

Chapter 8

Students and the Australian Consumer Law

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I Introduction

Changes to government policies and approaches to higher education have resulted in a rapid expansion of the sector and a ‘marketisation’ of the academy.¹ Students are increasingly being characterised as ‘customers’ of the services provided by higher education institutions whether in the public or in the private sector.²

Australia has had a single national consumer law since 1 January 2011. The Australian Consumer Law (ACL)³ introduced provisions dealing with unfair terms in consumer contracts,⁴ replaced provisions on implied terms in consumer contracts with new consumer guarantees in relation to goods and services,⁵ and retained the general

1 Gabriel Baldwin and Richard James, ‘The Market in Australian Higher Education and the Concept of Student as Informed Consumer’ (2000) 22(2) *Journal of Higher Education Policy and Management* 139; Kathryn McMahon, ‘Universities and Market Discourse’ (2001) 27(1) *Monash University Law Review* 105; Francine Rochford, ‘The Contested Product of a University Education’ (2008) 30(1) *Journal of Higher Education Policy and Management* 41; Mike Molesworth, Richard Scullion and Elizabeth Nixon (eds), *The Marketisation of Higher Education and the Student as Consumer* (Routledge, London, 2011).

2 See, for example, Damien Considine, ‘The Loose Cannon Syndrome: University as Business and Students as Consumers’ (1994) 37 *Australian Universities’ Review* 36; Patty Kamvounias, ‘Students as Customers and Higher Education as Industry: A Review of the Literature and the Legal Implications’ (1999) 3(1) *Academy of Educational Leadership Journal* 30; Patty Kamvounias and Sally Varnham, ‘Getting What They Paid For: Consumer Rights for Students in Higher Education’ (2006) 15 *Griffith Law Review* 306; Eddie Mark, ‘Student Satisfaction and the Customer Focus in Higher Education’ (2013) 35(1) *Journal of Higher Education Policy and Management* 2; David Palfreyman, ‘Quality & Consumerism in Higher Education’ (2013) 17(3) *Perspectives: Policy and Practice in Higher Education* 107.

3 The Australian Consumer Law (ACL) appears in sch 2 to the *Competition and Consumer Act 2010* (Cth) (CCA). The ACL applies as a law of the Commonwealth to the conduct of corporations: CCA s 131(1). State and Territory application legislation applies the ACL provisions to the conduct of persons generally: *Australian Consumer Law (Tasmania) Act 2010* (Tas) ss 5-6; *Consumer Affairs and Fair Trading Act 1990* (NT) ss 26-27; *Fair Trading Act 1992* (ACT) ss 6-7; *Fair Trading Act 1987* (NSW) ss 27-28; *Fair Trading Act 1989* (Qld) ss 15-16; *Fair Trading Act 1987* (SA) ss 13-14; *Fair Trading Act 1999* (Vic) ss 8-9; and *Fair Trading Act 2010* (WA) ss 18-19.

4 ACL ch 2 pt 2-3.

5 ACL ch 3 pt 3-2 div 1.

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