

# LEGAL STUDIES

## Consumer Essay – Law Reform

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Law reform is an ongoing process primarily driven through society's changing values and attitudes. The need to amend legislation or to introduce new laws is driven by the fact that today's society is in a constant state of flux. Changing social values and composition of society, new concepts of justice, failure of existing law, international law and new technology are all catalysts of law reform. Such factors oblige the parliament, courts, and the Australian Law Reform Commission (ALRC) to consider the effectiveness of current legal processes, and essentially provide *acquis consommateur* to protect all parties from immoral and unethical conduct.

Prior to the Industrial Revolution, there was no legal redress, meaning that the *laissez-faire* marketplaces of the 18<sup>th</sup> and 19<sup>th</sup> centuries were high risk commercial environments for consumers. However, as the moral and ethical standards of society revolutionised, the legal system reflected these adjustments by shaping the law in order to mirror community expectations. Today, the Australian society exists within the context of a consumer-driven, capitalist, free market economy. The cases of **Carlill v Carbolic Smoke Company (1893)** and **Donoghue v Stevenson (1932)** set precedents regarding misleading advertisement and manufacturer's duty of care to consumers, which ultimately began the age of consumer awareness and protection. As a result of such cases, legislation such as the Contracts Review Act 1980 (NSW) was introduced to ensure that all parties of a contract demonstrate *consensus ad idem* and that remedies such as damages, special performance or injunctions are available if a contract is broken. This is seen through the case of **Blomley V Ryan (1956)**, where a contract was declared unconscionable due to Blomley's intoxication.

Ethically those with least power should be protected from those with greatest power to preserve the moral value of equality. The revolution of 'caveat emptor' to 'cognoscat emptor' (right to know) meant the power imbalance in a consumer-seller relationship gradually but effectively stabilised. Due to the changing social values and composition of society, there is now a greater emphasis on awareness of the law, which has become a major factor contributing to equality. Publications from watchdogs, such as "Choice" are effective in keeping consumers accurately informed with regard to laws regulating advertising and marketing practices. As a result of the change in the composition of society, the ALRC has recommended that information about remedies available under the Trade Practices Act 1974 (Cth) should be included in national child education strategies to enable minors greater access to justice.

The youth consumer group provides an illustration of how the composition of our society gives rise to conditions requiring law reform. Due to children now becoming a major target group of advertisers, consumers groups such as the Advertising Standards Council (ASC) act as watchdogs by setting and reviewing the standards and ethics code that advertisers must adhere to. However, subliminal advertising in areas such as children's goods, as seen through 'Parents ask for truth on child food advertising.' (2007 SMH) has raised criticism from consumers in regard to the effectiveness of such institutions in effectively dealing with complaints, hence portraying the limitations that exist within the law despite reformations.

Law reform is also prompted by failure of existing law and by new concepts of justice. An area of consumer protection where reform has been influenced by changing concepts of justice is financing a purchase by credit. A major problem with credit is that people are lured into purchases which they cannot repay, as evident through the article 'Banks pushing credit card debt'- SMH 2010. Due to the new concepts of justice, the government enacted the Credit Act 1984 (NSW) to regulate credit providers, however this only protected 20% of the consumer lending market. Therefore, due to the failure of existing law and to increase enforceability, a uniform Consumer Credit Code was adopted throughout Australia in 1993 which supervises both borrowers and lenders to protect their rights in a high risk commercial environment.

The protection of individual's right is further improved by state regulation in occupation licensing, which reflects new concepts of justice. Although self-regulation improves resource efficiency within the legal system, state regulation ensures that only qualified professionals who meet minimum standards of ethical behaviour are licensed in NSW, as seen through the case of **Waterhouse vs. Bell (1991)**. Legislation such as the Motor Dealers Legislation Amendment Act 2001 (NSW) and the Travel Agents Act 1986 (NSW) have been introduced to ensure that any licensee whose work is below the industry minimum standard will have their license invalidated. In order to improve effectiveness, the law also allows people who have had their licenses revoked to seek a judicial review of the decision at the Fair Trading Tribunal (NSW), thus ensuring that the law reflects the rules of natural justice and the changing moral and ethical standards of society.

Change in social attitude towards justice, fairness and equity stimulates the need to recognise and redress the power imbalance that exists in a technologically advanced marketplace. Statutes such as Trade Practices Act 1974 (Cth) and Sales of Goods Act 1923 (NSW) prohibit unethical and immoral behaviour in the marketplace and guarantee consumers their legal right to goods of merchantable quality. Watchdogs like the ACCC and the Office of Fair Trading exist alongside these statutes and have the power to bring corporations to Federal Court for non-compliance. This is evident through **ACCC V Nissan Motor Company (1998)**, where the defendant was fined for false and misleading advertising. Furthermore, Society's concerns over the inaccessibility of redress in areas of cost and time have pursued the introduction of the Consumer, Trader and Tenancy Tribunal (CTTT), which is a specialist dispute resolution mechanism run informally to evaluate and mediate consumer disputes. The 2004 SMH article named, "Aussie battler bogged down in court" indicates how accessibility to the court system has come at the expense of resource efficiency.

Furthermore, international law and the use of new technology are constantly changing the level and complexity of interactions between consumers and sellers. Globalisation, has increased cross-border transactions, which allow traders to avoid detection and compliance with regulations. Although consumers are well protected through domestic legislation in Australia, the borderless characteristics of a global marketplace has promoted non-compliance amongst international traders. Due to constantly developing technology, today more than 50% of Australians shop online. Although convenient, compliance is difficult to enforce, due to the anonymity of the manufacturer/trader. In 2007 the Department of Fair Trading received almost 1500 complaints with regard to internet shopping. However, the NSW Fair Trading Minister could only produce an advice list of "dos and don'ts" when buying online, as remedying this form of injustice is almost impossible. Thus, e-commerce has meant a step back to 'caveat emptor,' deeming enforcement to be a major concern for the modern consumer.