

LEGAL STUDIES

Evaluate the effectiveness of law reform in achieving justice for consumers, and include a description of how law regulates manufactures/suppliers.

Consumers are faced with greater choices in a more complex society, making them vulnerable to the complexities of a deregulated market place. The industrial revolution has changed the very landscape for consumers who have moved from a rural subsistent civilization to an urban mass consumption society. The conduct of 'Laissez Faire' has no longer been a method of approach, hence has created an imbalance of power between suppliers/manufacturers and consumers. It is therefore been the aim of consumer law to provide a method of redress and resolve this imbalance and to effectively achieve justice for consumers in the market place.

The Federal and State governments operate in a parallel manner in the area of consumer protection by establishing statutory controls which in essence protect and ultimately achieve justice for the consumer. The enactment of the **Trade Practices Act 1974 (CWLTH)** can be seen as the primary piece of legislation which deals with the behaviour of corporations and deceptive marketing. However the establishment of the **Fair Trading Act 1987** provides the fundamental basis of overcoming the constitutional limitations presented, thus allows for the protection of consumers in their dealing with suppliers and manufactures. In essence, the provision of statutory controls allows for consumer law to be an effective instrument in protecting consumers against unfair practices and allowing for justice to be achieved. Under the **Sales of Goods Act 1923** if goods are not of merchantable quality, the consumer may return the good without payment and not be in breach of the contract. Product liability laws allow consumers the right to recourse against the manufacturer by implying certain terms into all contracts such as that the goods are fit for purpose and of merchantable quality. This factor can be best illustrated in the case of **Grant V. Australian Knitting Mills (1936)** on the grounds of implied terms as the product was not fit for purpose. On the other hand, the law also protects manufacturers by providing rights in regards to refunds where the consumer has changed their mind, nor obliged to ensure the provision of spare parts or repair facilities beyond a reasonable period. The law in this matter has been effective for the manufacturer as it ensures rights against consumer complaint on the grounds of unreasonable conduct.

The effectiveness of law reform in achieving justice for consumers can be highlighted under the credit contract which allows consumers and suppliers to achieve equality within the legal system. The credit contract allows borrowers the right to know the complete details of the contract and conversely, the provider has the right to be told the relevant financial details of the borrower. However the failure of existing law, namely the **Credit Act 1984 (NSW)** prompted consumer law to change in order for consumers to achieve justice within society and against manufacturers/suppliers. The reform under consumer law allowed the introduction of the **Uniform Credit Code Agreement** which primarily allowed for the creation of uniform credit laws throughout Australia. Consequently the establishment of the **Consumer Credit Act 1995 (NSW)** was deemed effective as it allowed for civil penalty or a payment of compensation if contract was breached, however the act does not cover 90% of contracts as the act does not have an upper monetary limit thus limiting its effectiveness in terms of its enforceability. To overcome this problem, the **Department of Fair Trading** allows consumers to receive time and cost effective measures such as specialist tribunals which insist in assisting the consumer in aching justice against manufacturers/suppliers.

The issue surrounding contracts has been a matter of concern, as the law has needed to provide continual reform in order for consumers to achieve justice in a deregulated market system. For this reason contract law provides a form of remedy if there is a breach of contract thus disadvantaging the consumer to achieve equality within the legal system. This can be highlighted in the case of **Donoghue V. Stevenson 1932** which revolutionised consumer law as reform to the law provided

the consumer with rights of recourse against manufacturers if negligent. Previously due to privity of contracts, manufactures could not be held liable in contracts between consumers and suppliers, thus allowing society to see this as unjust. Therefore the establishment of **Minors (property and contract) Act 1970 (NSW)** and the **Contracts Review Act 1980 (NSW)** has allowed consumer law in remedying the injustices suffered by consumers in the market place. The continual reform to statute law has provided consumers with the greatest protection against manufacturers/suppliers. This has allowed the law to be effective in achieving justice for consumers in the market place.

The law has been an effective instrument in dealing with issues faced by consumers; however the law still needs to protect consumers in areas of concern regarding enforcement. The need for law reform has been needed in the area of self-regulation as many levels of standards has been hard to enforce because they are often not legally binding. The law has not provided reform in regards to regulation of professions. This can be highlighted in the case **'The butcher of Bega' Feb 26th 08, SMH** which underpins the need for regulation of medical professions. Another area that has needed continual reform by the law in order to protect consumers has been the growing use of technology through the increasing integration of nation states and deregulation of the marketplace. The increase of technology has prompted the need for increase in protection of consumers as there a few laws that can apply to unscrupulous dealers on a national and international front. This can be illustrated in the case **'Hundreds out of pocket as ebay trader goes bust' July 29th, 2008 SMH** which highlights the role of technology and the need for the law to keep up to meet community standards. There has been a need for more regulation of overseas transactions; however current laws provide limited protection thus limiting the effectiveness of consumer law in responding to the changing needs of consumers in facing the rampant increase in the use of technology.

For consumer law to be just it needs to be applied to all consumers equally. In the case between consumers and manufactures equality needs to be achieved in order for just outcomes to be met between both parties. The law operates to protect consumers from the consequences of this power. This can be highlighted through the establishment of the **Australian Consumer Competition Commission (ACCC)** which ensures consumers their rights under the **TPA** and **Prices Surveillance Act 1983**. The Fair Trading tribunal is one such avenue for redress as it is an effective source of advice for consumers unaware of their rights. The tribunal investigates consumer complaints and offers mediation services. In essence, the tribunal is an effective instrument in dealing with unfair conduct and consumer rights as it is resource efficient in dealing with matters. However the effectiveness of the tribunal is limited in its enforceability, making it ineffective when protecting consumers against unfair practices.

There has been a need for law reform under consumer law in order for individuals to access the law when needed. The continual change to consumer law has brought about the establishment of the **Consumer, Trader & Tenancy (CTTT)** under the **CTTT Act 2001**. The independent body can hear both parties and if necessary form legally binding decisions. The legal system has proved to be effective as it has provided an **Alternative Dispute Resolution (ADR)** which has proved to be time and cost effective for the consumer. The informal processes allows the tribunal to move away from the litigation process and attempt to resolve disputes in a contemporary manner and effectively deeming it to be resource efficient. However the effectiveness of the **CTTT** is hampered when assessing its accessibility to consumers living in rural and remote areas. Furthermore, applications to the Tribunal must be made in writing, thus disadvantaging minority groups such as the ATSI, migrants and non-English speaking backgrounds. Therefore the law as responded to changes within society, however continual change is needed to ensure that all consumers receive equality when accessing the law to achieve justice.

The legal system has provided many avenues of redress for the consumer in order for the adequate protection in a mass consumption society. This has been achieved through continual reform to consumer law in order to respond to the changing needs of society as they develop into an increasingly complex civilisation. However the law has been ineffective in areas of self-regulation

and technology which has hampered the effectiveness of consumer law in sufficiently addressing specific areas in regards to consumer protection. Therefore the law has been effective in responding to changes in society through continual reform to the law, yet needs to do this consistently in order for the law to adequately protect consumers in the market place against manufacture/suppliers.