

# YOUR Special IACL Newsletter on Coronavirus and Consumer Rights November 2020

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Dear IACL Members,

The International Association of Consumer Law, November 2020 Newsletter covers special news from the jurisdiction on the Covid-19 pandemic.

The purpose of this special newsletter is to keep members up to date with the latest developments on how the situation is being handled during pandemic and reflects on how consumer law needs to adapt to face this novel coronavirus crisis.

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 [serkankaayaa@yahoo.com](mailto:serkankaayaa@yahoo.com) . For any items that may not be able to wait that long, you can contact us to post on our website <http://www.iacl.net.au> or our Facebook page <https://www.facebook.com/IACLaw/> or Twitter [@iacl\\_net](https://twitter.com/iacl_net)

Christine Riefa, on behalf of the IACL board.

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## 1. NEWS FROM THE JURISDICTIONS

### AUSTRALIA

#### **`Changes to law and practice to help credit consumers during COVID-19`**

**Reported by** Nicola Howell, Senior Lecturer, Faculty of Law, Queensland University of Technology, Brisbane, Australia [nicola.howell@qut.edu.au](mailto:nicola.howell@qut.edu.au)

In May 2020, one study reported that 60% of Australians were concerned about the impact of COVID-19 on their financial wellbeing, and 20% were very concerned.

Changes to consumer credit and personal insolvency laws and policies were among the responses to these concerns.

For example, under national credit laws, consumers can ask their credit provider to change their contract due to hardship. Under these laws and industry codes, many banks offered six-month deferrals of home loan repayments, and in some cases, also an additional four months. No payments were required during the ‘pause’. Assistance (including deferrals, waiving fees, interest only payments, etc) was also been provided for other types of credit products. These policies were accompanied by an agreement by banks that these loan deferrals would not be reported on a consumer’s credit file.

Temporary changes were also made to personal insolvency laws, including increasing ‘temporary debt protection’ (forcing a pause on collection activities) to six months and the minimum debt required for an involuntary bankruptcy to AUD20,000.

What has been the impact of these changes? Many thousands of consumers have benefitted from the financial hardship responses of credit providers; for example, banks have given deferrals to around 1 in 11 mortgage holders. At the same time, the number of new personal insolvencies has decreased substantially, with 50% fewer new personal insolvencies in the September 2020 quarter compared to the previous year. This may be partially a consequence of the insolvency law changes. However, most bankruptcies are voluntary, and it seems more likely that consumers who suffered financial hardship during COVID-19 have been able to keep themselves afloat through the loan deferral programs, financial assistance provided by government, and early access to retirement savings (payments of nearly AUD 34 billion have been made through this scheme).

However, the pressing question is what happens next for consumers who have been granted some assistance with their credit products? Credit providers are starting to contact these consumers to explore how and when repayments can commence, or whether other options are appropriate. Because interest accrues during a loan deferral period, many consumers will face extended terms and/or higher repayments on their loans once they do recommence payments. If unemployment and underemployment levels remain high, will we start to see an increase in defaults, repossessions and personal insolvencies? Is there a case for making the changes to personal insolvency laws permanent? Also, with the Parliament yet to pass amendments to better regulate small loans and consumer leases, and a government proposal to wind back responsible lending laws, is there a risk that vulnerable credit consumers will face further hardship through poor lending decisions even after the initial economic impacts of the pandemic have faded? Among others, consumer groups are campaigning for better outcomes. However, these and other questions suggest that there is still much to focus on for those interested in Australian credit and debt law in the coming months.

## **BELGIUM**

### **‘The Consumer’s Temporary Right to Deferral of Payment in Belgium’**

**Reported by** Jasper Vereecken, PhD researcher at the University of Antwerp

Like most of the EU's Member States, Belgium was hit by the first wave of the Covid-19 pandemic in the spring of 2020. The whole country went into lockdown from mid-March until early May in order to avoid an excessive burden on the nation's healthcare system. People were confined to their homes and the activities of some sectors of employment, such as the events and sports sector or retail clothing stores, were suddenly halted. Thus for some business owners and also those who were employed by them this meant an immediate loss of their source of income.

The Belgian parliament therefore responded swiftly to the situation and took action to avoid further detriment to these individuals. One course of action was to support consumers who have been confronted with repayment difficulties of their credit lines due to the Covid-19 pandemic. After some weeks of debate, the amending 'Act of 27 May 2020 concerning consumer credits, in order to help borrowers of such credits to cope with the crisis caused by the coronavirus' was published in the Belgian Official Gazette. The amendment brings about a legislative change to Book VII on payment and credit services of the Belgian Code of Economic Law.

