
Index

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

Accounting and statutory reporting

forensic accounting, 204-215

goodwill in, 165-166

Accreditation

in forensic accounting, 213-214

Agents

electronic delivery by, 237, 243-244, 248-249

Agricultural industry

AgVet chemical regulation, 420-422

data on the use of genetically modified organisms, 416-428

milk supply, 35-36

“Ambiguity principle”

High Court declines to clarify, 61-63

Anticompetitive practices *see* **Cartel conduct; Competition law**

Auditor independence

effect of law reform, 27-29

Australian Competition and Consumer Commission (ACCC)

challenges misleading premium claims, 188-203

civil cases brought by, 72-73, 297

civil penalty settlement practices, 303-313

draft Framework for abuse of market power, 387-388

impact of Harper Commission on, 3-4

legal successes, 216-218

on unfair contract terms, 278-279

Australian Competition Tribunal

powers to review merger proposals, 3

Australian Constitution *see* **Constitutional issues**

Australian Council for Competition Policy

mergers to be assessed by, 3

Australian Labor Party

competition policy, 155

Australian Securities and Investments Commission

Review of, 219

seeks review of penalties, 155

suggested reforms, 71-73

Authorisation

for s 46 conduct, 390

Authorship

collaborative research and, 132-143

“Awareness” of inside information

proposed legal requirement, 256-273

Banking industry

Parliamentary inquiries into, 298

Bankruptcy

survey relating to, 144-151

Barriers to entry

competition law and, 93

Billson, Bruce

requests review of competition law, 4

Book review

Private Life in a Digital World, 64

Breach of contract

mistaken, remedies for, 7-17

principles concerning, 121-124

Buy-back of a franchise

goodwill issues, 171

Canada

PPSA regime in, 178-182

Capability Panel report

release of, 219-221

Cartel conduct

civil and criminal compared, 322-323

criminal law provisions, 72

prohibitions relating to, 332-343

Carve-outs

from Regulatory Impact Statements, 363

Certainty

fairness vs., 175-187

City of London Guidelines

remote signing protocols, 232, 248-251

Civil proceedings

misleading premium claims, 200-202

Code of Conduct

for franchising, 162

Codelfa “ambiguity principle”

High Court declines to clarify, 61-63

Codes of conduct *see* **Industry codes of conduct**

Collaborative research

authorship and, 132-143

Commercial contracts *see* **Contracts**

Common law

contractual agreement to displace, 124

Commonwealth Fraud Control Guidelines

regulate forensic accounting, 213

Competition law

negotiated settlements in, 300-324

on facilitating practices and customer restraints, 325-360

State powers to protect corporations from, 225

“substantial lessening of competition” test, 74-105

successes for ACCC, 216-218

Competition Policy Review *see* **Harper Review**

- Computer expertise**
 - in forensic accounting, 213
- Concerted practices**
 - Harper Report on, 339-340
- Consent to forego rights**
 - legal status of, 141
- Constitutional issues**
 - application to trade contracts, 35-60
- Consumer Action Law Centre**
 - client bankruptcy survey, 144-145
- Consumer protection**
 - from misleading premium claims, 188-203
 - from unfair contract terms, 274-285
 - NZ credit contract laws, 292-294
- Continuous disclosure obligations** *see* **Disclosure issues**
- Contracts** *see also* **Breach of contract**
 - application of Constitutional principles, 35-60
 - assume commercial result, 62-63
 - between Monsanto and farmers, 422-424
 - consumer credit contracts (NZ), 292-294
 - consumer protection from unfair terms, 274-285
 - employment contracts, 106-131
 - “harsh” terms and unconscionable conduct, 216
 - High Court clarifies principles, 61-63
 - in franchising, goodwill in, 162-163, 169
 - negative stipulation as grounds for injunction, 412-413
 - remote signing protocols, 229-255
- Conveyancing**
 - electronic communication and, 233
- Cooperation**
 - implied duty of, 7-17
- Copyright law**
 - research authorship under, 135-140
- Corporate law and governance**
 - encouraging good corporate culture, 226
 - reform proposals, 18-34
 - remote signing protocols, 236-237, 254
- Countervailing power**
 - competition law and, 96
- Credit fees**
 - consumer credit protection laws, 292-294
- Criminal law provisions**
 - insider trading, 267
 - misleading premium claims, 200-202
 - resolution orders disallowed in criminal cases, 313-322
- Customers** *see* **Consumer protection**
- Damages**
 - to reputation due to invoking performance guarantee, 413-414

