Same, same but different: Comparing leading compliance systems in Myanmar and Australia

Rebecca Mohr, General Counsel, Head of Compliance, City Holdings Group, Myanmar

26 September 2019

Now… Myanmar's leading end-to-end consumer business

RETAIL: Leading modern trade retailer with supermarkets, hypermarkets, convenience stores, speciality stores

DISTRIBUTION FMCG: for Procter & Gamble, Abbott Nutrition, Brands Suntory, Red Bull and more

PROPERTY: largest Shopping Centre operator in Myanmar

F&B: Top bakery chain; joint ventures operating international franchises

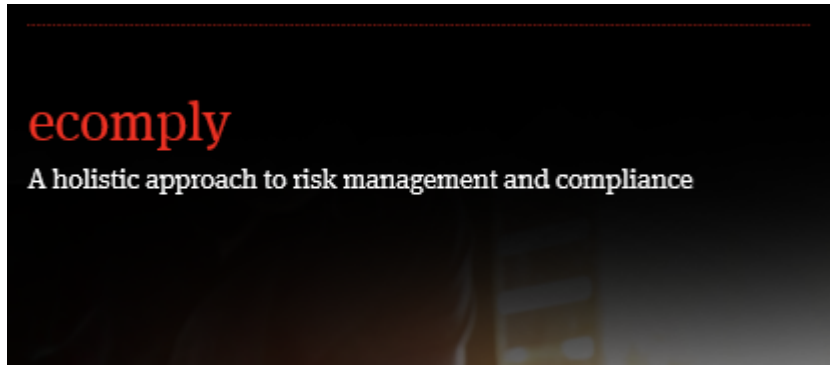
DISTRIBUTION PREMIUM: specialising in premium, masstige & HORECA channels

ACCELERATOR: growth sectors: Tech & Data, Transport & Logistics, Finance, Agriculture

And then - private practice & in-house counsel

City Holdings

BLAKE DAWSON WALDRON
LAWYERS



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Salt®
online compliance training

Gloria Jean's
COFFEES

DLA PHILLIPS FOX

SCM legal

DELL EMC

Snapshot of Australia

Land area

7,617,930 km² – 6th largest country by land are, world's largest island.

Small Population

26 million people – highly urbanised, mostly along eastern seaboard

Highly regulated

Common Law, highly active regulators, strong culture of corporate compliance

Remote

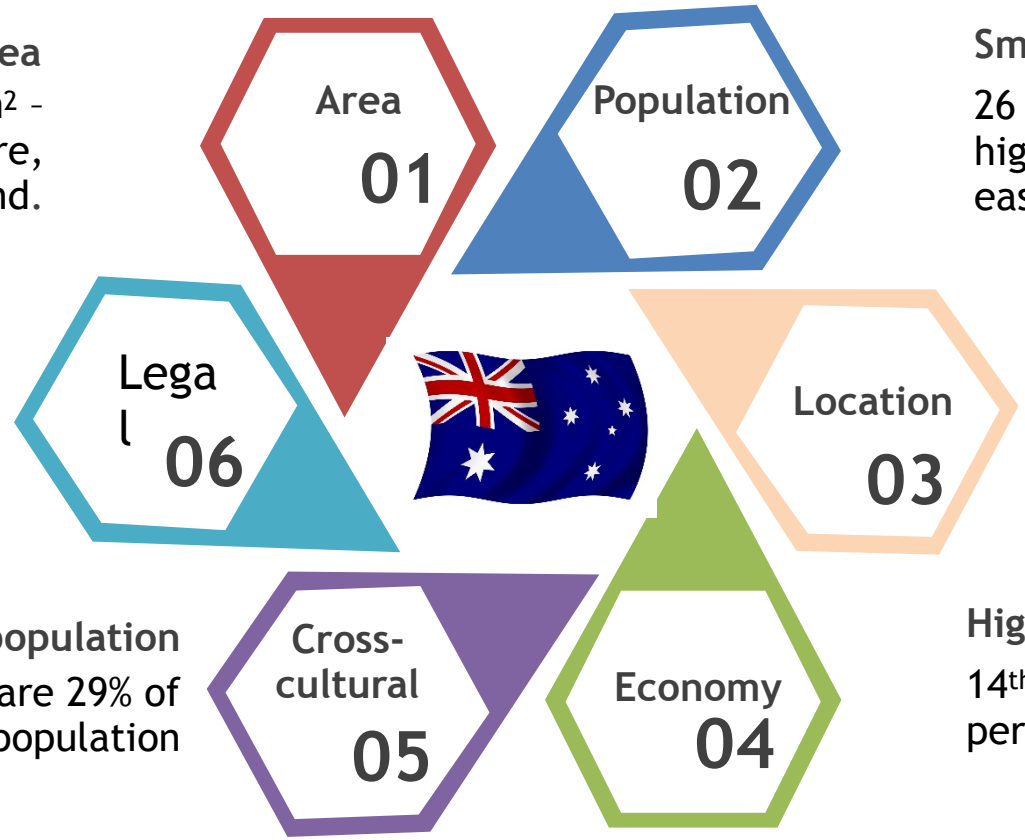
"Isolated" - oldest, flattest, driest inhabited content

