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[redacted]

15 January 2019

Submission to the Transport and Public Works Committee on the *Queensland Civil and Administrative Tribunal and Other Legislation Amendment Bill 2018*

Executive Summary

This submission only covers amendments that effect consumers who will be filing applications in QCAT relating to motor vehicle claims.

In principle, I support the amendment to the relevant legislative instruments to increase the QCAT limit for motor vehicle claims to $100,000. However, I agree with the recommendation of the Legal Affairs and Community Safety Committee 'Lemon' Laws inquiry report that the limit should be abolished and will argue that this should occur over time in order give Queenslanders the same access to affordable justice as consumers in NSW and Victoria.[1]

I also argue that QCAT should differentiate itself from the Magistrates Court not through its claim limit but by not allowing legal representation at all for vehicle claims. I argue that both NCAT and VCAT have become quasi courts and that this is serving to further disadvantage consumers rather than protect them.

I am very please to see that caravans have confirmed as motor vehicles but will argue that the term 'caravan' is not well defined and may unnecessarily exclude some recreational vehicle owners from affordable justice.

I would welcome the opportunity to give oral evidence at any Committee hearing. I have relocated from Queensland to WA so it would need to be by phone.

Introduction

I am the administrator of the Lemon Caravans & RVs in Aus Facebook group, which commenced in December 2015. At present, the group has approximately 41,500 members. Membership is made up of owners of lemon recreational vehicles (RVs); supporters for the owners and strengthened legislation; and prospective purchasers who are looking for information on how to avoid purchasing a lemon.

The group has many members who have purchased high value RVs in Queensland and have to date not had access to justice when the supplier and/or manufacturer refuses to comply with the Australian Consumer Law (ACL). Most RVs are well over $25,000, meaning that they have not been able to take their claim to QCAT. This leaves them having to take private legal action in the

[1] Legal Affairs and Community Safety Committee, 'Lemon' Laws - Inquiry into consumer protections and remedies for buyers of new motor vehicles (November 2015)

Magistrates Court. For most this is cost prohibitive, with legal fees often quoted in excess of $50,000 and paid in advance. Then costs are only awarded on a scale, meaning that the consumer can be out of pocket for a significant proportion of their costs. There is also the risk of an adverse costs order if the Court finds against the consumer, which can happen even if the facts support the consumer's claim. Suppliers know this and exploit it, leaving consumers with no way of seeking redress.

The Queensland Office of Fair Trading (QOFT) has admitted that it is unable to force a supplier to do anything at all. Mr David Ford, Deputy Director-General, Liquor, Gaming and Fair Trading, Department of Justice and Attorney-General, made this observation at the Public Briefing on 26 November 2018. Executive Director, Mr Bob Bauer, also informed me of this by letter in 2017. Suppliers also know and exploit this, leaving lemon owners with absolutely nowhere to turn and significantly out of pocket.

The ACL was intended to be straightforward legislation that enabled consumers to get redress without taking legal action.[2] It was intended that regulators would be able to enforce unlawful behaviour, not just offences under the Act.[3]

My personal experience

I speak with authority on this matter, as I am one of these lemon victims and purchased in Queensland. This was the impetus for starting the Facebook group, after being removed from other groups for trying to tell the truth about my lemon caravan experience. My husband and I purchased a $73,000 lemon caravan in February 2015. We took out a loan on our mortgage to do so, as we needed the caravan to live in while my husband was working away from home in Queensland. From day one there were defects. Over the months more and more defects became apparent, making the caravan unroadworthy. In spite of significant evidence of major failures, including the manufacturer's own expert inspection report, we have been repeatedly refused a refund for over three years.

In fact, the manufacturer even sued me for defamation and injurious falsehood in the County Court of Victoria in December 2016 for publicly posting in my Facebook group about the defects in my caravan and their lack of compliance with the ACL and many other regulations and legislative provisions. Posting on social media was a last resort as they just refused to comply with the ACL. It was, in my honest opinion, vexatious litigation designed to cause maximum financial and emotional damage to me personally. I had to self-represent, being unable to afford legal representation, although I crowd funded enough to have a barrister write my defence. They ultimately withdrew the action in December 2017 after the Judge in the County Court of Victoria ordered them to supply me with five years of their financial statements to prove their claim of financial loss. Over a year later I am still fighting for my costs and disbursements to be paid.

