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Articles

Evaluating the capacity for the unconscionability provisions in the consumer laws of Australia and New Zealand to protect Indigenous consumers
— *Mark A Giancaspro* 117

Safeguarding vulnerable market participants is a critical function of consumer protection law. Statutory prohibitions are becoming a common feature of consumer law frameworks and provide a powerful tool to address instances of consumer exploitation. Australia has had unconscionability laws since 1986 and New Zealand introduced theirs in 2022. As the case law demonstrates, Indigenous consumers in both jurisdictions have often been victimised, and questions have been raised as to the efficacy of such laws in protecting these peoples. Against this backdrop, this article evaluates the capacity for the statutory unconscionability provisions in Australia and New Zealand to adequately protect Indigenous consumers and address instances of their exploitation. It also suggests how we can improve efforts in this regard, concluding that the statutory framework has been applied effectively but that more can and must be done.

Ex ante access to justice
— *Shmuel I Becher* 138

Access to justice is a key challenge in the consumer protection landscape. Scholars and policymakers acknowledge this challenge and have devised various means to increase consumers' access to justice. Small claims courts and dispute tribunals, class actions and group litigation, exemplary damages, educational efforts, and accessible legal advice all assist consumers in accessing the court system and enforcing their rights. However, these fail to address what this article dubs 'ex ante access to justice': the stage in which policymakers and legislators design the rules that govern business-to-consumer relationships. Industry pressure, lobbying and capture can result in ineffective consumer protection laws that benefit powerful industry forces and undermine consumers' interests. This article: (1) conceptualises the idea of ex ante access to justice; (2) illustrates the problem by referring to two specific domains; and (3) offers a suite of corresponding law and policy improvements.

Banking behind bars — The case for prioritising facilitation of bank accounts to prisoners
— *Victoria Stace and John Sibanda* 163

In 2022 FinCap asked researchers at Victoria University Te Herenga Waka to look into the issues surrounding access to bank accounts by persons in prison. This article draws on the findings from that research and makes the case for the development in New Zealand of a programme along the lines of

that which operates in the UK, under which the major banks and Corrections would work together to make access to a basic bank account available for all prisoners (excluding those on remand or short sentences), before release.

The case for a 'Treating Customers Fairly' regime in Australia: Evidence from other jurisdictions and a consumer survey
— *Nicola Howell, Therese Wilson, Nina Reynolds, Andy Schmulow and Paul Mazzola* 183

In the light of recommendations from the Financial Services Royal Commission, the Australian Law Reform Commission is currently reviewing the financial services regulatory framework, including to examine how fundamental norms (such as fairness) can be more effectively incorporated. In this article, we present results from a national survey of 2026 consumers to show that consumers have high expectations of fair treatment by firms, but that those expectations are not always met. Given these findings, we argue that a principles-based and outcomes focused 'Treating Customers Fairly' regime, such as those implemented in the United Kingdom and South Africa, should be given serious consideration by the Law Reform Commission.

A new frontier? Consumer protection in international trade agreements
— *An Hertogen* 209

In this article, I discuss how preferential trade agreements have started incorporating consumer protection provisions in deviation from the traditional practice of leaving consumer protection to domestic law. The article first outlines the traditional frontier between consumer law and trade law. After describing two models for incorporating consumer protection provisions — in chapters on e-commerce or in a dedicated consumer protection chapter — the article explores whether this is a welcome evolution or an instance of trade agreements overstepping. I argue that a rationale exists for including consumer protection in trade agreements due to the growth of cross-border business-to-consumer transactions and the need to align regulations to the scope of the problem. However, the institutional structure around consumer protection in trade agreements must be improved to make this successful.

Book Review

Consumer Law in New Zealand, Kate Tokeley and Victoria Stace (eds) 228
— *Luke Nottage*