

## **YOUR IACL Newsletter January 2018**

WELCOME to all and a very happy New Year

It is a great pleasure to re-introduce the IACL newsletter. This newsletter is a way for members to stay connected and aware of what is happening across the world in between our international conferences.

Please do circulate it to any new person you think may want to take part in our activities and become a member. Please feel free to also send your news items via email to [Christine.riefa@brunel.ac.uk](mailto:Christine.riefa@brunel.ac.uk). The newsletter will come out every three months. For any items that may not be able to wait that long, you can contact us to post on our website or our facebook page (see below).

Christine Riefa, on behalf of the IACL board.

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## **NEWS FROM THE ASSOCIATION**

### **Welcome to our new board members elected in Brazil**

Gail Pearson, the previous president has stepped down and the Board has asked her to remain a Board member until the next election likely to take place at the 17th International Conference to be held in 2019. Thereafter, she is likely to become a member of the Advisory Board to the IACL, together with previous presidents and founding members. The General Assembly in Porto Alegre confirmed her position as a member of the Board and thanked her for her efforts in the past years.

Michelle Kelly-Louw, previously the vice-president, was nominated to replace Gail as President for the next two years. The majority of members of the Board agreed (mostly via e-mail) prior to the IACL Conference, and she was subsequently during the General Assembly in Porto Alegre appointed as the President.

Marco Loos, one of the Board members, was nominated as Vice-President for the next two years. The majority of members of the Board agreed (mostly via e-mail) prior to the IACL

conference, and he was subsequently during the General Assembly in Porto Alegre appointed as the Vice-President.

Monika Jozon is thanked for serving as a member of the board. She is replaced by Mateja Durovic. At the board meeting Mateja Durović was nominated to serve as a board member by Claudia Marques and Sebastián Barocelli. The rest of the board, in so far as present at the meeting, agreed with the nomination and during the subsequent election he has been appointed as a member of the Board.

The rest of the Board members remain on the Board for the next two years.

### **Next IACL international conference awarded to...**

This year we had three fantastic and equally exciting bids to host the International Association of Consumer Law's 2019 Conference. We received bids from Indianapolis, Macau and Hamburg. We thank all bidders.

**The bid was won narrowly by Indianapolis.** The Indiana University Robert H. McKinney School of Law, Indianapolis under the leadership of Professor Jim Nehf, will host the International Association of Consumer Law's 17<sup>th</sup> International Conference. We congratulate Prof Jim Nehf and his winning team! It is the first time that this conference will be held in North America and we look forward to an exciting conference.

The exact dates for the conference and the call for papers will be posted in due course.

### **Follow us on Facebook**

We now have a facebook page to keep you posted. Follow us! Please see our Facebook page for exciting news and updates <https://www.facebook.com/IACLaw/>

Contact us through the page to post your own announcements about what is happening in your jurisdiction. And of course, our website is still available for your to consult, despite some recent teething problems. Our thanks to those working behind the scene to keep it going. <http://www.iacl.net.au>

## **2. NEWS FROM THE JURISDICTIONS**

### **India**

Ashok Patil: Launch of a new online ADR programme

The Online Consumer Mediation Centre (OCMC, National Law School of India University) has launched a programme, which provides a platform for online mediation to resolve consumer disputes.

The parties are initially allowed to negotiating on resolving the dispute. If on completion of 7 days they have not been able to reach a settlement, a neutral third-party will be appointed to reach a settlement over another 23 days. A settlement agreement will be final and binding between the parties. The benefits include low costs to both parties, easy accessibility as it online and at any time without delays and neutrality.

The pilot project is tailored for sale disputes with e-Commerce companies and the analysis of mediation performance metrics will be used to further enhance the process.