QOFT said they were unable to assist even after I escalated my complaint to the highest levels and had another member of my group also make a complaint against the same supplier and manufacturer with almost identical facts to my complaint. QOFT refused to take any action at all other than conciliation, even though we had evidence of misleading and deceptive conduct and representations under ss 18 and 29 of the ACL. The vexatious defamation action is, in my view, unconscionable conduct under the ACL. I am not alone, with other members of my group

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[2] Australian Consumer Law, *Legislation* < http://consumerlaw.gov.au/the-australian-consumer-law/legislation/>.
[3] Australian Consumer Law, *Compliance and enforcement: How regulators enforce the Australian Consumer Law* (2 December 2010) < http://consumerlaw.gov.au/files/2015/06/compliance_enforcement_guide.pdf> 7.

reporting being threatened with legal action for telling the truth publicly after they too have been refused proper redress under the ACL and have no where else to turn.

As the regulator abandoned us, we only had private legal action to turn to. The QCAT limit is $25,000 so that has not been an option and quotes to take legal action in the Magistrates Court in Brisbane were in excess of $50,000 paid up front. This was not affordable or viable. So the caravan sat in storage at a friend's property for nearly three years while we continued to pay the loan, rego and insurance. Fortunately for us, I finally negotiated a special fee agreement with a solicitor that has enabled us to file a claim in the Magistrates Court. This action is ongoing. However, it shouldn't have been necessary if QOFT took action or if the ACL was properly applied and enforced as intended. Even with the special fee agreement, it is unlikely we will get the full value of our damages claim due to the scale of costs applied. So through no fault of our own, we will have a financial loss and that just isn't just or fair at all.

Tribunals in other jurisdictions

I have had experience in the NSW Civil and Administrative Tribunal (NSW) as a non-lawyer representative for three of my group members in ACL matters for refund claims. I have also had reports from my group members about their experiences in both NCAT and the Victorian Civil and Administrative Tribunal (VCAT). I have read numerous motor vehicle decisions from both Tribunals.

I would like to note that both NCAT and VCAT do not have any monetary limit on new motor vehicle applications. The filing fees can also be very high.

However, there are serious and fundamental flaws in the way these Tribunals operate that must not be replicated in QCAT. I discuss this further below.

Addressing the amendments in the *Queensland Civil and Administrative Tribunal and Other Legislation Amendment Bill 2018 (The QCAT Bill)*

Clause 5: Insertion of new ss 50A–50D

Section 50A(1)(c)

I am extremely grateful that after over three long years of waiting for the recommendation of the *'Lemon' Laws Inquiry*, the QCAT limit will be finally increased so that more consumers who have purchased a lemon vehicle through no fault of their own can have access to affordable justice.[4] However, I argue that placing a limit of $100,000 is arbitrary and doesn't take into consideration the fact that new many vehicles are now close to or over $100,000, especially recreational vehicles. The rationale as I understand it as being not to encroach on the jurisdiction of the Magistrates Court.

The NSW and Victorian Tribunals damages claims are unlimited for new motor vehicles. Putting a cap of $100,000 disadvantages Queensland consumers compared to consumers in these other States. This will continue to encourage consumers to purchase higher value new vehicles in those states in case they end up with a lemon.

I also believe that there is an assumption that if a consumer can afford $100,000 for a new vehicle then they can afford to pay for legal representation in the Magistrates Court. This is a very

[4] Above n1.

uneducated assumption. Some retired consumers sell their primary residence in order to travel permanently and end up with a lemon and nowhere to live. Some use a substantial part of their superannuation, only leaving what is needed to live comfortably in their retirement. Some purchase in good times but fall into hard times, especially if the lemon is causing financial hardship through the payment of finance.

