

TRADE PRACTICES LAW JOURNAL

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EDITORIAL

A further trans-Tasman connection	165
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ARTICLES

Representative actions: A review of 15 years of product liability class action litigation in Australia – Part I – Dr Jocelyn Kellam, S Stuart Clark and Christina Harris

During the early 1990s, the Australian federal government introduced both a class actions procedure and a strict liability regime for product liability claims. More than 15 years on, this article examines, in two parts, Australia's experience with class actions in the product liability context. It does so primarily from the defendant's perspective, reflecting the authors' experience as defence lawyers in class actions and product liability litigation. In analysing the Australian experience, Part I of this article considers whether class actions are fulfilling their intended purpose in the product liability context, and undertakes a detailed review of the authorities concerning class actions. Part II continues to review the case law but from a procedural and practical perspective, and concludes by considering the future of product liability class action litigation in Australia. While many of the early Australian class actions involved product liability claims – whether alleging product defects or mass torts involving products – recent civil liability reforms may have resulted in fewer such actions, at least by those seeking compensation for personal injury. More recent experience, however, suggests that the effect of the civil liability reforms is being outweighed by the increased availability of commercial litigation funding, leading to a greater number of class actions in Australia generally.

166

Stormy seas make skilful sailors: Changes to the Australian merger control regime – Dave Poddar and Kate Newman

This article provides an overview of the merger clearance options available to parties in Australia and examines the policy initiatives that underpin the two more recent merger clearance options: the voluntary formal merger clearance process and application for authorisation to the Australian Competition Tribunal rather than the Australian Competition and Consumer Commission. The authors evaluate, from a practitioner's perspective, the likely benefits that these procedural options will deliver to the parties involved in the merger, the stakeholders in the merger control process and also the business community at large. Further, the authors examine what the future may hold for merger control in Australia.

191

A dollar in the hand: Assessing penalties for contraventions of Part IV of the Trade Practices Act – Peta Stevenson, Dana Stewart and Andrew Floro

The increased maximum penalties and introduction of a new formula for setting penalties under the *Trade Practices Act 1974* (Cth) call for a consideration as to how these changes will be applied in practice. This article discusses the approach of courts in Australia, New Zealand, the European Union and the United States to setting penalties for competition law infringements, and reflects on the importance of determining the maximum penalty under the new Australian penalties regime.

203

CASE NOTE

Current affairs “scoops” and section 52 of the Trade Practices Act – Mitchell Landrigan	216
--	------------

COMMISSION CAMEOS – <i>Hank Spier</i>	220
---	-----

COUNCIL CONSIDERATIONS

The Council’s third-party access work in 2007 – Genevieve Ho and Jonathan de Ridder	226
--	------------

REPORT FROM EUROPE

The EU and German leniency guidelines – a comparative look – Tom S Pick and Dr Jochen P Beck	230
---	------------

REPORT FROM NEW ZEALAND

Misleading or deceptive conduct concerning securities and takeovers: Recent New Zealand reforms – Lindsay Trotman and Debra Wilson	238
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