

ARPI Submission to Australasian Compliance Institute on proposed National Consumer Credit Reform Legislation

On 27 April 2009 Senator the Hon Nick Sherry, Minister for Superannuation and Corporate Law, released [draft National Consumer Credit Reform legislation](#). This process will see the Commonwealth initially assume responsibility for state and territory consumer credit legislation as a first step in enacting federal consumer protection legislation.

Consumer interests are best served by simple, understandable law which is dynamic and adaptive. The policy presently being pursued has the potential for significant benefits to the market and consumers, but carries significant systemic risk.

Stasis

In the past, Commonwealth law and associated regulatory structures has been characterised as complex and change-resistant legislation. This has unique benefits and risks in the area of consumer law.

While complexity is sometimes necessary to create an appropriate level of precision, it is important that consumer law is expressed in simple understandable language. The existing Commonwealth legislative drafting style is difficult to reconcile with this aim. Commonwealth legislative style strives for precision rather than simplicity.

Significant effort will be necessary to ensure that the legislation which emerges from this process achieves an appropriate balance between the competing objectives of precision and simplicity.

While change-resistance is sometimes a desirable feature when articulating fundamental principle, it is inappropriate when dealing with dynamic markets where undesirable practice can emerge quickly and spread rapidly. Because of the legislative process, Commonwealth legislation is not capable of dynamic change. Because of the distance of federal policy from the market, Commonwealth legislation is not adaptive. Commonwealth law should be used to lock in place settled rules (of which there are a great number in consumer law), rather than attempt to deal with emergent market behaviour (which are sometimes more appropriately met at a local level, within the existing strengths of competitive federalism).

Insufficient rules

Australian consumer law is characterised by poor uptake of developing legislative schemes developed in like overseas jurisdictions. Best practice in Australian consumer law is often conditioned on developments in state law in New England. Initiatives adopted in those jurisdictions include:

Advertising or Offering to Sell on an "Easy Credit" Basis

In recent years, many businesses have commenced offering “easy credit” arrangements as inducement for consumers to purchase consumer goods. These arrangements are debt traps.

In New England states it is now a deceptive act for a seller to induce a buyer to enter into a transaction by advertising or offering to sell to such buyer on easy or lenient credit terms (or words to similar effect or meaning). The facts often demonstrate that the credit or repayment terms of the credit arrangement are neither lenient nor easy.

These practices are a significant debt trap and push many low income families over the edge.

Private Study, Business, Technological Social Skills and Career Schools – Scams

In New England states (as in Australian jurisdictions) in recent years, many businesses have commenced offering courses to give students trade skills in emerging employment areas. These schools have adopted a range of unfair and deceptive practices to attract students.

Earnings: The making of deceptive statements that have the tendency to mislead or deceive students, prospective students, or the public regarding actual or probable earnings or opportunities in any vocation or field of activity should be prohibited as an unfair and deceptive trade practice.

Influence: The making of deceptive statements which have the tendency to mislead or deceive students, prospective students or the public, by way of advertising or otherwise concerning private home study, business, technological, career, or social skills schools, their activities in attempting to enroll students, or concerning the character, nature, quality, value, or scope of any course of instruction or educational service offered, its influence in obtaining employment for its students, or in any other material respect, should be prohibited as an unfair and deceptive trade practice.

Opportunity: The making of deceptive statements that have the tendency to mislead or deceive students, prospective students, or the public regarding any opportunities in any vocation or field of activity as a result of the completion of any given course of instruction or educational service should be prohibited as an unfair and deceptive trade practice.

Offering “limited time offers”, fictitious price offers, money back agreements in connection with study should be prohibited as an unfair and deceptive trade practice.

Price gouging

In New England states (as in Australian jurisdictions) in recent years, depressed economic conditions have led to opportunistic business activities.

It should be an unfair or deceptive act or practice, during any market emergency, for any business to sell or offer to sell any essential service product for an amount that represents an unconscionably high price.

Embedded rules

Increasingly, complex consumer products embed legislative compliance within the structure of the product. For example, fire alarm devices contain a number of automatic features deployed by manufacturers to meet the legislative requirements of the jurisdiction in which the item was manufactured.

This type of practice invites recognition and active participation by jurisdictions such as Australia which tends to import such consumer items, after a home jurisdiction's legislative requirements have otherwise crystallized in the electronic architecture of the item.

This type of behaviour can ensure a basic level of 'market' ready goods – but it poses significant risks where local climatic conditions (humidity, dryness, altitude, temperature variations) are not factored into account. Active involvement is necessary at an international level in these emergent markets will ensure local consumer requirements are addressed and risk minimised.