

## **(1) Morality, Ethics and Commitment to the Law.**

### Extent to Which Law reflects Moral and Ethical Standards

- Consumer laws that are in place are clearly designed to protect the interests of the consumer.
- Trade Practices Act 1974 (CTH) + Fair Trading Act (NSW) focus on capturing misleading/deceptive conduct from retailers, suppliers and manufactures.
- Therefore they reflect society's moral and ethical standards.

### Commitment to the Law

- Groups that review laws regarding consumer to ensure law accurately reflects the aim of consumer protection includes
  - Federal and State Parliaments
  - Consumer groups and agencies – (i.e. The ACCC)
- To aid compliance, Federal Parliament introduced Retail Grocery Ombudsman Scheme on 9<sup>th</sup> May 2000
- However with globalisation of markets, its harder for our agencies to take action against foreign manufactures who may be manufacturing faulty goods.

## **(2) Effectiveness of Consumer Law**

- Factors that need to be considered when evaluating the effectiveness of consumer law in achieving justice include:
  - Law accessible in terms of cost/time
  - Equal treatment
  - Enforcement
  - Recognition and protection of the consumer
  - Balance of rights between individuals and the community
  - Able to deal with broad range of situations/people
  - Compatibility with society's moral and ethical outlook.
  - Readily to introduce amends to keep in line with society's changing beliefs.

### Justice for the Individual

- Law recognises the power imbalance between consumers and sellers of goods/services.
- Advantages of sellers over consumers not only encompass economics and monetary avenues but also political.
- State has countered these advantages of the supplier by the implementation of legislation and policy, which is used by courts and government departments.
- Law has helped consumer through:
  - Development of common law rules limiting rights/powers of party with an unfair advantage.
  - Specific legislation i.e. Motor Dealers Act 1974 (NSW)
  - Government Departments i.e. Department of Fair Trading or ACCC
  - Fostering of dispute resolution methods to ease burdens on courts and specialist tribunals.
- Ultimately, a person's interpretation of justice will guide their response to any question about the effectiveness of the common law.

- With an expanding marketplace induced by more globalisation in the economy, regulatory bodies have to face issues in dealing with consumer protection across international borders.
- The time it takes for these bodies to respond to issues, impacts upon how effective the law is.
- Amendments to legislation regarding Class Actions are an example of the type of legal response that needs to be taken in order to try and deal with these international transactions.

### (3) Law Reform

- The growth of new markets, globalisation and advancements in technology has all led to calls for newer regulations regarding consumer protection.
- Concurrent legislation created in the past do not follow the newer trends of globalised transactions through increased trading links as well as better forms of technology.
- Australian consumer law is gradually being changed, but is sometimes complicated due to different jurisdictions of certain acts and legal loopholes.

Conditions that give rise for the need for Reform

Changing Social Values...

- The expectations, standards and values of consumers have and are changing over time.
- Example – most consumers these days use EFTPOS rather than paying for goods with cash.
- With this new method, came issues of credit fraud, which has lead government attention to see that protection needed to be put into place for the consumer.
- The amendments to the Trade Practices Act, dealing with misleading and deceptive conduct are examples of how the legal system, can govern as well as define the relationship between people.

Composition of Society...

- Australia is a very multi-cultural society whereas there are many different groups of consumers.
- Advertising targets specific groups of these consumers, which make up our society, which is usually a very large source of revenue for media groups.
- In this case, the law has set up certain mechanisms and reforms directed at advertising which address the needs and consider interests of these groups in our society.
- Examples – Page 221

International Law...

- The United Nations has proclaimed March 15 as World Consumers Day.
- The UN has laid down eight international consumer rights, which is a form of international law attempting to protect consumers on a global scale.
- See Page 222 for 8 rights...
- On an international level, the International Organisation of Consumer Unions (IOCU) which is a worldwide federation of consumer organisations, is dedicated to protect and uphold consumers and their rights.

## Technology...

- With an increasing reliance and use of the internet, more and more an international marketplace is being formed on the web for consumers.
- As this market grows, law needs to focus on mechanisms to protect consumers' rights for goods and services obtained via the Internet.
- Existing laws did not adequately cover Internet purchases, therefore law makers needed to address the need and are still reviewing and changing law regarding the purchasing of goods through the internet.
- Another Example would be the government responses to the Y2K bug in the year 2000 and compliance stickers regarding many electronic goods.

## Goods and Services Tax...

- There are disclosure requirements on retailers to state the amount of GST that has been added to the price of goods.
- It should be remembered that the GST affects not only goods but also services. It affects all consumers of goods and services.

## Who Facilitates Reform? (The Agencies of Reform)

There are a number of agencies of reform dealing with laws regarding the consumer. The main reform agencies are Parliament, Courts and Tribunals. However there are others.

### Parliament...

- Both state and federal, can legislate to reform law affecting consumers
- Laws need to be continuously reviewed to reflect changing social standards as well as increasing technology.
- Example – E-Commerce (from above)

### Courts and Tribunals...

- The New South Wales Fair Trading Tribunal was a reform made by the NSW State government regarding consumer reform.
- Tribunal was established to replace things such as the Consumer Claims Tribunal, Building Disputes Tribunal, and Commercial Tribunal Etc.

### The ACCC...

- The ACCC's mission is to 'enhances the welfare of Australian's by fostering competitive, efficient, fair and informed Australian Markets'.
- Acts as an industry watchdog achieving compliance with Trade Practices and State equivalent act regarding consumers and makes recommendations for reform.

#### **(4) Chapter Summary**

- The law recognises the power imbalance between consumers and sellers of goods or suppliers of services.
- Consumer protection mechanisms currently in place were developed for a conventional marketplace.
- With an expanding global market, the emergence of new markets and advances in technology as well as changing social values and expectations, new issues arise which call for consumer laws to be reformed.
- Increased cross-border transactions and Internet trading make it difficult for enforcement agencies to ensure compliance by traders with Australian Law.
- Legislation such as the Trade Practices Act attempts to set in law the moral and ethical standards expected from suppliers of goods and services, with penalties for misleading and deceptive conduct.
- To be effective in achieving justice, the law needs to be accessible and enforceable, among other things.
- The rights of consumers are recognised by the international community.