8th largest immigrant population

Immigrants are 29% of population

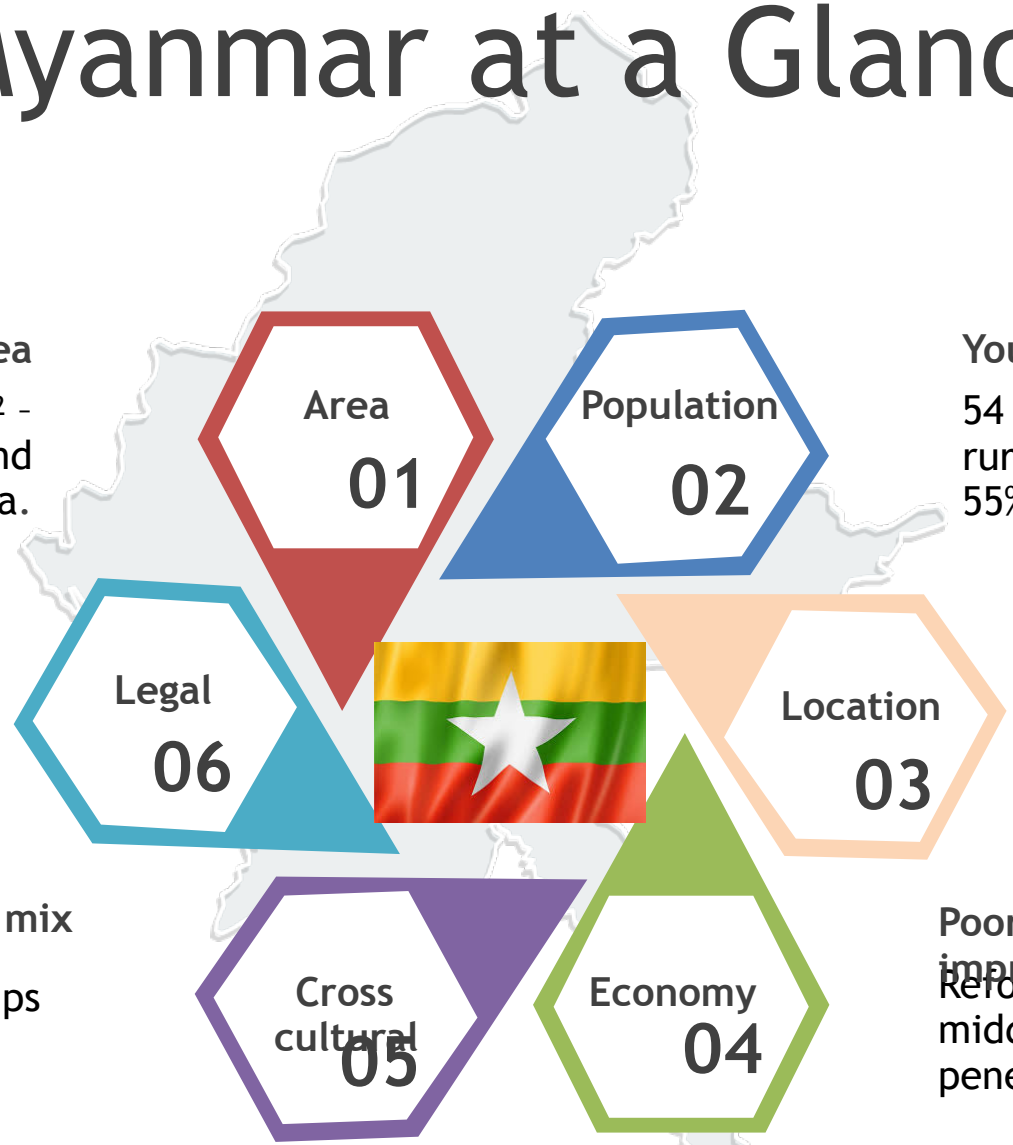
Highly developed

14th largest economy, 10th highest per capita GDP (US$55,692)



*data sourced from "Australia" Wikipedia 24.09.19

Myanmar at a Glance



Large Area

676,578 km² – Largest country in mainland Southeast Asia.

