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ARTICLES

Australian Cartel Law: Recent Developments – Second Set of Two Sets – *Brent Fisse*

This article surveys recent developments in Australian cartel law. The First Set contains Parts I–V, discussed in a previous issue of the Review. This Second Set contains Parts VI–X. Part VI begins by discussing the allocation of individual and corporate liability for cartel conduct. Individual criminal or civil liability has been imposed in many recent cases, but not all. Part VI continues with a critique of the definition of corporate fault at common law, as applied to ancillary liability under the *Competition and Consumer Act 2010* (Cth) in the *BlueScope Steel* case. Part VII examines the significance of the *BlueScope Steel* decision in relation to the attempted inducement of cartel conduct and sidewinder liability in the form of obstruction of justice. Part VIII reviews developments in exceptions to cartel prohibitions. Authorisation has increased in relevance, especially in the context of COVID-19 and climate change. Class exemptions have yet to take-off. The joint venture exceptions remain problematic. There is still no exception for everyday supply contracts between competitors. Part IX examines recurring questions of immunity and compares Australian Competition and Consumer Commission and Commonwealth Director of Public Prosecutions cartel immunity policies with the United States Department of Justice (DOJ) cartel leniency policy after changes to the DOJ policy in April 2022. Part X concludes. 258

Cybersecurity, Data Governance and Directors Fiduciary Duty: An Expanding Obligation – *Robert Walters*

Cybersecurity has evolved into one of the most important and complex developments of the new digital economy. Today and going forward it will underpin economic, social and environmental development across the entire digital economy. Furthermore, cybersecurity is interconnected with personal and commercial data. Coupled together, or, independently they are impacting the entire supply chain of business, from manufacture, distribution, sale and consumption. This article demonstrates the developments in Australia pertaining to directors’ and officers’ obligations to ensure they have developed robust cybersecurity self-regulatory systems. It draws upon a recent 2022 Federal Court of Australia decision of *Australian Securities and Investments Commission v RI Advice Group Pty Ltd.* that has raised the stakes in this area of the law. The article will compare Australia with the United States, European Union, Canada, United Kingdom and India. The article demonstrates that these jurisdictions are at various stages of imposing such obligations on directors and officers. It calls for additional research and provides a pathway forward for individuals and entities to strengthen their internal systems to prevent and manage cyber breaches. It recommends a level of law reform for directors’ and officers’ obligations and reporting, to ensure a more consistent approach to be taken internationally, because cybersecurity knows no national borders. 281

Small Business and Legal Needs: Effective Support for Access to Justice – Maree Sainsbury

The small business sector is significant to Australia’s economy and its communities. The legal environment within which a small business operates is complex, and the small business owner will inevitably need support in navigating this, particularly where legal issues arise. The inability to access appropriate legal services is an issue that can significantly impact the business owner and have broader ramifications for the community. This article will look at the complexities that small business face in navigating the legal system, the multiple factors of vulnerability that may impact small businesses and make suggestions for support that should be provided. The article recommends that more work be undertaken to consult with small businesses to ascertain the most effective support type and to monitor the effectiveness of support.

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Fair Enough? Use of Exclusions and Limits of Liability in the Australian Logistics Industry – Gillian Bristow and Mia Williams

The use of exclusion and limitation of liability clauses in standard form contracts is commonplace in the Australian logistics industry. This article explores the extent to which these clauses are at risk of being impugned under the *Australian Consumer Law*’s “unfair contract terms” regime. Given the dearth of Australian authorities dealing with limitation clauses, the approach of English courts to such clauses under the *Unfair Contract Terms Act 1977* (UK) is discussed and the article posits criteria that may assist in framing appropriate limits of liability in Australian logistics contracts.

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