Data *see* **Information**

Dawson Report

on competition, 81

Deception *see* **Intention to deceive; Misleading or deceptive conduct**

Deeds

remote signing protocols, 234-235, 247-249, 253

Default fees

consumer protection legislation, 292

Delivery

via electronic communication, 236-240, 247-248

Department of Industry and Science

proposes safe harbour defence, 5

Deterrence

role of civil penalties in, 317-319

Disclaimers

in employment contracts, 119-131

Disclosure issues

competitively sensitive information, 338-339

insider trading and, 268-269

Discrimination

protectionism and, 48-50

Dishonesty

as grounds for injunction, 408-409

Dismissal

under employment contracts, 119-131

Distributional effect

on corporate law, 18-20, 23-24

Duties

implied duty to cooperate, 7-17

Economic issues

free trade doctrine, 50-51

Effects test *see* **Substantial lessening of competition (SLC) test**

Efficiency

effect on corporate law, 18-20, 23-24

SLC effects test and, 386-387

Election commitments

not subject to RISs, 363

Email document exchange

remote signing protocols, 229-255

Employees

who disagree with workplace policies, 111

Employment contracts

drafting advice, 115-117

summary dismissal under, 119-131

variations in, 112

workplace policies in, 106-118

Environmental benefit

misleading premium claims, 194-195

Escrows

electronic communication and, 237-240

Essentiality

in employment contracts, 130-131

of contract terms, 121-122, 125-126

Establishment fees

consumer protection legislation, 292-293

European law

on free trade doctrine, 43, 55-59

on unfair contract terms, 279

privacy issues, 64

resolution orders in, 300-301

Evidence

in interpreting contracts, 63

parol evidence rule, 112-114

Expert witnesses

in forensic accounting, 210-212

Express obligations

implied obligations vs., 15

Facilitating practices

Australian law on, 325-360

Fairness

under PPSA regime, 178

False premium claims

legal challenges to, 188-203

Federal Government

Regulatory Impact Statement process, 361-376

Financial advisors

survey relating to client bankruptcy, 144-151

Financial Counselling Australia

client bankruptcy survey, 144-145

Financial Services (Murray) Inquiry

recommendations of, 225-226

“Fit for the Future” report

recommendations of, 219-221

Forensic accounting

regulation of, 204-215

Franchising

goodwill issue in, 158-174

termination of a franchise, 171-172

transfer of a franchise, 170-171

Fraud *see also* Misleading or deceptive conduct

as grounds for injunction, 405-408

electronic communication and, 241-245, 252-254

Free trade *see* Restraint of trade doctrine**Future of Financial Advice reforms**

exempted from Regulatory Impact Statement, 369-374

General Agreement on Tariffs and Trade (GATT)