## **Romania**

Rodica Diana Apan: The Romanian law regarding the insolvency of the natural person will come into force on 1 January 2018, and not 1 August 2017, as it was at the last postponement. Please find below the link to an article entitled “A New Perspective on Insolvency – the Procedure Applicable to the Debtor who is a Natural Person (I)” published in the Curentul Juridic Review  
no.1/2017:[http://revcurentjur.ro/old/arhiva/attachments\\_201701/recjurid171\\_9F.pdf](http://revcurentjur.ro/old/arhiva/attachments_201701/recjurid171_9F.pdf)

## **Denmark**

Jan Trzaskowski:

A new law on marketing was adopted 3 May 2015 (law No. 426). It entered into force on 1 July 2017. The purpose of this revision was to ensure compliance with the Unfair Commercial Practices Directive.

## **Argentina**

Sebastian Barocelli: The conclusion and recommendations of the Mar Del Plata conference are available in Spanish on the IACL website.  
Visit, <http://www.iacnet.au/news/>

## **EU**

Christine Riefa:

New research carried for BEUC shows that there are significant obstacles to cross border e-commerce and the protection of consumers. For more on those issues, see: <http://www.beuc.eu/publications/european-consumers-face-significant-hurdles-when-shopping-online-outside-eu-new/html>

## **USA**

Kathleen Engel:

## **US Congress Strikes down Consumer Financial Protection Bureau Ban on Class Action Arbitration Clauses**

In July 2017, the Consumer Financial Protection Bureau (CFPB) issued a new rule banning companies from using mandatory arbitration clauses to deny groups of people their day in court. Many consumer financial products like credit cards and bank accounts have arbitration clauses in their contracts that prevent consumers from joining together to sue their bank or financial company for wrongdoing. By forcing consumers to give up or go it alone – usually over small amounts – companies could sidestep the court system, avoid big refunds, and continue harmful practices. The CFPB's new rule would have deterred wrongdoing by restoring consumers' right to join together to pursue justice and relief through group lawsuits.

Before issuing the rule, the CFPB engaged in extensive research for over five years and produced a report that exceeded 700 pages, documenting the Bureau's findings and its rationales for the rule. In response, many Republicans in Congress and the Dept. of the Treasury and the Office of the Comptroller of the Currency— both federal agencies— issued reports that falsely claimed that the new rule would impose an undue burden on companies and increase the cost of credit to consumers. Ultimately, the Senate took a vote to decide whether to revoke the rule, which resulted in a 50-50 split. Vice-President Pence broke the tie and, as expected, voted to repeal the rule.

This was a huge defeat for consumers and the CFPB.

## **United Kingdom**

Laura Clausen:

Brexit is now gathering pace and a Parliamentary inquiry under the EU Justice Sub-Committee has been launched to look into Brexit in relation to consumer protection rights. It is estimated that around 90 pieces of legislation make up the body of EU law designed to protect consumers and the UK's departure from the EU cast doubt over the continued application of this significant body of EU law that protects the consumer rights of millions of people in the UK. The latest oral evidence was given by the Executive Director of Strategy and Competition of the Financial Conduct Authority. The final oral evidence was concluded in October 2017 and this stage of the inquiry has now concluded and a report is in preparation.

For more on the issue, see: <http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-justice-subcommittee/inquiries/parliament-2017/brexit-consumer-protection-rights/>

## Australia

Nicola Howell:

### **Forthcoming developments in Consumer Credit and Financial Services Law in Australia**

In recent years, Australia has experienced significant changes in the laws designed to protect consumer credit and financial services consumers, and there is no sign that the pace of change is abating. A few of the recent reviews and proposed future developments are described below.

#### **The proposed merger of Ombudsman schemes into a new Australian Financial Complaint Authority.**

Businesses who provide financial and credit products and services to consumers have long been obliged (as a licence condition) to belong to an external dispute resolution scheme that has been approved by the financial services regulator ASIC (the Australian Securities and Investments Commission). Since 2009, following mergers and consolidation in the sector, there has been only two ASIC approved schemes - the [Financial Ombudsman Service](#) (FOS) and the [Credit and Investments Ombudsman](#) (CIO). There is also a statutory based scheme, the [Superannuation Complaints Tribunal](#) (SCT), which has jurisdiction over disputes about the decisions or conduct of a trustee of a regulated superannuation fund and other matters.

