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EDITORIAL

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ARTICLES

The Risk of Accessorial Liability for Lawyers Drafting Contracts That Contain Unfair Terms – *Peter Sise*

Since 9 November 2023, the use of an unfair term in a standard form “consumer contract” or “small business contract” may result in pecuniary penalties being imposed under the Australian Consumer Law or the *Australian Securities and Investments Commission Act 2001* (Cth). This is a significant risk given the widespread use of standard form contracts. This risk may spread to lawyers who draft standard form contracts containing unfair terms due to accessorial liability provisions in the relevant legislation. This article examines that risk to lawyers. 266

Concerted Practices: Does the Reach of s 45(1)(c) of the CCA Exceed Its Grasp? – *Domenic Leonello*

This article considers how courts are likely to interpret and apply the “concerted practices” prohibition in *s 45(1)(c) of the Competition and Consumer Act 2010* (Cth). This article contends that the provision will expand the spectrum of anti-competitive dealings previously restrained by the narrow interpretation of “contracts”, “arrangements” and “understandings”. However, the provision will not extend to the same range of conduct found to be in contravention of Art 101 of the Treaty on the Functioning of the European Union, despite the Explanatory Memorandum’s (EM’s) endorsement of EU jurisprudence. The article will consider the EM’s formulation of “concerted practices”, its implicit, yet ambitious, indication of likely contraventions and the impediments to enforcement. The article will demonstrate that the statutory scheme and common law principles will not only likely preclude Australian courts from adopting the European Court of Justice’s (ECJ’s) broad reading of Art 101, but that Courts should be cautious when turning to EU jurisprudence for interpretive guidance. 278

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