# Index

### **Accessorial liability**

of directors for company misconduct, 203-212

### Accountability

in non-profit sector, reduced by law reform, 157 retrospective legislation and, 337–343

#### **Accountants**

legal literacy required by, 387, 397-401

### Administrative penalties

for offences in non-profit sector, 169-170

## Agents

principals in competition with, 61–68

# Alternative dispute resolution

in public sector employment, 243–259

## Anticompetitive practices see also Cartel conduct; Competition law

effects test introduced, 364-386

in innovation patent system, 276-278

new price signalling laws, 281

pharmaceutical industry, 80-116

### **Anti-deprivation rule**

insolvent franchisees, 433-447

## **Anti-discrimination law**

redress for workplace bullying, 456

#### **Anti-overlap provisions**

pharmaceutical industry cases, 112-114

#### Arbitration

in public sector employment, 252-254

## "At work"

defined in Fair Work Act, 459-460

## Atkins, Tracev

becomes CA section editor, 283

### **Auditors**

co-regulatory environment for, 322-336

## **Australian Administrative Tribunal**

on "personal information", 189

#### **Australian Charities and Not-for-Profits Commission**

charity registration standards and enforcement, 127-187

## **Australian Competition and Consumer Commission (ACCC)**

Draft Guidelines on anticompetitive behaviour, 385

new powers and responsibilities, 195, 361

Pfizer case, 80-95

success rate in s 46 cases, 377

wins Reckitt Benckiser appeal, 77

## **Australian Competition Tribunal**

decision set aside by Federal Court, 361-362

mergers requiring authorisation by, 281–282

### **Australian Securities and Investments Commission (ASIC)**

empowered to make levies on industry sectors, 345

inconsistencies in regulating company auditors, 322-336

interactions with professional bodies, 333

new resources and responsibilities, 195, 197

regulation of retirement income products, 3

"Strengthening Penalties" report, 431–432

## **Australian Stock Exchange**

overseas share buyback regulations, 28-60

## Authorisation on public benefit grounds

of anticompetitive behaviour, 384-385

## **Banking industry**

ACCC given new responsibilities in, 195

Banking Executive Accountability Regime, 362

Royal Commission proposed, 3–4, 78–79

## Bankruptcy Code (US)

bars franchise termination for bankruptcy, 436-438

### **Bare trustees**

powers of, 298-299

### **Bargaining**

in public sector employment, 245-258

### **Black Economy Taskforce**

establishment of, 197–198

#### **Breach of contract**

law of penalties on, 8–27

#### **Bribes**

to foreign officials, 197–198, 199–212

## **Bullying in the workplace**

redress for, 448-466

## **Business Set-up, Transfer and Closure Report**

by Productivity Commission, 196

## **Buyback announcements**

overseas share buybacks, 37-38

#### Canada

Personal Property Security law reform, 467-481

whistleblowing protection, 282–283

#### **Cartel conduct**

criminal penalties for, 77

failure to prosecute individuals, 361

first cartel offence prosecution, 482–493

intellectual property licensing cases, 262-265

patent settlement agreements as, 111-112

principal-to-agent relationships in, 61–68

#### "Carve-outs"

Productivity Commission report, 196

## Charities see Registered charities

### Child abuse

retrospective liability for, 338-341

### Civil proceedings

for offences in non-profit sector, 167-169

vs criminal proceedings for cartel conduct, 491-492

## Class actions see also Third-party funding of litigation

growing numbers of, 5

insurance issues, 419-427

## Client engagement documentation

differing levels of access to, 332–333

#### **Collateral**

use of licences as, 471–473

#### **Commercial contracts** see Contracts

#### Common law

legal literacy for non-practitioners, 387-404

#### **Communication skills**

legal literacy and, 403

