



## Précis Paper

### How Consumer Law is Coping with the Pandemic

Abstract – Competition and consumer protection legislation has shown considerable resilience during COVID-19 as the Australian Competition and Consumer Commission and businesses respond to the challenge.

#### **Discussion Includes**

- Is competition still alive?
- Authorisations
- Examples
- Misleading and deceptive conduct
- Pricing
- Caselaw - Kogan Australia
- Customer refund rights
- Freedom Furniture
- Flexibility of ACL
- Amendment - Definition of consumer

# Précis Paper

## How Consumer Law is Coping with the Pandemic

1. In this edition of BenchTV, Caroline Hutchinson (Principal) and Richelle Massey (Associate) discuss the challenges for competition and consumer law during the pandemic.

### Is competition still alive?

2. The Australian Competition and Consumer Commission (ACCC) has produced a number of guidelines for business during COVID-19.

### Authorisations

3. When businesses are concerned they may breach the competition provisions of the *Competition and Consumer Act 2010*, they can seek authorisation from the ACCC which allows them to engage in that conduct.
4. The ACCC has the power to make an interim authorisation before the final authorisation. The ACCC can grant authorisation for conduct that would normally breach the competition provisions of the Act.

### Examples

5. Aviation industry – Regional Express Airline (REX) has put in an application to coordinate regional flights with Qantas and Virgin.
6. Supermarkets – supermarkets have applied for authorisation to ensure supply chains remain open so we still have access to important food and groceries.
7. Health – for States and Territories to jointly procure and distribute supplies and staff. It could be viewed as anti-competitive but it is clearly in the public interest to coordinate until September 2021.

### Misleading and deceptive conduct

8. The ACCC is keeping a close eye on making sure businesses are being truthful in their interactions with consumers.

### Pricing

9. There are two main areas – was and now pricing or strike-through pricing, and recommended retail pricing.

### Caselaw – Kogan Australia

10. Kogan argued that the behaviour was of no surprise to their customers.
11. Courts are taking misleading and deceptive conduct very seriously.

### Customer Refund Rights

12. These are rights when goods are faulty.

### Freedom Furniture

13. On its website Freedom Furniture had indicated that furniture items could not be exchanged except at Freedom's absolute discretion.

### Amendment – Definition of consumer

14. The definition of consumer will change from 1 July 2021. The monetary threshold will increase to \$100,000.

## **BIOGRAPHY**

### Caroline Hutchinson

Principal and Head of Litigation, Coleman Greig, Parramatta

Caroline leads a dynamic group of commercial litigators dealing with a wide variety of issues ranging from contractual disputes to intellectual property proceedings, misleading and deceptive conduct and insolvency matters.

With extensive experience in construction law, Caroline brings a pragmatic perspective in advising clients whose large-scale commercial projects involve complex contractual disputes and litigation. Working with national clients in the construction sector, including Australian subsidiaries of multinationals, Caroline draws on a comprehensive understanding of the differing legislative requirements across Australia.

Caroline is a graduate of the Australian Institute of Company Directors and possesses a sound understanding of the financial and governance issues affecting companies. In 2017, she joined the Board of Western Sydney University's The College as a non-executive director (independent). A member of the NSW Law Society Litigation Law and Practice Committee since 2014, Caroline contributed to the Commission of Inquiry into the Future of Law and Innovation in the Profession. In 2017, Caroline was a finalist for Partner of the Year in the *Lawyers Weekly Women in Law Awards*.

### Richelle Massey

Associate, Coleman Greig, Parramatta

Richelle's work in the Commercial Advice team includes provision of commercially focused advice in relation to various pieces of legislation and Codes, including the Competition and Consumer Act, Spam Act, Privacy Act and the Telecommunications Consumer Protection Code. Richelle has been involved in drafting and negotiating a wide range of contracts, including marketing and media buying arrangements, sponsorship agreements and service arrangements, Competition Law compliance programs, reviews and training. She has provided legal advice and support for product launches, including review of initial concepts to the launch of various telco products and provision of advice relating to marketing campaigns and activities to ensure ongoing compliance with relevant legislation.

## **BIBLIOGRAPHY**

### Benchmark Link

[https://benchmarkinc.com.au/benchmark/construction/benchmark\\_21-07-2020\\_construction.pdf](https://benchmarkinc.com.au/benchmark/construction/benchmark_21-07-2020_construction.pdf)

### Judgment Link

<http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2020/1004.html>

### Cases

*Australian Competition and Consumer Commission v Kogan Australia Pty Ltd* [2020] FCA 1004  
*Australian Competition and Consumer Commission v Sony Interactive Entertainment Network Europe Limited* [2020] FCA 787

### Legislation

ACCC authorisation, Ingham's Group Ltd, other chicken processors and the Australian Chicken Meat Federation

ACCC authorisation, Regional Express Pty Ltd

*Competition and Consumer Act 2010* (Cth)

*Treasury Laws Amendment (Acquisition as Consumer—Financial Thresholds) Regulations 2020* (Cth)

#### Publications

Australian Competition and Consumer Commission, *COVID-19 (coronavirus) information for business*

Australian Competition and Consumer Commission, *Guidelines for Authorisation of Conduct (non-merger)*

Coleman Greig COVID-19 blog at [colemangreig.com.au](http://colemangreig.com.au)

Richelle Massey, 'Ouch! Hefty penalty awarded against Health Engine for breach of Australian Consumer Law', *Mondaq*, 29 September 2020