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'CONSUMER LAW ENFORCEMENT AND ADMINISTRATION' SUBMISSION TO THE DRAFT REPORT

EXECUTIVE SUMMARY

In this submission I will show that the lack of enforcement of the *Australian Consumer Law* (ACL) by regulators is due to a corporate culture which is often biased towards the supplier/manufacturer and at times hostile towards the consumer. I will argue that in most cases presented to me by my members, investigators have wasted their time and that of the consumer and did not achieve any positive outcomes for the consumer. I will argue that there is a risk averse corporate culture, and a path of least resistance is the norm and not the exception. Consumers are repeatedly told that consumer guarantees cannot be enforced by regulators, only Tribunals and Courts. There is therefore a culture that the consumer is the one who must take the risk through independent legal action, not the enforcement agency that has been legislated to ensure consumer protection and reduce consumer detriment in a fair market.

As a result, poor business behaviour and breaches of the ACL continue to go unchecked in certain industries, such as Recreational Vehicle (RV) manufacturing. This is a rogue industry on many levels, due to a lack of regulation and lax laws governing manufacturing practices in Victoria, where the majority of RV manufacturers are located. Add to this mix a lack of enforcement by ACL regulators and consumers are prime targets for exploitation. The consequences range from significant financial loss, emotional distress and physical health impacts to near fatalities and possible fatalities that have been unable to be attributed to manufacturing defects due to the evidence being destroyed in the accident and/or a culture of blaming driver error in most if not all RV accidents.

INTRODUCTION

Lemon Caravans and RVs in Aus is a Facebook group with over 9000 members and growing rapidly. It is primarily a 'victim support group' for owners of lemon caravans and other RVs, where they can share their stories and get support and advice from other similarly aggrieved RV owners. Here they also learn of their consumer rights under the ACL as well as their options for redress.

The economic consequences of negative reviews in social media has been far more effective to date than any complaints to regulators or legal action. Refunds and replacements have been secured by administrators such as myself and Ashton Wood of 'Destroy My Jeep'. Regulators are simply not enforcing the ACL properly. Consumers are told to either compromise their rights or seek legal advice. In most cases they are told that regulators cannot enforce consumer guarantees. Screen shots of emails and conversations are tendered as evidence in Appendix One.

I have a BA (Murdoch) in Politics and International Studies and experience working in both commercial businesses and NGOs. I have had a role as a coordinator for a QCPP pharmacy quality assurance program. I have also been a business owner. As such I have an array of experience that informs my views. I would like to be considered a stakeholder.

ENFORCEMENT: A DEFINITION

To enforce: to make people obey a law, or to make a particular situation happen or be accepted. (Cambridge Dictionary http://dictionary.cambridge.org/dictionary/english/enforce Accessed 22 January 2017)

According to the document '*Compliance and enforcement: How regulators enforce the Australian Consumer Law*', developed in collaboration by all the State, Territory and Federal regulators, it is clear that regulators are expected to enforce **all** of the ACL for any unlawful conduct not just the stated offences under the ACL.

> "To be effective, compliance measures must be supported by a range of escalating enforcement options that can be used if a trader fails to comply or when there is a serious contravention of the ACL.
>
> ACL regulators have a range of civil, administrative and criminal enforcement remedies at their disposal under the ACL and supporting legislation.
>
> When enforcing the law, ACL regulators seek to:
> - stop the unlawful conduct
> - undo the harm caused by the contravening conduct (for example, by corrective advertising or redress for those adversely affected)
> - ensure future compliance with the law
> - deter future offending conduct
> - encourage the effective use of compliance systems
> - when warranted, punish the wrongdoer with penalties or fines.
>
> ('*Compliance and enforcement: How regulators enforce the Australian Consumer Law'* http://www.consumerlaw.gov.au/files/2015/06/compliance_enforcement_guide.rtf Accessed 23 January 2017)
>
> ACL regulators will choose the most appropriate enforcement tools to achieve these outcomes in a timely and proportionate manner.

In the vast majority of cases that I have reviewed, my members by and large report that 'enforcement' is more of an ideal than a reality. Most report that they are told that the regulator cannot enforce the ACL for breaches of consumer guarantees and that it is a matter for the courts to interpret and apply the ACL, thus abandoning consumers to their own devices.

This restriction on enforcement action is not supported by any overarching enforcement documentation, such as that cited above, or any restrictions in the ACL. It is clearly against the original intent of the consumer guarantees and enforcement powers, as stated on the Australian Consumer Law web site.

> "The ACL creates national enforcement powers, to be used by all consumer law regulators, including civil penalties and remedies for breaches of the ACL. Not all remedies require a breach to be taken to court. For example, under the ACL, consumers can seek a refund, replacement or repairs if a supplier fails to satisfy its obligations in relation to consumer guarantees." (http://consumerlaw.gov.au/the-australian-consumer-law/legislation/ Accessed 23 January 2017).

QUEENSLAND OFFICE OF FAIR TRADING EXAMPLE

I am going to start the main argument of this submission with a recent example of what consumers face when dealing with regulators that have no intention of enforcing the ACL in the interest of the consumer. I will include some comments from a conversation that I had with a Queensland Office of Fair Trading (QLD OFT) investigator on Friday 20 January 2017 regarding this complaint. I was appointed by the consumer as their advocate in this complaint. This was largely ignored by the investigator. The investigator also rang me at a time I asked not to be contacted as I had an imminent appointment. Hence the conversation was very rushed and I was anxious about being late for my appointment.

The conversation is indicative of the corporate culture within the QLD OFT which, from my own experience and all the examples I have been sent, is biased toward the business and leaves the consumer to fend for themselves. The words 'consumer protection' and 'enforcement' seem to have no meaning to many officers within so called enforcement agencies. In some cases investigators become hostile towards consumers when they continue to try to argue for their consumer rights and ask them to be enforced. I am not the only consumer to have received this treatment.

