

TRADE PRACTICES LAW JOURNAL

Volume 13, Number 1

March 2005

EDITORIAL	5
-----------------	---

ARTICLES

Concrete Constructions turns 15 – Bernard McCabe

Section 52 of the *Trade Practices Act 1974* (Cth) (and mirror provisions in the State and Territory Fair Trading legislation, and the *Australian Securities and Investments Commission Act 2001* (Cth)) applies to conduct occurring “in trade or commerce”. The requirement serves as a limit on the operation of what is otherwise a broad-ranging prohibition. The High Court’s decision in *Concrete Constructions (NSW) Pty Ltd v Nelson* (1990) 169 CLR 594 was an attempt to reinforce the limitation. The lower courts have struggled with the characterisation process required by the High Court in the 15 years since *Concrete Constructions* was handed down. This article explores that struggle in four areas: the conduct of professionals, employers, public officials and managers, and politicians. It follows on from an earlier article in the Journal titled “Revisiting Concrete Constructions”.6

Regulating for the future – accommodating the effects of convergence – Niloufer Selvadurai

Convergence describes the dissolving of traditional boundaries between the computing, telecommunications and broadcasting sectors. Advances in technology, especially the widespread application of digital technology, have enabled similar services to be delivered on a variety of platforms. Convergence is challenging traditional concepts of “telecommunications” and “broadcasting”, as well as the assumptions underlying legislation and policy.

This article considers the effect of convergence on the continuing efficacy of the *Telecommunications Act 1997* (Cth) and the *Broadcasting Services Act 1992* (Cth). Options for reform are considered, and regard is had to the recent introduction of a new “electronic communications” regulatory regime in the European Union.20

ADMINISTRATION AND NATIONAL COMPETITION POLICY

The Trade Practices Act at the crossroads: A review of the proposed Dawson reforms – Frank Zumbo	40
---	-----------

DEFECTIVE GOODS

A feast for the senses – more decisions relating to defective goods – Elizabeth Olsson	50
---	----

ENFORCEMENT AND REMEDIES

Potts v Miller revisited (again) – Michael Corboy	54
--	----

CASE NOTE

Judicial scrutiny of penalty agreements to increase: Minister for Industry, Tourism & Resources v Mobil Oil Australia Pty Ltd [2004] ATPR 41-993 – Dr Caron Beaton-Wells	59
---	----

BENCHMARKS	63
-------------------	----

Guidelines for Contributors

Submission and licence agreement instructions

All contributions to the journal are welcome and should be sent, with a signed licence agreement, to the Production Editor, *Trade Practices Law Journal*, Lawbook Co., PO Box 3502, Rozelle, NSW 2039 (mail), 100 Harris St, Pyrmont, NSW 2009 (courier) or by email to tplj@thomson.com.au, for forwarding to the Editor. Licence agreements can be downloaded via the internet at http://www.lawbookco.com.au/authorsupport/d_authorJournals.asp. If you submit your contribution via email, please confirm that you have printed, signed and mailed the licence agreement to the attention of the Production Editor at the mailing address noted above.

Letters to the Editor

By submitting a letter to the editor of this journal for publication, you agree that Thomson Legal & Regulatory Limited, trading as Lawbook Co., may edit and has the right to, and may license third parties to, reproduce in electronic form and communicate the letter.

Manuscript

- Manuscript must be original, unpublished work that has not been submitted for publication elsewhere.
- Personal details (name, qualifications, position) for publication and a delivery address, email address and phone number must be included with the manuscript.
- Manuscript must be submitted electronically via email or on disk in Microsoft Word format.
- Manuscript should not exceed 7,000 words for articles or 3,000 words for section commentary or book reviews. An abstract of 100-150 words is to be submitted with article manuscripts.
- Proof pages will be sent to contributors. Authors are responsible for the accuracy of case names, citations and other references. Excessive changes to the text cannot be accommodated.
- Contributors of articles receive 25 free offprints of their article and a copy of the part in which the article is published. Other contributors receive a copy of the part to which they have contributed.
- All material published in this journal is refereed. Every manuscript submitted is subject to peer review for the purpose of maintaining the standards of the journal.

Style

1. **Levels of headings should be clearly indicated (no more than four levels).**
2. **Cases:**
 - Case citation follows case name. Where a case is cited in the text, the citation should follow immediately rather than as a footnote. Give at least two and preferably all available citations, the first listed being the authorised reference.
 - Australian citations should appear in the following order: authorised series; Lawbook Co./ATP series; other company series (ie CCH, Butterworths); media neutral citation.
 - “At” references should only refer to the best available citation, eg: *Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 34; 66 ALJR 408; 107 ALR 1.
 - Where only a media neutral citation is available, “at” references should be to paragraph, eg: *YG v Minister for Community Services* [2002] NSWCA 247 at [19].
 - For international cases best references only should be included.
3. **Legislation should be cited as follows:**
Trade Practices Act 1974 (Cth), s 51AC. The full citation should be repeated in footnotes.
4. **Books should be cited as follows:**
Macken JJ, O’Grady P, Sappideen C and Warburton G, *The Law of Employment* (5th ed, Lawbook Co., 2002) p 55.
 - In footnotes do not use *ibid* or *op cit*. The following style is preferred:
 4. Austin RP, “Constructive Trusts” in Finn PD (ed), *Essays in Equity* (Law Book Co, 1985).
 5. Austin, n 4, p 56.
5. **Journals should be cited as follows:**
Odgers S, “Police Interrogation: A Decade of Legal Development” (1990) 14 Crim LJ 220.
Wherever possible use official abbreviations not the full name for journal titles.
 - In footnotes do not use *ibid* or *op cit*. The following style is preferred:
 6. Sheehy EA, Stubbs J and Tolmie J, “Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations” (1992) 16 Crim LJ 220.
 7. Sheehy et al, n 6 at 221.
6. **Internet references should be cited as follows:**
Ricketson S, *The Law of Intellectual Property: Copyright, Designs and Confidential Information* (Lawbook Co., subscription service) at [16.340], <http://subscriber.lawbookco.com.au> viewed 25 June 2002. Underline the URL and include the date the document was viewed.

For further information visit the Lawbook Co. website at <http://www.lawbookco.com.au> or contact the Production Editor.

SUBSCRIPTION INFORMATION

The *Trade Practices Law Journal* comprises four parts a year.

Customer Service and sales inquiries:

Tel: 1300 304 195

Fax: 1300 304 196

Web: www.lawbookco.com.au

Email: LRA.Service@thomson.com

Editorial inquiries:

Tel: (02) 8587 7000

HEAD OFFICE

100 Harris Street PYRMONT NSW 2009

Tel: (02) 8587 7000 Fax: (02) 8587 7100



© Thomson Legal & Regulatory Limited ABN 64 058 914 668 trading as Lawbook Co.

ISSN 1039-3277

Typeset by Lawbook Co., Pyrmont, NSW
Printed by Ligare Pty Ltd, Riverwood, NSW