

Students Name

University Name-

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The economy is generally divided into two extremes. One is the free market and another is the command market. The free market is the market where the labor, factors of production, and mechanisms at different prices are unplanned and are not regulated by any central authority. Such an economy is regulated by supply and demand rules. On the other hand, command markets are controlled by a central authority usually the government. Presently, most of the economies are neither completely free nor completely under command. The idea is to create a balanced mix of a free market and a command market (Metri, 2018). The present-day economies, therefore, ensure that the factors of production are not concentrated in a few hands and that labor gets its due and the consumers or buyers get the value of their money. These regulations came after the government realised that the free economy tends to become exploitative and that some steps need to be taken by the government to give a level playing ground to all the people participating in the market.

This manifested in the form of many legislative measures taken by the Australian government. The Australian Consumer laws, the consumer protection laws in property estate, and protection under the *Sales of Goods Act, 1928* are a few examples. The examples of having a protective legislative scheme can be found in many schemes in the given laws. However, the point to be ascertained is whether the protection is adequate. Australian consumer law can be found in *schedule 2* of the *Competition and Consumer Act, 2010* and *Australian Securities and Investments Commission Act 2001 (ASIC Act)*. The need for empowering the consumers was felt due to the emergence of standard contracts in the field of contract laws.

The contract laws are thus an attempt to give the consumers some bargaining power over the organised bunch of producers. Such powers have become more important and relevant given the online shopping where the seller is virtual and there is no legal mechanism in place to trace the person to be made responsible for any unfair dealing that may happen online. Another important area where consumer protection is important in the field of property purchase because this is one area where the consumers are not well informed because property transactions are rare transactions and involve a lot of documentation that the consumer may not be aware of (Syuib, 2020). Therefore, the *Property, Stock, and Business Agents Act 2002 (NSW)* is also framed for protecting the consumers.

Consumer protection does not however mean that the consumer is always right. Nor does it mean that the consumers will have it their way all the time for all the transactions. For

instance, the cooling-off period is not available for all contracts. The cooling-off period is available only in cases of the door to door sales, in certain land purchase contracts, contracts with an agency to sell the property (Fair Trading, 2021). There are checks and balances maintained in the laws. For instance, the consumers may not get a deposit in case of cancellation of the order. This is an attempt made by the government to give the benefit of the time and expense devoted by the seller to the transaction and to adjust any loss that may occur due to the cancellation of the transaction. Similarly, in minor problems, the business itself gets to choose the remedy for the consumer.

ACL, on one hand, provides general protection to the consumers while entering into contracts specifically the standard form of contracts. *Schedule 2 Competition and Consumer Act, 2010* gives the consumers certain protections which are- protection from misleading and deceptive conduct (*s 18*), unconscionable conduct (*s 21*), unfair contract terms (*s 23*), and unfair practices. The protections given under ACL are general. There is nothing extraordinary in the protection given under ACL except for the fact that the law applies to all the provisions similarly and this has ensured that the consumer rights do not get jeopardised due to procedural issues. The guarantees under ACL are-

- a. The supplier must have the right to sell goods so that the consumer does not have to be dragged into a confusing state created by someone's lack of title or authority (*s 51*).
- b. The goods are of merchantable quality (*s 54*).
- c. The goods provided match the description given by the consumer or displayed by the seller (*s 57*).
- d. The goods are fit for the purposes they are generally used (*s 61*).
- e. If the contract is for services, the services are carried on with due caution and care (*s 60*).
- f. The services are completed at a fixed time or the reasonable time if no time is fixed (*s 63*).

Apart from these general protections the ACL also puts certain obligations on the seller of consumer goods like ensuring the safety of products and in case of laying off agreements the buyer has a right to call off the agreement before delivery but a seller does not have the same right. The consumer has to be provided with receipts for purchases over and above \$ 75 and

in case of purchases of a lesser amount the consumer can ask for the receipt (ASIC, 2021). Additionally, the seller has to maintain mandatory safety standards and report any injury or death happening because of the defect in the goods or services.