This amendment will only be in force up until 31 January 2021 and contains the following temporary measures in Article VII.3 §2, 6°bis CEL. Consumers have the right to request deferral of payment for three months, which is extendable for another three months. Some cumulative requirements must be fulfilled by the requesting consumers, such as disposing of limited funds on their savings account (< 25 000 Euro) and loss of income due to the Covid-19 pandemic. When these requirements are fulfilled, the credit provider must grant deferral of payment without costs when such deferral has been requested between 1 May 2020 and 31 July 2020. Thus the last day of the deferral period is 31 October 2020 with the possibility of extension to 31 January 2021. Creditors are also obliged to inform consumers about this temporary right on their website.

These deferral facilities have obviously been a great help for a number of consumers. The measure constitutes a commendable good practice as it does not rely on mere voluntary actions by the credit sector, but *oblige*s creditors to help their clients with their debt burdens. It goes without saying that the obligatory nature of the measure adds to its effectiveness, which is moreover strengthened by the information duty. The intervention is also an innovative approach for protecting consumers who are faced with imminent harm to their personal financial situation due to external factors that may suddenly appear. This could offer inspiration to other legislators abroad when a new crisis would emerge in the future and consumers would require help to bridge the short-term debt problems that may emerge.

## **GEORGIA**

### **‘Measures for Consumer Protection Implemented by the Government of Georgia During COVID-19’**

**Reported by** Asst. Prof. Dr. Giorgi Amiranashvili, Tbilisi State University; Tbilisi Open University; European University

According to the Global Consumer Insights Survey 2020, the coronavirus pandemic has accelerated the pace of behavioural changes around the world – how people work, eat, communicate, play and learn and this extends to consumption patterns, too, in every category, including groceries, entertainment, healthcare and even data. My conference paper was focused on an analysis of how my country has responded to difficulties consumers are experiencing because of COVID-19. Firstly, after giving some preliminary explanations, I have talked about the period of the state of emergency. This was followed with the restrictions lifting plan. Then I have discussed the activities of the National Bank of Georgia and the Georgian National Energy and Water Supply Regulatory Commission. And lastly I have tried to draw some conclusions. It is noteworthy that in 2015, the Committee on European Integration of the Parliament of Georgia has proposed a new Draft Law of Georgia on Consumer Rights Protection but, unfortunately, it has not been passed yet. All in all, it is probably difficult to talk about such a specific and complex issue as the problem of consumer protection during the pandemic based on the example of the particular country that has not yet adopted general legislation in the field of consumer protection. However, a conference paper showed that against the background of this global challenge, the Georgian government has taken important steps to protect consumers.

## **INDIA**

### **‘Coronavirus and Consumer Rights in India’**

**Reported by** Prof.(Dr.)Ashok R. Patil, Chair Professor, Chair on Consumer Law & Practice, Member, Central Consumer Protection Council [Ministry of Consumer Affairs, Government of India], Coordinator, Post Graduate Diploma in Consumer Law, National Law School Of India University, Bengaluru, INDIA

The novel Corona Virus Disease (Covid-19) spread all over the world and has witnessed large outbreaks of emerging and reemerging infectious diseases. India as of now (29-10-2020) has witnessed 79,90,322 positive Cases of Coronavirus out of which 72,59,509 has been recovered and has reported 1,20,054 deaths. Due to which it has changed the consumer behaviour who are turning out to so called digital marketing and has scaled

new heights by reducing the physical barriers and maintain the social distancing. However incessant flourishment of the digital marketing has led to rampant increase in scams & frauds specifically charity scams, phishing scams, fraudulent websites, fake mobile apps and supplier scams including price gauging in Health and scams relating to refund. According to India's Home Ministry, cybercrime has increased by 86% between the month of March and April of 2020, and personal data is the most attractive target as millions of consumers have fallen victim to malwares out of which more than 90% of them being financial frauds.” The one biggest scam was around the Airlines Sector i.e., refusal to refund the ticket amount whereas Supreme Court in case *Pravasi Legal Cell & ors., v. Union of India* (WP no. 10966/2020) held it as arbitrary and ultravires. Whereas in Health Sector the AYUSH ministry ordered the Patanjali Ayurveda to stop advertising of the Coronil vaccine as there is no scientific prove to show the same. Its advertisement should be stop immediately as there is no medical authority which can vouch on the claim of the Patanjali of curing highly contagious disease.