Damages claims over and above the value of the new vehicle for consequential losses, disbursements, and misleading and deceptive conduct claims can also push a lower value claim over the $100,000 threshold. My own case is exactly like that, with the caravan being $73,000 but the further damages claims have pushed that well over $100,000 now.

Additionally, the ACL is beneficial legislation for consumers. It is consumer protection legislation. There was an expectation by legislators that consumers would not be financially worse off through no fault of their own when they purchase a defective product. If forced to take legal action in the Magistrates Court, a consumer will always be worse off as costs are awarded on a scale, meaning that they could well be tens of thousands out of pocket in order to take what can also be risky legal action.

So by imposing a limit on vehicle claims in QCAT, legislators are neglecting a class of Queensland consumers based on arbitrary limits and assumptions. I believe that this would not be the intention of legislators, either in Queensland or Federally. Protected consumers are confident consumers who will purchase locally. There is a continuing disincentive for Queenslanders in purchasing higher value vehicles in Queensland.

Proposal
Initially implement the cap of $100,000 but undertake a review after 12 months of operation to ascertain the number of consumers who have been excluded from affordable and accessible justice due to the value of their claim being outside this jurisdiction.

Section 50A(4)
The definition of a motor vehicle under s 12(1) of the *Motor Dealers and Chattel Auctioneer's Act* 2014 (QLD) (MDCA Act) includes:

> (a) a vehicle that moves on wheels and is propelled by a motor that forms part of the vehicle, whether or not the vehicle is capable of being operated or used in a normal way; or
>
> (b) a caravan.

The definition specifically excludes trailers other than a caravan at subsection 2(e). There is no definition of what constitutes a caravan. This causes a grey area in the legislation.

This is very problematic for owners of camper trailers. They are not specifically defined in the MDCA Act as a caravan, yet are used for a similar purpose, being a mobile dwelling. Vehicle Standards Bulletin 1, which is mandatory for trailer manufacturers to comply with, defines a caravan as:

> An enclosed trailer, which is intended for use as a mobile home or living quarters when parked. It will usually provide fixed sleeping accommodation and/or facilities for the preparation of food. A trailer permanently equipped with a folding and stowable roof (such as a camper trailer) is a

> caravan. Enclosed trailers constructed for the accommodation of people when parked such as workers' amenity trailers, mobile kitchens or mobile offices are also regarded as caravans.[5]

There were approximately 10,000 camper trailers imported from China in 2018.[6] According to multiple reports in my group, many are dangerously defective. Some of the largest importers are on my Buyer Beware list as the biggest rogues in the RV industry who blatantly refuse to comply with the ACL. They refuse to repair under warranty by blaming the consumer for causing the defects. They refuse refunds or replacements citing the same reasons. In other words, the problems that camper trailer owners face are identical to those faced by caravan owners.

On top of those figures, there are the Australian made camper trailers. [redacted] is one of the largest manufacturers. The [redacted]

Camper trailers can cost from less than $10,000 up to well over $50,000. Excluding this significant market sector from being able to obtain accessible and affordable justice in QCAT has no reasonable foundation and is not common sense.

I would like to add here that I am also getting complaints about horse floats. They can be manufactured or imported by the same businesses that manufacture or import caravans and camper trailers. The problems are similar to those experienced by caravan and camper trailer owners. The price paid can often be in excess of the current QCAT limit of $25,000. Once again, there is no reasonable foundation or common sense in excluding this very large market sector from accessible and affordable justice.

Proposal
Amend the MDCA Act as follows:
Section 12(1)(b) a recreational vehicle that is used as a mobile dwelling, including a caravan, campervan, motorhome or camper trailer; or

Add:
Section 12(1)(c) a horse float.

Section 50B Expedited Hearing
I have significant concerns about how this legislative reform will play out in reality. Whilst it is an excellent idea, it needs further consideration including substantially increased funding.