## **Compensation regimes**

termination for convenience clauses, 239-241

## Competition law see also Anticompetitive practices

in Papua New Guinea, 347-351

market regulation and, 260-269

objective of, 367–373

## Competition Policy Review see Harper Report recommendations

## "Competition test" see Effects test

### Compliance

corporate attitudes towards, 77-78

enforcement by regulatory bodies, 283

in not-for-profit sector, 133–137, 147–154, 159–187

## Compulsory dispute resolution

in public sector employment, 255–258

#### Conciliation

in public sector employment, 247–249

#### **Conditional bonds**

as penalty clauses in contracts, 19-20

#### **Conflicts of interest**

recent litigation, 346

## Considerations, illusory

termination for convenience and, 241-242

## "Constitutionally-covered business"

defined in Fair Work Act, 460-461

## **Consumer protection**

as goal of anticompetition law, 368-369

in Papua New Guinea, 347–351

legal literacy required for, 390-391

serial numbers for consumer goods, 476–478

#### Continuous disclosure obligations see Disclosure issues

#### Contracts see also Insurance issues

clauses to limit trustee liability, 286

in work-integrated learning programs, 405-418

penalty clauses in, 8–27

termination for convenience clauses, 229–242

voiding ipso facto clauses, 433–447 workplace bullying policies, 453–454

#### Convenience

termination of a contract for, 229-242

## Co-regulatory environment for auditors

inconsistencies in, 322-336

### Corones, Stephen

retires as CCL section editor, 6

## Corporate culture

director liability and, 210-212

## Corporate law and governance

attitudes towards compliance, 77-78

co-regulatory environment for auditors, 322-336

developments in, 344-346

in Papua New Guinea, 349-350

legislation imposing retrospective accountability, 337–343

overseas share buybacks, 39-41

redress for workplace bullying, 448-466

registered charities, 127-158

## **Corporations Act**

charities registered under, 137

## Corruption

bribery of foreign officials, 199-212

#### **Court orders**

to enforce "lien" on trustee, 295-297

#### Coversyl

alleged "product-hopping", 102

## **Criminal law provisions**

first criminal prosecution for cartel conduct, 482–493

offences in non-profit sector, 163–167

penalties for cartel-related conduct, 77–78

### **Customers** see Consumer protection

### Cyberbullying

in the workplace, 448-466

#### **Damages**

potential, penalty clauses based on, 22-23

### **Data** see **Information**

#### Dawson, Daryl

on authorising mergers, 281

#### **Debts**

priority rules in payment of, 471–476

#### Deception see Misleading or deceptive conduct

#### **Declaration of access**

for insolvent franchisees, 435

#### Directors' duties

liability for bribery of foreign officials, 199–212 retrospective accountability, 337–343

## **Disciplinary action**

in work-integrated learning programs, 412-413

#### Disclosure issues

continuous disclosure obligations, 217–219 marine insurance law, 118–122 overseas share buybacks, 28–60

## **Dispute resolution**

in public sector employment, 243–259 redress for workplace bullying, 453

### **Dual distribution arrangements**

risk of cartel liability, 65-67

#### **Duties**

contravention of duty of care by directors, 204–210 directors of registered charities, 127–158 of trustees towards former trustees, 311–317

#### **Effects test**

history of, 364–386 pharmaceutical industry cases, 105

## **Emergency services sector**

alternative dispute resolution, 243-259

### **Employment contracts**

in work-integrated learning programs, 411–412

### **Empowering workers**

redress for workplace bullying, 448–466

### **Enforceable undertakings**

for offences in non-profit sector, 173

## Enforcement by regulatory bodies see also Regulation

not-for-profit sector, 147–154, 159–187 pharmaceutical industry cases, 95–98, 108–110

