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ARTICLES

A fly in the ointment for the ACCC? Implications of the Cement Australia decision for the interpretation of section 46 – *Caroline Coops*

The recent Cement Australia decision of the Federal Court raises a number of questions for the interpretation and application of s 46 of the Competition and Consumer Act 2010 (Cth). Given the Australian Competition and Consumer Committee’s (ACCC) historical lack of success in contested s 46 actions, the provision has been reviewed a number of times, including the recent Harper Review. This article considers whether the Cement Australia decision resolves the “would vs could” debate in the context of the “take advantage” limb of s 46, and makes some general comments as to possible implications of the decision, both for the ACCC when enforcing the provision and for the Harper Review. 83

Acceptable quality v merchantable quality – *Lynsey Edgar*

The consumer guarantee of “acceptable quality” under the Australian Consumer Law replaced the implied warranty of “merchantable quality” in the Trade Practices Act 1974 (Cth) in 2011. The first part of this article considers the differences in meaning between the two standards, drawing guidance from foreign case law, and concludes that, from a legal perspective, any differences between the old warranty and the new guarantee are minor. From a practical perspective, however, it is argued that the new terminology arms consumers with greater knowledge and understanding of their rights, which has increased, and will continue to increase, the protection afforded to consumers. The second part of this article considers whether, rather than introducing a new guarantee of acceptable quality, it would have been preferable to have made other reforms to consumer protection law. In particular, consideration is given to whether the unfair contract terms regime could have instead covered the field, or whether a general prohibition on unfair practices should have been introduced. It is concluded, though, that the new consumer guarantee of acceptable quality provides greater clarity and certainty for consumers and businesses alike, and four years after its introduction, can be viewed as a positive reform. 97

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