The Ministry of Consumer Affairs, Food and Public Distribution issued an order adding surgical and N95 masks and hand sanitizers to the list of essential commodities under Essential Commodities Act 1955 (ECA) . The prices of 2ply and 3ply surgical masks and raw materials used for manufacturing masks and hand sanitizers were also fixed under a later order . State governments were advised to take measures to maintain the demand-supply balance of sanitizers .A contravention of orders under Section 3 of ECA is a cognizable offence and can lead to imprisonment of up to 7 years, or fine and also potential forfeiture of the offending property. For offences committed by companies, officers-in-charge, directors, managers and secretaries can be punished. Another major issue was around the food security and nutrition where ministry of consumer affairs has taken rampant steps to protect the consumer from food starving by means of providing Pradhan Mantri Garib Kalyan Ann Yojana to ameliorate the hardships being faced by the underprivileged and poor on account of lockdown. The Central Government and the State Government (Karnataka , Telangana , Delhi Etc.,) had issued a notification for fixing ceiling rates for different Covid-19 tests, isolation beds and others and also constituted a committee to supervise the same. For instance in Karnataka, “A COVID 19 patient was treated at a private hospital and had struggle to pay Hospital Bill, the supervisory team headed by IAS officer Mr. Harsh Gupta and IPS Officer Ms. D. Roopa Moudgil visited and scrutinised the hospitals bills found several instances of excess billing and directed to refund the amount. Around 22 patients have now got refunded. The Karnataka in view of the same has taken steps to borne treatment cost under the Suvarna Arogya Suraksha Trust (insurance) scheme and request the private hospitals to reserve 50% of beds.”

In the mean while on July 24, 2020, Ministry of Consumer Affairs, Government of India enforced Consumer Protection Act 2019, and various Rules and Regulations. The Act aims to protect the consumer rights and their interest. The Central Government established Central Consumer Protection Authority (CCPA) under CPA 2019 with an object to protect the consumer from Unfair trade Practice and Misleading Advertisement of Consumer as a Class and if the CCPA deems that there is a prima

facie case make bring an suo-moto action and pass an order. The Consumer Protection (E-Commerce) Rules 2020 was enacted to regulate the E-Commerce Entities/Digital Marketing. The CPA 2019 has brought a drastic change by empowering the Consumer Commission to receive court fees and filing of complaint in electronic mode and also hearing and recording of witnesses through Video Conferencing.

The Central Government and State Government have come up with various legal policies & schemes so as to protect the Consumer. Once the new legislation CPA 2019 is implemented at the State Level then we may observe better protection of the Consumers.

## **ISRAEL**

### **`Consumer Protection in Digital Payments`**

**Report by** Professor Ruth Plato-Shinar Director, the Center for Banking Law and Financial Regulation Netanya Academic College, Israel

In Israel as in other countries, one of the repercussions of the Covid-19 pandemic is the increase in the use of digital payments. A few issues led to this phenomenon: The lockdown that banned people from leaving their homes and thereby promoted a significant increase in remote transactions and payments; the reduction of activity in bank branches and the increase in digital banking; and the reluctance of many people to use cash because of the fear of being infected through contact with infected banknotes and coins.

On October 9<sup>th</sup> 2020, a new law on digital payments entered into force: **The Payment Services Law, 5779–2019**.

The Law deals with the contractual relationship between the payment service provider and its customer and provides the latter broad protection.

Although the Law was very much inspired by the European Directive on Payment Services (PSD2) that aims to protect consumers, in certain issues (such as unauthorised payments) it provides an even broader protection for users of the digital payment services.

The term “customer” is defined in the Law as: "A payer or a payee". Since the Law applies to all forms of payment and not only to credit cards, the payee could be not only a business but also an individual. Hence the need to protect "payees" as well. However, in light of the above definition, the Law affords protection to payers and payees whether they be individuals or corporations. In this way, the Law reflects a broad consumer perception, even wider than that of the Israeli Consumer Protection Law, 5471–1981, where a “consumer” is defined as "a person who buys a commodity or receives a service from a dealer, in the course of his business, for mainly personal, domestic or family use". The concept of the new Law is different and it aims to also protect incorporated businesses, particularly small and medium-sized businesses.

Nevertheless, while the Law stipulates that its provisions are cogent and may not be conditioned to the detriment of the customer, in the case where the customer is a business with a sales turnover greater than NIS 30 million (approx. USD 8.5 million), the customer and the payment service provider may contract out of some of the protections granted to customers under the Law.

The Law refers to the following issues:

- The payment services contract.
- The execution of the payment transaction, including the service provider's liability for the correct and timely execution, and the customer's ability to stop the transaction.
- The liability in cases of unauthorized use of a payment instrument, whereby most of the liability is shifted to the service provider.
- A special arrangement for direct debits, due to their special mechanism whereby the payment is made at the initiative of the payee and therefore carries a higher risk for the payer.