CASE STUDY ONE

The new, UK made, imported caravan in question, purchased in December 2015, has over 30 defects. One defect is a crack in a rear panel that let water into the caravan. This problem was also reported in at least seven other similar caravans. The replacement panel was ordered from the UK in July 2016 and is still not replaced in January 2017. The fridge took 10 weeks to repair waiting on a part to arrive. The water heater was replaced once and then the replacement needed repair. The Tare on the compliance plate is incorrect by 158kg, leaving only 120kg of payload, and only approximately 30kg if the water tank and two gas bottles are full. It is illegal to tow the caravan with even a minimum amount of personal possessions. The consumers live in the caravan and as they cannot tow it legally, unless they empty more than half of their possessions, they cannot move. When they do have to move, as caravan parks have maximum time limits, they have to get family members to assist them due to their health issues and lack of space in the car.

After finding out about the weight issue, on top of all the other ongoing problems, they rejected the caravan and asked for a replacement that was fit for purpose, but they were ignored. They then asked for a refund as they had no confidence in the brand any more, and were ignored. On their behalf, as their authorised advocate, I lodged a complaint with QLD OFT. Evidence was presented including photos of the compliance plates and a certified weigh bridge certificate as well as a list of all the defects and emails between the consumer, dealer and importer.

The investigator contacted the supplier and after no response contacted the importer. The importer claimed they hadn't been given an opportunity to inspect the caravan and offered repairs once it was assessed. If the investigator had read the supporting documentation it would have been clear that the consumer had been negotiating repairs on this caravan already for over 12 months. There had already been a number of inspections of the defects, parts ordered and some repairs done. The consumer now claimed major failures and their right to a refund based on the weight issue and the amount of time repairs were taking.

The investigator did not ask the importer to supply any evidence of the claim that there had been no inspection of the caravan. The importer claimed that the weight issue could be simply resolved with a new compliance plate and an increased Aggregate Trailer Mass (ATM). This too was not questioned . Everything said by the importer was taken on face value as fact. The consumers were not given any right of reply to the claims made by the importer.

The investigator also told the consumer that there was no chance of a refund. Repairs were their only option. She then proceeded to communicate with the importer along those lines even though the consumer had not agreed to this as an outcome. They also asked the investigator to keep me informed and to discuss everything with me as their advocate. She did not contact me until the very end of her handling of the complaint, leaving them very vulnerable.

Some of the lowlights of this conversation are as follows.

- The investigator claimed that only the courts can enforce consumer guarantees.
- The investigator did not accept the consumer's evidence of major failures and stated only a court can determine that.
- I asked the investigator if, as a reasonable consumer, would she have bought this caravan knowing about all the defects in advance. Once again, she claimed that only a court can determine that.

- She stated as fact the caravan had not been inspected when it clearly had been on a number of occasions.
- Any time I tried to quote from the ACL or enforcement policies I was talked over or cut off.

The following exchange clearly demonstrates her antagonism towards me.

> Investigator: They don't want to go to court and they are unwell. Repairs are the best option for them.
> Me: No they don't want to go to court, they want the Office of Fair Trading to enforce the ACL like they are supposed to.
> Investigator (angry voice): IT DIDN'T WORK FOR YOU AND IT WON'T WORK FOR THEM!

It was clear that she had knowledge of my own case where I have been trying for 15 months to have the QLD OFT enforce the ACL for my caravan and perceived me to be a 'trouble maker'. This would also explain her reluctance to contact me as the consumer's advocate.

I was appalled and quite upset at both the statement and angry, accusative tone. She made it very clear that she considered that I and the other consumers who knew our rights were a nuisance and she had absolutely no intention whatsoever of conducting a proper investigation when the importer agreed to repairs, which had already been organised by the consumer over a period of 12 months. Thus she had effectively achieved nothing more than upsetting both myself and the complainant and exacerbated the consumer detriment.

After these comments I said that I would contact her again after my appointment. She stated no, she was going on leave, and would not be handing the file to any other office because repairs had been offered. Case closed.

She had made the decision herself that repairs were the best option for this consumer after telling them there was no chance of a refund. It was clear that no matter the evidence, no matter what the ACL prescribes, this was the only outcome that she was willing to negotiate. I argue that this is because it is an easy option and allows a case to easily be closed as an outcome has been negotiated, no matter that this outcome had already been tried and rejected and will not reduce consumer detriment. In fact it exacerbates it.

HIGH VALUE PURCHASES

The ACL and the regulatory and enforcement regime may work well for relatively inexpensive products, but for larger, often one off purchases it functions very poorly. This is definitely the case for the purchase of vehicles, including new cars, caravans and boats, some of which may be the most expensive, or second most expensive, purchase in a consumer's lifetime. I will leave other interest groups to discuss the new car and boat manufacturing industries and will focus my examination of the efficacy of the enforcement of the ACL in relation to consumers purchasing caravan and other RVs.

The overarching goal of the consumer protection regulatory system is stated as:

> To improve consumer wellbeing through consumer empowerment and protection, to foster effective competition and to enable the confident participation of consumers in markets in which both consumers and suppliers trade fairly. (*Australian Consumer Law Review: Interim Report* p. 5 https://cdn.tspace.gov.au/uploads/sites/86/2016/10/ACL_Review_Interim_Report_v2.pdf Accessed 10 December 2016).

The six operational objectives are stated as:

- to ensure that consumers are sufficiently well informed to benefit from, and stimulate effective competition
- to ensure that goods and services are safe and fit for the purposes for which they were sold
- to prevent practices that are unfair
- to meet the needs of those consumers who are most vulnerable, or at greatest disadvantage
- to provide accessible and timely redress where consumer detriment has occurred
- to promote proportionate, risk based enforcement.
  (*ibid.*)

I argue that with respect to expensive purchases, none of these objectives are being achieved under the current ACL or regulatory enforcement regime and as a result, consumers are forced into taking expensive legal action, where the judicial system is failing them as well.

I believe that part of the reason for this is because there is an assumption that if a consumer can afford an expensive product that they can afford legal advice and litigation to achieve their consumer rights, but this is not always the case and in fact shouldn't be the case. All consumers deserve their complaint to be treated on the facts and merit. Another reason appears to be a protectionist culture for businesses where regulators do not want to cause economic detriment, especially when expensive consumer products are involved.