An independent review of dispute resolution in the financial services sector took place earlier this year. The [final report](#) acknowledged that the current framework generally provides low cost, speedy and flexible access to redress. However, the report raised concerns about, among other things, the costs and confusion associated with having multiple schemes, the monetary limits and compensation caps, access by small businesses, the efficiency of the resolution of superannuation disputes, gaps and overlaps in the coverage of the schemes.

The review therefore recommended that a new single EDR body be established to handle all financial complaints, replacing FOS, CIO and the SCT. The review also recommended an increase in monetary limits and compensation caps, higher limits and caps for small business disputes, and changes to strengthen accountability and oversight.

The Government accepted all the recommendations of the Review, and [legislation](#) to establish the new Australian Financial Complaints Authority was tabled in Parliament on 14 September 2017.

However, the [Putting Consumers First](#) report from the Senate Economic Legislation Committee, released on 17 October, suggests that the path to the new AFCA may not be so

easy. The Labor (Opposition) members of the Committee has indicated that they did not support the proposal to abolish the SCT, on the basis that this proposal would weaken protections and outcomes for consumers.

### **Addressing credit card over-commitment**

Consumer groups and others have been concerned about credit card overcommitment for some time. Although Australia introduced new responsible lending obligations in 2009, it has been argued that these have not worked well for a subset of credit card customers, who ‘incur very high interest charges on a persistent basis because of the inappropriate selection and provision of credit cards as well as certain patterns of credit card use’.<sup>[1]</sup>

Following a [consultation process](#) in 2016, on 19 October 2017, the Government tabled [legislation](#) that proposes amendments to the credit legislation to :

- Tighten responsible lending obligations for credit card contracts, including by requiring that the unsuitability of a credit card contract or credit limit increase for a consumer be assessed according to whether the consumer could repay an amount equivalent to the credit limit of the contract within a period determined by ASIC;
- Prohibit unsolicited credit limit increase offers;
- Simplify the calculation of interest charges under credit card contracts, including by prohibiting retrospective imposition of interest charges on a balance that had the benefit of an interest free period; and
- Allowing customers to request a credit limit reduction or termination online.

### **Australian Consumer Law Review**

In 2010, the [Australian Consumer Law](#) (ACL) came into force (as a schedule to the *Competition and Consumer Act 2010* (Cth)). The ACL introduced changes to the generic consumer law, including a new prohibition against unfair terms in consumer contracts, and a new consumer guarantees regime for products and services (replacing an implied terms regime for dealing with quality issues).

For financial services, the ACL provisions are largely mirrored in the *Australian Securities and Investments Commission Act 2001* (Cth). One exception that the consumer guarantee provisions have not been included in the *ASIC Act*, leaving financial services governed by an implied terms regime. (On the other hand, consumer financial services are heavily regulated in terms of disclosure, conduct and advice by chapter 7 of the *Corporations Act 2001* (Cth) and by the *National Consumer Credit Protection Act 2009* (Cth)).

The ACL was reviewed in 2016-17, with the [Final Report](#) of the Review released in April 2017. Some of the changes proposed in the review will affect financial services, including proposals to increase the maximum penalties for non-compliance (up to \$10 million for a

corporation), remove the exemption of insurance contracts from the unfair contract terms provisions, clarify that the ASIC Act provisions apply to financial products, as well as financial services, and increase the monetary threshold in the definition of ‘consumer’ from \$40,000 to \$100,000.

The Review stopped short of recommending the introduction of a general prohibition against unfair trading, but instead proposed to explore in future work how an unfair trading prohibition could be adopted within the Australian context to address potentially unfair business practices.

The Review Report was considered at a meeting of the relevant Commonwealth and State Ministers in August 2017, at that meeting, Ministers [agreed](#) for some changes to the ACL to be progressed as soon as possible (including an increase in the maximum penalties), and for other changes to be the subject of regulatory impact assessment. To date, no legislation to amend the ACL has been tabled.