For elaboration see:

Ruth Plato-Shinar, *The New Israeli Law on Payment Services: Towards a New World of Digital Payments*, 35 BFLR 351 (2020)

Ruth Plato-Shinar, *Regulating liability for unauthorised digital payments: Insights for South Africa*, Annual Banking Law Update 2020 (Charl Hugo and Sarel du Toit, eds. forthcoming).

## **NORTH CYPRUS**

### **`Coronavirus and Consumer Rights in North Cyprus`**

**Reported by** Nezihe Tekman, PhD Candidate at University of Hull, Lecturer, Near East University

Since 1974, ceasefire has been established between two Cypriot communities, forming 'the ceasefire line' referred as the Green Line according to the European *acqui*. Turkish Cypriots has been living in North and Greek Cypriots has been living in the South of Cyprus. Even though the whole of Cyprus is part of the European Union, the Republic of Cyprus does not have effective control over the North of Cyprus. In 1983, Cypriots living in the North, formed the Turkish Republic of Northern Cyprus (TRNC) which is a *de facto* state recognised only by Republic of Turkey. The non-government-controlled areas in Cyprus are outside the EU's customs and fiscal territory – but this does not affect the personal rights of Turkish Cypriots as EU citizens. However, arguably this does affect the consumer rights of Turkish Cypriots. Currently, Turkish Cypriots living in the North are subject to two different consumer protection regimes. One being their 'domestic law' in Northern Cyprus, and the latter being the consumer protection regimes in the Republic of

Cyprus as per the Directives and Regulations of the European Union. This being the norm in everyday life in Cyprus, during the Covid-19 pandemic, consumers realised the significance of consumer protection.

In North Cyprus, in theory, all the basic 'tools' are in existence for the consumers to seek protection (eg. Consumer Protection Act, unfair terms directive, etc. all have been adopted). However, in practice since the enactment of these consumer protection measures, there never has been one case that has reached to courts of North Cyprus regarding consumer protection. This does not illustrate that consumers are well protected and do not find it necessary to file charges against seller/suppliers; to the contrary this illustrates that Turkish Cypriots in fact are ill-informed, unaware of even the existence of the consumer protection laws and regulations and are at a strong belief that as consumers they are the *weaker* than seller/suppliers and it is not worth their time and funds to argue with the seller/suppliers. This has been illustrated during the Covid-19 pandemic as well that 'loan sharks', increase in prices of everyday essentials, shops refusing to change the products consumer purchased prior to lockdown.

On the other hand, for the Turkish Cypriots living in North but engaging in economic activities as European Union citizens in the Republic of Cyprus, again there is lack of information for the Turkish Cypriot consumers regarding their withdrawal rights, return policies or refund policies. These difficulties have been heightened during the pandemic. The borders have been closed and Cypriots have been confined to their 'parts of the island'. On both sides, arguably even more in North Cyprus, there has been drastic increase in the price of masks, disinfectants, basic hygiene items, even the price of basic food supplies, yet there has not been any legislative amendments or interference to protect the consumers. However, due to the lack of judicial control over consumer protection measures, especially during this difficult time for everyone in the world not just in Cyprus, seller/suppliers possess a high level of confidence and consumers possess the mentality that they can never go against a seller/supplier and portrays a perfect example of a scenario of how consumers can be abused by the *stronger party*.

## **TURKEY**

### **'Ban on the Sale of Face Masks and Price Restriction in Turkey'**

**Reported by** Dr. Ayşen Çilenti Konuralp, Department of Civil Law, Istanbul Aydın University, Turkey

Coronavirus outbreak has revealed many daily-life-affecting controversies as the risk of price gouging on staple food and medical products. Face masks have had a special role in this controversy for its special use. Consumers' high demand of face masks led to a significant price gouging on the market after the first Covid-19 cases were found



