



# Strengthening Consumer Law and Policy in Australia: A Rights-based Approach to Consumer Protection

Lee Hansen<sup>1</sup>

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## Abstract

Consumer law in Australia has traditionally relied on economic rationales centred on market failure and rational actor theory. However, the rise of behavioural economics has exposed the limitations of these assumptions while raising questions about meaningful autonomy and consumer vulnerability that economic frameworks alone cannot resolve. Human rights principles can meaningfully address these normative gaps by grounding consumer protection in dignity, autonomy, and material security. This article argues for integrating a rights-based approach into Australian consumer law and policy, drawing on Deena Hurwitz's framework of human rights lawyering to transform relationships between consumers and the marketplace. The article examines how human rights intersect with consumer protection across three dimensions, with particular attention to the right to an adequate standard of living and the right to privacy. First, it explores how substantive protections can be enhanced by incorporating human rights principles into the regulation of key types of consumer transactions, such as essential services and housing. Second, it develops a rights-based approach to consumer remediation, showing how human rights principles inform the interpretation of harm, exercise of regulatory discretion, and design of remedies within Australia's existing enforcement architecture, particularly for consumers experiencing structural disadvantage. Third, it advocates for transforming legal service delivery and policy development to prioritize dignity, participation, and empowerment. The analysis reveals an existing but underutilized relationship between human rights and Australian consumer law, with substantial scope for embedding rights considerations more fully within the legal framework. This approach not only strengthens consumer protection but also aligns with Australia's international obligations, helping to ensure consumers experiencing vulnerability and marginalization have their rights respected, protected, and fulfilled.

**Keywords** Consumer law · Human rights · Rights-based approach · Consumer protection · Consumer vulnerability

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✉ Lee Hansen  
l.hansen@essex.ac.uk

<sup>1</sup> School of Law, University of Essex, Colchester, United Kingdom

## Introduction

Consumer law has been described as a “postmodern” area of law, resistant to traditional categorization and drawing on a range of regulatory and contractual tools, making it receptive to other disciplinary influences (Ramsay, 1993, p. 91). Measures aimed at addressing market failure reflect a commitment to individual dignity and the protection of consumers experiencing vulnerability (Australian Competition and Consumer Commission (ACCC), 2021a; Consumer Policy Research Centre, 2021), echoing values familiar to human rights (Timmer et al., 2021). Both fields share a common interest in addressing power imbalances within their respective domains (Deutch, 1994, p. 553).

Despite the normative similarities between the fields, there has historically been reluctance to integrate human rights principles into consumer law and advocacy (Hilton, 2009). Instead, economic arguments centred on the rationality of economic actors and the mitigation of market failure and consumer detriment have predominated (Paterson, 2019, sec. 1.60). This is evident in Australia, a jurisdiction with a robust consumer law system. With limited direct enforcement of human rights protections (Charlesworth, 1993), early activists saw little potential in human rights arguments (Tenants Union of Victoria, 2014). The state-centric nature of human rights law, traditionally focused on state obligations, may have further distanced it from consumer protection, which requires regulating business practices. As a result, the focus has largely remained on economic regulation rather than rights-based advocacy.

Yet developments in economic theory and legal doctrine challenge this reluctance. The advent of behavioural economics has reshaped understandings of consumer law by questioning assumptions of fully rational decision-making. This body of work demonstrates that choices are often shaped by cognitive biases, situational pressures, and contextual factors (Sunstein, 2000). In Australia, behavioural insights have increasingly influenced consumer policy (Australian Government Productivity Commission, 2007), supporting a shift away from reliance on disclosure and formal consent towards stronger expectations of fairness and responsibility on traders. This is reflected in regulatory developments including the unfair terms regime (Competition and Consumer Act 2010 (Cth) sch. 2 (“Australian Consumer Law” [ACL]), pt 2–3), proposals for an unfair trading prohibition (Australian Government Treasury, 2024), and, in financial services, the design and distribution obligations (Corporations Act 2001 (Cth) pt 7.8A), alongside growing attention to manipulative design practices (ACCC, 2025). These initiatives reflect an awareness that consumer detriment often arises from systematic features of market design rather than isolated poor decisions.

At the same time, critics argue that behavioural economics does not provide a sufficient normative framework to replace the rational actor model or justify specific interventions (Liscow & Markovits, 2022, pp. 1287–89). Concerns have also been raised about paternalism (Field, 2008, p. 95). In response, Liscow and Markovits propose democratizing behavioural economics through deliberative processes. This article argues that such initiatives can be strengthened by integrating a human rights perspective. By showing how choices are shaped by cognitive biases and contextual pressures, behavioural research raises questions about meaningful autonomy that it cannot itself resolve. Human rights principles address this gap by grounding choice in dignity, autonomy, and material security, extending analysis beyond cognitive bias to structural conditions such as poverty, power imbalances, and access to essential services. This framework supports interpretation of open-textured standards such as fairness, reasonableness and good faith, and evaluation of how market practices affect fundamental interests. A rights-based approach can inform

judgments about justified intervention by identifying harm beyond economic detriment and shape participatory processes through principles of dignity and equality.

There has been a limited shift in law and scholarship towards recognizing the human rights implications of consumer law (see, e.g., Benöhr & Micklitz, 2018, p. 16; Maker et al., 2018; Tully, 2006). Benöhr (2013) highlights the transformative potential of EU consumer law when informed by human rights considerations, and in some constitutional contexts, such as Article 60 of the Portuguese Constitution (1976), consumer protection is expressly linked to human rights norms. By contrast, this relationship remains underdeveloped in common law jurisdictions such as Australia. Two analytically distinct strands can be identified. The first advances claims that certain consumer interests should be recognized as human rights. The second focuses on the horizontal effect of human rights norms in private market relationships, examining how rights standards influence contractual regulation, regulatory enforcement, and judicial interpretation in consumer–trader interactions. While both strands are relevant, this article primarily engages with the latter. The central concern is not whether consumer rights should be reclassified as human rights, but how existing human rights standards inform the regulation, interpretation, and enforcement of consumer transactions involving private or public actors. Against this background, the article examines how human rights principles operate within established consumer law frameworks and makes a twofold contribution. First, it analyses how substantive consumer protections relating to privacy and an adequate standard of living can be interpreted in light of international and domestic human rights standards. Second, it develops a rights-based approach to consumer remedies and service delivery, with particular attention to access, procedural safeguards, and institutional responsiveness. While other avenues exist for incorporating human rights perspectives, including analyses of moral agency or labour and environmental exploitation, this article focuses on consumers as rights holders within market relationships that structure everyday life, particularly for those experiencing vulnerability. Vulnerability is understood as a situational and structural condition shaped by market design, regulatory settings, and social position, rather than as an inherent personal attribute (cf. Fineman, 2008).

Australia has been selected as the focus of this analysis due to its robust consumer protection framework, which, despite its strengths, continues to face significant challenges in preventing and mitigating consumer detriment, particularly barriers to accessing effective remedies, persistent unfair trading practices, and the disproportionate impact of such practices on consumers in situations of vulnerability. The country's recent move towards greater human rights protections suggests potential for developing a rights-based approach to consumer law, making it a compelling jurisdiction for examining how human rights principles can strengthen consumer protection.

