



CARAVAN TRADE
& INDUSTRIES
ASSOCIATION
OF QUEENSLAND

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23 January 2019

Committee Secretary
Transport and Public Works Committee
Parliament House
George Street
Brisbane Qld 4000

To Committee Secretary

**Re: Queensland Civil and Administrative Tribunal and Other Legislation
Amendment Bill**

Introduction:

The Caravan Trade & Industries Association of Queensland (trading as Caravanning Queensland) is the peak industry body for Caravan, Motorhome, Camper Trailer and other Recreational Vehicle derivatives in Queensland.

It represents the vast majority of businesses in the industry in this state including dealers, manufacturers, accessories suppliers, repair & service facilities etc. Almost 240 businesses from Cairns to the Gold Coast and west are embraced in the membership of the Association which was established in 1964.

The Caravan Trade & Industries Association of Queensland welcomes the opportunity to submit our views relating to the Queensland Civil and Administrative Tribunal and Other Legislation Amendment Bill. We are particularly interested in items that will impact upon our member businesses.

Bill Objectives:

We understand the policy objectives of this Amendment Bill are to:

- Improve the operational efficiency of the Queensland Civil and Administrative Tribunal (QCAT) to better achieve the objects of the QCAT Act.
- Implement the Government's commitment to improve fairness and provide greater rights for Queenslanders buying a vehicle and address recommendation 7 of the Report *Lemon Laws – An inquiry into consumer protections and remedies for buyers of new motor vehicles*.

Our Views:

The Caravan Trade & Industries Association of Queensland supports in principle any amendments that will improve fairness and provide increased protection to consumers.

We understand better than anyone that caravans and motorhomes are high value items and represent one of the largest investments a consumer may make outside of the family home. It is important that consumers are protected throughout the purchase process, including after the fact.

A Member of

• Caravan Industry Association of
Australia

• Queensland Tourism Industry Council

While the vast majority of caravan and motorhome owners report a positive experience when purchasing and using their investment, there are of course instances where issues have arisen that have led to further action being required.

In some of these unfortunate instances, parties have no other alternative than to seek legal advice which in turn can lead to costly and formal court hearings.

We fully support increasing the amount that can be claimed through QCAT from \$25,000.00 to \$100,000.00 for disputes made under the ACL consumer guarantees for the supply of goods that are vehicles (including caravans and motorhomes), and the MDCA Act for claims relating to statutory warranties for used motor vehicles (including motorhomes but not caravans).

This increase will save consumers and suppliers from having to spend precious time and money attempting to resolve any disputes through the courts. We agree that QCAT delivers fair and just outcomes for consumers and suppliers via an independent and objective process.

We are fully supportive of initiatives designed to improve fairness and provide increased protection for consumers. We do not, however believe the introduction of specific "Lemon Laws" is the appropriate method to deliver this.

We disagree with funding and resources being directed to an expanded defective motor vehicle tribunal on QCAT, as outlined on page 20 of the 2017 – 18 Queensland Civil and Administrative Tribunal Annual Report.

'Lemon Laws'

The Queensland Government has advised QCAT that, consistent with an election commitment, it proposes conferring an expanded defective motor vehicle jurisdiction ('lemon laws') on QCAT.

Assessing vehicle defects is a specialised field and requires a specialised list. The President is seeking appropriate funding to staff this jurisdiction with dedicated registry staff and a tribunal member to enable QCAT to deal with these matters quickly and efficiently. If such funding is provided, a single time-to-hearing benchmark could be established for these disputes regardless of the quantum of defect.

A more proactive approach would be to address issues before they make it to QCAT or even before the purchase process is completed.

Australian Consumer Law is designed to provide protection for consumers, ensure the same level of fair trading across all Australian jurisdictions and provides consumer guarantees for all the goods and services that they acquire.

In cases and disputes relating specifically to the Caravan & Motorhome industry, we strongly believe that the guarantees listed below (taken from ACL Consumer Guarantees, A guide for businesses and legal practitioners) provide ample protection for consumers:

Guarantees applying to goods. A supplier and a manufacturer guarantee that:

- goods are of acceptable quality*
- goods will match any description provided*
- any express warranties will be honoured*

A supplier guarantees that a consumer is buying goods:

- *that have clear title, unless otherwise stated*
- *that do not have undisclosed securities*
- *that are fit for any disclosed purpose*
- *with a right to undisturbed possession*
- *that match the sample or demonstration model provided*

Guarantees applying to services. A supplier guarantees that services are provided

- *with due care and skill*
- *which are fit for any specified purpose*
- *within a reasonable time (when no time is specified).*

We have not seen any legitimate evidence that demonstrates an increase in cases involving Recreational Vehicles being heard in relation to serious breaches of the ACL. This would indicate that the current process for handling disputes is working effectively. The ACL coupled with the changes to QCAT will provide a greater level of protection for consumers.

