

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

been the top office-bearers of the Consumers Association. It is not surprising therefore that the Business Council sees Cashman's involvement in the revival of the class actions brief as a worry for business, as the council's latest bulletin puts it, "the perception that the current push for class actions has at least some undercurrent of this quasi political agenda".

the new push. The Business Council also weighed in with its July bulletin, which carried a story entitled 'Class Actions — The New Push'. Citing concerns about cost, the Business Council article pointed to a number of other mechanisms available to meet consumer concerns including small claims tribunals, consumer affairs agencies, increased media involvement in identification and redress, and recent amendments to the Trade Practices Act enabling the Trade Practices Commission to seek representative compensation on behalf of identified persons.

The Business Council bulletin's support for the trade practices amendments incorporating a form of representative action seems strange given the broad thrust of the Business Council's argument that reforms of the representative procedure to allow more people to seek redress are unnecessary. This is especially so because the ALRC's proposed reform is a private rather than public sector option.

'nude vicar class actions shock horror'. Probably the high point of press reaction came in a story in the *Sunday Telegraph* (16 August 1987), reporting that

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

The *Sunday Telegraph* story suggested that, if class actions were introduced in Australia as proposed by the ALRC

respondents to a consumer survey might be sued for criticising a product unfairly. The potential for costly and divisive law suits would be endless.

After quoting comments from Messrs Gardini and Allen expressing fears that the deterrent effect of class actions on 'decent business' would be so strong that they would be afraid to try new products or practices, the article concluded

In the US, the Washington Post recently forecast the legal situation getting so out of hand that all the swimming pools would have to be drained because of the possibility of drowning.

favourable press. Earlier this year the *Insurance Record* (Jan-Feb) reported an address by Andrew Roman, a Canadian expert on multiparty litigation retained by the ALRC as a consultant on its reference. An editorial commented:

So, at the moment, there is no great pressure being brought to bear for legislation to allow class actions. However, the need is pressing. . . . We are still unsure about the long term effects of many of the chemicals we consume or use and, somewhere among the major products, there is a time bomb ticking away. When it explodes our legal system must be ready.

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two extensions to the nsw ombudsman's powers to investigate police

. . . Dare we permit people to have some say about how they are policed? . . . F