



Queensland University of Technology
Faculty of Law

COMPARATIVE ANALYSIS OF OVERSEAS CONSUMER POLICY FRAMEWORKS

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CONTENTS

Part 1: Introduction	2-1
1.1 Structure of the report	2-1
1.2 Consumer protection legislation in Australia	2-2
1.3 ACL as a National Uniform law	2-2
Part 2: Executive summary	2-3
2.1 Approaches to unconscionable or highly unfair trading practices.....	2-3
2.1.1 General and specific protections.....	2-3
2.2 Misleading conduct	2-5
2.3 Unfair/unconscionable conduct	2-5
2.4 Role of codes of conduct in unfair/unconscionable conduct.....	2-6
2.5 Unfair terms and the requirement of good faith	2-6
2.6 Inclusion of punitive fees in contracts.....	2-6
2.7 Pyramid schemes.....	2-7
2.8 Unsolicited selling and cooling off periods.....	2-7
2.9 Approaches to regulation of e-commerce and peer-to-peer transactions	2-7
2.9.1 Summary.....	2-7
2.9.2 Product quality	2-7
2.10 Unfair pricing	2-9
2.11 Fake reviews	2-10
2.12 Fraud.....	2-10
2.13 Peer-to-peer transactions	2-11
2.14 Institutional structures relating to the administration and enforcement of consumer laws.....	2-11
2.14.1 Summary and key observations	2-11
2.15 Jurisdictional comparisons	2-12
2.15.1 Comparison of main institutions for consumer protection.....	2-12
2.15.2 Legislation and jurisdictional comparisons	2-12
2.15.3 Comparative issues in policy and practice	2-13
2.16 The revised United Nations guidelines for consumer protection	2-13
2.17 United Nations sustainable development goals.....	2-13
2.18 Digital purchasing and digital products	2-14
2.19 Other interesting developments	2-14
2.20 Measures to facilitate access to justice.....	2-14
2.20.1 Summary.....	2-14

2.21	The form of and content of legislation.....	2-15
2.22	Information and education.....	2-16
2.23	Assistance and advice.....	2-16
2.24	Alternative dispute resolution.....	2-16
2.25	Regulatory oversight and enforcement.....	2-17
Part 3:	Approaches to unconscionable or highly unfair trading practices	18
3.1	Legislative approaches to regulating unconscionable or highly unfair trading practices	18
3.2	General protections in Australia.....	19
3.2.1	Introduction.....	19
3.2.2	General protections in Australia — misleading conduct.....	20
3.2.3	General protections in Australia — unconscionable conduct.....	21
3.2.4	Different interpretations of statutory unconscionable conduct.....	22
3.2.5	General protections in Australia — unfair terms	23
3.2.6	General protections in Australia — excluded terms	26
3.3	Punitive fees in contracts	28
3.3.1	Australia.....	28
3.3.2	Application of statutory unconscionable conduct to punitive fees	28
3.3.3	Application of unfair terms to punitive fees in contracts.....	29
3.3.4	Competition and Consumer Amendment (Payment Surcharges) Act 2015.....	30
3.3.5	European Union.....	31
3.3.6	General protection — punitive fees	32
3.3.7	Specific protection — punitive fees	34
3.4	United Kingdom.....	35
3.4.1	Introduction.....	35
3.4.2	General protection — punitive fees	36
3.4.3	Specific protection — punitive fees	37
3.5	United States	38
3.5.1	Introduction.....	38
3.5.2	General protection — punitive fees	39
3.5.3	Financial regulation	40
3.5.4	Industry Specific Regulation	41
3.6	Canada.....	41
3.6.1	Introduction.....	41
3.6.2	Banking Industry.....	41
3.7	Singapore.....	42
3.8	Pyramid selling	43
3.8.1	Australia.....	43
3.8.2	Specific protection — pyramid selling.....	43
3.8.3	Meaning of ‘pyramid scheme’	44
3.8.4	Meaning of ‘entirely or substantially’	45
3.8.5	Meaning of ‘in relation to’	45
3.9	European Union.....	47
3.9.1	Introduction.....	47
3.9.2	General protection — pyramid selling	48
3.9.3	Specific protection — pyramid selling.....	49