If I purchase a small consumer good such as a toaster and it catches fire or burns the toast on every setting, I am educated by the ACCC to be able to discern that this is a major failure as the product is clearly unsafe. I take it back to the supplier, tell them about the problems and in the vast majority of cases I will be given either a replacement or refund, my choice, with a smile and an apology. The ACCC has been very effective in prosecuting larger retailers such as Harvey Norman to ensure that there is compliance with the ACL for small scale consumer goods.

However with larger, more expensive purchases such as caravans, with larger monetary profit margins, this has not been the case. Even though the ACCC has similarly educated the consumer and the supplier/manufacturer on consumer rights, with comprehensive documents such as the "*Motor vehicle sales & repairs - an industry guide to the Australian Consumer Law"* that contain multiple examples as guidance, to my knowledge there have been no prosecutions or even any significant enforcement action.

Additionally, in these cases regulators take the path of least resistance and only negotiate the repair option based on a reluctance to make an informed and reasonable decision that the breaches amount to major failures. This is in spite of a complainants evidence, often with expert reports, that clearly meets the definition of a major failure under s.260. The higher the value the product, the more risk averse the regulator becomes, in spite of the evidence being there to make an informed decision that there is reasonable suspicion that the law has been breached.

Right the way to the top of the enforcement agency, no individual wants to make a decision outside of the judicial system and thus they fob the consumer off to independent legal advice and action. This is in spite of the intent of the plain language ACL to empower consumers to be able to know their rights and enforce them, as well as the clearly stated objective 'to provide accessible and timely redress where consumer detriment has occurred'.

All consumers should be treated equally irrespective of whether the defective product is a $100 toaster, a $2000 TV or a $100 000 caravan. Under the current 'enforcement' regime, consumers who have severely defective and unsafe caravans are likely to bear the bulk of the financial losses and suffer emotional and physical detriment through no fault of their own. These losses can be in the tens of thousands of dollars. More if they take legal action. They lose personal time through spending hours making complaints that are not appropriately resolved in light of the evidence provided. They report frustration, depression, loss of enjoyment and even hating their caravan that they have to look at or live in every day. This is in stark contrast to the supplier and/or manufacturer who has their business insurance pay for most or all legal fees, and are supported by regulators in their unlawful behaviour through a lack of proper investigation and legitimate use of enforcement power and tools.

The end result is that there is now a significant lack of consumer confidence in purchasing an expensive product such as a caravan. This is having far reaching economic consequences across the spectrum of vehicle manufacturing. This is the antithesis of the stated 'overarching goal' of the ACL and regulatory regime.

MORE REAL WORLD PROBLEMS WITH THE REGULATORY AND ENFORCEMENT SYSTEM

Members of my Facebook group regularly report serious breaches of consumer laws, Australian Standards and Australian Design Rules. Dealers and manufacturers both know that the State based regulators and the ACCC

will take no action against them. After five years of the implementation of the ACL, to the best of my knowledge there has been no prosecution for breaches of s. 106 of the ACL, in spite of numerous recalls and reports of serious safety breaches to the ACCC Product Safety Branch and Vehicle Safety Standards (VSS) in the Department of Infrastructure. VSS is a specialist regulator for vehicle safety. There have also been numerous recalls without any penalty or prosecution that I am aware of to date.

I know this for a fact with my own lemon caravan case, where I have supplied expert reports of breaches of legislation, Australian Standards and the ACL to the Queensland Office of Fair Trading and to date, after 15 months, no action has been taken. Their enforcement department simply refuses to act, in spite of numerous remedies available to them that don't require them to take legal action. When I try to take them to task for not applying their policies and procedures I am told I am wrong and that only the courts can enforce the Australian Consumer Law. I will discuss my case in more detail later in this submission.

I am not alone in this. I recently conducted a poll of my group and the results are:

Do you have or have you had a defective RV?	120
I suffered a financial loss as a result of the defects in my RV.	68
The defects were rectified by the supplier and/or manufacturer promptly.	38
I had to argue for a resolution.	74
I was fully aware of my consumer rights at the time.	16
I was lied to about my consumer rights.	19
I learnt about my consumer rights later.	46
I had to take legal action in a court or tribunal.	17
I settled at mediation.	7
I went to a full hearing and got a court judgement.	1

I also asked members to write about their experience with their State regulator. All respondents but one said they didn't get a resolution. There were varying comments such as 'toothless tigers', 'office of unfair trading', 'a joke', 'has no teeth' and 'good as useless'. Many shared the response they got by email, with claims that the regulators were unable to force a supplier to do anything and referring them to get legal advice. This was also my personal experience at the first level of my complaint, which I later escalated twice. I have included a number of screen shots from my members corroborating these claims. This evidence is provided in Appendix One.

So consumers are forced to then take legal action if they want to have their consumer rights enforced. This imposes an additional financial, emotional and physical burden on them. Only two States, Victoria (VCAT) and NSW (NCAT) have no caps on value for vehicle claims. The other States and Territory limits are too low. For example Queensland's QCAT limit is $25 000, forcing consumer to go to a full court hearing, incurring excessive legal fees, time and additional stress. South Australia, Western Australia and Tasmania all require action to be taken in the Magistrates Court.

CASE STUDY TWO

A consumer purchased an Australian made caravan for over $120 000 direct from the manufacturer. Very soon after purchase numerous defects became apparent, including water ingress. The caravan was inspected by a certified engineer and the chassis was condemned. The caravan was over a tonne heavier than the chassis and chains were rated for. The chassis had bent under the weight. The caravan was clearly not 'fit for purpose' and had major failures. It was also likely to be illegal under Australian Standards and Australian Design Rules.

The manufacturer refused to accept any liability or refund the consumer when the caravan was rejected. The consumer complained to the Queensland Office of Fair Trading (QLD OFT), submitting a 53 page dossier of

reports, emails and photographic evidence. QLD OFT did not take any enforcement action in spite of the caravan chassis being declared unsafe and condemned by the expert engineer. The caravan was also not compliant to Australian Design Rules and therefore not legal to be sold in the first place.

