

- the disobedience is both wilful and persistent, and
- no other means are available to the court or the creditor by which payment of the debt may be effectively enforced.

These recommendations echo those in the ALRC's Contempt Report (ALRC 35) (see [1987] *Reform* 111).

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product liability

Breakages, Ltd, the biggest industrial corporation in the country.

GB Shaw, *The Apple Cart*

new reference. The ALRC is to carry out a review of product liability law in Australia.

The Terms of Reference for the review were given to the ALRC by the federal Attorney-General, Mr Lionel Bowen on 11 September 1987. The Terms of Reference call for the ALRC to review:

- whether Australian laws, including the Trade Practices Act, relating to compensation for injury and damage caused by defective or unsafe goods are adequate and appropriate to modern conditions
- the appropriate legislative means of effecting any desirable changes to the existing law, having regard to any constitutional limitations on Commonwealth power, and
- any related matter.

national consumer affairs advisory council report. The reference follows a report released in June 1987 by the National Consumer Affairs Advisory

Council, Product Safety. That report drew attention to the costs to individuals and to the community caused by defective or unsafe goods. It recommended that a review of the appropriateness of a 'strict liability' regime for defective and unsafe goods be investigated.

The federal government agreed with the National Consumer Affairs Advisory Council that a complete review of product liability law, focussing on the question of strict liability, was warranted.

alrc report. Product liability law had been identified by the ALRC in its 1986 Annual Report as a matter which fell within the business law aspect of the suggested four-pronged reform program (see [1987] *Reform* 133).

cost considerations. The Terms of Reference draw particular attention to the cost to business and the community of changes in the liability of manufacturers, distributors and retailers for unsafe or defective goods. The cost and availability of insurance, and the desirability of continued product innovation and availability, are especially identified in the Terms of Reference as matters that the ALRC must keep in mind. The reference also envisages close consultation with relevant government authorities and representatives of manufacturers, distributors, retailers, insurers and consumers.

strict liability. The reference to the ALRC is a timely one. As the National Consumer Affairs Advisory Council report points out, the trend in product liability law in recent years, both in Australia and overseas, has been to move towards a regime of strict manufacturer's liability for product related damage. A number of States of the United States have moved in that direction.

rection and the literature in the United States on the implications of strict liability is enormous. The EEC recently directed its member countries to adopt a form of strict liability for product damage and, for example, the UK has recently passed legislation broadly along those lines.

investigation of strict liability. It is clear that the effect of the introduction of a strict liability regime will be a critical focus on the ALRC's work on the reference. The ALRC intends to carry out a detailed study of the implications of allocating losses arising from products in particular ways. Imposing a strict liability regime on manufacturers could, for example, lead to increased insurance premiums and consequent increases in the price of products. Requiring the injured victims to bear some or all of the loss in cases of personal injury, on the other hand, could lead to increases in social welfare payments with consequent strain on the revenue. The focus of the ALRC's study will be to identify the most efficient way, economically speaking, of allocating the loss that has occurred.

vlrc reference. Following on the ALRC reference, and in keeping with the policy suggested by the VLRC standing reference mentioned elsewhere in this issue (see page 200), the VLRC has received a companion reference on product liability.

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class actions — the business push

The Commission's tentative proposals have sent shock waves through the business community which believes they have huge implications for the economy.

Sunday Telegraph, 16 August 1987.

As the ALRC moves towards completing its report on the question of class actions in matters of federal jurisdiction, the class actions 'war' in the nation's business press heats up.

a consultants meeting. A detailed set of tentative proposals was circulated by the ALRC to its consultants recently. A two day weekend meeting to discuss the tentative proposals was also held. A written submission from Mr Geoff Allen of the Business Council of Australia was tabled by Robert Gardini, General Counsel for the Confederation of Australian Industry, and was discussed at that meeting. The submission strongly opposed the introduction of reforms to the representative procedure presently available in superior courts and certain tribunals. Reforms of the representative procedure were the focus of the ALRC's tentative proposals.

the official push. Shortly after the consultant's meeting, the *Business Review Weekly* carried a story headed 'Class Action Gets an Official Push'. Referring to class actions as 'a dinosaur from a more optimistic age', and asserting that the ALRC was 'undeterred by the absence of demand and doubts that new legislation might encourage the spread of civil litigation', the *BRW* article points out that Peter Cashman, one of the part-time Commissioners in charge of the Reference, was Director of the Public Interest Advocacy Centre when appointed to head the reference.

[PIAC uses] the law to achieve social and economic change in line with the interests of consumer, environmental, feminist and worker democracy activists The centre acts closely with the Australian Consumers Association. At various times, a substantial component of the centre's board has