Although a mere perusal of the ACL gives us an idea that the government has taken every possible step of protecting consumers the problem in the ACL lies in the poor implementation of the laws. This was one of the recommendations given by the PCs in its review of the ACL. The point to be noted here is that this poor implementation is despite the range of civil remedies available under the laws (Australian Government, 2013). ACL is a very well thought of legislation when it comes to the remedies for the breach of contract. They are- civil pecuniary fines, negative publicity, declaration, injunctions, damages to the consumer, criminal proceedings in rare, and cases of gross negligence.

The defences available under the ACL are evident in the stringency towards the seller. The only defence a seller has is that the consumer is of foreign origin. Although this may not go well with the commitment made by Australia to the International Conventions dealing with human rights especially the right to equality but has given some respite to the sellers in terms of the extends of their responsibility (Consumer Affairs Australia and New Zealand, 2018). Although the laws under ACL do not apply to financial products and services, The Australian Securities and Investments Commission Act 2001 (ASIC Act) applies to financial products and services. But the government has made appropriate amendments to bring the laws under ASIC in tune with the laws under ACL.

So, largely the government has covered almost all areas of consumer protection and all range of goods and services. The problem as mentioned above is the implementation of these laws by the state and territory agencies. Now, coming to the balance of rights of consumers and the sellers, the sellers are mostly duty-bound but as long as the contract is fair and there is no misconduct or unconscionable bargain, the sellers do not have any liability towards the consumers (Australian Consumer Law Review, 2016). Despite the detailed provisions, there are a few loopholes in the laws that need to be filled up like the confusion on whether multiple non-major laws can be termed as a major fault. There have been conflicting judgments by the courts and the law on the point is not clear.

In the case of *Prestige Auto v Bonnefin* [2017] NSWSC 149 and *Marwood v Agrison Pty Ltd* [2013] VCAT 1549, the courts gave a judgment stating that multiple minor faults can be termed as a major fault. The consumer interests also get hampered due to the unawareness

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of the consumers of the existing laws under ACL. Surveys have shown that 90% of consumers are aware that consumer laws exist but they are not aware of the specific rights under those laws. This is aggravated by the fact that the traders are not under an obligation to inform the consumers about the rights or benefits accruing from extended warranties. Moreover, a buyer has more chances of getting warranties if the decision of purchasing is made quickly. The decisions are thus not fair. That was one contention made by the communications Alliance.

Apart from the laws under ACL, the laws under the *Property, Stock and Business Agents Act 2002 (NSW) (PSBA Act)* also provide consumer protection albeit with certain practical problems that need some changes. There is a discrepancy in the laws related to underquoting under *sections 73 and 73A of the PSBA Act* and *sec 30 of the ACL*. The sections under both laws would stop the seller from quoting a price lower than the intended sale price. However, under ACL if a real estate agent agrees to sell at a higher price, then the sections of *PSBA* are not violated but *sec 30* gets violated by the same. So, there is a need to harmonise this discrepancy in the given laws.

Another problem lies with *Section 52(1) of the PSBA Act* which states that a licensed or a registered person involved in property matters should not conceal a material fact to induce another person to agree. This section puts fetters on the real agents only. So vendors are out of the purview of this section. Similarly, what would constitute a material fact under this section is not defined anywhere. So, that leaves out a lot of scope for the sellers to manipulate facts to their benefit. Despite the decision given by the administrative tribunal in the case of *Hinton & Ors. v Commissioner for Fair Trading [2006] NSWADT 257 (1 September 2006)*. A suggestion given by the REINSW was that it must be made mandatory for the seller to include the material facts in *Schedule 1 of the Conveyancing (Sale of Land) Regulation 2010 (NSW)*.

A consumer credit regime was established under the *National Consumer Credit Protection Act 2009 (National Credit Act)*, which states that the consumer should be informed about the credit rates and thus should be able to make an informed decision. The lacunae of the *National Consumer Credit Protection Act 2009 (National Credit Act)* is that its scope of operation is very limited. It only applies to loans that are taken for domestic purposes or that are taken for residential purchases leaving out a good deal of purposes for which one may require a loan. Moreover, short-term loans are also not covered under this

regime and logically a consumer who takes a domestic loan would not generally require it for the long term but may due to lack of protection end up taking credit for the long term.