The structure of this article is inspired by Deena Hurwitz (2003), a clinical legal education scholar who articulated the concept of “Human Rights Lawyering.” While this approach has been used in contexts such as supporting homeless communities through a Community Legal Centre in Melbourne (Lynch, 2004), its development within consumer law remains limited. Human Rights Lawyering integrates human rights principles into legal advocacy to address systemic injustice and empower marginalized communities. It encompasses not only traditional representation but also community education, policy advocacy and coalition building, focusing on “the subjects of traditional poverty lawyering—the poor, the powerless and other marginalized groups—in human rights terms, and formulat[ing] demands using tools of human rights accountability” (Hurwitz, 2003, p. 513). It extends beyond civil and political rights to include economic and social rights

relating to development, poverty, health, labour, gender, indigeneity, disability, and sexuality (p. 513). Hurwitz also emphasizes analysing “the politics of power and causation, including an examination of who is in control and why” (p. 517), making her framework particularly relevant to consumer–business relationships.

Lynch (2004, p. 59) builds on this by emphasizing that a human rights approach involves treating clients with dignity and respect, listening to their needs and providing holistic support beyond legal advice. He suggests that this can enhance clients’ physical, social, and psychological wellbeing by addressing legal and non-legal needs in an integrated way. This is especially relevant to consumer law, helping ensure that the voices of consumers experiencing situational or structural vulnerability are heard and their rights protected.

Following Hurwitz’s framework, which operates across three analytical dimensions, the article proceeds as follows. Part One engages with the first dimension, reframing legal issues in human rights terms, by analysing consumer law from a human rights perspective and examining doctrinal issues and the theoretical foundations of consumer rights. Part Two turns to the second dimension, expanding remedial strategies beyond traditional litigation, by investigating a rights-based approach to consumer remediation. Part Three addresses the third dimension, critical self-examination of service delivery, by exploring how legal services should be delivered in line with human rights standards and extending this approach to consumer policy development.

## Part One—Human Rights in Consumer Law and Policy

This section examines the substance of consumer law from a human rights perspective, drawing on the first dimension of Hurwitz’s approach, which reframes traditional poverty lawyering in human rights terms. It analyses policy rationales for integrating human rights into consumer law, including justifications for regulatory intervention. It considers debates on recognizing consumer rights as human rights and the horizontal and vertical operation of human rights within consumer law. Finally, it assesses Australia’s consumer law framework through a human rights lens, covering general and industry-specific legislation, with particular attention to the rights to an adequate standard of living and to privacy.

### Grounds for Intervention in Consumer Markets

Regulatory interventions in consumer markets are conventionally justified by the need to prevent consumer detriment and address market failure (Hadfield et al., 1998, p. 133–134; Organisation for Economic Co-operation and Development [OECD], 2010, p. 33). Consumer detriment is typically understood in economic terms, such as financial loss, information asymmetry, and reduced choice, yet a rights-based perspective highlights that even modest economic harm may involve serious impacts on dignity, autonomy, and material security, particularly for those experiencing structural vulnerability. Protecting consumers in vulnerable situations is a key focus (Consumer Affairs Victoria, 2004), though such measures are often criticized for increasing business costs and prices (Australian Government Productivity Commission [Productivity Commission], 2008, p. 8). While price remains crucial for access to essential goods and services, consumer policy has wider implications beyond affordability, particularly from a human rights perspective.

Behavioural economics has challenged the classical theory that consumers make rational choices, revealing numerous biases in decision-making (Bar-Gill, 2012, pp. 7–22).

The availability heuristic, for instance, can lead individuals to overestimate event likelihood based on memorable examples (Carroll, 1978). Overconfidence bias can result in consumers overestimating their ability to manage future financial behaviour, leading to suboptimal credit choices (Ausubel, 1999), while present bias creates a preference for immediate rewards over better long-term outcomes (Productivity Commission, 2008, p. 381). These biases shape purchasing decisions and highlight the need to protect consumers in situations of vulnerability.

Although the increased focus on protecting consumers in situations of vulnerability is not directly grounded in human rights law, it aligns with the notion of dignity central to international human rights, which affirms the inherent worth of all individuals (Bouyid v Belgium, 2015, paras 45–47; International Covenant on Civil and Political Rights [ICCPR], 1966, art. 10; International Covenant on Economic, Social and Cultural Rights [ICESCR], 1966, art. 13; May & Daly, 2020, sec. 3(A)(4)). This perspective supports the idea that individuals should participate in markets with dignity (Lamberton et al., 2024, p. 3), underscoring the importance of protecting those who are most exposed to exploitation or harm in particular market contexts, regardless of how biases may affect their purchasing decisions.

Behavioural economics has significantly influenced consumer policy (OECD, 2017), but as Liscow and Markovits (2022) argue, it raises concerns about the normative basis of interventions aimed at protecting consumers. They criticize the field's reliance on expert judgment, which may not reflect broader social norms, and highlight its often shaky assumptions (pp. 1322–24), instead proposing “Democratic Behavioural Law and Economics,” which integrates public preferences into policy-making through deliberative polling. By informing a representative sample about behavioural biases and involving them in deliberation, this approach aims to align policies with the values and interests of society (pp. 1328, 1337–38).

Relying on democratic processes to inform policy, while commendable, may struggle to ensure that the voices of those experiencing vulnerability and marginalization are not overshadowed by dominant social forces. Acknowledging this, Liscow and Markovits exclude rights-related issues from their proposed deliberative process. Yet many areas of consumer policy raise human rights concerns, and excluding them risks overlooking an important social dimension. Moreover, while attention to bias in consumer decision-making is important, it does not fully capture the vulnerabilities that create power asymmetries between consumers and traders. People in poverty or undocumented migrants, for example, may enter disadvantageous transactions not because of cognitive bias, but because marginalization limits their choices. Although Australian consumer law recognizes such structural vulnerabilities, these protections are usually justified through economic frameworks such as market failure and information asymmetry rather than explicit human rights principles. Human rights provide distinctive normative foundations grounded in dignity, autonomy, and material security.

The following sections will establish foundations for incorporating human rights into Australian consumer law and policy, focusing on the right to an adequate standard of living and the right to privacy and autonomy. Part 3 will examine how a rights-based approach to consumer policy could complement democratized behavioural economics.

## Consumer Rights—A New Generation of Human Rights?

There is ongoing debate about recognizing consumer rights as human rights (Benöhr, 2013; Benöhr & Micklitz, 2018). Deutch (1994, p. 551) argues that consumer rights share

features with human rights, such as universality, individual wellbeing, and protection against abuses of power. While consumer rights generally address business conduct rather than state action, Deutch contends that large businesses can function like states, controlling private consumers rather than bargaining on equal terms. This view is reinforced by the trend towards horizontal extension of human rights obligations to non-state actors, including private businesses and quasi-public entities providing goods and services. This article focuses primarily on this horizontal analysis in consumer-trader relationships, rather than on claims that consumer rights should be reclassified as a distinct category of human rights.

Several human rights instruments now give expression to the notion of consumer rights as human rights or fundamental constitutional rights at domestic and regional levels, including Article 60 of the Portuguese Constitution (1976), Article 51 of the Spanish Constitution (1978), and Article 38 of the EU Charter of Fundamental Rights (2000). Internationally, there is growing momentum for corporations to respect human rights alongside broad recognition of the need for states to protect consumer rights (Benöhr, 2020, p. 105; Frederick, 1991; Ruggie, 2007; United Nations Conference on Trade and Development [UNCTAD], 2016). In Australia, during the National Human Rights Consultation and associated debates about federal human rights protection, submissions and advocacy organizations called for consumer rights to be legally recognized as human rights (Ilksen Yokus et al., 2009; Queensland Council of Social Services, 2009; Victoria Legal Aid, 2009).

