

TRADE PRACTICES LAW JOURNAL

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EDITORIAL 205

ARTICLES

Section 52 and misrepresentations to a class: Principles, proof and appellate review – *Peter Gillies*

This article examines the application of s 52 of the *Trade Practices Act 1974* (Cth) to alleged misrepresentations made by a respondent to the public or to a smaller class of persons (collectively, misrepresentations to a class). Inquiry is directed to the principles for testing when a representation to a class contravenes s 52, matters of proof, and the principles of appellate review applying in this category of case. Sub-topics include the reasonable or ordinary members of class test, and whether these terms are synonymous; the issue of whether there is requirement that there be a significant effect on the applicant's interests where a misrepresentation to a class is alleged; whether the class members' error must be a material one in a case where a third-party respondent is claiming loss; the admissibility of expert evidence in s 52 class cases; and whether there is a presumption in favour of the trier of fact when conducting the rehearing of s 52 class (and indeed other s 52) cases. 206

The ACCC's immunity policy: A new application of the "Prisoner's Dilemma" – *Cam Truong*

This article discusses the ACCC's development of an immunity policy to fuel distrust between price-fixing firms and facilitate a real world "Prisoner's Dilemma", one which deters potential, and cracks existing, price-fixing cartels. 219

Are Australia's consumer laws fit for purpose? – *Frank Zumbo*

After decades of experience with the consumer protection provisions of the *Trade Practices Act 1974* (Cth) and the State and Territory Fair Trading Acts, it is timely to consider whether such laws remain fit for purpose. In doing so, this article will consider whether existing consumer laws have become repetitive and unnecessarily complex to a point where both consumers and businesses struggle to fully appreciate the impact of such laws. In turn, questions arise as to whether consumer laws could be streamlined or made more user friendly and, if so, how this could be achieved in an efficient and cost-effective manner. In this regard, the article explores a number of themes such as the use of plain language drafting; the removal of redundant legislative provisions; mechanisms for promoting fairer consumer contracts, and facilitating greater access to justice. 227

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