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EDITORIAL

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ARTICLES

Could the Harper Review recommendations revive private enforcement of cartel prohibitions? – Rebecca Gilsenan

Private enforcement of cartel laws in Australia is rare and has dwindled further in recent years, with no new cartel class actions having been commenced since 2007. This is in contrast to regular public enforcement activity. This article reviews the state of public and private enforcement, and identifies the main difficulties encountered in private enforcement actions. It considers the recommendations made by the Harper Review in relation to improving the ability of private parties to enforce cartel laws, and concludes that, while those recommendations will alleviate some of the difficulties, significant barriers remain. Therefore the recommendations of the Harper Review alone will not make much difference to the rate of private enforcement. While this is the case, the incentives to participate in cartel conduct remain unacceptably high and reforms are needed. 6

Place names as marketing tools: Legal issues in the use of geographic names – Neil Francey

Naming places is something that probably vies with naming celestial bodies, as a feature of human existence. In Australia, the practice dates from examples of Indigenous peoples, to recorded maritime exploration along the coast and subsequent exploration inland upon British settlement of “New Holland” – first in New South Wales and then throughout the continent. Over time, the practice has evolved from official recognition of names given by explorers such as Captain Cook and John Oxley, to wider recognition, initially by respective Surveyors General and now under specific place names legislation in the States and Territories. Some tension exists between such legislation and other legislation regulating business names, trade marks, copyright and the law of passing off. This article examines that tension in relation to the use of place names as marketing tools. Special emphasis is given to the *Australian Consumer Law*, with the Whitsunday Region and other Australian areas used to illustrate the issues. 15

Are we there yet? A return to the rational for Australian consumer protection – Brenton Lee Worth

The introduction of Australia’s unfair contract term legislation, when applied to standard form contracts, has improved the position of the consumer by taking into account the impact of behavioural biases and bounded rationality. As such, this article shows that through a shift in focus to the substantive fairness of the terms in a contract, much has been done to return the consumer to the position of a rational economic agent. Ultimately,

however, shortfalls still exist in the legislation in light of the insights of behavioural economists, meaning that improvements are needed to fully embed the benefits of Australia’s dedicated consumer protection provisions.	33
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