I have a minor civil claim matter filed in QCAT at the moment. I filed it on 13 August 2018. The hearing has finally been set down for 12 February 2019. This is six months from filing to hearing. QCAT stated that they were well behind and could not tell me when I would get a hearing until it was finally set on 11 December 2018.

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[5] Department of Infrastructure, Regional Development and Cities, *Vehicle Standards Bulletin VSB1* (3 September 2018) < https://infrastructure.gov.au/vehicles/vehicle_regulation/bulletin/vsb1/vsb_01_b.aspx> 11.4.
[6] Caravan Camping Sales, *Surge in Chinese Imports* (10 July 2018) <https://www.caravancampingsales.com.au/editorial/details/surge-in-chinese-imports-113563/>.

I requested an expedited hearing in this matter. A repairer has taken a lien over my $73,000 caravan for a $700 alleged debt for services I did not authorise and therefore refused to pay for. I was completely unaware that a lien could be taken in these circumstances when I refused to pay the account. The caravan is the subject of legal action in the Magistrates Court. Having this lien taken over the caravan has been extremely stressful, as it has stopped me from engaging in negotiations with the defendants to resolve the matter quickly. It has created a lot of uncertainty. The business has both refused to insure the caravan or comply with my insurance company's written requirements to ensure it is covered if anything goes wrong. The business recently moved premises and refused to tell me the location of my caravan. Due to the extent of time to wait for the hearing, I was being pressured into giving in and just paying the account, which has now ballooned out to $2400 with charges for storage and interest on the original debt.

This demonstrates that there needs to be a better and clearer mechanism for deciding on expedited hearings than the QCAT President making a decision. Litigants don't have access to the President of the Tribunal. Even assuming these decisions are devolved to a Registrar, this will mean further resourcing for the increased workload in making these decisions and an appeal mechanism where the party believes the decision is incorrect.

Proposal

That expedited hearings be immediately invoked where the vehicle is unusable and/or unsafe irrespective of the value of the claim. In the case of a recreational vehicle such as a caravan, camper trailer, motor home or campervan, if it is the consumer's primary residence then an expedited hearing should be granted as a matter of right.

That the timeframe for an expedited hearing is not more than three weeks from the time of filing an application with QCAT.

Section 50C Costs

This amendment has been very poorly thought through. I understand that the intention is that consumers will not be subject to any adverse costs orders when making an application to QCAT, thus reducing their risk in taking legal action. This is a commendable consideration. However, in attempting to do so, there are circumstances where the consumer will be substantially worse off by taking their matter to the Tribunal rather than the Magistrates Court if they cannot claim their costs and disbursements.

Under s 43 of the QCAT Act, the Tribunal can give leave to a party to be represented and this is primarily legal representation. This right to request leave for representation is mirrored in both NCAT and VCAT legislation. I have had experience with this in two cases in NCAT and the consequences have been catastrophic for the consumer. I outline these cases below to give the Committee some small idea of what can go wrong when leave for legal representation is granted.

In one case I was representing a consumer as a non-lawyer consumer advocate, as the respondent (one of Australia's largest importers of Chinese manufactured recreational vehicles) had been granted leave for representation. They engaged a barrister and solicitors. The applicant couldn't afford to do the same, so I stepped in to help out as best I could. The Tribunal member was a barrister as well. The hearing was an abrogation of any form of justice or procedural fairness. The consumer was only awarded a very small sum for repairs when the facts of the matter would have dictated a full refund and other damages. There were multiple defects and multiple repairs in addition to misleading and deceptive conduct. The caravan was unsafe at the time of supply as the

solar electrical system burnt out. It continuously leaked and was taken for repairs four times. The sum awarded would not have even come close to making the caravan safe and roadworthy again. The consumer had to appeal the decision and engage a barrister herself at the cost of nearly $10,000 so far. It is now another three months after the appeal hearing and no appeal decision has been made. The likelihood is that it will be referred back to the Tribunal to be reheard, costing the consumer another $10,000 or more in legal fees, all because the Tribunal made errors in the first hearing. She may or may not get these costs awarded, as it is highly discretionary in NCAT. All this because she was unlucky enough to purchase a severely defective $50,000 caravan from what I can only describe as a rogue manufacturer who has had multiple legal actions against them.