The consumer was forced to take legal action at a full court because the State tribunal limit was too low. The matter was settled at mediation where the consumer was forced to sign a non-disclosure clause that prevented them from speaking about their experience to anyone, even to government regulators. If they didn't sign the settlement offer that included this clause then the threat was that the matter would continue to a full trial.

At this stage the legal costs were already over $50 000. The quote to go to a full trial was another $100 000 or more, which they clearly did not have and so were trapped into taking whatever was finally offered. The settlement offer was well below what they paid for the caravan. They ultimately lost over $70 000. This process took a period of years. The manufacturer then onsold the defective caravan allegedly without remedying the chassis, which was clearly not compliant to Australian Design Rules or Australian Standards. The caravan was allegedly sold at a higher price than the partially refunded amount to the original purchaser.

This is only one case of many that have been reported by members of my Facebook group. The story is similar each time. Losses vary from the thousands to the hundreds of thousands. This is only the financial cost and doesn't take into account the emotional and physical toll this takes on the consumers' health. One member reported having a heart attack immediately after an altercation with a dealer when trying to get his caravan repaired properly, such was the stress.

To add insult to injury, I am told that in the majority of cases, the businesses involved have their legal fees paid by their business insurance, so there is absolutely no cost to them and no penalty for flouting the law. There is not even any adverse publicity because it is rare that a case goes to full trial and consumers are 'gagged' in settlement contracts, just like in the case of lemon cars. Therefore there is no incentive to obey any laws, including the Australian Consumer Law.

RELUCTANCE TO IDENTIFY MAJOR FAILURES AND ENFORCE THE ACL

It would seem that while regulators are willing to accept that complainants can identify breaches of the ACL s. 54 'Acceptable Quality', there is a cultural reluctance to accept that these breaches are any more than non major failures when the cost of the product is high.

The ACL was written in plain English. The ACCC has gone to great lengths to educate consumers about their rights and suppliers about their obligations. There are multiple brochures and web site pages educating consumers when they have a right to a refund or replacement for a major failure. If the ACCC believes a consumer can make the distinction between a major failure and minor repairable defects, and therefore demand their rights from retailers, why are supposedly expert investigators not similarly able to apply the evidence — that often includes expert reports, photos and videos — against the very clear definitions in s.260 of the ACL.

The QLD OFT policy and procedures document states: 'Where there is substantial, reliable and credible evidence to support enforcement action, and there are no other factors directly affecting the investigation, the enforcement option taken should be that which is linked to the Breach Category that the substantive offence falls within' (https://publications.qld.gov.au/dataset/c6c2dacb-d22f-4cdf-9312-0e6941a1f2b0/resource/21a50b49-fa94-4bd0-a5cc-60bc3e192fb9/download/complianceandenforcementpolicyandstandards.pdf pp. 41–42).

However, as shown by the multiple examples in Appendix One, this is clearly not happening.

THE JUDICIAL SYSTEM ALSO REGULARLY FAILS CONSUMERS

Regulators are failing consumers by not enforcing the ACL according to the published guidelines contained in '*Compliance and enforcement: How regulators enforce the Australian Consumer Law*' . Most consumers are none the wiser and believe what they are told by regulators. They end up disillusioned and frustrated with nowhere to turn. They are mostly advised to seek 'independent legal advice' when the regulator closes their case. This then places the burden of enforcement of their ACL rights to the consumer. In most cases the consumer either cannot afford this action, doesn't feel emotionally capable of enduring a legal battle or gives in and just pays for repairs to be done properly, often then selling the caravan at a loss because they can no longer bear to look at it or use it.

For those who do try taking the legal action route, many report that the judicial system is letting them down as well. Rather than being called a 'consumer protection' regime, it has turned into a 'business protection' regime. One reason appears to be a reluctance on behalf of enforcement agencies and the judiciary to cause economic detriment to businesses. Unfortunately, this is often the only language they understand and the only way to force a positive change in corporate culture.

For those consumers who live in NSW and Victoria, on the surface it would appear that they have better access to consumer protection through NCAT and VCAT. Whilst professing to be a low cost and fair means of seeking consumer redress, actual practice is proving that both NCAT and VCAT have both become 'quasi courts'. Yet again the business is favoured over the consumer. If they ask, permission for legal representation appears to generally be granted. This then forces the consumer to also engage counsel or be disadvantaged. Those who start out 'self representing' have reported being intimidated and feeling like they are disadvantaged, once again in spite of clear policies and guidelines where the Tribunal is supposed to assist the consumer to get fair and accessible access to justice.

CASE STUDY THREE

A Queensland resident member of my Facebook group (the Applicant) purchased a caravan from a Victorian manufacturer (the Respondent) in May 2015. Within a month it started to present with major failures, including severe water ingress. By August 2015 they had over 20 documented defects. After getting an unsatisfactory resolution from the manufacturer and no assistance from Consumer Affairs after lodging a complaint, they lodged a claim in VCAT in December 2015.

At their first directions hearing in June 2016, six months later, the Respondent was represented by a solicitor without asking leave of the Tribunal. The Applicant was unrepresented and caught by surprise. The Applicant was then told by the presiding Tribunal member that they would have to attend in person in Melbourne for the full hearing. The Applicant claimed that this financially disadvantaged them as they had to travel from Queensland. The Applicant stated that the response from the Member was "well you brought the action".

At this stage the Respondent then offered to transport the caravan to Melbourne for repairs but the consumer had lost confidence in both the brand and the actual caravan, as more and more issues kept arising. They refused this offer and decided to proceed with action as they were confident of their rights under the ACL for a full refund.

There was a second directions hearing to see the evidence of an expert report obtained by the respondent. The report was inadequate, not expert and not detailed. The Tribunal Member then directed that a negotiation conference be attended in November 2016.

