

- or will be able to, complete his side of the bargain; and
- [3] B thereupon promises A an additional payment in return for A's promise to perform his contractual obligations on time; and
- [4] as a result of giving his promise B obtains in practice a benefit, or obviates a disbenefit; and
- [5] B's promise is not given as the result of economic duress or fraud on the part of A; then
- [6] the benefit to B is capable of being consideration for B's promise, so that the promise will be legally binding.

Those who have studied the law of contracts will be familiar with the case *Stilk v. Myrick* [1809] 2 Camp 317, 170 E.R. 1168 which dealt with a promise by a ship's captain to pay the crew extra if they worked the vessel back to London without two deserters from the crew being replaced. That promise was held not to be binding because the crew were doing no more than their duty. While not denying that that case is still good law, the Court in the *Williams & Roffey* case pointed out that the "relatively recent "concept of economic duress" may provide an answer in law to the question of policy which has troubled the courts since before *Stilk v. Myrick*, and no doubt led at the date of that decision to a rigid adherence to the doctrine of consideration".

THE FAIR TRADING ACT

- Chris Coyne, Partner, and Scott Budd, Solicitor, Henderson Trout Solicitors, Brisbane.

Queensland now has a Fair Trading Act to regulate the activities of corporations and individuals.

The Fair Trading Act, 1989 came into effect on 9 October, 1989. Queensland is the last of the States of Australia to enact such legislation.

The Act can be considered a "State Trade Practices Act" with the specific purpose of plugging some of the gaps which were constitutionally unavoidable in the Commonwealth Trade Practices Act. The State Act includes within the scope of its provisions the activities of individuals as well as corporations.

It mirrors the provisions of Part 5 of the Commonwealth Act relating to consumer protection dealing with misleading and deceptive conduct, unconscionable conduct, false or misleading representations and undue harassment or coercion in connection with the supply of goods or services.

Although the Act principally regulates the conduct of persons, as opposed to corporations, of particular importance is Section 95 which attributes to a corporation the conduct of its directors, servants or agents. The section provides that where a director, servant or agent of a company engages in conduct on behalf of that company and that conduct is within that person's actual or apparent authority, that conduct is deemed to have been engaged in by the company as well. Similar liability results where a director, servant or agent instructs another person to engage in that conduct.

It should also be noted that the liability attributable to corporations for the conduct of their directors, servants and agents is in addition to their personal liability for breaches of the Act.

The Act also provides for criminal penalties for breaches of its provisions. The important section here is Section 96 which removes the ability of say, directors of corporations to hide behind the veil of their company when breaches are committed. The section provides that where a company commits an offence against the Act each director or member of the governing body of the company shall be deemed to have also committed that offence.

Section 97 provides a defence to an action under Section 96 where the director or member of the governing body can show that the breach was caused by either a reasonable mistake, reasonable reliance on information provided by another person, the act or default of some other person, or an accident beyond the control of that person where it can be shown that reasonable precautions were taken and due diligence exercised to prevent the breach.

The Fair Trading Act imposes liability upon professionals previously immune to the provisions of the Trade Practices Act by virtue of their unincorporated status. Professionals such as doctors, dentists, lawyers and ac-

countants who operate traditionally in a partnership context will now be liable for any misleading or deceptive conduct or other such practices engaged in by themselves or their employees in the course of their practices.

Clearly the Fair Trading Act will have important ramifications on how both businesses and professional practices are conducted in the future and will result in a significant increase in the exposure of traders and professionals alike to claims for improper conduct.

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MINISTER ANNOUNCES IMMEDIATE PROTECTION OF HERITAGE BUILDINGS

On Sunday March 11, 1990 the Queensland Environment and Heritage Minister, Mr Pat Comben announced details of legislation to be known as the Historic Buildings Preservation Act.

From that date anybody demolishing, damaging or altering any building contained in a schedule of "Listed Historic Places" will be liable to fines of up to \$1 million as well as a jail term of up to seven years. The government will also prevent new buildings being erected on sites where heritage buildings are demolished.

Effectively this means that a freeze will apply to any proposals involving demolition, subdivision, significant alteration or development of listed properties from Sunday 11 March, 1990 unless permitted by the Minister.

Which properties are affected?

The Minister has announced that approximately 1100 properties and places considered to be of heritage value and of importance to the community are in the schedule. These include hotels, private dwellings, agricultural and pastoral buildings and structures, cemeteries, engineering works, sawmills and smelters, commercial properties and warehouses, churches and halls.

Recently the full list contained in the schedule to the Historic Places Preservation Bill was made available to the writer.

The proposed legislation

Queensland will model the proposed legislation on the New South Wales Heritage Act and the Victorian Historic Buildings Act and interim legislation will apply from 11 March, 1990. The legislation will prohibit unauthorised demolition and subdivision, significant alterations or development of listed properties.

Demolition will be defined as damaging, defacing, destroying, pulling down or removal of a building or work in whole or in part.

Subdivision will be defined as the division of a property containing a listed place into two or more parts.

Significant Alteration will be defined to include the making of substantial changes to the internal or external fabric or appearance of a building or work involving:

- refurbishment or renovation;
- painting or plastering except for the purpose of essential repair and maintenance;
- rebuilding, enlargement, extension, removal or replacement of existing structural fabric;
- any changes to the existing landscape of a listed property including changes to natural features or works.