## **Environmental remediation**

retrospective liability for, 337-339

## **Equitable interests**

whether trustee "lien" counts as, 291-293

### "Essential facilities" doctrine

denial of access and, 435

## European law

pharmaceutical industry cases, 98–100, 108–110

### **Exclusionary provisions**

pharmaceutical industry cases, 112

#### **Executive necessity doctrine**

termination for convenience and, 230

#### **Exoneration**

exercise and enforcement of, 295, 309–311, 313–317 recoupment vs, 288–289

#### **Express exclusion**

termination for convenience clauses, 238–239

## **Fair Work Commission**

on penalty rates, 270-272

### **Federal Court**

sets aside Tribunal decision, 361–362

## "Federally regulated entities"

identifying, 147

## **Fiduciary powers**

loss of by trustee, 289

### Field, Chris

retires as CA section editor, 283

## Financial Adviser Standards and Ethics Authority

establishment of, 197

#### Fines see Penalties

#### Fisse, Brent

becomes CCL section editor, 6

## Flip clauses

in franchising, 437-439

## Foreign officials

bribes to, 197-198, 199-212

### Foreign share owners

are they included in "public benefits"?, 69–73 overseas share buybacks, 28–60

#### **Franchising**

voiding ipso facto clauses, 433-447

## Francis framework

for auditing regulation, 324

# Fraud see Misleading or deceptive conduct

## **Functionless monopoly rents**

accruing to foreign share owners, 71-73

## **Future of Financial Advice reforms**

cases relating to, 345

### Good faith doctrine

marine insurance law, 118-122

termination for convenience and, 230-237

## Governance see Corporate law and governance

#### **Harper Report recommendations**

effects test introduced, 364-386

implementation of, 78

on collaborative behaviour, 281

### Health and safety

legal meaning of "risk to", 463

## **High Court decisions**

on law of penalties, 13–27

on misuse of market power, 368–369, 377–378

on principal-agent competition, 61-68

on trustee indemnity, 289

#### **High Court decisions (NZ)**

are gains to foreign owners public benefits?, 69-73

## **Illusory considerations**

termination for convenience and, 241-242

#### **Imprisonment**

for offences in non-profit sector, 165-166

## **Incorporated associations**

duties of management committee, 140–143, 151

### **Indemnity**

in work-integrated learning programs, 413–414 trustees' proprietary rights, 285–321

#### **Industrial law**

penalty rates, 270–272

### **Industry practice**

as factor in assessing director liability, 205-206

## "Influence"

defining for insider trading law, 222

## **Information**

materiality of for insider trading law, 213-228

## **Innovation patents**

inquiry into, 273–278

## Insider trading law

material effect provision, 213-228

#### **Insolvency issues**

franchise supplies cut off due to, 433–447 insolvency of a trust, 287–301 legislation amended, 344

#### **Insurance issues**

marine insurance law, 117–126 retrospective liability for company misconduct, 343 third-party funding of litigation, 419–427 work-integrated learning programs, 413

#### **Intellectual property**

exemptions to law of, 260–269 in work-integrated learning programs, 409–411 inquiry into innovation patents, 273–278 pharmaceutical industry patents, 80–116

## International cartels see Cartel conduct

### **International Competition Network**

on goal of legislation, 372

#### **Internet**

defining "personal information" on, 188-192

## Ipso facto clauses

unintended consequences of voiding, 433-447

#### **Judicial process**

first criminal prosecution for cartel conduct, 482–493 legal literacy for non-practitioners, 387–404 third-party funding of litigation, 425–426

#### Law reform see also Harper Report recommendations

Canadian PPS law, 117–126 insider trading law, 226–228 marine insurance law, 117–126

### LAW Survey of legal literacy

results of, 395-397

### Legal literacy

for non-practitioners, 387-404

## Legal practitioners

in work-integrated learning programs, 405–418 legal literacy and, 387–404

### Liability

clauses to limit trustee liability, 286 exemption of supply agreements proposed, 343 for cartel-related conduct, 490–491 for child abuse, retrospective, 338–341 for company misconduct, retrospective, 343 of directors for company misconduct, 199–212 per se liability for cartel-related conduct, 65–67 "Personal Liability for Corporate Fault" report, 343

#### Licences

use of as collateral, 471–473

#### "Liens" on trust assets

to recoup former trustee's expenditure, 285-321

## Lipitor

Pfizer response to patent expiry, 87–90

#### Marine insurance

law reforms proposed for, 117-126

# Market power see also Competition law

effects test introduced, 105, 364–386 misuse in pharmaceutical industry, 103, 110–111 proposed media company merger in NZ, 352–353 "substantial market power' defined, 374

### Market regulation

competition law and, 260-269

## **Materiality provision**

insider trading law, 213-228

### Media industry

proposed merger in NZ, 351-357

#### Mediation

in public sector employment, 249-251

## **Mediation-arbitration ("med-arb")**

in public sector employment, 254-255

#### Mergers

authorisation deferred to ACCC, 281 proposed media company merger in NZ, 351–357 regulation in PNG, 349 returns from to foreign share owners, 69