The Applicant read all the Tribunal rules, regulations and legislation and found out that the Respondent was supposed to apply to have legal representation at the first hearing and theoretically this can only be granted

under certain circumstances. The Applicant appealed to the Tribunal to disallow legal representation for the Respondent on the basis that they had not sought proper leave to be represented and that it was unbalanced and unfair to the Applicant. Leave to be represented also didn't appear to satisfy any of the special grounds stated for legal representation.

As a result of the appeal against legal representation their negotiation conference was cancelled and a hearing was scheduled to hear the evidence for and against representation. This occurred on 14 December 2016. The result was that the Tribunal allowed the representation of both parties under s. 62 (1) (c) of the Victorian Civil and Administrative Tribunal Act 1998, which states:

(c) may be represented by any person (including a professional advocate) permitted or specified by the Tribunal.

The Applicant also claims that the Tribunal Member stated that the request for representation was 'implied' at the first hearing and that as the applicant had not paid for a certified transcript of the first hearing that there was no evidence to the contrary. The Member also allegedly implied that the Applicant was at fault for dragging out proceedings by lodging the objection to representation and causing the cancellation of the November negotiation conference.

By this stage the Applicant was made to feel as if they had done the wrong thing by taking their matter to the Tribunal. They believe that they were made to feel inferior to the represented Respondent. They are now seeking to be legally represented, at a significant additional cost which is unlikely to be recovered as, in spite of allowing representation, they rarely awards costs.

What this now means is that in spite of VCAT' s published practice note of fair hearing procedures, that an element of unfairness has been introduced. The Applicant clearly felt that the Respondent was being favoured due to being represented. It was clear also that the Applicant believed that the Member held the Respondent in higher regard than the Applicant. This further entrenches the frustration of the consumer that the entire regulatory and enforcement system is against them. So in this case and other similar cases that have been reported to me, the Applicant now needs to engage legal counsel to be on an even footing. Those costs will be borne by the Applicant whereas the Respondents' costs are likely to be paid for by business insurance. This further entrenches the disproportionate amount of power that businesses have over the consumer and their rights.

This also demonstrates that there is a lot of pressure on consumers to accept the offer of repairs as a full remedy, in spite of having the right to a refund after proving major failures. There appears to be a consensus by regulators that if repairs are offered then the supplier is doing 'the right thing' and that this is all that is required. In all reports to date, this appears to be the most commonly reported outcome of a consumer complaint, in spite of evidence of major failures, major safety defects, supplying products that are non compliant to mandatory standards and design rules.

However by the time this occurs there are often so many defects that the consumer has lost confidence in the integrity and durability of the product and brand and simply want their money back. Often the consumer will actually accept repairs in the first instance but when they find that these repairs are merely 'patch up jobs' or have reduced the value of their caravan, they decide it is time to seek a refund.

There also seems to be a consensus that 'compromise' is necessary, when the ACL doesn't state anywhere that a consumer must compromise. Consumers regularly are offered less than a full refund as settlement in mediation because of 'use' of the product. They may well have had some use of the product but it has been interrupted, inconvenienced and stressful. They have often lost any enjoyment of the product and in many cases, of life itself, such are the emotional stresses. The onus always appears to be on the consumer to wear the financial losses of purchasing a defective product, rather than the supplier or manufacturer, who originally made a profit in that supply.

I fail to understand how this can be considered acceptable by regulators and the judiciary, when the ACL mandates that a product must be 'fit for purpose', safe, defect free, durable, as described etc. When that is clearly not the case, why is the consumer then also faced with financial and non financial losses because of failings in the regulation and enforcement of the ACL, while the suppliers and manufacturers argue that the ACL places unfair burdens on them? I would argue that for purchasers of expensive products such as caravans, where they turn out to be lemons, the burden of loss is far more likely to be borne by the consumer.

These are just a few of the many similar stories and experiences that members post on my Facebook group page, with evidence including photos and expert reports. What I want to demonstrate with these case studies is the lengths that consumers need to go to in order to exercise their rights under the ACL.

By having an ineffective regulatory and enforcement system it is clear that there are increasing amounts of consumer detriment. This goes against all the principles and good intent of the so called consumer protection system.

MY COMPLAINT TO MULTIPLE REGULATORS

As previously discussed, the major reason why the ACL is failing consumers of expensive purchases is that there is little to no enforcement by any regulator. I have proven that with my own case. I am still fighting for a refund 15 months after lodging a claim with the Queensland Office of Fair Trading. My $73 000 new caravan is not compliant to Australian Standards and Australian Design Rules, unroadworthy, unsafe and has over 30 defects. I am told that the enforcement department is, so far, unwilling to act, in spite of reams of evidence of multiple breaches of the ACL — including an expert report and an email confirmation of non compliances to Australian Standards from the Queensland Electrical Safety Office. This evidence shows multiple breaches of the ACL including s. 106, which states that a supplier must not supply a product that is non compliant to mandatory safety standards. The penalty for this breach is up to $1.1 million for a company. I am told on good authority that in five years of the operation of the ACL this section has never led to any prosecutions, in spite of numerous product safety breach recalls.

I complained to multiple regulators and enforcement agencies including: the Queensland Office of Fair Trading, the ACCC, the ACCC Product Safety Branch, Vehicle Safety Standards, Energy Safe Victoria and the Queensland Electrical Safety Office. After months of escalating complaints and keeping up the pressure, the ACCC Product Safety Branch and Vehicle Safety Standards are both now investigating.

Energy Safe Victoria (ESV) investigated, found the caravan manufacturer's factory non compliant to mandatory Australian Standards and the only action they took was to tell them to get compliant in four weeks. The manufacturer had allegedly been making non compliant caravans for at least 17 months prior to the inspection with hundreds of caravans potentially affected. ESV refused to prosecute or do a recall. I escalated the complaint right to the Director of Energy Safety and he agreed with the decision not to do a recall on the basis that in his opinion the breaches were 'technical' and not 'safety' related. I have had a number of licensed electrical workers inform me of the potential safety hazard from these breaches. I am now going to escalate my complaint to the Victorian Ombudsman.