Our Recommendations & or Requests and Comments

- Government to work with industry by supplying resources and funding to address any potential issues at the front end of the purchasing process. An effective method would be proactive educational, industry delivered and government backed training for Member Businesses regarding their obligations to consumers under the Australian Consumer Law.

This should be expanded to include accreditation for Sale People that work within the Caravan & Recreational Vehicle Industry.

Throughout the past 18months, our Association has been facilitating member seminars focussing on these topics and these sessions have been delivered by Industry experts, representatives from the Office of Fair-Trading Queensland and the Department of Transport.

We have also been involved in a public education program throughout South East Queensland designed to better prepare consumers for the caravanning lifestyle and to inform them on what questions to ask dealers and manufacturers when purchasing recreational vehicle products.

Our Association also organises free Caravan Safety Check days at multiple locations across the State in conjunction with the Department of Transport. These Safety Checks provide valuable information to consumers about how to ensure their recreational vehicle remains legal and compliant. Almost 2000 privately owned caravans have been inspected so far.

- Funding a free dispute resolution / mediation service for Consumers and Licenced Dealers through which minor civil disputes can be assessed prior to lodgement of claim through QCAT.
- There needs to be a clearer definition as to what constitutes a Motorhome. Under the MDCA Act 2014, motorhomes could be interpreted as being a commercial vehicle as they are built primarily for the purpose of carrying or hauling goods and as such a statutory warranty (Class A or B) and cooling off period would not apply. There are some within Government that agree with this interpretation.

The definition of a commercial vehicle under the MDCA Act 2014 states:

commercial vehicle means a motor vehicle—

(a) built mainly for carrying or hauling goods;

(b) designed to carry more than 9 persons;

but does not include a utility with a nominal load carrying capacity of 1t or less.

Most motorhomes have a nominal load carrying capacity of over 1 tonne, which could then be defined as a commercial vehicle by applying the above guidelines.

In any case, there is protection that categorically warrants consumers under Australian Consumer Law, however a clearer definition would alleviate any potential misinterpretation.

It is also important for us as the peak industry body to be providing accurate information to our members and consumers, therefore clear definitions of Motorhomes in the Act and regulations are imperative.

- Consider increasing the QCAT application fee for civil disputes. This will assist in ensuring only legitimate and relevant disputes are being heard.

Consultation

We note that the following stakeholders were consulted on the proposal to reinstate the 'class B' statutory warranty. Motor Trades Association of Queensland; Royal Automobile Club of Queensland; Caxton Legal Centre; Queensland Law Society (QLS); Queensland Consumers Association; Legal Aid Queensland.

It is disappointing that the Caravan Trade & Industries Association of Queensland was not consulted, especially given the potential impact this may have on our industry. When this Amendment Bill was released late last year, we contacted the Treasurer's Office on numerous occasions seeking clarity on some of the points and did not receive a single response. We were not even made aware of the opportunity to lodge submissions on this particular bill.

Conclusion

We thank you for the opportunity to lodge this submission and welcome any opportunity for further consultation with the Committee regarding this Amendment Bill.

Submitted by The Caravan Trade & Industries Association of Queensland

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23 January 2019

Committee Secretary
Transport and Public Works Committee
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George Street
BRISBANE QLD 4000

To Committee Secretary

**Re: Queensland Civil and Administrative Tribunal and Other Legislation
Amendment Bill 2018**

On behalf of Caravan Industry Association of Australia (CIAA), I wish to write in support of Caravanning Queensland's submission regarding the proposed amendments to the Queensland Civil and Administrative Tribunal and Other Legislation Bill.

As an industry, we welcome any review regarding the legislative frameworks that ensure the rights and protection of Queensland's consumers are upheld when purchasing a Recreational Vehicle. However, it is equally our position that any amendments proposed are provided in a balanced approach that supports a sustainable business environment which included a full industry consultation.

Caravan Industry Association of Australia believes that consumers purchasing Recreational Vehicles (RVs) currently have robust protections against faulty products under Australian Consumer Laws. This includes supplier and manufacture goods guarantees, supplier guarantees and guarantees applying to services. Therefore, it is the strong position of CIAA that any current failings in consumer protection is in the enforcement process and judicial infrastructure, including:

- I. The limit imposed on consumers being able to bring forth disputes which exceed the \$25,000 threshold;
- II. Limited dispute resolution services to offer mediation between consumers and business separate to QCAT;
- III. The lack of education provided to both consumers and businesses in Queensland regarding the dispute resolution processes and consumer rights.