Young Population

54 million people- moving from rural to urban,
55% below 30 years of age

Undergoing reform

Common Law, legal reforms, 'unpredictable' regulators & courts

Strategic Location

Bordered by 40% of world's population

Diverse ethnic mix

135 distinct ethnic groups

Poor nation, economy improving

Reforms ongoing, growing middle class, high mobile phone penetration

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Laws and regulator

Australia

- Legislation – clear and precise
- Active regulators
- Transparent systems
- Readily available resources

NSW GOVERNMENT
SafeWork NSW

Safety starts here

Your Industr

Compliance & prosecutions

Notify SafeWork

Incident information releases

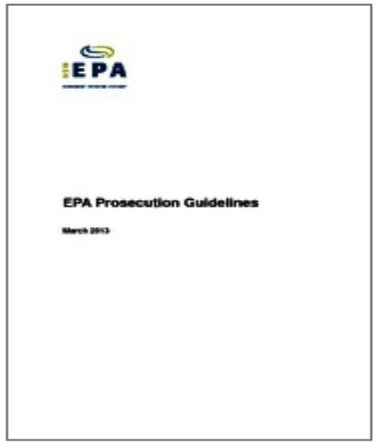
Improvement, prohibition and penalty notices

SafeWork inspectors

Enforceable undertakings

Prosecutions

EPA Prosecution Guidelines



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Publisher Environment Protection Authority

Type Publication

Cost Free

Tags legislation

ISBN 978-1-74293-504-1 / **ID** EPA20130141

File PDF 0.1MB / **Pages** 27 / **Name** 20130141EPAProsGuide.pdf

Laws and regulators - Australia

- Annual compliance & enforcement priorities publish

ASIC Australian Securities & Investments Commission

ASIC has released its Corporate Plan for 2019-2023 and small business remains a large and important stakeholder for ASIC, reflected in the plan's action items for this financial year.

ASIC Commissioner John Price said, 'With small businesses comprising 96% of all companies registered with ASIC, their success is critically important to the Australian economy. As Australia's regulator for companies, financial markets and providers of financial services and consumer credit, ASIC works to help small business succeed and to ensure a level playing field for honest small business owners.'

In the financial year ahead, ASIC will continue to review lenders' compliance with small business protections in light of the changes to unfair contract terms legislation as well as maintain engagement with

ACCC Australian Competition & Consumer Commission

Our enforcement and compliance priorities for 2019.

Consumer guarantees on high value **electrical and whitegoods products**, in particular those supplied by large retailers and manufacturers.

Conduct that may contravene the **misuse of market power** provisions and the concerted practices provisions.

Anti-competitive conduct and competition issues in the **financial services** sector, including issues with respect to foreign exchange services.

Consumer and competition issues arising from opaque and complex pricing of **essential services**, in particular those in energy and telecommunications.

Laws and regulators - Australia

- Regulators – use a “carrot and stick” approach

Undertaking

Dell Australia Pty Ltd has provided a court enforceable undertaking to the ACCC in response to concerns over its warranty and refund policies.

The undertaking acknowledges that from January 2008 to May 2010, Dell provided to its customers information that may have misled those customers about their statutory warranty rights, and responded to customer complaints in a manner not in accordance with consumers’ statutory warranty rights.

As part of the undertaking accepted by the ACCC, Dell will:

- email all customers who purchase products directly from Dell in the next three years, and publish on the Dell website for a period of three years, a notice outlining the warranty rights of consumers;
- publish an advertisement in the Weekend Australian newspaper notifying the public of the ACCC’s investigation and inviting consumers to contact Dell if they wish to have their claims reassessed; and
- upgrade its existing trade practices compliance program.

Laws and regulators - Australia

- Penalties – fines (significant) imprisonment for most serious offences
- Proportionality of penalties
- Courts guided by precedent

Record $26.5m penalty and $56m repayment ordered against training college Empower Institute

Listen

20 September 2019

"The **EPA** has an exceptional **prosecution record**, this includes a historical success rate of greater than 95% in its **prosecutions**." Also in the last financial year, the **EPA** issued 261 penalty notices with about $1.9 million in penalties being imposed.

Garuda ordered to pay $19m in ACCC air cargo cartel case

By **Patrick Hatch**
May 30, 2019 — 6.03pm

A A A

Indonesia's national airline Garuda has been savaged by a federal court judge and ordered to pay a $19 million penalty as a long-running price fixing case comes to a close.