impact on free trade doctrine, 55

Genetically modified organisms, 416-428

Good faith doctrine

in employment contracts, 114

unfair consumer contract terms and, 275-278

Good Shepherd Australia New Zealand

client bankruptcy survey, 144-145

Goodwill

in franchising, 158-174

Guarantees

electronic communication and, 240, 244, 250-251

Guide to Regulation

policy outlined in, 361

Hanlong Mining

insider trading sentences, 377-379

Harper Report recommendations

amendments to CCA, 216-218

government response to, 3-4

implications for ACCC, 72-73

may not provide benefits, 297-298

on misuse of market power, 384-391

Health benefits

misleading premium claims, 196-198

High Court decisions

Barbaro inapplicable to civil penalties, 319-322

CMFEU case, 5

limit anticompetitive laws, 75-76

on “ambiguity principle”, 61-63

on “application” of trust property or income, 287-290

on bank late payment charges, 227

on competition, 79-89

on contract interpretation, 107-108

on free trade doctrine, 38-39, 42, 44-50

on innominate terms in employment contracts, 123

on interlocutory injunctions, 404

on joint authorship, 140

on plea bargaining in criminal cases, 314-315

on “unconscionability”, 298

Hilmer Report

on competition, 79-80

Hui Xiao

sentence for insider trading, 377-378

Implied duty to cooperate

history of, 7-17

Import competition concept

competition law and, 92

Industry codes of conduct

for franchising, 173

- forensic accounting, 215
- Information**
 - on the use of genetically modified organisms, 416-428
 - possession of “inside information”, 256-273, 377-383
 - sensitive, disclosure of, 338-339
- Infringement notices**
 - limitations of, 71
 - misleading premium claims, 198-200
 - no element of guilt associated with, 217-218
- Injunctions**
 - on letters of credit and performance guarantees, 404-415
- Innominate terms**
 - in employment contracts, 122-123
- Insider trading**
 - law reforms proposed for, 256-273
 - longer sentences for, 377-383
- Insolvency issues**
 - bankruptcy survey, 144-151
- Institutional rules**
 - about research authorship, 133-134, 140
- Intangible property**
 - in franchising, 159, 164-166
 - what it is to “possess”, 260-262
- Intellectual property**
 - authorship and collaborative research, 132-143
- Intention to deceive**
 - misleading premium claims, 190-191
- Interleasing case**
 - PPSA regime in, 186-187
- Interlocutory injunctions** *see* **Injunctions**
- Intermediate terms**
 - in employment contracts, 122-123, 130
- International cartels** *see* **Cartel conduct**
- Interstate trade**
 - Constitutional issues, 35-60
- Joinder of documents**
 - in electronic communication, 241
- Jordan, Chris**
 - as Commissioner for Taxation, 226
- Land transactions**
 - use of electronic communication, 244-245
- Legal practitioners**
 - in forensic accounting, 204-215
 - remote signing protocols, 229-255
 - survey relating to client bankruptcy, 144-151
- “Lessening” of competition**
 - defining, 88-92

Letters of credit

criteria for injunctions on, 404-415

Leximetric analysis

tracking strength of shareholder protection, 24-25

MacNeil-Brown submissions

in State and Territory courts, 302

Market power *see also* **Competition law**

competition for a market, 82

concentration of, 94-96

dynamic nature of, 97

misuse of prohibited, 74-105, 350-355, 384-391

SLC effects test and, 385-386

Master servant law

remnants of in employee relationship, 128-129

Medcraft, Greg

as ASIC chair, 71-73

lobbies for increased penalties, 155

Milk supply

attempts to impose regional restrictions, 35-36

Ministerial Council on Federal Financial Relations

oversees ACCC, 3

Misleading or deceptive conduct *see also* **Deception; Fraud; Unconscionable conduct**

in premium claims, 188-203

Mistaken breach of contract

remedies for, 7-17

Monsanto Australia Ltd

contracts covering GMOs and AgVet chemicals, 422-424

Moral benefit

misleading premium claims, 193-194

Moral rights

research authorship and, 135-136, 138-139

Morrison, Scott

response to Harper Report, 3-4

Most favoured customer restraints

Australian law on, 325-360

Murray Inquiry

recommendations of, 225-226

National Broadband Network

exempted from Regulatory Impact Statement, 366-368

Negative stipulation in underlying contract

as grounds for injunction, 413-414

New Zealand

consumer credit protection laws, 292-294

insider trading law, 270-271

unfair contract term law, 283-284

North America *see* **Canada; United States**

Nutritional benefit

misleading premium claims, 194

Ownership structures

- for agricultural data, 416-428
- for corporations, 18-34

Palmer, Clive

- allegations made about, 71

Parkes, Henry

- on free trade doctrine, 39-40, 53

Parliamentary Committee hearings

- into banking, 298

Parol evidence rule

- applied to employment contracts, 112-114

Penalties

- civil and criminal distinguished, 300-324

Performance guarantees

- criteria for injunctions on, 404-415

Personal Property Securities Register

- in PPSA regime, 175-187
- remote signing protocols, 246, 251-252

Place of origin benefit

- misleading premium claims, 195-196

Policy documents

- incorporation into employment contracts, 112

“Possession” of inside information

- proposed requirement for prosecution, 256-273

Post-implementation reviews

- of policy changes, 363

Premium claims

- misleading, 188-203

Prices

- power to determine, 97

Prime Minister’s Exemptions

- from Regulatory Impact Statements, 362-363, 365-366

Principal-to-agent relationships

- in franchising, 161-162

Principal-to-principal relationships

- in franchising, 161-162

Priority rules

- in PPSA regime, 175-187

Private Life in a Digital World

- book review, 64

Productivity Commission

- enquiry into consumer protection laws, 226
- government accepts recommendations from, 4-5