In response to the above points, the following recommendations and commentary is provided:

- I. The Association fully supports increasing the amount that can be claimed through QCAT from \$25,000.00 to \$100,000.00 for disputes made under the ACL consumer guarantees for the supply of goods that are vehicles (including caravans and motorhomes), and the MDCA Act for claims relating to statutory warranties for used motor vehicles (including motorhomes but not caravans).

- II. The Association is of the view that the recommendation that resources be provided for the formation of a separate or expanded tribunal to oversee disputes related to motor vehicles (lemon laws stated in the QCAT Annual report 2017-18), would not provide a remedy to any of the failings listed above. Instead, we advocate for the creation of a free dispute resolution service for any issues arising with motor vehicles as a precursor to QCAT involvement, which has been successfully applied within the judiciary process in New South Wales (Refer to Case Study 1).
- III. The resources that have been requested for the construction of a specific motor vehicle tribunal, should be redirected towards education, including programs such as:
 - a. Industry delivered and government backed training for Member Businesses regarding their obligations to consumers under the Australian Consumer Law.
 - b. Funding a free dispute resolution / mediation service for Consumers and Licenced Dealers through which minor civil disputes can be assessed prior to lodgement of claim through QCAT.
 - c. Provide funding to support the industry's Free Caravan Safety Check days at multiple locations across the State in conjunction with the Department of Transport. These Safety Checks provide valuable information to consumers about how to ensure their recreational vehicle remains legal and compliant. Almost 2000 privately owned caravans have been inspected to date across 43 safety days.

In addition to the above recommendations, any definitional change regarding 'motor vehicles' to include recreational vehicles, must be done in consultation with industry stakeholders and State and Federal government bodies. Providing definition is a complex scenario that impacts Australian Design Rules, Road and Transport Authorities, Australian Consumer Law and statistical data collection.

Caravan Industry Association of Australia also advocates that any amendments to the bill should not be prescriptive to including non-major failures as a precursor to a refund without oversight from QCAT. Similar to a motor vehicle, the manufacturing and assemblage of a recreational vehicle involves a complex array of moving parts and components including the core construction of the body of the vehicle (i.e. chassis), the interior components (i.e. flooring, electronics, seating) and additional value add-ons (i.e. air conditioning, whitegoods). It is the Association's position that any failures that do occur in these components are already remedied under existing guarantees and judicial processes and as such, do not require a specific motor vehicle tribunal to provide remedy.

In summary, Caravan Industry Association of Australia are supportive of the ongoing review in consumer law and the responsibilities of QCAT. However, it is our position that failures in consumer protection are more in the enforcement process and judicial infrastructure which imposes unreasonable expectations and costs on both consumer and business to seek a remedy through tribunal, as opposed to mediation. This is leading to disgruntled consumers, increased frustration between consumer and business who are unable to settle a dispute, and the rise of social media crusading that provides no satisfactory outcome for any parties involved.

I therefore hope you will give serious consideration to ours and Caravanning Queensland's submissions to ensure a balanced approach that will ensure that both the needs of consumers and business owners are met.

Yours faithfully



Stuart Lamont

Chief Executive Officer

Case Study

NSW Fair Trading provides a free dispute resolution service to motor vehicle owners, licensed motor dealers or licensed motor vehicle repairers with dealer guarantee or repair disputes. The dispute resolution service offered by Fair Trading is a voluntary process between the motor vehicle owner and the licensed motor dealer or repairer. When a complaint is received, it is allocated to a complaints officer who will assess the issues to determine:

- the issues in dispute and options which will help to resolve the complaint, generally within 30 days;
- if a breach of the law has occurred;
- if the matter would be better handled by another organisation or by a Fair-Trading Motor Vehicle Inspector.

Fair Trading inspectors are qualified tradespeople, who provide impartial assistance, meaning they do not represent either party. However, trade qualified inspectors can issue rectification orders to resolve disputes if repair work on a vehicle is incomplete or defective, or if a dealer guarantee has not been met. Rectification orders are enforceable and can be used as evidence before a tribunal.

If the dispute is not resolved the consumer may lodge a claim with the NSW Civil and Administrative Tribunal (NCAT). NCAT can make orders which are binding on the parties and may include payment of monetary amounts or repair work to be completed on a vehicle. The maximum claim that can be made through the NCAT is \$40,000, except where the claim relates to a new motor vehicle (which includes RVs) used for private purposes.