As a consumer it is simply untenable that I have had to put this much effort into trying to get regulators to abide by their own policies and procedures. That to date my case still remains in limbo and I am unable to get proper redress because I cannot afford legal action. I am paying off a loan for a caravan I can't use.

Additionally, there is another complainant who reported the same supplier, the same manufacturer, the same non compliances to Australian Standards, the same lack of communication with the supplier and manufacturer, the same weight issues and in spite of two almost identical cases, still the QLD OFT will not take any enforcement action against either the supplier or manufacturer. This is also where jurisdictional issues arise, where the supplier is in Queensland and the manufacturer in Victoria.

Suppliers and manufacturers are therefore given a strong signal that in spite of the relatively high pecuniary penalties, no action will be taken against them. There is no deterrent against breaching the ACL at all. Add this to the enforced secrecy surrounding the extent of the problems with defective caravans — both through threats of defamation by dealers and manufacturers to complaining consumers, and owners web sites and Facebook pages deleting negative reviews—and it is not difficult to deduce that the growing number of consumers buying caravans, many of whom are retirees, are playing 'Russian Roulette' with their life savings.

THE REALITY OF THE COMPLAINT PROCESS

Many of my members tell similar stories about their complaints to consumer affairs, offices of fair trading and the ACCC. Many are saying they won't even bother any more in wasting their time, in spite of me urging them to do so to add to the database of similar complaints.

The complaint process generally goes like this.
1. Complaint submitted.
2. Officer responds that they will contact supplier.
3. Supplier refutes all allegations; or claims to have offered repairs and they were refused; or claims they have been denied any opportunity to inspect the caravan.
4. The claims are not investigated for truthfulness. They are taken on face value as fact.
5. The investigator says that they tried to resolve the matter, they can't force the supplier to give the redress the consumer wants and advises the consumer to now seek legal advice.

There are two crucial steps missing. The first is the right of reply by the consumer to give evidence to refute the supplier's claims. The supplier simply gets away with saying whatever they want, refusing all claims and blaming the consumer, without any further questions or investigation. The consumer is told here is the offer. If you don't accept it you need to seek independent legal advice. This is exactly what happened with my compliant, the complaint I was an advocate for and has been repeated time and time again with many other members' complaints.

The second crucial step is that there is often no proper investigation to substantiate the claims of the supplier where the consumer has tendered substantial evidence of breaches. Generally, when a consumer complains to the regulator of major failures, they have made numerous attempts to have their ACL rights upheld directly with the supplier and/or manufacturer. They approach the regulator with the expectation that the regulator will take their complaint seriously, review all their evidence and enforce the law. Instead they get what appears to be a standard response that the regulator is unable to enforce consumer guarantees.

I escalated my complaint because I was not satisfied with this response and had an understanding of due process and the actual ACL legislation. Most complainants do not. A more senior officer reviewed all the documentation but did not do so very carefully because he chose to make accusations against me that were clearly untrue. He appeared biased and defensive toward the supplier. I was made to feel like the perpetrator and not the victim. This was extremely upsetting after all I had been through with the caravan, which was at the time my home that was falling apart around me. I now know from my members that this response is also very common. Some of the email exchange is documented in Appendix One.

I escalated my complaint again and it reached a senior manager who this time had compassion for my situation and made further attempts to conciliate an outcome. However the supplier and the dealer still refused to abide by the ACL and my choice of a refund. In s. 263 the ACL says a supplier **must** refund or replace, in accordance with an election by the consumer. However the reality is that in spite of independent, expert evidence, all the supplier has to do is say 'NO'. So my case was closed.

Not one to give in, I requested that it be reopened and further enforcement options explored — such as enforceable undertakings and public naming—considering the level of evidence that I had supplied. Once again I also argued that there had been offences committed, specifically non compliance to mandatory standards, false

and misleading advertising and also misleading me about my right to a refund. These are serious offences with maximum penalties of up to $1.1 million. Some are offences of strict liability, in which there is no defence. In spite of this QLD OFT still refused to prosecute.

My case is also not unique to this supplier or manufacturer. The supplier has done the exact same thing to another consumer who purchased an even more expensive caravan than mine. In spite of these two cases having products worth nearly $200 000, purchased from the same supplier, made by the same manufacturer, with similar defects and non compliances to Australian Standards, the QLD OFT still will not act. I have given evidence of multiple complaints against the same manufacturer, including four caravans that have exploded, evidence of other caravans not compliant to Australian Standards and one caravan where the suspension broke in two. This is on top of many of these caravans also having multiple other defects. I have to ask, what will it take for them to act?

So in spite of many enforcement options open to the QLD OFT that don't require taking legal action, as stated in their recently updated '*Compliance and enforcement policy and standards*' v. 2.05 (https://publications.qld.gov.au/dataset/c6c2dacb-d22f-4cdf-9312-0e6941a1f2b0/resource/21a50b49-fa94-4bd0-a5cc-60bc3e192fb9/download/complianceandenforcementpolicyandstandards.pdf Accessed 10 December 2017), they still refuse to enforce the ACL. This leaves myself and the other complainant in limbo as the Tribunal limit is too low ($25 000) and legal action in the Magistrates Court is unaffordable to us. We both receive disability pensions and have limited means. We have been failed by the regulatory system, especially as we are vulnerable consumers. We have suffered increased detriment, financial loss, emotional and physical suffering and we know we are not alone.

This is by and large the experience reported by most complainants to regulators who own a 'lemon' vehicle. The common response is that consumer guarantees cannot be enforced by regulators. However, as previously stated, I argue that this is not the case and also not the intent of the overarching goals and objectives of the ACL and its enforcement regime.

There are clear guidelines in the ACL under ss. 259–263 of what defines a major failure, the process to reject the product and claim a refund or replacement, being the consumers' choice. Unlike other sections in the ACL for damages and compensation, at no point does it state that this needs to be done 'by action against...'.