### **But that is not all ...**

The above examples represent only the tip of the iceberg of recent reviews and consultations relevant to consumer credit and financial services. Others include:

- The 2017 Review of the Code of Banking Practice, which has recommended major changes in the structure, wording and content of the Code, see the [Final Report](#) of the Code Review, the [Report of the Review of the Code Compliance Monitoring Committee](#), and the [industry’s response](#) to the recommendations. The industry has also agreed to include in the revised Code new provisions to deal with concerns about the sale of [consumer credit insurance](#).
- Proposals from the 2014 [Financial System Inquiry](#) to introduce a new product design and distribution obligation for financial services providers, and to give ASIC a product intervention power. Earlier this year, the Government [consulted](#) on draft proposals to implement these recommendations.
- Various reviews and inquiries into the banking and finance sectors, following public outcry about bank conduct in relation to financial planning, investment, life insurance, and insurance. These include an [ongoing review of the four major banks](#) by the House Economics Committee; and a [review of consumer protection in the banking, insurance and financial sector](#) by the Senate Standing Committee on Economics. The Government has also recently introduced [legislation](#) to impose an enhanced accountability framework for authorised deposit-taking institutions and their directors and senior executives.
- A review of [ASIC’s enforcement regime](#), which has included consultation on ASIC’s licensing powers and its power to ban senior financial sector officials, and on industry codes of conduct.
- A review of provisions in the *National Consumer Credit Protection Act 2009* (Cth) that target small amount credit contracts. This [Final Report](#) of the review recommended the retention of the price cap for SACCs; the introduction of a protected earnings cap for all SACC customers; a continued ban on loans with a term of less than 15 days; a requirement

that default fees not exceed their actual costs; and the introduction of a price cap for consumer leases. The Government has [accepted](#) most of the recommendations of the review, and [exposure draft legislation](#) to implement the changes was released for consultation on 23 October 2017.

It is safe to say that for those interested in consumer protection in the Australian credit and financial services sector, the coming months and years are likely to provide plenty of law reform material to review and comment upon.

### 3. **NEW BOOKS TO BE AWARE OF ...**

Christine Riefa, **Consumer protection and online auction platforms**, towards a safer legal framework. The book spans many current e-commerce issues including the liability of intermediaries and has just been re-edited in a paperback collection. <https://www.routledge.com/Consumer-Protection-and-Online-Auction-Platforms-Towards-a-Safer-Legal/Riefa/p/book/9780754677109>

#### **United States Consumer Law Attorney Fee Survey Report 2015-2016**

This 403 page Survey Report publishes the results of the United States Consumer Law Attorney Fee Survey for 2015-2016. The only national survey of Consumer Law practitioners in the United States and its Territories since 1999, the data has been used by state and federal courts, the U.S. Court of Federal Claims, the U.S. Department of Justice, the U.S. Department of Labor, and the American Arbitration Association to determine reasonable Consumer Law hourly fee rates, resulting in more than \$7.9 million in awards across the United States.

Attorneys in every state and the U.S. Territories took part in this national peer-reviewed survey of Consumer Law attorneys and their law practice economics.

The Survey Report provides detailed data for the entire United States, Washington D.C., Puerto Rico, the U.S. Virgin Islands, and 98 greater metropolitan areas. From Cape Coral, Florida to Eugene, Oregon, from San Diego, California to Hartford, Connecticut, and points in between, this survey provides lower quartile, average and median, and upper quartile hourly rates for attorneys, paralegal fee rates, and rates by years in practice, degree of niche specialization, and more.

Available as a free pdf book download from the National Consumer Law Center, the National Association of Consumer Advocates, the National Association of Consumer Bankruptcy Attorney web site or directly from its internet link: <http://tinyurl.com/USAtyFeeSurvey>

### 4. **CONFERENCES/ JOURNALS – CALL FOR PAPERS**

**Call for papers: International Journal on Consumer Law and Practice (IJCLP) VOL VI (2018)**



The Board of Editors now invites submissions for the fourth volume of IJCLP which is to be launched in 2018 on varied issues of National and International issues on Consumer Protection Laws. Contributions from academicians, practitioners, students of law and allied fields are all welcome.