Despite these developments, treating consumer rights as human rights poses challenges. First, recognizing so-called third- or fourth-generation rights might dilute the normative value of human rights themselves (Alston, 1979, pp. 39, 45; Deutch, 1994, p. 540). Second, some consumer transactions, such as purchasing luxury goods, may not credibly be framed as human rights issues. Third, scepticism may be reinforced by the pejorative connotations of “consumerism,” which can link consumer rights to excessive materialism rather than genuine protection. Indeed, excessive consumption may undermine the right to a healthy environment and related rights, as recognized by the United Nations General Assembly (2022) and Human Rights Council (2021). Addressing these concerns requires a discerning approach that distinguishes between consumer contexts, recognizing that not all issues warrant classification as human rights concerns. Rather, it is useful to view consumer matters through a lens that identifies potential human rights implications, ensuring a thoughtful and proportionate application of human rights principles.

While the nexus between human rights and consumer law differs across jurisdictions, in Australia, the connection is weaker. Several Australian states have statutory bills of rights protecting civil and political rights but do not explicitly incorporate consumer rights, including the Human Rights Act 2019 (Qld) [Qld HRA], the Human Rights Act 2004 (ACT) [ACT HRA], and the Charter of Human Rights and Responsibilities Act 2006 (Vic) [Charter]. At the federal level, Australia’s Human Rights (Parliamentary Scrutiny) Act 2011 (Cth) requires parliamentary review of legislation against the core human rights conventions. Although these conventions do not expressly include consumer rights, as discussed below, there is strong alignment between consumer rights and Economic, Social, and Cultural (ESC) rights and Civil and Political (CPR) rights.

## Horizontal and Vertical Application of Human Rights to Consumers

A key challenge in integrating human rights into consumer law is the traditional view that consumer law and human rights operate in separate spheres—business and the state,

respectively (Deutch, 1994). However, this division is increasingly untenable. There is growing recognition that businesses must respect human rights (Human Rights Council, 2011), while governments can be subject to consumer protection statutes. Under the tripartite obligation in international human rights law, states must respect, protect, and promote human rights (Committee on Economic, Social and Cultural Rights [CESCR], 1999; Human Rights Committee [HRC], 2004). This includes a duty to protect individuals from harm by third parties, including businesses, through legislative, administrative, and judicial measures (HRC, 2004; International Commission of Jurists, 1997).

In addition to Australia's obligations under international human rights law, domestic legislation in several states and territories imposes upon governments or public authorities direct obligations to comply with human rights requirements (Charter s 38; ACT HRA s 40B; Qld HRA s 58). While private businesses are generally not directly burdened by such instruments, some domestic laws may result in liability for breaches of human rights standards. For example, in the Australian Capital Territory, private businesses may opt into the direct obligations of the ACT HRA (s 40D).

In some jurisdictions, private organizations providing goods or services of a public nature may be subject to direct human rights obligations through extended definitions of "public authority" (Charter s 4; ACT HRA s 40; Qld HRA s 9). An example is the Victorian residential tenancies case *Metrowest v Sudi* (2009). In Australia, tenants in public and social housing are considered consumers because they enter contractual relationships for accommodation services and fall within consumer protection legislation (*Director of Housing v Debbie Young* (2002); Consumer Affairs Victoria, 2024). As tenants of a transitional housing provider, the Sudi family challenged an eviction in the Victorian Civil and Administrative Tribunal (VCAT) under the Residential Tenancies Act 1997 (Vic), the Fair Trading Act 1999 (Vic), and the Charter, relying on rights to privacy (s 13) and protection of family and children (s 17). The Tribunal held that transitional housing was sufficiently public to fall within the Charter's definition of public authority. The landlord subsequently withdrew the Notice to Vacate, allowing the family to remain. The case illustrates that private entities treated as public authorities may need to navigate intersecting consumer and human rights obligations.

This case also highlights broader implications of privatization in Australia, where responsibility for realizing rights such as housing has increasingly shifted from state provision to charitable and commercial providers (Anaf et al., 2024; Otto, 2002, pp. 273–274; Penovic, 2014). This trend, evident across sectors including health, education, energy, water, and telecommunications, is reflected internationally (Abbott & Cohen, 2021; De Feyter & Isa, 2005; Hogan & Thompson, 2020). Benöhr (2013, p. 80) observes that a shrinking welfare state and expanding privatization make consumers increasingly dependent on businesses for essential services, often shifting emphasis from public good to private profit. The CESCR (2017) warns that privatization can undermine human rights by reducing affordability and quality, stressing that access to essential services should not depend on ability to pay. While user charges may be compatible with human rights law, they must not deny access to those unable to pay, and states must retain regulatory capacity, protect vulnerable groups, and enforce standards through effective safeguards.

Beyond the specific implications of privatization, human rights obligations can also extend horizontally to businesses under the state's obligation to protect (Beale & Pittam, 2001, p. 131). Domestically, this is reflected in interpretation mandates in several state-based statutory bills of rights, which require that statutes be interpreted compatibly with human rights, irrespective of whether they apply to government entities, business entities, or individuals (Charter s 32; ACT HRA s 30; Qld HRA s 48(1)). Therefore, human rights

can have a horizontal application to businesses, including in transactions between businesses and consumers (Knox, 2008).

The second challenge is that consumer law is typically seen as applying to business rather than government. However, consumer detriment can also arise in public services such as health, education, and welfare (Williams, 1997, p. 3). Although there is a common law presumption against statutes binding the Crown (*R v Sutton* (1908)), modern Australian consumer legislation expressly applies to the Crown at both Commonwealth and state levels (Competition and Consumer Act 2010 (Cth) ss 2A–2B; Australian Consumer Law and Fair Trading Act 2012 (Vic) s 4). Where public bodies engage in trade or the commercial supply of personal, domestic, or household goods and services, they are generally subject to consumer protections, including guarantees of acceptable quality and fitness for purpose (ACL s 54), prohibitions on misleading, deceptive, and unconscionable conduct (ACL ss 18, 20–21), and rules on unfair contract terms (ACL Part 2–3; Wilhelmsson & Willett, 2018, p. 135).

This section has explored the increasingly converging lines between consumer law and human rights, challenging the traditional dichotomy that places business and government in separate legal categories. Building on these foundations, the following sections examine how the rights to an adequate standard of living and to privacy intersect with consumer law.

## The Right to an Adequate Standard of Living

The right to an adequate standard of living, encompassing housing, food, and other essential needs (Art. 11), has been described as “the most central right in the ICESCR” from which other rights “in some sense deriv[e]” (Bailey, 1997, p. 27), yet it has received limited direct recognition in Australian law. Benöhr (2013, p. 49) notes that some economic and social rights under the ICESCR can be understood as consumer protection, as adequate food, clothing, housing, and living conditions also entail safety, information, and fair prices. This is particularly relevant in Australia, where consumer legislation may help realize these rights across sectors involving consumer–trader relationships, including where the state supplies goods or services.

## Essential Services

Essential services such as energy, water, and telecommunications are fundamental to an adequate standard of living under international law (see, e.g., CESCR, General Comment No. 15, 2003, on the right to water). Despite privatization, states remain obliged to ensure that these services are accessible, affordable, and properly regulated.