In the second case, the consumer is elderly, frail and critically unwell. He was unable to run his own case and couldn't afford legal representation, so was granted leave for me to represent him as a non-lawyer representative. The Respondent then argued they should have legal representation, which was granted without any directions hearing and against the arguments of the applicant. However at the same time the Tribunal stripped the applicant of his leave to have me represent him, due in part to an administrative error and in part [redacted] against the applicant. This was only sorted out in a directions hearing a month later.

The respondent, a very large dealership backed by one of the largest RV manufacturers in Australia, hired a very experienced barrister, a partner in a major law firm and an instructing solicitor. They pulled out every legal trick in the book to throw at us, including trying to have the matter moved to the District Court and trying to have me removed as the applicant's representative only weeks before the two day hearing. Eventually we had to engage a barrister as I didn't feel competent to run a two day hearing against an aggressive legal team. The cost of doing so was over $20,000.

The hearing was once again an abject failure of procedural fairness and justice. It was one of the most horrendous experiences in my life and I had an emotional breakdown during the proceedings because of the [redacted] and the aggressive behaviour of the respondent's legal team. This included [redacted] the applicant repeatedly into making an offer to the respondent that would have left him tens of thousands out of pocket as the [redacted] he had already prejudged the case against the applicant. The threat was that the applicant could be facing a six figure costs order against him. They almost succeeded except that I urged the applicant to give the full case a chance to run as the facts were sound and the respondent had actually made admissions of those facts. Thankfully he listened to me.

The [redacted] also ruled the applicant must give evidence in person and not by phone in a conference room at the Tribunal, even though he had five medical reports outlining his very fragile health status and a recent medical certificate from his treating GP stating he could die as a result of doing so. After the [redacted] ruled against the applicant, he was supposed to then only be cross-examined for 1.5 hours. The [redacted] let it go on for over four hours across two days. This is only a very brief summary of two days of a horror story at the hands of the legal representatives for the respondent and the [redacted].

In spite of all this, once the hearing was concluded and after closing submissions, some weeks later the consumer was awarded a refund based on the facts, but nothing more, even though damages and consequential losses were claimed. The [redacted], pure and simple, punished us. I

know the reasons why but they are long and complex and not appropriate for this submission. They will be the subject of a formal complaint to [redacted] once the matter is finally concluded.

The respondent appealed the decision claiming errors in law. Due to the ease of which the appeal process in [redacted] can be abused, where leave to appeal is heard at the same time as the appeal hearing meaning a full response to the appeal has to be prepared, the consumer now has to engage the barrister again at a further cost of around $10,000. Even though the respondent admitted to the repairs and the defects over a period of years, they still spent six figures in legal fees to defend the case and now have taken it to appeal. They have deep pockets and wield their financial superiority as a weapon to force consumers into giving in.

This matter has been ongoing for over four years with two Tribunal applications, where the first application was withdrawn after the [redacted] and made errors in law in [redacted] the applicant into accepting more repairs to his extremely defective and dangerous caravan. The second application was history repeating itself except this time the applicant had support and advice about the merits of his case. Based on the findings of the second application hearing being that the caravan was continuously defective as well as misleading and deceptive conduct, he would have been successful in obtaining a full refund in the first application hearing had the Member allowed him to argue his case in full and properly applied the ACL. Instead, the Tribunal Member told the applicant that because the vehicle was still under warranty he had to allow it to be repaired even though it had multiple major failures and the respondents had misled the consumer. He was told his application was premature.

These are only two of many NCAT cases where the [redacted] has made a decision that is an error in law, where the ACL has not been properly applied, where the respondent has had legal representation, where the outcome for the consumer is not as intended at all by the ACL, where the consumer suffers stress and financial hardship as a result of being the victim of a broken system through no fault of their own having purchased a lemon vehicle.