The penalty ordered by the Federal Court on Thursday brings the total carriers including Qantas,

Importance of Compliance Systems – Australia

Why have a compliance system?

- Community & shareholder expectations
- Reduces risk of breach
- “Dob-in” culture - reports to regulators (competitors, consumers, NGOs, Unions…)
- Contributes to due diligence defences
- Part of mitigation strategy - reduction in penalties
- “Good for business”

Laws and regulators

Myanmar

- System in transition
- Significant legal reform
- Government commitment to rule of law
- Moving to regional integration & standa

CBM again issues detailed rules to banks | The Myanmar Times
https://www.mmtimes.com › news › cbm-again-issues-detailed-rules-banks

New Consumer Protection Law Enacted in Myanmar

April 5, 2019

Pyihtaungsu Hluttaw Law No. 9/2019—Myanmar's new Consumer Protection Law· March 15, 2019, repealing the previous law and providing a clearer legal framework protection of consumers in Myanmar. The date of implementation is March 15, 20

HEARTBEAT OF THE NATION

MYANMAR TIMES

Parliament approves tax law

CHAN MYA HTWE | 19 SEP 2019

Myanmar launches new companies law to adapt to current age

Next Step for Myanmar Competition Law: The Competition ...
https://globalcompliancenews.com › next-step-myanmar-competition-law-c...
Nov 18, 2018 - Notification 106/2018 of the Union Government released on 31 October 2018 appointed the various members of the Commission. This is the next step towards the active implementation of the **Myanmar Competition Law** 2015, which took effect in February 2017 The long-awaited **Myanmar** ...

The **Myanmar Companies Law** 2017 ("**Companies Law**") is in force as of 1 August 2018. The **Companies Law** brings about sweeping changes to the regulation of **companies** in **Myanmar**. From 1 August 2018: ... A private **company** can be incorporated with a minimum of one shareholder and one director. Aug 30, 2018

Laws and regulators - Myanmar

Myanmar

- Laws not always clearly drafted & may be inconsistent
- Implementation of laws – “troublesome”
- Challenge in lack of existing systems
- Resourcing & capacity challenges
- Lack of confidence in systems
- Regulators and Courts can lack transparency and may be unpredictable in decision making
- Breaches often cognizable
- Penalties for breach – fines & imprisonment (even for minor breaches)
- Generally no statutory defences

Importance of Compliance Systems - Myanmar

Why have a compliance system?

- Reduces risk of breach
- Global integration – local business meeting international expectations
- Improves professionalism and predictability of business
- Increasing community expectations
- Moves to compliance as part of doing “good business”

- Stay out of goal!

Comparing leading compliance systems

Australia

- Code of Conduct, detailed policies & procedures
- Induction and regular training
  - highly regulated areas (e.g. franchising, consumer, financial services)
  - high-risk sectors (e.g. manufacturing, mining)
  - high risk roles (directors & officers)
- Digital & in-person training (industry, business, role-specific) & testing
- Internal & independent auditing
- Reporting & registers
- Remedy breaches & review system
- Pro-active engagement of regulators
- ISO Compliance
- Legal advice on non-compliance & audits (claim for legal professional privilege)

Comparing leading compliance systems

Myanmar

- Code of Conduct with high-level principles
- **Easy to understand case studies**
- **Visual tools, clear messaging – language and cultural barri**
- Induction and regular training
  - highly regulated areas
  - individuals in high risk roles (directors & officers)
- **Explainer videos & in-person training - industry, business, role-specific scenarios**
- **Pop Quizzes**
- **Periodic internal auditing**
- **Encouraging reporting & keep registers**
- Remedy breaches & review systems
- ISO Compliance **as goal**
- Legal advice on non-compliance & audits (claim for legal professional privilege)

Score card - costs outweighing bene

- Outstanding workplace health & safety
- Historically strong environmental protection
- Globally leading Consumer Protection
- Strong corporate governance
- Low levels of corruption

- Over regulated “nanny-state”
- High cost of compliance to business
- Systematic non-compliance in highly regulated areas
  - Franchising enquiry
  - Banking Royal Commission
  - Under-payment of wages retail & hospitality
- Dampens risk appetite & reduces investment

Score card: right direction, journey sta

- Leadership at high levels of Government
- Supported by leading businesses
- Cultural shift occurring
- Ongoing law reform
- Potential major improvements - workplace health & safety, environmental protection, corporate governance
- Improved investment climate

- Low up-take of compliance
- New concepts
- Resourcing & capacity challenges
- Inconsistent enforcement
- Unpredictability of regulators & courts

Thank you