3.10	United Kingdom.....	49
3.10.1	Introduction.....	49
3.10.2	General protection — pyramid selling	50
3.10.3	Specific protection — pyramid selling.....	51
3.11	United States of America.....	52
3.11.1	Introduction.....	52
3.11.2	General protection — pyramid selling	52
3.12	Canada	53
3.12.1	Introduction.....	53
3.12.2	Specific protection — pyramid selling.....	54
3.13	Singapore.....	55
3.13.1	Introduction.....	55
3.13.2	Specific protection — pyramid selling.....	55
3.14	Unsolicited selling laws.....	57
3.14.1	Australia.....	57
3.14.2	General protections — unsolicited selling laws	58
3.14.3	Specific protection — unsolicited selling	58
3.14.4	European Union.....	60
3.14.5	United Kingdom.....	62
3.14.6	General protection — unsolicited selling.....	63
3.14.7	Specific protection — unsolicited selling	65
3.14.8	United States	65
3.14.9	Canada	68
3.14.10	Singapore.....	69
3.15	Comparing and contrasting	71
3.15.1	Introduction.....	71
3.15.2	General protections.....	71
3.15.3	Misleading conduct: reasonable consumer v average consumer	72
3.15.4	Statutory unconscionable conduct v unfair commercial practice.....	74
3.15.5	Role for codes of conduct.....	75
3.15.6	Aggressive commercial practices	75
3.15.7	Unfair terms and the requirement of good faith	76
3.15.8	Inclusion of punitive fees in contracts.....	77
3.15.9	Pyramid Schemes: promoting retail sales over recruitment.....	78
3.15.10	Unsolicited selling and cooling off periods.....	79
Part 4:	Approaches to regulation of e-commerce and peer to peer transactions.....	80
4.1	Introduction — regulatory approaches to e-commerce	80
4.2	Product quality in e-commerce.....	81
4.2.1	Issues	81
4.2.2	Australia.....	83
4.2.3	United Kingdom.....	89
4.2.4	United States	92
4.2.5	Canada	95
4.2.6	Singapore.....	97
4.2.7	Comparison of regulatory approaches.....	98

4.3	Unfair or misleading pricing practices.....	99
4.3.1	Issues	99
4.3.2	Australia.....	101
4.3.3	United Kingdom.....	103
4.3.4	United States	106
4.3.5	Canada.....	109
4.3.6	Singapore.....	113
4.3.7	Comparison — Drip pricing and surge pricing in e-commerce.....	116
4.4	Online reviews and endorsements.....	117
4.4.1	Issues	117
4.4.2	Australia.....	119
4.4.3	United Kingdom.....	120
4.4.4	United States	122
4.4.5	Canada	125
4.4.6	Singapore.....	126
4.4.7	Comparison.....	127
4.5	Consumer fraud.....	128
4.5.1	Issues	128
4.5.2	Australia.....	130
4.5.3	United Kingdom.....	130
4.5.4	United States	131
4.5.5	Canada	133
4.5.6	Singapore.....	135
4.5.7	Comparison.....	136
4.6	Peer-to-peer transactions and the sharing economy.....	138
4.6.1	Overview.....	138
4.6.2	Peer to peer platforms — Scope of report.....	139
4.6.3	Consumer issues in peer to peer transactions	141
4.6.4	Australia.....	146
4.6.5	Other jurisdictions	148
4.6.6	Increased self-regulation.....	149
4.6.7	Comparison.....	149
Part 5: Institutional structures relating to the administration and enforcement of consumer laws		150
5.1	Introduction.....	150
5.2	Functions of consumer law enforcement and policy agencies	151
5.3	Country institutional structures for consumer law	152
5.4	Comparison of main institutions for consumer protection.....	153
5.4.1	United States	153
5.4.2	Canada	161
5.4.3	New Zealand	163
5.4.4	Singapore.....	163
5.4.5	United Kingdom.....	164
5.5	Legislation and jurisdictional comparisons	164
5.5.1	United States	164
5.5.2	Canada.....	166