## Misleading or deceptive conduct

bribery of foreign officials, 199–212 insider trading, 213–228

# Misuse of market power see Market power

## Mitigating factors

first prosecution for cartel conduct, 487-489

## Monopoly see also Anticompetitive practices

functionless monopoly rents, 71–73

### Moral obloquy

Federal Court views on, 198 unconscionable conduct and, 5–6

### Morobito, Vince

on class actions, 5

## Morrison, Scott

on banking industry accountability, 362

## **Murray Report**

implementation of, 3

## Negotiation-conciliation-arbitration model

in Australia, 251–252

### **New Zealand**

are gains to foreign owners "public benefits"?, 69–73 media company merger rejected, 351–357

## Nippon Yusen Kabushiki Kaisha case

implications of, 482-493

## North America see Canada; United States

## **Not-for-profit bodies**

enforcing compliance with standards, 159–187 governance of registered charities, 127–158

## O'Dwyer, Kelly

attends seminar on whistleblower protection, 282–283 exposure draft on whistleblower policy, 431 on retirement income products, 3 review of whistleblower protections, 4

#### **OECD**

on liability for bribery of foreign officials, 201-202

## On-market share buybacks

defined, 30-31

## **Ontario Province Securities Commission**

on whistleblowing, 282-283

#### **Open Government National Action Plan**

whistleblowing in, 282

## Overseas share buybacks

disclosure issues, 28-60

#### Papua New Guinea

consumer and competition law, 347–351

## Paralegal professionals see also Legal practitioners

role in providing advice, 399-400

## Patent law see also Intellectual property

deterring generic entry before patent expiry, 80–116 inquiry into innovation patents, 273–278 pharmaceutical industry cases, 105–106

#### **Penalties**

criminal prosecution for cartel conduct, 485-489

law of and question of breach, 8-27

offences in non-profit sector, 162-175

relief in the absence of breach of contract, 15–16

### **Penalty rates**

Fair Work Commission decision, 270–272

### Per se liability

for cartel-related conduct, 61, 65-67

#### "Personal information"

defining for privacy purposes, 188–192

## "Personal Liability for Corporate Fault" report

issues raised by, 337

### Personal property security

Canadian law reform, 467-481

#### **Pharmaceutical Benefits Scheme**

pricing policies, 84-85

### Pharmaceutical industry

deterring generic entry, 80-116

#### Phoenix activities

regulating, 432

## **Prescription medicines**

supply chain for, 81

## Price control and monitoring

in Papua New Guinea, 350

#### Price fixing

in principal-agent competition, 65

## Principal-to-agent relationships

competition in, 61-68

#### **Prioritisation rules**

security interests, 470-471

## **Privacy issues**

"personal information", 188-192

## **Private actions**

based on anticompetition law, 378

## "Product-hopping"

in pharmaceutical industry, 81, 95-100

### **Productivity Commission**

on intellectual property exemption, 260-269

on ipso facto clauses, 433-447

proposed monitoring of pharmaceutical industry, 114–115

report on "carve-outs", 196

review of competition in banking sector, 195

## **Professional bodies**

inconsistencies in regulating company auditors, 322–336 interactions with ASIC, 333

quality reviews by, 330-331, 333-334

## "Proscribed purpose" element in CCA

pharmaceutical industry cases, 92-94, 104-105

#### **Public interest issues**

authorisation of anticompetitive behaviour, 384–385 gains to foreign share owners as, 69–73 proposed media company merger in NZ, 353–356

# **Public sector employment**

alternative dispute resolution, 243-259

## **Purchase-money security interests**

defining, 468-469

## **Quasi-administrative sanctions**

for offences in non-profit sector, 170–173

### Ramsay Health Care companies

prosecution commenced, 195

### Reasonableness

in deciding if information is material, 213–228 in ensuring compliance by charities, 133–134 of regulation, 176–177

### Recoupment

exercise and enforcement of, 295, 309–311, 313–317 exoneration vs. 288

### **Registered charities**

corporate law and governance, 127–158 enforcing compliance with standards, 159–187

