

AUSTRALIAN BUSINESS LAW REVIEW

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EDITORIAL – *General Editor: Michael Terceiro*
Special Guest Editor: Rob Nicholls

Fifty Years of Competition Law – Rob Nicholls 335

ARTICLES

It's Time – The Trade Practices Act 1974 Then and Now – JS Wylie

The Trade Practices Act 1974 (now the Competition and Consumer Act 2010) had its 50th Birthday on 24 August 2024. This article revisits its legal and political origins, and its legal significance and economic impact at the time. It goes on to trace what remains of the original Act, to evaluate its ongoing application and the utility of those provisions, and to make some quantitative and qualitative observations as to its form and effect. 338

Transforming Australian Business in 23 Words: The First 50 Years of the Prohibition of Misleading or Deceptive Conduct – Andrew Terry

The prohibition of misleading or deceptive conduct, first introduced in s 52 of the Trade Practices Act 1974 (Cth) but now enshrined in s 18 of the Australian Consumer Law, has had a massive impact on the conduct of business in Australia. The section has had an influence far beyond its assumed residual consumer protection role as a provision complementing the specific provisions prohibiting particular examples of misleading conduct. It has evolved into a general norm of conduct for misleading conduct in a range of circumstances far removed from any traditional notions of consumer protection and has become a staple of commercial litigation. This article traces the development of s 18 and its increasing impact on Australian business. 350

Public Benefit in Mergers: A View on Authorisation 50 Years On – Deborah Healey and Rhonda L. Smith

The Australian competition law has always allowed specific exemptions for particular conduct and nominated parties based on tests around public benefit under its authorisation process. This process has stood the test of time and has been expanded in more recent years till it covers all Pt IV conduct. This recognises that competition is a means to an end and may need to be modified in some particular cases where public policy demands a different market solution. This article considers the history of authorisation through the lens of mergers on the 50th anniversary of competition law in Australia. It is also a time when the merger process has been under review. It examines the impact of public benefit considerations in the Australian merger authorisation process to determine whether the process has been effective and how public benefit should be interpreted going forward. It reflects on how past experience might inform any new approach to public benefit in mergers. It concludes that there is little evidence that consideration of public benefits to date has been superfluous, flawed or should be abolished. It finds that public benefit analysis is, however, subject to the issue common to all competition law analysis – the

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