5.5.3	New Zealand	166
5.5.4	Singapore	169
5.5.5	United Kingdom.....	171
5.6	Comparative issues in policy and practice	172
5.6.1	United States	172
5.6.2	Canada	173
5.6.3	New Zealand	174
5.6.4	Singapore	176
5.6.5	United Kingdom.....	178
5.7	Revised United Nations Guidelines for Consumer Protection	180
5.8	2030 UN Agenda for Sustainable Development.....	181
5.9	Digital purchasing and digital products	181
5.9.1	Obstacles to the Digital Single Market (2015).....	182
5.9.2	Key findings of the surveys.....	182
5.9.3	Types of purchases and online spending.....	183
5.9.4	Consumer attitudes and behaviour regarding online purchases	183
5.9.5	Perceived and actual barriers with online (cross-border) purchases.....	183
5.10	Other interesting developments	184
5.11	The European Consumer Centres Network (ECC-Net)	185
5.11.1	Operational information.....	185
5.11.2	Role and activities.....	186
5.11.3	Future challenges	186
5.11.4	Contacts and complaints	187
5.11.5	Research activity.....	187
5.11.6	Chargeback as a consumer protection tool.....	189
5.11.7	Other chargeback possibilities.....	191
5.12	Proposal for a Pan-European Trust Mark	192
5.12.1	Consumer trust in e-commerce.....	192
5.12.2	Trustmarks for e-commerce	193
5.12.3	Advantages and disadvantages of an EU Trustmark for e-commerce	193
5.12.4	26.4 Legal framework for e-commerce Trustmarks.....	194
5.12.5	An EU Trustmark for e-commerce.....	194
5.13	Best practices for all consumer redress	195
5.13.1	Objectives	196
5.13.2	The European e-Justice Portal	197
5.13.3	Consumer Conditions Scoreboard.....	198
5.13.4	Contribution of the Internal Market and consumer protection to growth.....	198
Part 6:	MEASURES TO FACILITATE ACCESS TO JUSTICE.....	201
6.1	Introduction.....	201
6.2	The form of and content of legislation.....	203
6.2.1	Australia.....	203
6.2.2	South Africa	204
6.3	Information and education.....	204
6.4	Information provided by regulators and consumer advocates.....	205
6.4.1	Australia.....	205
6.4.2	Canada	207

6.4.3	Singapore.....	208
6.4.4	South Africa.....	208
6.4.5	United Kingdom.....	208
6.5	Information via traders.....	209
6.5.1	Australia.....	209
6.5.2	Singapore.....	209
6.5.3	United Kingdom.....	209
6.6	Advice and assistance.....	210
6.6.1	Australia.....	210
6.6.2	Canada.....	211
6.6.3	Singapore.....	211
6.6.4	South Africa.....	211
6.6.5	United Kingdom.....	211
6.6.6	United States.....	212
6.7	Alternative dispute resolution.....	212
6.8	Tribunals and small claims courts.....	212
6.8.1	Australia.....	213
6.8.2	Singapore.....	214
6.8.3	South Africa.....	215
6.8.4	United Kingdom.....	215
6.8.5	Canada.....	215
6.8.6	United States.....	215
6.9	Mediation.....	216
6.10	Compulsory arbitration.....	216
6.10.1	Australia.....	216
6.10.2	United Kingdom.....	217
6.10.3	United States.....	217
6.11	Ombudsman services.....	217
6.11.1	Australia.....	218
6.11.2	South Africa.....	219
6.11.3	United Kingdom.....	220
6.12	Online dispute resolution.....	222
6.12.1	Canada (British Columbia).....	222
6.12.2	United Kingdom.....	223
6.13	Compliance and enforcement action by regulators.....	223
6.13.1	Australia.....	224
6.13.2	Canada.....	225
6.13.3	United Kingdom.....	226
6.13.4	Singapore.....	226
6.14	Comparison and analysis.....	226

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.’