From the above analysis, it is clear that the a through consumer legislative scheme is prevalent in the Australian market to regulate the market and control the sellers, traders, vendors while dealing with the consumer whose bargaining power is weak. Right from standard contracts to dealing with consumer goods and services as well as the and, property and credit market, the Australian regime has taken care of all aspects of the consumers' needs and transactions. However, it cannot be said that the Australian legal regime does not need any changes or amendments. As mentioned in the above-given analysis and recommendations, certain areas of law need more clarity and consistency like *Section 52(1) of the PSBA Act and sections 73 and 73A of the PSBA*, and *sec 30 of the ACL*. Additionally, a better implementation mechanism needs to be there to make most of these rights by the consumers. It can be concluded thus that the consumer rights are not over stretched given the bargaining power of the sellers and as is evident from the analysis, the laws are just, fair and reasonable for both the consumers and the sellers.

## References

ACL, s 30.

ASIC. (2021). National Credit Code. Retrieved from: <https://asic.gov.au/regulatory-resources/credit/credit-general-conduct-obligations/national-credit-code/>.

Australian Consumer Law Review (2016). The Real Estate Institute of New South Wales Limited. Retrieved from: [https://consumerlaw.gov.au/sites/consumer/files/2016/07/Real\\_Estate\\_Institute\\_of\\_New\\_South\\_Wales.pdf](https://consumerlaw.gov.au/sites/consumer/files/2016/07/Real_Estate_Institute_of_New_South_Wales.pdf).

Australian Government. (2013). The Australian Consumer Law A framework overview. Retrieved from: [https://consumerlaw.gov.au/sites/consumer/files/inline-files/ACL\\_framework\\_overview.pdf](https://consumerlaw.gov.au/sites/consumer/files/inline-files/ACL_framework_overview.pdf).

Consumer Affairs Australia and New Zealand. (2018). Australian Consumer Law Review: Clarification, simplification and modernisation of the consumer guarantee framework. Retrieved from: [https://ris.pmc.gov.au/sites/default/files/posts/2018/11/3\\_consumer\\_guarantee\\_framework\\_decision\\_ris.pdf](https://ris.pmc.gov.au/sites/default/files/posts/2018/11/3_consumer_guarantee_framework_decision_ris.pdf).

Fair Trading. (2021). Consumer right: Myths and facts. Retrieved from: <https://www.fairtrading.nsw.gov.au/buying-products-and-services/buying-products/consumer-rights-myths-and-facts>.

Hinton & Ors. v Commissioner for Fair Trading [2006] NSWADT 257 (1 September 2006).

Marwood v Agrison Pty Ltd [2013] VCAT 1549

Metri, A. (2018). What is the National Credit Code? Regulations & Summary. Retrieved from: <https://legalvision.com.au/what-is-the-national-credit-code/>.

National Consumer Credit Protection Act 2009 (National Credit Act),

Prestige Auto v Bonnefin [2017] NSWSC 149

PSBA Act, s 52 (1).

PSBA Act, s 73

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PSBA Act, s 73 A.

Schedule 2 Competition and Consumer Act, 2010, (s 18),

Schedule 2 Competition and Consumer Act, 2010, s 21

Schedule 2 Competition and Consumer Act, 2010, s 23

Schedule 2 Competition and Consumer Act, 2010, s 51

Schedule 2 Competition and Consumer Act, 2010, s 54

Schedule 2 Competition and Consumer Act, 2010, s 57

Schedule 2 Competition and Consumer Act, 2010, s 60

Schedule 2 Competition and Consumer Act, 2010, s 61

Schedule 2 Competition and Consumer Act, 2010, s 63.

Syuib, M. (2020). 'The Protection of Online Shopping Consumer Rights in Australia'.

*Pusat Journal*, 5 (1).