It is also becoming more common for respondents, being the supplier and/or manufacturer, to seek leave to have legal representation, claiming complex questions of fact or law. There is now precedent to rely on. They share knowledge through peak industry bodies. The Tribunals invariably grant that leave. In doing so, [redacted] are breaching their objects of being 'accessible, fair, just, economical, informal and quick'.[7] They were never intended to be quasi courts but that is what they have become. This is a danger that needs to be recognised and acknowledged by those legislators tasked with these amendments.

There is a significant power imbalance already at play where a consumer is forced to take legal action against a supplier and/or manufacturer, which are, in general, corporations with financial superiority over the consumer. Mr Ford acknowledged this fact at the public briefing on 26 November 2018, where he stated:

> One of the challenges with motor vehicles, of course—that has led to a lot of these issues—is that there is a massive imbalance of knowledge and power when a consumer who has had a lot of trouble with a motor vehicle finds themselves, against the resources of a company manufacturing

[7] QCAT Act s 3 and similarly legislated in the NCAT Act and VCAT Act.

> and distributing motor vehicles, actually proving whether it is a major or a minor defect. Therefore, triggering the major defect provisions of the legislation can be rather difficult.[8]

By granting leave for representation to the respondent, as they are usually the only ones to request leave, one of two things happens. Either the consumer has to go to the expense of retaining legal representation, often at an upfront cost of tens of thousands of dollars, or they become even further disadvantaged with the already massive power imbalance between parties and increased at the hands of the Tribunal, completely in breach of its objects. It is no surprise that Tribunal Members invariably grant leave if requested. It is likely they are lawyers themselves. It is normalised in legal proceedings to have legal representation. The problem is that they do so without regard to the consequences to the applicant or the objects of the Tribunal.

The ACL was intended to be plain and simple in its application. The complexities generally only arise once the lawyers get involved and manufacture the complexities. This is also something for legislators to be very aware of when making amendments or framing legislation. The theory is very often not the reality. Submissions such as this are an attempt to alert legislators to the way that good intentions may not be executed as intended when legislation is put into the real world and especially when lawyers become involved, whether they be representatives, Tribunal Members, Magistrates or Judges.

The solution is really quite simple. QCAT should not be able to grant leave to either party for legal representation for matters under s 50A unless the party is not competent to run their own case. A lack of competence would be defined as being mentally impaired, being a minor, being elderly and frail or being seriously ill. In those cases, a non-lawyer representative could be appointed by the applicant to run the case.

If QCAT is able to grant leave for legal representation to a respondent and s 50C remains, it means that a consumer who has no choice but to also retain legal representation could be out of pocket by tens of thousands of dollars, because no costs can be awarded at all. This could reduce the consumer's refund to next to nothing.

The differentiation between the Tribunal and the Magistrates court must be that the Tribunal has to maintain its objects of being 'accessible, fair, just, economical, informal and quick'. Allowing legal representation for the respondent, forcing the applicant to do the same or be disadvantaged, and then not allowing any costs claim by the applicant, breaches these objects. If a matter is deemed so complex that legal representation is required, then it should be referred to the Magistrates Court. QCAT must be protected from becoming the quasi court that both NCAT and VCAT have become. It has nothing to do with the value of the claim and everything to do with operational procedures and legal representation.

However the Tribunal must also be very careful not to equate complexity with the high value of a claim. In my experience, most vehicle claims are extremely simple, as intended by the ACL which doesn't differentiate based on the value of the goods as long as they are consumer goods. There is no higher bar of evidence or need for repairs for high value goods compared to say a toaster or a TV. In general, the consumer has experienced multiple defects that are well documented, usually some major and unsafe. The vehicle has been repeatedly but ineffectually repaired. The consumer

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[8] Transport and Public Works Committee, *Public Briefing—Inquiry Into The Queensland Civil And Administrative Tribunal And Other Legislation Amendment Bill 2018: Transcript Of Proceedings* (26 November 2018) <https://www.parliament.qld.gov.au/documents/committees/TPWC/2018/9QCAT/9-trns-26NOV2018.pdf> 4.

has independent reports or repair quotes. No reasonable consumer would have purchased the vehicle if they had known in advance of the extent and nature of the defects. This is a major failure and entitles the consumer to their choice of a refund or replacement. In most cases it is a 'no brainer'. The higher the value of the goods, the higher the expectation of the consumer that the goods will comply with the consumer guarnantees.