At the federal level, the parliamentary scrutiny process under the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth) has been used to affirm human rights compatibility and support legislative action, particularly in relation to consumer law and economic, social, and cultural rights. In 2022, Parliament considered the Treasury Laws Amendment (Energy Price Relief Plan) Bill to provide temporary relief from high energy costs for households and small businesses. Its Statement of Compatibility highlighted alignment with the right to an adequate standard of living by addressing the economic impacts of global energy price shocks. This framing provided normative justification for intervention in energy markets, reframing affordability as a matter of

state obligation rather than market preference. Human rights principles can therefore shape consumer law by providing a principled basis for regulatory action to protect access to essential services.

At the regulatory level, sector-specific frameworks also reflect concerns aligned with human rights principles, particularly in relation to gender-based violence. The Australian Energy Regulator's family violence provisions, introduced in 2024, require energy retailers to provide protections for affected customers, including prohibitions on disconnection, debt waivers, and safe transfer of accounts (Australian Energy Regulator, 2025). Although not framed as human rights measures, these protections resonate with CEDAW's guidance that states should adopt measures to protect victims and mitigate the social and economic consequences of gender-based violence, including through access to appropriate support and safeguards (CEDAW Committee, General Recommendation No 35, 2017, paras 31(a)–(b)). The provisions recognize that access to essential services is not merely a commercial matter but engages concerns about safety, security, and protection from violence-related harm. This illustrates how sector-specific consumer regulation can advance objectives consistent with human rights standards.

Although ESC rights are not directly enforceable in Australian law at either federal or state level, they may still influence the development of consumer policy. A submission by the Consumer Action Law Centre (2022, p. 3) to the Essential Services Commission illustrates how consumer organizations can draw on human rights arguments to advance consumers' interests. The submission framed access to water as a basic human right integral to an adequate standard of living and emphasized the importance of affordability for people experiencing financial hardship. While it could not compel specific pricing outcomes, this framing strengthened the normative case for regulatory intervention. The language of rights reframes what might otherwise appear as a request for subsidies or concessions into an argument grounded in international obligations and human dignity.

Private actors may at times move ahead of the state in advancing access to essential services. In 2022, Telstra announced that local and national calls from public payphones would be free (Telstra, 2022), supporting people experiencing homelessness, those escaping domestic violence, and individuals affected by natural disasters. Although not framed in human rights terms, the measure reflects principles of access and dignity in precarious circumstances. However, as a voluntary corporate initiative, it remains reversible, exposing a gap between human rights principles and consumer protection in privatized services. While human rights law recognizes non-retrogression as a state obligation (CESCR, General Comment No. 3, 1990), Australian consumer law lacks mechanisms to secure such gains, leaving access vulnerable to shifts in corporate priorities and underscoring the need for more durable regulatory protections.

Taken together, these examples show that human rights principles can influence consumer law and policy in essential services through three pathways: by providing normative justification for regulatory intervention, strengthening advocacy for consumer-protective policies, and identifying governance gaps where voluntary corporate action may be insufficient to secure sustainable access. At the same time, this influence is typically mediated through regulatory, legislative and policy processes, rather than operating as a direct source of enforceable rights. This underscores the value of more explicit and systematic integration of human rights standards into essential services regulation and consumer protection frameworks.

## Housing

Although housing is often analysed through welfare, planning, and tenancy law frameworks, it is also shaped by consumer relationships. In both the private rental market and social housing, tenants enter contractual arrangements for accommodation services characterized by significant power imbalances (Chisholm et al., 2020; Keller, 1987). While housing provision is also influenced by broader regulatory and welfare settings, many day-to-day experiences of housing insecurity arise within contractual relationships between tenants and providers. It is within these relationships that consumer protection norms and human rights principles can most directly operate. This section therefore examines housing as part of the ESC right to an adequate standard of living, with particular emphasis on affordability, before returning to the CPR right concerning non-interference with the home in a later section.

Hohmann (2020, p. 303) argues that reframing housing affordability through the right to housing, rather than as a purely market issue, provides a stronger normative basis for addressing housing stress and insecurity. The CESCR's General Comment No. 4 (1991) identifies key features of adequacy, including security of tenure, affordability, habitability, accessibility, location, and cultural adequacy (para 8), and emphasizes states' obligations to regulate private actors (para 17). Homelessness and forced evictions breach minimum core standards (para 18), while increasing unaffordability may indicate retrogression (Hohmann, 2020, p. 296). These standards provide a framework for assessing how contractual and regulatory arrangements in rental markets affect access to adequate housing.

In Australia, aspects of residential tenancy law already reflect concerns closely aligned with the right to an adequate standard of living, particularly in relation to security of tenure, habitability, and protection against arbitrary eviction. For example, the Residential Tenancies Act 1997 (Vic) imposes statutory obligations on landlords to maintain premises in good repair and fit for human habitation (ss 68–71; 72–80), regulates rent increases (ss 44–47), and governs termination and eviction processes (ss 91B–91P). Recent reforms enacted through the Consumer and Planning Legislation Amendment (Housing Statement Reform) Act 2025 (Vic) have strengthened notice requirements and limited no-reason evictions, thereby enhancing housing stability. These developments illustrate how tenancy regulation incorporates normative commitments to fairness and minimum living standards that resonate with international human rights principles, even where they are not expressly framed in rights-based terms.

Comparative jurisprudence illustrates how consumer law can be interpreted with close attention to housing security. In *Aziz v Caixa d'Estalvis de Catalunya* (C-415/11), the Court of Justice of the European Union treated potential loss of the home as a serious consequence when assessing unfair-terms protection in mortgage enforcement. Although arising under the EU regime, the case shows how consumer law can operate as an indirect safeguard where standard form terms expose consumers to housing insecurity.

In Australia, no equivalent authority has expressly linked unfair-terms review in residential tenancies to the right to housing, but there remains scope for rights-attentive reasoning within existing frameworks. The unfair terms prohibition in the ACL (s 23), read with the criteria in s 24, provides a structured basis for evaluating how standard form terms allocate risk and cost between landlords and tenants in ways that affect housing stability and affordability. In practice, this lens is most relevant to landlord-favouring

terms, such as disproportionate lease-break fees, broad penalty or indemnity provisions, restrictive lifestyle conditions, and mechanisms that shift statutory responsibilities onto tenants (Hansen, 2006). A rights-based analysis does not displace the statutory test, but helps clarify what “imbalance” and “detriment” mean in a housing context where affordability, stability, and autonomy are fundamental, revealing that seemingly modest economic detriment may involve profound harms to housing security, residential autonomy, and dignity. It also links to the discussion below of privacy and protection of the home, as some standard terms affecting enjoyment and control over the home environment implicate residential privacy as well as cost and security.

## Product Durability and Repair

An area largely unexplored in the literature is how product durability and repairability affect the right to an adequate standard of living. While affordability debates often focus on purchase prices, product longevity also shapes living standards, as short-lived goods impose early replacement costs. In General Comment No. 24, the CESCR (2017, para 22) warned that essential goods and services may become less affordable or decline in quality when delivered by private actors. These concerns extend to durability and repairability, which directly affect adequate living conditions.

The ACL provides some protection by requiring products to be of acceptable quality, including reasonable durability having regard to price and product type (s 54), with rights to repair, replacement, or refund (Part 5.4, Div 1). However, these protections are time-limited and do not adequately address the broader problem of planned obsolescence, where products are designed to fail prematurely or be difficult to repair, for example, through restricted access to spare parts or barriers to disassembly. This is a challenge that consumer protection frameworks more generally have struggled to meet (Malinauskaite & Erdem, 2021). The ACCC (2021b, p. 4) has supported measures to improve access to repair information and parts, enabling self-repair and third-party services.