It was written this way, in plain language, to be able to be enforced by the consumer without having to resort to legal action. It would be ridiculous to think that a consumer should have to take legal action in order to get a refund for a defective item such as a toaster. The ACL applies equally to all consumer products so it should be equally the same process to claim a refund or replacement for any defective product with major failures irrespective of the price of the good. There is nothing in the ACL that requires a higher burden of evidence, or resorting to legal action, based on price. In fact, as previously cited, "Not all remedies require a breach to be taken to court. For example, under the ACL, consumers can seek a refund, replacement or repairs if a supplier fails to satisfy its obligations in relation to consumer guarantees." (http://consumerlaw.gov.au/the-australian-consumer-law/legislation/ Accessed 23 January 2017).

The onus is therefore on the supplier to prove why they did not accept the consumer's claim if the correct procedure has been followed. This is the general procedure for small goods. The consumer takes it back to point of sale, states the reasons why they want a refund or replacement, the store either investigates the claims or simply accepts the consumer's claim and then refunds or replaces.

I argue then that the onus is also on the regulator, when presented with evidence by the consumer of major failures, to investigate the reasons why the supplier refused to enact the consumers' rights and to seek evidence from the supplier, rather than taking their claims as fact. It should not be acceptable to an enforcement agency for a supplier to simply state that there are only minor defects, all easy to repair, or that they haven't been allowed to inspect the product or that they have offered repairs, without having to supply any evidence. Too often, once the supplier responds in this way, the consumer is given two options, accept the suppliers offer (usually repairs) or take legal action. I argue that this was clearly not the intent of these sections of the ACL. Proper investigation

may well turn up more serious breaches and offences under the ACL such as s. 106 (non compliance to mandatory safety standards) of s. 155 (misleading the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose or the quantity of any goods), s. 20 (unconscionable conduct) and s. 18 (misleading and deceptive conduct).

The question that begs to be asked is: what is the point of having an regulatory and enforcement regime that will not abide by its own policies and procedures and enforce the legislation that is in its purview? It has created a system that increases consumer detriment and encourages unlawful behaviour by suppliers and manufacturers through non-enforcement and bias toward the business. It is, by and large, a waste of tax payers money.

In cases such as this, regulators need to be held to account for their actions. If this doesn't happen, they too will simply stonewall consumers, just like the suppliers and the manufacturers have been getting away with. It is only by penalty that behaviour changes, whether this be economic, custodial, public naming or loss of employment. There needs to be a penalty system in place for regulators who refuse to enforce the ACL when they can clearly do so under their regulations, policies and procedures. Regulators have numerous enforcement avenues available to them that they rarely use, especially in cases of very defective or lemon vehicles.

When regulators refuse to act, especially on repeated reports of serious safety failures, they also need to be held accountable for the physical and financial consequences, just as any individual or corporation would be. If a product fails and causes injury or death and a regulator received a complaint or complaints and did not investigate, then they are as liable as the manufacturer for that death as it may have been prevented by timely investigation and recall.

RECOMMENDATIONS

1. Work towards a national database of consumer complaints and incidents.
   This would be very useful to identify repeat offending from manufacturers and interstate supplier networks. It would assist in enforcement where another regulator has taken a specific course of action against a business that has been successful.

2. Educate enforcement officers on how to identify a major failure and to make it mandatory to escalate the complaint to the appropriate level of management to deal with the serious breaches.

3. Make it clearer to consumers that are complainants of the appropriate course of action to take if they are not satisfied with a decision.

4. Have a penalty model for regulators who refuse to enforce the ACL appropriate to the complaint and evidence supplied. This is particularly important for notifications of serious safety breaches that are not properly investigated.

5. Enlarge access to the full suite of enforcement tools.
   All regulators should have the same enforcement tools in order to provide national consistency to enforce a Commonwealth law. In addition, education needs to take place from the very lowest level of complaint handling to the highest level to ensure that all officers are using the enforcement tools appropriately and in line with the objectives, policies and procedures. If consumers can be educated on how to claim their consumer rights from suppliers, then regulators and enforcement officers can be educated similarly on how to interpret and implement the ACL to reduce or eliminate consumer detriment rather than claiming only a Tribunal or Court can do that.

6. Recalibrate financial penalties for breaches of the ACL
   This is a worthy ideal but only if there are actual prosecutions for breaches of the ACL. In such a risk averse culture this appears to be one of the most pressing issues. The penalties also need to be mandatory rather than an 'up to' amount. With all due respect, the judiciary often doesn't get the penalty right in the first instance

but increases it on appeal. It would be far better for a set figure for a breach so all stakeholders, businesses included, know the ramifications of unlawful conduct.

7. Relinquish State and Territory powers to issue recalls and interim bans
   Recalls need to be centrally coordinated and advertised to a broad audience to ensure that all consumers have an opportunity to know and respond. There are currently two recall models, mandatory and voluntary. For the most part businesses appear to be coerced into voluntary recalls with guarantees that there will be no penalty. Mandatory recalls take a lot more work to enforce and so the incentive is there for the regulator to encourage cooperation.

   However, in doing so, the extent of the failure of the product is often not known. There is also no incentive not to continue the behaviour. An example of this is with Jayco Australia caravans. Each year there are multiple recalls. They are a serial offender yet with the extent of their resources a consumer would expect the best of research and development, engineering and construction. (https://www.productsafety.gov.au/recalls/browse-all-recalls?f[0]=field_accc_psa_product_category%3A4891 Accessed 22 January 2017))

8. Reported breaches of s. 106 of the ACL (non compliance to mandatory safety standards) with evidence should initiate an automatic recall. The time taken for investigation can put consumer's lives at risk. There is currently a case under investigation that has taken almost a year from first report of the non compliances to now, the investigation is not completed and the offending caravans are still on the road with consumers none the wiser.

9. Address resourcing issues transparently
   Resourcing is certainly an issue in every public service department but it doesn't account for the culture within the departments, which is both risk averse and follows the path of least resistance. Resourcing will impact on which cases are taken to prosecution but should not impact on which cases are enforced under the array of other enforcement tools available to regulators. By transparent reporting of resourcing these issues will be better able to be analysed and addressed.

