ltd v Chahil

contract interpretation in, 213-216

Whistleblower protection

Australia, the *Dodd-Frank Act* and, 26-42

US, before the *Dodd-Frank Act*, 28-29

Work Health and Safety Act (the model Act)

liability of corporate officers for OHS breaches, 410-423