



# **Comparing Recent Legislative Reform Outcomes and Processes in Australia, NZ & Beyond: Arbitration, Consumer & Contract Law**

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# Arbitration: fed (& state) AGD

- Nottage/Garnett (eds) '10, ch 1
- Nov. '08: Discussion Paper – ltd. issues
  - (April '09: SCAG agrees to revise CAAs)
- Nov. '09: IA Amendment Bill introduced
  - (Dec. '09: AG calls for 'cultural reform' of arb)
- Mar. '10: gov't amendments to Bill
- 6 July '10: enacted with Royal Assent
  - (28 June '10: new CAA enacted in NSW, etc)
  - (leaves 'legislative black hole' for some arb agts!  
Garnett/Nottage UNSWLJ '12)

# Australian Consumer Law: Treasury

- Malbon/Nottage (eds) *Consumer Law & Policy in Australia & NZ* (Fed Press '13) ch I App.B
- (Nov. '07: Labor govt wins election)
- Apr. '08: (Treasury-linked) PC Final Report
  - Policy review initiated after '05, '06 Reports
  - Guesstimates \$1.5-4.5b savings from harmonising
- May-Nov.'08 (GFC!): MCCA & COAG agt
- Feb & May '09: SCOCA & Treasury papers
- May '09: Inter-Gov't Agreement on ACL
- June '09: 1<sup>st</sup> Cth Bill amending TPA
  - more enforcement powers, unfair terms rules

- Dec'09: MCCA agrees on final ACL
- Mar.'10: 1<sup>st</sup> Cth Bill passed, 2<sup>nd</sup> introduced
  - Eg consumer product safety reg: duty on suppliers to disclose (only) to (Oz) regulator deaths or serious (rapid-onset) injury/illness
- June '10: 2<sup>nd</sup> Bill passed
- 2011: 3<sup>rd</sup> Bill passed (expanding: unconscionable conduct), draft RIS on unfair terms in insurance contracts

# Australia's **consumer credit** rereg

- States/territories ceded power to Cth
- Oct.'09: NCCPA passed - responsible lending
- July '10: Treasury green paper on 2<sup>nd</sup> tranche
- Sept.'12: Enhancements Act enacted – price regulation (= interest rate caps) on small consumer loans

# Contract Law: AGD (-> ALRC?)

- (Like ACL) arose from AGD forum on harmonisation (cost savings, accessibility)
  - Domestically, also perhaps internationally
- Apr.'12: Discussion Paper *to explore the scope for reforming Australian Contract Law*
  - Late '12: Submissions online (incl mine on SSRN) + new Consultation on private int'l law
- '13: nothing! (AG Roxon resigns after less than a year, general election set for Sept)

# Cf New Zealand

- NZLC '03: “Improving the **Arbitration Act '96**”
  - Amendment Act '07 (eg *full* interim measures)(Nov.'08: National gov't elected)
- June'10: MCA **Consumer Law Reform DP**
  - After '06 enforcement int'l comparison DP
- Apr.'11: Reform Bill introduced  
(Then new consumer affairs Minister)
- Oct.'12: Select C'ee – suggests adding unfair terms rules *enforced by regulators*
- Apr.'12: (Treasury) Draft Exposure **Credit Contracts & Consumer Finance Amdt Bill** – ‘RL’
- **Contract law? Nothing** – cf earlier NZLC Report on '70s – early '80s *Contract Statutes*

# Cf Japan (etc)

- '03: (Justice System Reform Headquarters '01-'04) ML-based **Arbitration Law**
  - Ltd impact, no calls for further amdts
- (EPA -> Cabinet Office) PL Law '94, **Consumer Contracts Law '00, (CCA)**  
Consumer Product Safety Amdt Act '06
- (FSA / MOF) **Moneylenders Act '06**
  - Stricter interest rate caps, Resp. Lending
- **Contract Law:** ('private study group') '06-09, (MoJ) Council – like EU, led by profs!



# Tentative conclusions

- Growing ‘politicisation’?
  - Especially Australia: no refs to ALRC
    - Maybe still: Contract Law (or PIL), jointly to states?
    - Ref to PC: mostly economists, so (more ltd?)  
Recommendations more likely enacted?
  - Also NZ: ‘less reg’n’ mantra since ‘08 election
    - Despite: ‘leaky bldgs’, consumer finance co collapses
    - (Surprisingly enduring) legacy of ‘80s ‘Rogernomics’
      - Except for: (no-fault, injury) Accident Compensation scheme!

- More complex in Japan (Kozuka/Nottage):
  - **Arb Law** due to political (Jce reform) program
  - **Consumer law** also political, but
    - (cf Oz )influenced by ‘global standards’ (PL, CCL)
    - even some judicial ‘activism’ (consumer credit)
  - **Contract law:** driven by profs & MoJ (incl Js)
    - some ‘micro-politics’ (lawyers quite opposed!), but
    - little ‘macro-politics’ (gov’t changes in ‘09 and ’12 irrelevant, some pushback from banks etc)
- What about **HK ... or Taiwan, PRC?**