Durable and repairable products also support the circular economy by reducing waste and conserving resources (Malinauskaite & Erdem, 2021, p. 719). This aligns with the right to a healthy environment (UNGA, 2022; UNHRC, 2021) and with an adequate standard of living by lowering long-term costs. Many economic and social rights depend on access to essential products, making durability and accessibility central to both environmental sustainability and human rights protection. While the ACL provides baseline protection through acceptable quality standards, stronger measures are needed to address planned obsolescence and improve access to repairs. Enhancing durability and repairability would help reduce unnecessary costs and support sustainable consumption.

## Conclusion

The right to an adequate standard of living intersects with consumer law across essential services, housing, and product durability through three mechanisms: providing normative justification for regulatory intervention, informing the interpretation of existing protections, and identifying governance gaps in privatized service provision. These developments show that consumer protection frameworks, including sector-specific regulation, unfair contract terms doctrine, and tenancy law, can operate as practical vehicles for advancing economic and social rights, even where those rights lack formal domestic recognition.

## Consumer Privacy

This section analyses the right to privacy and its intersection with consumer protection. Protected under international law (ICCPR, art 17) and recognized in Australian state human rights statutes (Charter s 13; Qld HRA s 25; ACT HRA s 12), the right safeguards individual autonomy and has clear relevance in consumer contexts. It explores how privacy operates in areas such as door-to-door selling and residential tenancies, illustrating its influence on consumer law and practice.

Article 17 of the ICCPR protects against arbitrary or unlawful interference with privacy, family, home, and correspondence, and has been incorporated into many domestic and regional frameworks (e.g., Charter s 13; ECHR art 8). It provides a basis for protecting privacy in personal, household, and domestic transactions (ACL s 3) and requires states to safeguard against interference by private actors (HRC, General Comment No. 16, para 9). While Australian privacy law focuses mainly on personal information under the Privacy Act 1988 (Cth), it offers limited protection against physical and spatial intrusion into the home. Consumer law therefore performs a complementary role by addressing forms of interference beyond data protection.

Although the United Nations Guidelines for Consumer Protection only incorporated privacy protections in 2015 (UNCTAD, 2016), the issues discussed below demonstrate that privacy is now central to consumer law and practice. Human rights principles offer valuable insights for strengthening consumer privacy protection, particularly in less visible contexts where autonomy is affected in domestic settings, beyond familiar concerns relating to digital technologies and financial services.

## Door-to-door Sales

Door-to-door sales involve unsolicited visits to private homes to promote goods and services such as energy, telecommunications, education, home maintenance, and food deliveries (Curran, 2015, p. 29). Research indicates that these practices disproportionately affect individuals experiencing economic insecurity, social isolation, and limited access to information, including older people, low-income households, and culturally and linguistically diverse communities (Consumer Action Law Centre, 2017, pp. 7, 27). Although the industry is subject to extensive regulation under the ACL (pt 3–2, div 2), high-pressure tactics and psychological manipulation remain common, facilitated by the personal and social dynamics of the home (Harrison et al., 2010, p. 23). Judicial authority has recognized this situational vulnerability. In *Australian Competition and Consumer Commission v Lux Distributors Pty Ltd* (2013), the Full Federal Court emphasized that door-to-door selling can exploit the privacy of the home and the consumer's difficulty in bringing the interaction to an end once the salesperson has gained entry (paras. 10, 13, 67).

These concerns informed the “Do Not Knock” campaign and related enforcement mechanisms under s 75(1)(a) of the ACL (Consumer Affairs Victoria, 2025; Do Not Knock, 2011). The campaign combined regulatory reform with public education, community outreach, and the wide distribution of signage, enabling households collectively to assert control over commercial access to the home. In this respect, it reflects a mobilization strategy consistent with Hurwitz's emphasis on rights-based advocacy beyond formal litigation (Hurwitz, 2003, pp. 516–17). In *Australian Competition and Consumer Commission v AGL Sales Pty Ltd* (2013) and (No 2) (2013), the Federal Court confirmed that approaching

premises displaying such signage breached the ACL, resulting in civil penalties, corrective advertising, and compliance obligations (ACCC, 2013).

These decisions translate privacy and dignity interests into enforceable consumer rights by enabling households to control commercial access to their homes. In practice, however, protection often depends on individual activation, such as displaying signage or lodging complaints, and on regulatory capacity and priorities. Where safeguards rely primarily on ex post enforcement, they may fail to provide consistent deterrence, particularly for individuals with limited resources or capacity to pursue formal remedies. Australian regulatory discourse has therefore tended to emphasize situational disadvantage rather than explicit rights-based analysis. By contrast, European consumer law has more directly acknowledged privacy interests, as reflected in Recital 17 of the Distance Selling Directive (97/7/EC), which drew on Articles 8 and 10 of the European Convention on Human Rights. Under international and domestic human rights law, states are obliged to protect individuals from arbitrary interference with privacy and the home and from discriminatory targeting (ICCPR art 17; Charter s 8(3); ACT HRA s 8(3); Qld HRA s 15(3)). A human rights framing thus provides an additional basis for assessing whether existing protections fulfil Australia's international obligations and for supporting stronger enforcement or categorical restrictions on unsolicited in-home selling.

## The Home

As discussed earlier in relation to the right to adequate housing under the ICESCR, the home is a central site at which consumer law, housing regulation, and human rights principles converge. The right to privacy under ICCPR art 17 encompasses protection against unlawful or arbitrary interference with the home and requires states both to refrain from unjustified intrusion and to safeguard individuals against private interference.

In tenancy contexts, substantial authority recognizes that eviction or loss of the home constitutes a particularly severe interference with privacy and family life. In Victoria, the United Kingdom and other jurisdictions, tenants in public and social housing have relied on privacy-related rights to resist eviction (*Director of Housing v Sudi* (2011); *Manchester City Council v Pinnock* (2010); *McCann v United Kingdom* (2008); see also Swannie, 2023). This jurisprudence reflects a broader understanding that housing stability is closely connected to autonomy, dignity, and security. Privacy concerns also arise through standard form terms and regulatory practices that structure everyday life in rented housing. Although tenure, rent and habitability are now largely governed by statute, ancillary contractual terms and “additional clauses” continue to shape domestic use and control over the home environment (Hansen, 2006).

Human rights principles are also relevant to the assessment of unfair terms under the ACL. Because the statutory criteria of “significant imbalance” and “good faith” are open-textured, their application involves evaluative judgments about how tenancy terms affect living arrangements, stability, and autonomy. The unfair terms regime therefore provides an additional lens, alongside tenancy regulation, for assessing whether contractual settings improperly burden renters' private life.

Concerns about interference with the home have been reflected in law reform. In its inquiry into the photographing and filming of tenants' possessions, the Victorian Law Reform Commission (2015) identified gaps in existing protections following advocacy by the Tenants Union of Victoria. Submissions relied expressly on the right to privacy under the Charter, and these concerns informed the Residential Tenancies Amendment Act

2018 (Vic), which introduced regulated rights of entry and protections relating to consent, review, and objection. This reform illustrates how rights-based advocacy can be translated into enforceable statutory protections.

Despite these developments, public tenants in Australia continue to face substantial obstacles in invoking privacy and housing rights in eviction proceedings (Walsh, 2022). As Walsh argues, rights-based arguments are rarely determinative, and proceedings often prioritize administrative efficiency over proportionality, disproportionately affecting individuals with complex needs. In practice, advocates frequently rely on informal negotiation informed by human rights considerations (Walsh, 2022). In the absence of stronger doctrinal integration, however, protection remains uneven and contingent.

