

# TRADE PRACTICES LAW JOURNAL

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## EDITORIAL

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## ARTICLES

### **Bring it on! New challenges and opportunities in the pursuit of cartels in Australia – Ross McInnes and Mihkel Wilding**

Since the 2003 Dawson Review’s endorsement of criminal sanctions for cartel conduct, Australia has sat on the precipice of a criminal regime for cartel conduct. After considerable public consultation on an earlier draft of legislation to criminalise cartels, and the Senate Economics Committee’s endorsement of the “dual track” civil and criminal cartel regime proposed in the Trade Practices (Cartel Conduct and Other Measures) Bill 2008 (Cth), criminal sanctions have now been introduced. This article examines the key features of the new legislation and some of the practical issues that are likely to arise when deciding whether to pursue a civil penalty case or a criminal prosecution. It also considers the challenges and opportunities created by the complex interplay between public enforcement by the Australian Competition and Consumer Commission and the pursuit of class actions on behalf of potential cartel “victims”. ..... 167

### **Avoiding infringement of section 52: Reconciling the information provider’s defence and the conduit defence – Peter Gillies**

This article analyses the information provider’s defence (also known as the media safe harbour defence) enacted by s 65A of the *Trade Practices Act 1974* (Cth) (TPA). The defence is usually raised in relation to s 52 actions, although it is available in cognate actions. The scope of the defence has been clarified in recent decisions. The parallel conduit defence, which has been created by way of statutory construction of s 52 of the TPA, is also reviewed. The two defences are compared and contrasted, and the question is posited: given the entrenchment upon the absolute liability associated with s 52 and its cognates by the creation of these two defences, one by the legislature and one by a process of legislative interpretation, is it time to enact a general defence of honest and reasonable mistake applicable to s 52 (and cognate) actions? ..... 186

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