Submissions can be made under the following heads:

1. Articles and Research papers (4,000-5,000 words incl. of foot notes)
2. Essay (3,000-4,000 words incl. of foot notes)
3. A Note (2,500 words incl. of foot notes)
4. A Case Comment, Legislative Briefs (2,500-3,000 words incl. of foot notes)
5. A Book Review (2,000 words incl. of foot notes)

Please submit your written contribution addressed as follows:

Prof (Dr) Ashok R Patil, Chief Editor, National Law School of India University, Bengaluru, Nagarbhavi Circle, Bengaluru 560072

Please also email your contribution in a MS word format along with a covering letter to following: [consumerlaw@nls.ac.in](mailto:consumerlaw@nls.ac.in)

Your email must be received on or before **31<sup>st</sup> May 2018**.

Please be aware of the following:

1. The cover letter should include: (i) Title of the paper; (ii) abstract (max. 250 words); (iii) name of the author (if co-authored: full details of all authors); (iv) designation; (v) institutional affiliation; (vi) correspondence address, (vii) along with CD
2. The article should contain a disclaimer to the effect that the submitted work is original and is not being published or under consideration for publication elsewhere
3. All citations should be placed in footnotes and in accordance with The Bluebook: A Uniform System of Citation (19<sup>th</sup> Ed)
4. All submission will go through an initial round of review by the editorial board and selected pieces will subsequently be sent for peer-review before finalisation for publication

### **Call for Papers: 2018 Teaching Consumer Law Conference**

The tenth biennial international Teaching Consumer Law Conference is to be held in Santa Fe, New Mexico on the 18<sup>th</sup>-19<sup>th</sup> May 2018. The subject is: "Teaching Consumer Law: Where Have We Been – Where Are We Going?".

The 2018 Conference will focus on traditional issues of consumer law in the context of significant changes in technology, privacy and social media.

Papers and presentations are invited on any of the below themes or any other topic related to the teaching of consumer law:

- How increased use of social media can be integrated into a consumer law course
- What innovations can or should be brought to the consumer law classroom to reflect popular culture?
- Do we need more consumer regulation, or less?
- What is the impact in the US of the Consumer Financial Protection Bureau (CFPB) and how do you teach about the CFPB?
- Are there innovative ways to resolve consumer problems other than the typical court and ADR systems?
- How do we deal with intra-state and intra-national consumer transactions?
- Is online dispute resolution good or bad?
- How can the multitude of subjects encompassed within the term “consumer law” be taught – what should be emphasised and what should be deleted?
- International consumer law developments and innovations
- Recent developments in substantive US consumer law
- What do practicing attorneys see as the current consumer law issues?

The topics may discuss the law of any jurisdiction but the emphasis is on topics of interest to law school professors and directed at those currently teaching or interested in teaching consumer law at law school or college level.

If you wish to submit a paper or presentation topic, please forward a proposal to following:

Prof Richard M Alderman: [alderman@uh.edu](mailto:alderman@uh.edu)

Please include a brief abstract (max. 400 words) and contact information for the author.

Proposals must be submitted no later than **15<sup>th</sup> January 2018**.

Please be aware of the following:

1. Authors will be promptly notified of acceptance
2. Final drafts of papers to be included in the Conference materials to be forwarded no later than 1<sup>st</sup> May 2018
3. The language of the Conference is English
4. Conference registration fees will be waived for all presenters
5. Some scholarships available for travel and room costs
6. Selected papers will be published in the Journal of Consumer and Commercial Law, <http://www.jtexconsumerlaw.com>

[1] The Australian Government the Treasury (2017) [Credit cards: improving consumer outcomes and enhancing competition](#) (Consultation Paper, May 2017), 1.