Taken together, these examples show that privacy and non-interference with the home arise across eviction processes, contracting practices, and regulatory regimes. Although usually addressed through specialized tenancy law, they also intersect with consumer protection and human rights norms. The right to privacy therefore forms part of the normative background against which residential transactions and regulatory practices are assessed, helping to clarify how consumer law, housing regulation, and human rights principles jointly shape everyday housing conditions.

## Conclusion

This Part has examined how human rights norms intersect with consumer law in practice, particularly in relation to essential services, housing, product durability and repairability, and privacy in domestic settings. It has shown that, although these rights are rarely directly enforceable in Australian consumer disputes, they can inform regulatory design, statutory interpretation, law reform processes, and advocacy strategies. Their influence is mediated through existing doctrinal and institutional frameworks, including sector-specific regulation, unfair terms analysis and public authority obligations, and remain uneven. Attention to human rights principles therefore provides a basis for assessing whether consumer law adequately protects access to basic services, housing security, and domestic autonomy, and whether regulatory responses address the harms to dignity and security that may accompany consumer detriment where market regulation alone is insufficient.

## Part Two—A Rights-Based Approach to Remedies in Consumer Claims

Despite strong remedial provisions in Australian consumer law (Hansen & Pillay, 2024, pp. 20–21), consumers continue to face major hurdles in resolving disputes, including unequal bargaining power, limited legal assistance, and fears of retaliatory treatment. Recent inquiries illustrate the scale of these problems. The Australian Consumer Survey 2023 reported widespread dissatisfaction arising from misleading information, poor service, and defective products (Australian Government, 2023a), while the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (2019) exposed deep-rooted failures in customer remediation (Sheehan & Kinley, 2021, pp. 14–15). Many consumers are discouraged from seeking redress, as the burdens of navigating complaints systems often outweigh likely benefits (Australian Government, 2023a, p. 36). These findings suggest that existing mechanisms, while comprehensive on paper, frequently fall short in practice.

A rights-based approach, informed by Hurwitz's framework, offers a way to recalibrate consumer remediation by foregrounding dignity, accountability, and power dynamics. It aligns with Hurwitz's second dimension of Human Rights Lawyering and her analysis of the "politics of power and causation" (Hurwitz, 2003, p. 517). By expanding accountability beyond formal adjudication to include strategies such as impact litigation, legal assistance, legislative reform, community education, media engagement, and reporting (pp. 512–13), this approach complements traditional remedies and supports more inclusive and accessible systems of dispute resolution.

## Remediation in Domestic Law

Having established the basis for a rights-based approach to consumer remediation, this section examines how such an approach can operate within Australia's domestic legal framework.

Consumers have access to various dispute resolution mechanisms, including common law claims, consumer legislation such as the ACL, complaints schemes, and low-cost tribunals such as VCAT. However, legal representation is often not cost-effective for low-value claims, and overall access remains limited (Australian Government, 2023a, pp. 74, 174; Consumer Action Law Centre, 2021, p. 90). Barriers including lack of awareness, procedural complexity, and power asymmetries deter many consumers from pursuing remedies (Australian Government, 2023a, pp. 42, 44). A rights-based approach must therefore address these structural obstacles.

As Hurwitz observes, "relatively little of what human rights lawyers actually do looks like traditional legal practice" (Hurwitz, 2003, p. 513), yet significant potential remains within this domain (Bettinger-López et al., 2011, p. 347). By drawing on human rights principles, lawyers can frame consumer claims through multiple legal perspectives and develop innovative responses to entrenched problems. Established doctrines may also be reconsidered through a human rights lens, as illustrated by the contrast between two United Kingdom decisions: *Fitzpatrick v Sterling Housing Association Ltd* (1999), where orthodox statutory interpretation narrowly constrained the right to succeed to a tenancy, and *Ghaidan v Godin-Mendoza* (2004), where rights-based reasoning under the Human Rights Act 1998 enabled a more expansive interpretation of the same legislation to permit succession. While the interpretive mandate differs across jurisdictions, rights-compatible interpretation remains available in Australia under human rights charters, although it operates within more orthodox interpretive limits (*Momcilovic v the Queen*, 2011), potentially strengthening consumer protection.

Australian consumer law offers significant scope for creative outcomes through alternative dispute resolution schemes, which may facilitate settlements on terms unavailable through strict enforcement of legal rights. This is particularly evident where schemes permit fairness-based outcomes, allowing broader human rights considerations to inform dispute resolution (see Energy and Water Ombudsman Victoria, 2018, Charter and Constitution, para. 1.5). Agreed settlements may also vindicate human rights interests even where such rights are not directly enforceable, for example, through apologies or contributions to organizations promoting those rights.

A conventional consumer law approach often frames litigation in commercial terms, balancing potential damages against legal costs and risks. By contrast, a human rights perspective recognizes that remedies such as apologies or declarations of rights breaches may provide meaningful vindication for claimants who do not seek financial compensation,

affirming dignity and respect (see *Kracke v Mental Health Review Board* (2009)). This reflects the international human rights remedy of “satisfaction,” which includes acknowledgments of wrongdoing and moral reparation aimed at restoring dignity (UN General Assembly, 2005).

At the same time, the practical significance of a rights-based approach to consumer remediation lies in the distinctive enforcement architecture of consumer law. In Australia, economic and social rights remain weakly justiciable, and civil and political rights, protected mainly through state-based statutory instruments, have uneven coverage and limited reach in everyday market contexts. By contrast, consumer law provides regulatory, collective, and representative mechanisms capable of addressing diverse forms of harm, including widespread low-value claims, high-stakes individual disputes, and modest claims with significant implications for dignity, security, and living conditions. As Hansen and Pillay (2024, pp. 20–21) note, remedies under the ACL include regulator-led enforcement, representative proceedings, corrective advertising, injunctions, and turnover-based penalties, enabling systemic practices to be challenged even where individual consumers lack the resources or incentives to litigate.

A rights-based perspective contributes not by displacing these mechanisms, but by shaping how consumer detriment is identified, evaluated, and prioritized. Human rights principles foreground the cumulative effects of market practices on dignity, security, and living conditions, highlighting harms that may be understated when assessed solely in terms of financial loss. In this way, a rights-based approach informs regulatory priorities, enforcement strategies, and remedial design by situating consumer detriment within broader patterns of vulnerability and structural disadvantage, supplementing established responses to individual and systemic harms.

## Access to Legal Support

The limited availability of legal services for consumer disputes, particularly those involving low monetary value, presents a significant barrier to justice. This section examines legal support mechanisms in light of the right to a fair hearing (Charter s 24; Qld HRA s 31; ACT HRA s 21). People experiencing consumer problems are less likely to seek help than in other areas of law (Coumarelos et al., 2006), and those who do may encounter obstacles such as busy advice lines, delayed responses, and difficulty securing appointments (Australian Communications Consumer Action Network, 2018; Coumarelos et al., 2006). Although consumers may sometimes achieve satisfactory outcomes through ADR, apparently minor disputes can be critical for protecting the basic interests of individuals experiencing marginalization or vulnerability, particularly in relation to utilities or housing. Denying legal assistance too readily in such cases risks leaving the regulatory and deterrent potential of consumer law underrealized.