Professional bodies

- in forensic accounting, 204, 207-210, 213-214

Promissory estoppel

- “trumps” legal rights, 114

Protectionism

High Court on, 46-50

Public interest issues

in forensic accounting, 213-214

Puig, Gonzalo Villalta

on application of Constitution s 92, 39

Real estate transactions

use of electronic communication, 244-246, 249, 251, 253

Reasonableness

as defence to breach of moral rights, 140-141

Registrable Superannuation Entity licensing

exempted from Regulatory Impact Statement, 368-370

Registration errors

in PPSA regime, 175-187

Regulation

of AgVet chemical use in Australia, 420-422

of genetically modified organism use in Australia, 416-420

Regulatory Impact Statement process

efficacy concerns, 361-376

Related party transactions

effect of law reform, 25-27

Remote signing protocols

under Australian law, 229-255

Remuneration

two strikes rule and, 29-30

Repudiation

as grounds for terminating employment, 123-124, 126-128

Reputational damage

due to performance guarantee being invoked, 413-414

Resale price maintenance

prohibitions relating to, 355-357

Research, collaborative

authorship and, 132-143

Resolution orders

in civil and criminal cases, 300-324

Restraint of trade doctrine

Constitutional issues, 35-60

Retention of title agreements

security interests under, 397-403

Ricardo, David

on free trade doctrine, 50

Romalpa clauses

pre-PPSA, retained, 397-403

Royal Commissions

into banking, proposed, 155

into trade union governance and corruption, 5

Scientific research

authorship and, 132

- Security interests** *see also* **Shareholders**
prioritisation rules, 175-187
redefined by PPSA, 397-403
- “Serious misconduct” by employees**
defining, 121
- Settlement practices**
civil and criminal penalties distinguished, 300-324
- Share market**
legal protection for shareholders, 18-34
- Sims, Rod**
on competition policy, 225
reappointed ACCC chair, 71-72, 216
- Singapore**
insider trading law, 270
- Small print elucidators**
legal status of, 191-192
- Smith, Adam**
on free trade doctrine, 50
- Social benefit**
misleading premium claims, 193-194
- State taxes**
Constitutional issues, 45
- Statutory law**
enforcement by regulatory bodies, 303-313
- Structure-conduct-performance paradigm**
in competition analysis, 99
- “Substantial lessening of competition” (SLC) test**
evolution of, 74-105
prohibitions relating to, 343-350
proposed for CCA, 384-385
- Substantial market power** *see* **Market power**
- Substantiation notices**
for premium claims, 198
- Substitutable products**
competition law and, 97
- Summary dismissal**
under employment contracts, 119-131
- Surrender of a franchise**
goodwill issues, 171
- Surveys**
client bankruptcy survey, 144-151
forensic accounting practitioners, 209-214
of whistleblowing, planned, 220-221
- “Taking advantage” element in CCA**
revision to, 384
- Taxation issues**
State taxes and the Constitution, 45

Title

retention of title agreements, 397-403

Trade Practices Commission

can restrain anticompetitive practices, 76

cases brought by, 305-307

Trade Practices Tribunal

defines competition, 77-78

principles for assessing competitive impact, 99-105

Transurban case

PPSA regime in, 186

Trusts

what is “application” of property or income from?, 286-291

Two strikes rule

effect of law reform, 29-31

Unconscionable conduct *see also* **Misleading or deceptive conduct**

as grounds for injunction, 410-412

in “harsh” contract terms, 216

Unfair contract terms

consumer protection from, 274-285

Unfair preference claims

pre-PPSA retention of title and, 397-403

United Kingdom

insider trading law, 270

remote signing protocols, 230-232

unfair contract term law, 280-284

United States

free trade doctrine, 51-55

insider trading law, 270

legal protection for free trade, 40

remote signing protocols, 230

resolution orders in, 300

shareholder protection, 18-21

Vertical integration and restraints

competition law and, 97, 325-360

Virtual signatures *see* **Remote signing protocols**

Welfare recipients

bankruptcy declared by, 144-151

Whistleblowing

ASIC plans survey of, 220-221

Workplace policies

in employment contracts, 106-118

Xiao, Hui

sentenced for insider trading, 377-378