out in Turkey around March 2020. Face mask and disinfectant liquid prices increased almost twenty times in March 2020. Ministry of Trade of Turkey announced that high amounts of fines had already been imposed to many businesses so far that was detected to apply price gouging during February and March 2020. In the meantime, Ministry of Trade established a special phone line and called all the citizens for the reporting of price gouging businesses. Nevertheless, such efforts and the ‘threat’ of fine did not work out as expected. On 6th April 2020, Presidency of Turkey announced a rigid ban on the sale of face masks as a measure taken against the price gouging on the market and that the Government would make sure the distribution of the face masks to Turkish citizens for free via firstly the post offices and then the pharmacy stores. Free distribution of masks continued for almost one month. Then, on 4th May 2020, Presidency of Turkey announced that the limitations and the precautions against the Covid-19 outbreak would be gradually lifted and the normalization period would begin. One of the steps of this period would be the lift of the ban on sale of face masks. However, a price limit for the face masks would be set and any mask price in the market would not be allowed to exceed this limit. On 8th May 2020, Ministry of Trade of Turkey announced that the price limit of the face masks would be 1 Turkish Lira nationwide. Price of a package including 50 face masks is around 35 TL currently. This decrease in the price proves how gouging the price was in the first phase. Price limit on the face masks is being applied since then with the concern of protection of the consumers against the price gouging market actors. Limitation on the mask prices does not seem to be lifted unless the much-awaited end of the outbreak comes.

## **UNITED KINGDOM**

### **‘The Regulation of Bailiff Activities in the UK’**

**Report by Jodi Gardner and Mia Gray, University of Cambridge**

In many ways covid-19 – as well as the legal and political responses to the pandemic – have exacerbated the pre-existing inequalities in the UK; lower-income households are twice as likely to have increased debts, the North-South divide has worsened in terms of infection rates and economic consequences, women have shouldered the burdens of working from home with caring responsibilities, ethnic minorities (particularly women) have higher rates of anxiety around debt and loss of government support, and young people are significantly more likely to have lost their job due to the virus.

One area of particular concern is the regulation of private enforcement agents, better known as bailiffs. As part of the measures to address Covid-19, bailiffs were prohibited from visiting homes to enforce debts from April 2020. This type of debt collection is aggressive, lacking in dignity and exploitative. It is the last thing struggling households need to experience whilst dealing with the emotional and financial strain of a global pandemic. Even before the added stress of covid-19, after a decade of austerity many low-income debtors were already in a financially precarious situation and could easily be coerced into unaffordable private-sector repayment agreements. Bailiffs are also an

exceptionally expensive form of debt enforcement – a single process of debt enforcement could therefore cost a household £455, and that is before any funds are actually used to pay off the pre-existing debt. In 2019, bailiff fees added an additional £200 million of fees on top of households’ existing debts, and it is likely that 2020 will be even worse.

In light of these issues, the three largest debt charities called on the government to continue the prohibition of bailiff visits for the duration of the outbreak. These pleas were ignored. Despite the financial implications (not to mention health risks) associated with these activities, in August 2020 the UK government allowed enforcement activities to recommence. In recognition of the increased risks, bailiffs were given Working Safely during covid-19 guidelines, which included attempting to maintain social distancing, wearing PPE, not ‘unduly raising their voice’ (to avoid a risk of transmission) and not working if you are showing signs of covid-19.

This is not enough. Enforcement activity during a pandemic puts both the household and the bailiff at increased risk of infection, and causes undue hardship for already stressed and vulnerable households. It also makes no sense. Many families have had their incomes plummet during the pandemic with the sharp contraction of the economy. We should not allow for-profit debt enforcers to enter financially struggling households to coerce them into paying debts. It is hard to see how this regulatory approach could be justified on a social justice or public health basis, and bailiff enforcement activities should remain prohibited for the foreseeable future.

## **2. NEW BOOK TO BE AWARE OF ...**

**Christine Riefa, Severine Saintier (eds), ‘Vulnerable Consumers and the Law: Consumer Protection and Access to Justice’ (Routledge 2021)**

This book charts the difficulties encountered by vulnerable consumers in their access to justice, through the contributions of prominent authors (academic, practitioners and consultants) in the field of consumer law and access to justice.

It demonstrates that despite the development of ADR, access to justice is still severely lacking for the vulnerable consumer. The book highlights that a broad understanding of access to justice, which encompasses good regulation and its public enforcement, is an essential ingredient alongside access to the mechanisms of traditional private justice (courts and ADR) to protect the vulnerable consumer. Indeed, many of the difficulties are linked to normative obstacles and lack of access to justice is primarily a vulnerability in itself that can exacerbate existing ones. In addition, because it may contribute to ‘pushing’ already vulnerable consumers into social exclusion it is not simply about economic justice but also about social justice.

The book shows that lack of access to justice is not irreversible nor is it necessarily linked to consumer apathy. New technologies could provide solutions. The book concludes with a plea for developing ‘inclusive’ justice systems with more emphasis

on public enforcement alongside effective courts systems to offer the vulnerable with adequate means to defend themselves. This book will be suitable for both students and practitioners, and all those with an interest in the justice system.