



Queensland University of Technology
Faculty of Law

COMPARATIVE ANALYSIS OF OVERSEAS CONSUMER POLICY FRAMEWORKS

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Part 1: Introduction

1.1 Structure of the report

The Commonwealth Department of Treasury (Commonwealth Treasury) on behalf of Consumer Affairs Australia and New Zealand (CAANZ) has engaged the Queensland University of Technology (QUT) to conduct a comparative review of international consumer policy frameworks.

The principal jurisdictions identified for the purposes of the comparison are the European Union, the United Kingdom, the United States of America, Canada, and Singapore.

This comparative analysis identifies emerging issues and key developments in consumer policy and possible alternative approaches for providing consumer protection. It highlights where the chosen jurisdictions adopt different approaches to Australia, but does not identify best practice models in other jurisdictions.

The following four principal issues are considered in this review:

Issue 1: Approaches to unconscionable or highly unfair trading practices (Professor Stephen Corones, Faculty of Law, Queensland University of Technology)

The first issue for analysis is:

- Approaches to **unconscionable or highly unfair trading practices**:
 - **punitive fees** included in contracts that exceed the cost base (for example, regulating contract terms where transparency may not be enough);
 - the effectiveness of controls to limit **pyramid schemes**; and
 - the scope of **unsolicited selling laws** overseas and the approach to direct selling.

Issue 2: Approaches to regulation of e-commerce and peer-to-peer transactions (Professor Sharon Christensen, Faculty of Law, Queensland University of Technology)

The second issue for analysis is:

- How consumer laws have responded to the challenges of **e-commerce and peer-to-peer transactions**:
 - online payments and disclosure of prices in online transactions e.g. drip pricing;
 - regulatory approaches that are flexible enough to accommodate technical solutions to the problem being regulated and not inhibit innovation or protect existing business models; and
 - challenges with obtaining a remedy for breaches of the law overseas/ international reach of domestic consumer protection laws.

Issue 3: Institutional structures relating to the administration and enforcement of consumer laws

(Professor Justin Malbon, Faculty of Law, Monash University and Mr Allan Asher)

The third issue for analysis is:

- **Institutional structures** relating to the administration and enforcement of consumer laws (e.g. breadth of regulator powers; whether it is an enforcement model, administrative model or judicial model).

Issue 4: Measures to facilitate access to justice

(Associate Professor Jeannie Marie Paterson, Melbourne Law School, University of Melbourne)

The fourth issue for analysis is:

- Measures to facilitate access to justice, including
 - early intervention and consumer empowerment,
 - support for consumers in accessing dispute resolution, and
 - institutional support (e.g. from regulators or other third party advocates).

The structure of the report is to consider each issue in a separate Part. Within each part the relevant Australian law that applies to the issue identified is considered. Next, the laws of the principal comparator jurisdictions applicable to the issue are considered. Finally, the respective laws are compared and contrasted and similarities and differences are identified.

1.2 Consumer protection legislation in Australia

Under the Australian Constitution, legislative power in relation to consumer protection is divided between the Commonwealth and the State and Territory parliaments. The method adopted to achieve this for the ACL was to use the ‘application model’. Under this model, new legislation to apply universally throughout Australia is enacted by a lead legislator — in this case the Commonwealth, with the text of the ACL set out in Sch 2 of the *Competition and Consumer Act 2010* (Cth) (CCA). This text is made the law of the Commonwealth and of each State and Territory law by their individual applications laws — laws that apply the Schedule within each particular jurisdiction.

Although the principal provisions of the ACL only came into effect on 1 January 2011, many of these provisions are not novel. Instead, they are based on the consumer protection provisions of the *Trade Practices Act 1974* (Cth) (TPA), albeit in revised language. Other provisions, of the ACL are new at the Commonwealth level, but they have been modelled on provisions previously contained in State, Territory, or overseas legislation.

1.3 ACL as a National Uniform law

In the case of the Commonwealth, the application law is contained in Pt XI of the CCA. This restricts the application of Sch 2 by reference to the limits imposed on Commonwealth legislative power by the Australian Constitution and by reference to the policy decision to leave the regulation of financial services and products to the *Australian Securities and Investments Commission Act 2011* (Cth) (ASIC Act).

Section 131(1) of the CCA applies Sch 2 as a law of the Commonwealth only to ‘the conduct of corporations, and in relation to contravention of Chapters 2, 3 or 4 of Schedule 2 by corporations.’