## **Registered Company Auditors**

regulations relating to, 326-331

### Registered managed investment schemes

where responsible entities replaced, 286, 318-320

## Regulation

corporate regulation in PNG, 349–350 inconsistencies in regulating company auditors, 322–336 third-party funding of litigation, 422–425

### Remedies

for non-compliance in non-profit sector, 152–154

#### Repeated behaviour

legal meaning of, 461–462

## **Reporting and Red Tape Reduction Directorate**

establishment of, 162

#### Representation prior to contract

marine insurance law, 122–125

#### **Retired trustees**

rights of, 301

### **Retirement income products**

regulation of, 3

## Retrospective accountability

duties of directors, 337-343

#### Risk

in innovation patent system, 274–275 "to health and safety", 463

## Royal Commission into banking industry

proposed, 3-4, 78-79

#### Sanctions see Penalties; Remedies

### Security interests see also Shareholders

Canadian law reform, 467-481

whether trustee "lien" counts as, 290-292

## Security trustees see Trusts

### Serial numbers for consumer goods

searchable against name of debtor, 476-478

### **Share market**

reaction to overseas buybacks, 36

#### **Shareholders**

retrospective liability for company actions, 339-341

## Shipton, James

appointed ASIC Chair, 432

### Signalling impact

overseas share buybacks, 28-60

#### Sims, Rod

on misleading and deceptive practices, 77–78 suggests reversing onus of proof, 3

### **Small business**

insolvency issues for franchisees, 433-447

low levels of legal literacy, 387-388, 391-393, 397

## Statutory law

impact on company auditors, 325-326

legal literacy for non-practitioners, 387–404

## "Stepping stones" liability

of directors for company misconduct, 199–212

#### "Strengthening Penalties" report

ASIC releases, 431–432

#### Stress

related to workplace bullying, 448-466

## Student Deeds see Work-integrated learning programs

Substantial lessening of competition (SLC) test see Effects test

Substantial market power see Market power

### **Superannuation issues**

low levels of legal literacy, 394

### Supply agreements

proposed exemption from cartel liability, 61

#### **Tabcorp Holdings**

penalised for unlawful activity, 77

## "Taking advantage" element in CCA

interpretation of, 372–373

pharmaceutical industry cases, 91-92, 103-104

removal of, 364-386

#### **Taxation issues**

low levels of legal literacy, 392-394

tax reform, 4-5

## Technology transfer block exemption

scope for use in Australian IP law, 268-269

## **Telecommunications industry**

consumer information held by, 188-192

## Termination of a contract

for convenience, 229-242

## Third-party funding of litigation see also Class actions

insurance issues, 419-427

## Thomas, Jordan

paper on whistleblower protection, 4

### **Training initiatives**

in legal literacy, 401-403

work-integrated learning programs, 405-418

#### Trusts

duties of responsible entities, 144–147, 152

proprietary rights of indemnity, 285-321

rights of a replaced trustee against its successor, 285-321

## Uncertainty

in innovation patent system, 274–275

## Unconscionable conduct see also Misleading or deceptive conduct

moral obloquy and, 5-6

#### Unfair contract term law

extended to small businesses, 442-443

### **Unincorporated associations**

duties of management committee, 147

#### **United Kingdom**

historical law on penalty clauses, 19-21

marine insurance legislation, 117–126

modern law on penalty clauses, 9-13

## **United States**

pharmaceutical industry cases, 106-107

prosecution of pharmaceutical product-hopping, 95–97

### University education see also Training initiatives

work-integrated learning programs, 405–418

## Unreasonable behaviour

legal meaning of, 462–463

#### Warranties

marine insurance law, 122-125

### Whistleblowing

exposure draft on protection mechanisms, 431

inquiries into, 3–4

protection for, 282

#### Women

economic empowerment in PNG, 350

## **Wool industry**

in New Zealand, mergers in, 69

## "Workers"

as defined in Fair Work Act, 458

## Workers' compensation

redress for workplace bullying, 454-456

# **Work-integrated learning programs**

contractual risks in, 405-418

# Workplace relations law

penalty rates, 270–272 redress for workplace bullying, 448–466