The problem is that there is no incentive for suppliers or manufacturers to abide by the ACL because there are no means to enforce the consumer guarantee or remedy provisions. This is the key reason why there are so many Tribunal applications in NSW and Victoria and it will happen in QCAT as well. There are no penalties for forcing a consumer to take legal action. Legal fees are paid for out of either business insurance or deducted as a business expense, whereas for a consumer it comes out of their pocket and upfront at that. Then there is the blame game where consumers are alleged to have caused the defects even though there is absolutely no evidence to support the allegations. This is what consumers have to contend with as the ACL currently stands.

This is therefore also the right time for the *Fair Trading Act 1989* to be amended so that regulators are able to enforce the consumer guarantees and remedy provisions. Whilst not an offence, it constitutes unlawful behaviour and should be able to be prosecuted as was originally intended when the ACL was drafted and implemented. This would significantly reduce the impact on QCAT if the only claims being made are those that require adjudication, rather than those that are mostly 'no brainers' but the supplier and manufacturer are just abusing the gaps in the laws. QOFT is well placed to make decisions on whether the ACL has been breached based on a reasonable belief and supplied evidence. They are already able to do so when handing out infringement notices, so this is not an additional burden on them. In fact, it is likely to reduce the burden as suppliers and manufactures will soon find out that the ACL is going to be assertively enforced.

It is also up to QCAT to ensure that by filing an application a consumer is not placed in a position of further abuse at the hands of either the respondent or the Tribunal. It is up to QCAT to ensure that its objects of being 'accessible, fair, just, economical, informal and quick' are at the forefront of all decision-making and procedure. This includes not facilitating any situation where the applicant is caused any financial detriment, as the ACL intends that consumers be placed into the position they were in prior to having purchased the defective product.[9]

Proposal

Amend the QCAT Act s 43 to exclude legal representation for all applications under s 50A unless the applicant is not competent to run their own case. Lack of competence should be properly defined and include mental impairment, being elderly and frail, being a minor or being too unwell.

Amend s 50C to include disbursements such as photocopying and expert reports.

Amend the *Fair Trading Act 1989* (QLD) to enable the Queensland Office of Fair Trading to enforce the consumer guarantees and remedy provisions of the ACL and force suppliers and/or manufacturers to comply with the ACL where there is reasonable evidence of breaches.

50D Constitution of tribunal

Vehicle claims must be heard by a Tribunal Member who has legal training as well as technical knowledge of the type of vehicle the matter is about. I have had experience in NCAT where the

[9] ACCC, Compensation for damage & loss <https://www.accc.gov.au/consumers/consumer-rights-guarantees/compensation-for-damages-loss>

Tribunal Member was very easily persuaded by the respondent and their legal representative of technical claims by them because of a complete lack of knowledge of caravans.

For example, expert witnesses evidence was excluded because he didn't have any qualifications in caravan manufacture or repair. He did however have 40 years experience in heavy vehicles and trailers. A caravan is a trailer with a domicile on top. He tried to explain that to the Tribunal Member but the clever barrister pressed the case he didn't have appropriate qualifications and was successful. In addition, there were no qualifications at all in caravan manufacture or repair until about two years ago and only in Victoria.

If a claim has legal arguments then it should only be properly heard by someone who has legal training. I have read many very poor decisions in NCAT and VCAT by general members who it would appear don't have legal training or are able to properly understand and implement the ACL.

Proposal

Motor vehicle claims be heard by a Tribunal Member with legal training and technical expertise on the type of vehicle being claimed about.

Provide seminars to Tribunal Members by experts such as myself to inform them of the technicalities and arguments they are likely to be presented with, especially regarding caravans and other recreational vehicles where they may not have had any experience at all.