Historically, barriers to individual enforcement have been addressed through specialized institutional support structures. In Australia, consumer credit legal centres emerged in the 1980s, followed by the establishment of the Consumer Law Centre of Victoria in the early 1990s, funded through the proceeds of a successful class action (Giddings, 2000, p. 171). While many legal aid commissions later reduced civil law services (Noone & Tomsen, 2006, p. 191), New South Wales Legal Aid gained prominence through strategic litigation involving timeshares and caravan park residents (Giddings, 2000, pp. 163–175). Community legal centres (CLCs) and legal aid bodies continue to play a central role in consumer assistance.

Under Australia's statutory human rights regimes, public authorities are required to act compatibly with human rights and to consider relevant rights in decision-making (e.g., Charter s 38; Qld HRA s 58; ACT HRA s 40B), including the right to a fair hearing before a competent, independent, and impartial tribunal (Charter s 24; Qld HRA s 31; ACT HRA s 21). Although there is no definitive authority on how these obligations apply to CLCs and legal aid providers (Federation of Community Legal Centres Victoria, 2008; *Kortel v Mirik & Mirik* (2008)), core human rights values of dignity, equality, and fairness provide a principled basis for allocating scarce resources and shaping service delivery. In practice, prioritizing clients with the greatest disadvantage or least access to alternatives reflects commitments to equality before the law and procedural fairness and enhances the quality of consumer legal assistance.

Innovative strategies such as representative and collective actions, pro bono partnerships, and bulk negotiation schemes can further extend legal assistance within resource constraints. The bulk debt negotiation scheme initiated by Denis Nelthorpe and piloted by CLCs, legal aid, and financial counselling services illustrates this potential. By consolidating similar matters and presenting them collectively to creditors, negotiators strengthened bargaining power and secured substantial relief for vulnerable clients, with 90% of debts waived in Victoria (Kavanagh, 2011; Nelthorpe & Digney, 2011).

In summary, ensuring access to legal support is a central element of a rights-based approach to consumer remediation. Addressing barriers through institutional, collective, and rights-informed strategies, and integrating human rights principles into service delivery and enforcement practices, can significantly strengthen consumer protection.

## Protection from Victimization for the Assertion of Consumers' Human Rights

Consumers in Australia remain largely unprotected from unfavourable treatment by traders in response to complaints. For example, tenancy databases may deter tenants from asserting their rights because of fears that landlords or agents will make retaliatory listings (Victorian Law Reform Commission, 2006, p. 21). By contrast, discrimination law provides explicit protection against victimization: under the Equal Opportunity Act (1995, Vic), consumers of goods, services, and accommodation who allege unlawful discrimination are protected from retaliatory treatment (pt 6, div 1).

Fear of victimization significantly discourages individuals from exercising their rights, undermining the effectiveness of consumer protection law and fostering a culture of silence and inaction. From a human rights perspective, retaliatory withdrawal of access to goods or services may affect a person's standard of living, particularly in markets with limited competition. For example, a low-income tenant evicted after requesting repairs may face serious barriers to rehousing in an unaffordable housing market.

Retaliatory conduct may also engage the right to freedom of expression (Charter s 15; Qld HRA s 21; ACT HRA s 16). In the United States, First Amendment jurisprudence has recognized an "affirmative equitable defence" against eviction by public landlords where protected speech relates to tenancy rights and the tenant is not in breach (*Port of Longview v International Raw Materials Ltd* (1999)). Whether similar arguments could succeed under Australian statutory bills of rights remains untested. Nevertheless, framing retaliation through freedom of expression highlights its deterrent effect and can inform policy debates and reform efforts aimed at enabling consumers to assert their rights without fear of adverse consequences.

## Conclusion

In summary, this part has shown that the significance of a rights-based approach to consumer remediation lies in its interaction with existing enforcement, dispute resolution, and regulatory structures. While economic and social rights, and to a lesser extent civil and political rights, remain unevenly enforceable in Australia, consumer law provides relatively strong regulatory, collective, and representative mechanisms capable of addressing diverse market harms, including low-value mass claims, high-stakes disputes, and modest claims with serious implications for dignity, security, and living conditions. A rights-based approach contributes by shaping how harm is understood, prioritized, and addressed within these mechanisms, particularly in contexts of structural disadvantage, cumulative impact, and fear of retaliation. It does not remove constraints arising from limited legal assistance and institutional capacity; rather, its practical value lies in guiding how regulators, dispute resolution bodies, and advocates interpret harm, exercise discretion, and design remedies within existing legal frameworks.

## Part Three—Rights-based Approach in Consumer Law, Practice, and Policy

The third dimension of Hurwitz's framework calls for self-examination by consumer lawyers and advocates, focusing on how they deliver services to clients. A rights-based approach has the potential to reshape relationships between consumers and the marketplace by positioning lawyers and advocates as models of rights-respecting practice. This part argues for integrating such an approach into legal service delivery and extending it to broader fields of consumer advocacy, and considers how it may also inform consumer policy design, including in response to gaps identified in democratized behavioural economics.

### Rights-based Approach to Consumer Legal Service Delivery

Those engaged in consumer law and practice perform functions analogous to social services, safeguarding rights and promoting welfare and access to justice. By defending consumer interests, they uphold values of social equity and justice comparable to those associated with traditionally recognized social service professions. Consumer law and advocacy should therefore be understood as part of a broader network of services dedicated to promoting human dignity and wellbeing.

Rights-based approaches have been explicitly adopted in professions such as nursing and social work, where they have reshaped professional–client relationships. In nursing, human rights principles have enhanced patient care by promoting dignity, respect, and autonomy and encouraging participation in decision-making (Ivanov & Oden, 2013). In Australia, the International Code of Ethics for Nurses (2021) mandates respect for human rights, reinforcing collaborative and non-paternalistic practice. Similarly, in social work, a rights-based approach has transformed service delivery by treating clients as active participants rather than passive recipients, fostering agency and mutual respect (Healy, 2008).

Hurwitz's account of human rights lawyering suggests that principles developed in poverty lawyering can be extended to consumer practice (Bettinger-López et al., 2011, p. 383). Although she does not use the term "rights-based approach," her framework reflects its

core elements, including accountability, transparency, non-discrimination, participation, self-determination, and respect for human dignity (Hurwitz, 2003, p. 517). Central to this approach is treating clients as active participants rather than passive beneficiaries. Its relevance extends beyond lawyers to other consumer advocates, including tenant advisers, particularly given the absence of formal qualification requirements in this field (Field, 2006, p. 2).

A rights-based approach also emphasizes client-centred and empathetic practice, attention to non-legal needs, and engagement in policy and community education (Lynch, 2004, pp. 60, 63). It contrasts with welfare or charity models that frame assistance as discretionary and depict individuals as deserving recipients rather than rights holders (Goldie, 2003, p. 133). Instead, it locates consumer problems within broader structural contexts and affirms individuals' entitlement to support. As Goldie's work on homelessness activism illustrates, empowering affected communities to shape responses to their circumstances is central to this approach (p. 133). Applied to consumer relationships, this perspective can strengthen autonomy and participation by enabling vulnerable consumers to exercise greater control over the resolution of their problems.

The right to be treated with dignity and respect is central to the international human rights system (Lynch, 2004, p. 62), encompassing autonomy and meaningful participation in decisions affecting individuals. Research indicates that respectful treatment in legal practice can significantly enhance client wellbeing and satisfaction with justice, sometimes more than substantive outcomes, while its absence can be profoundly disempowering (Lynch, 2004, p. 63). Hurwitz also emphasizes accountability and transparency in lawyer–client relationships. Bettinger-López et al. (2011, p. 383) note the absence of professional codes specifically designed for human rights practitioners, leading to inconsistent ethical standards, and propose principles including competence, informed consent, cultural sensitivity, avoidance of conflicts, and accountability (p. 384, citing Barish, 2007). Although Australian consumer lawyers are governed by professional codes, these standards are equally relevant to the broader range of consumer advocates engaged in rights-based strategies.

The assessment of whether consumer law practice upholds dignity and respect is complicated by the scarcity of empirical research in this area (Field, 2006, p. 2). Macaulay's (1979) study of US consumer lawyers in the 1970s offers a cautionary account, documenting pejorative attitudes towards consumer clients, characterized as “deadbeats” and “cranks” (p. 138), and sharp disparities in expertise and commitment. Lawyers acting for businesses were typically well versed in consumer legislation, whereas those representing individuals often lacked comparable knowledge and adopted a mediating rather than advocacy-oriented role. Even progressive practitioners treated consumer law as a low priority and found such work unrewarding (pp. 141–42). Although this study is dated and reflects US practice, the absence of more recent research makes it difficult to assess contemporary professional attitudes. A human rights-based approach offers a normative safeguard against such tendencies by foregrounding dignity, respect, and accountability.

Lynch (2004) provides a counterpoint by emphasizing empathetic lawyering, attentive listening, and respect for clients' wishes. He illustrates this through the case of a homeless client harassed by debt collectors over an unpaid phone bill, who sought not litigation but recognition, explanation, and respectful treatment: “All she wanted was an opportunity to tell her story ... and to demand that, when he called her on the phone, he spoke politely and treated her with dignity and respect” (p. 66). This example demonstrates how a rights-based approach prioritizes voice, recognition, and respect.

In summary, Hurwitz's framework supports the application of human rights lawyering principles to consumer practice, including accountability, transparency, non-discrimination, participation, self-determination, and respect for human dignity (Hurwitz, 2003, p. 517). A rights-based approach treats clients as active participants and extends beyond legal representation to wider forms of consumer advocacy, aligning practice with human rights principles of dignity, autonomy, and participation.

## Rights-based Approach to Consumer Policy Development

Having explored the integration of human rights into consumer law, this section turns to a rights-based approach to consumer policy development. It revisits Liscow and Markovits' (2022) concept of democratic behavioural economics, which advocates deliberative processes to democratize policy-making. Although they frame consumer wellbeing in terms of freedom and dignity, they deliberately exclude rights-based claims from these processes (pp. 1336–37), a choice that risks marginalizing certain voices and limiting the scope of policy scrutiny.

Ensuring equal participation in deliberative processes requires safeguards against bias and discrimination and mechanisms to include groups experiencing marginalization and vulnerability. This aligns with human rights principles of inclusive and participatory engagement (Hurwitz, 2003, p. 516). The National Indigenous Consumer Strategy (NICS) Action Plan (2022) illustrates this approach by identifying key consumer issues for Indigenous communities, including contract comprehension, trader compliance, two-tiered pricing, and exploitative practices such as “book-up,” unconscionable debt collection, and high-pressure sales.

In the context of Indigenous consumer policy, active community participation supports the development of culturally appropriate and sustainable responses. Although the NICS Action Plan provides limited detail on participatory methods, it incorporates Indigenous representation through the NICS Reference Group, which oversees implementation (NICS Action Plan, 2022, p. 8). Embedding such participation in consumer policy development strengthens responsiveness to lived experience and reinforces the protection of rights, demonstrating the practical value of a rights-based approach.

A rights-based approach to consumer policy development also involves promoting transparency and accountability in both the formulation and implementation of consumer policy. This includes making the rationale behind policy decisions accessible and understandable to the public (Hurwitz, 2003, p. 517). Furthermore, establishing clear mechanisms for public accountability, requiring policymakers to justify their decisions in terms of human rights standards and principles, helps prevent the imposition of technocratic biases and supports transparent, accountable policy-making (Liscow & Markovits, 2022, pp. 1322–1324).

Taken together, these participatory and accountability-oriented mechanisms show how a rights-based approach can deepen democratic behavioural insights. Rather than treating deliberation as a technocratic exercise, a rights-based framework foregrounds power relations, structural disadvantage, and institutional responsibility. It directs attention not only to how consumer preferences are elicited, but to whose voices are heard and how policy choices are justified. In this way, integrating human rights strengthens the capacity of consumer policy processes to respond to systemic vulnerability while reinforcing regulatory legitimacy.

## Conclusion

This section highlights the potential of a rights-based approach to consumer law, practice, and policy development, grounded in the third dimension of Hurwitz's human rights lawyering framework. Hurwitz emphasizes applying human rights principles to guide legal service delivery, prioritizing client dignity, accountability, and transparency. This section extends that concept to policy development, addressing gaps in democratized behavioural economics by emphasizing participatory approaches for marginalized voices.

## Overall Conclusion

In Australia and elsewhere, behavioural economics has challenged traditional economic justifications for consumer protection by revealing the limits of rational choice and the influence of cognitive bias. While these insights explain how consumers make decisions, they offer limited guidance on how to evaluate the seriousness of resulting harms or to determine which forms of regulatory intervention are justified. As this article has shown, questions of access to essential services, housing security, privacy, retaliation, and effective remedies cannot be adequately assessed through behavioural or efficiency-based frameworks alone.

This creates a clear role for human rights principles in consumer law. A rights-based approach provides substantive criteria for identifying consumer detriment, not merely as suboptimal outcomes, but as impacts on dignity, autonomy, and material security arising from structural disadvantage and power imbalances. Drawing on Hurwitz's human rights lawyering framework, this article has argued for strengthening substantive consumer law, consumer remediation, and service delivery in ways that better reflect these normative concerns.

The first dimension highlights the intersection of human rights and consumer law, focusing on the right to an adequate standard of living and the right to privacy. This analysis demonstrates that integrating human rights principles into consumer law, especially in essential services, housing, product durability, and privacy in domestic settings, can strengthen consumer protection. The doctrinal analysis revealed an existing but underutilized relationship between human rights and Australian consumer law, indicating substantial scope to embed human rights considerations more fully within the legal framework.

The second dimension emphasizes a rights-based approach to consumer remediation within Australia's domestic legal context, demonstrating how human rights principles reshape understanding of harm beyond economic loss to encompass impacts on dignity, security, and living conditions. This includes both individual claims and collective advocacy strategies, impact litigation, community education, and policy reform, that target systemic barriers rather than isolated disputes. Creative uses of ADR schemes could transform them into vehicles for human rights protection. Community legal centres and legal aid bodies, even if not legally obliged, can play a crucial role in supporting consumer access to legal assistance. Additionally, addressing consumer victimization for making complaints should be prioritized in future policy development.

The third dimension invites self-examination by consumer lawyers and advocates, focusing on service delivery to clients. This article has emphasized treating clients as active participants rather than passive recipients, promoting empathy, accountability, and transparency in legal service delivery. These principles also extend to policy development,

addressing gaps in democratized behavioural economics and reinforcing the importance of participatory policy-making.

Across all three dimensions, power analysis serves as a diagnostic tool, examining “who is in control and why” (Hurwitz, 2003, p. 517). This approach identifies structural power asymmetries in privatized service delivery, barriers to accessing remedies, and consumer exclusion from policy-making. A rights-based approach thus addresses not only individual consumer harms but the systemic imbalances that disadvantage consumers in market relationships.

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- Human Rights Act 2004 (ACT).
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## European Union

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## Portugal

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## Spain

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## United Kingdom

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## United States of America

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## International conventions

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International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

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