10. Response to the information request:
    Interaction between ACL and specialist regulators
    What is needed to progress the move to national consistency among all State and Territory electrical safety regimes?
    This is a particularly serious issue in the RV manufacturing industry. It would appear by the location of manufacturers that most caravans are manufactured in Victoria. The reasons for this are multiple but there are two clear stand outs.
    (a) A caravan manufacturer does not need a motor dealers license to sell caravans.
    (b) In Victoria, under the *Energy Safety Act 1998*, as confirmed by the Director of Energy Safety Paul Fearon, a caravan is not an electrical installation. This means that a caravan can have the electrical wiring installed by unskilled workers and do not need to provide a Certificate of Electrical Safety.

    This is allowing multiple backyard operations as well as larger manufacturers to produce caravans that have questionable and often dangerous electrical wiring. There are multiple reports of electrical fires, faults and non compliance to Australian Standards and Australian Design Rules.

    The Australian Standard AS/NZS 3001 is titled: *Electrical installations—Relocatable premises (including caravans and tents) and their site installations*. This is enforceable law under the *Motor Vehicle Standards Act 1989(Cwlth)* and the Third Edition of the Australian Design Rules (https://infrastructure.gov.au/roads/motor/design/adr_online.asp Accessed 22 January 2017). It is also enforceable law under the ACL s. 106.

    Under the Australian Constitution s. 109 Commonwealth law takes precedence over State law where there are inconsistencies. I would argue then that there needs to be nationally consistent Commonwealth electrical

safety legislation that is also consistent with other Commonwealth legislation such as the *Motor Vehicle Standards Act 1989(Cwlth)*, Australian Standards and Australian Design Rules. All Australians deserve to be equally protected under electrical safety legislation regardless of where they live and where the product is manufactured.

11. Consumer redress

Are there gaps or deficiencies in the current dispute resolution services provided by the ACL regulators that a retail ombudsman would fill?...

To the best of my knowledge, there has never been appropriate consumer redress negotiated by a regulator on behalf of complainants with defective RVs and with evidence of major failures, beyond what they have already negotiated themselves. This is usually repairs, which have been accepted, undertaken and not been successful or fully completed. In response to substantial evidence of major failures, regulators do not escalate the investigation to higher levels. They believe the supplier and treat the major failures as minor defects, thus allowing the supplier to continue on their previous path of patch ups that keep the vehicle off road for extended periods of time and require multiple returns to be repatched.

In response to the ACL review, many stakeholders including myself argued for 'lemon laws' for all new vehicles, a vehicle ombudsman and a nationally consistent low cost tribunal process staffed with members that have specific expertise in hearing vehicle claims. If regulators continue to be risk averse and reluctant to enforce the ACL in the case of major failures with vehicles, there needs to be a low cost redress and resolution mechanism to ensure that the overarching goals and objectives of the ACL consumer protection system are achieved.

12. That there be clearer enforcement guidelines and procedures to ensure that breaches of consumer guarantees can enforced by regulators. Any breaches of a law are unlawful conduct. As outlined on the Australian Consumer Law web site, the intent of the consumer guarantees of the ACL were that consumers did not need to take action in court. "The ACL creates national enforcement powers, to be used by all consumer law regulators, including civil penalties and remedies for breaches of the ACL. Not all remedies require a breach to be taken to court. For example, under the ACL, consumers can seek a refund, replacement or repairs if a supplier fails to satisfy its obligations in relation to consumer guarantees." (http://consumerlaw.gov.au/the-australian-consumer-law/legislation/ Accessed 23 January 2017)

The onus should therefore fall on regulatory enforcement to ensure that consumer detriment is minimised and the financial burden of ensuring that the ACL is enforced is not placed on the consumer, simply because they purchased a seriously defective product through no fault of their own.

APPENDIX ONE

These are actual email responses from regulators, some rebuttals and screen shots from group members also outlining their experiences with regulators.

Emails between myself and QLD OFT. This is part of the conversation with the first investigating officer.

Dear Ms Leigh

I refer to your complaint regarding [redacted] Your complaint has been assessed and referred to the conciliation team.

Under the laws which govern the marketplace, the Office of Fair Trading (OFT) cannot force a trader into providing you a remedy to your complaint. Nor can we provide a judgement on this matter, only the appropriate court or tribunal can do this. However, I will conciliate your matter. Please allow up to 30 days for this to occur.

If the situation has been resolved, you wish to withdraw the complaint or you wish place the matter before the court or tribunal, please advise us accordingly.

If you have any further question please do not hesitate to contact myself, otherwise I will contact you in due course.

OFT does not provide legal advice or represents you, therefore we recommend that you obtain your own legal advice in relation to this matter.

You can also obtain general fair trading advice and information from our website www.fairtrading.qld.gov.au.

Yours sincerely,

Dear Ms Leigh

Thank you for your recent correspondence regarding [redacted]

Representations were made to the trader in an effort to resolve the matter. Please find attached a copy of the response this office received.

If this offer is not suitable you may wish to lodge a claim with the Queensland Civil Administrative Tribunal (QCAT) where matters in dispute between consumers and traders, for amounts up to $25,000 can be heard, for further information visit http://www.qcat.qld.gov.au/. The QCAT can be contacted by telephoning 1300753228 or your local courthouse. Alternatively, you may wish to seek independent legal advice about the options available to you.

There are a number of ways to obtain legal advice. You can contact:

1. The Legal Aid Queensland Call Centre, on telephone number 1300 651 188 for information and referral for legal advice; or
2. The Queensland Law Society, on (07) 3842 5888 and ask them for the names of legal firms in your area which specialise in your particular type of legal problem.
3. Contact your closest Community Legal Centre for free advice. You can find them by
   Accessing the following link: http://www.qails.org.au/01_directory/search.asp?action=search

Thank you for bringing this matter to our attention.

Yours sincerely

I have sent information on the Australian Consumer Law (ACL) to the trader and I have requested a further response in relation to that information.

A response has not yet been provided to that request.

The Consumer Guarantees part of the ACL gives rights to both the consumer and the supplier depending on the situation. (I have attached below a very simple brief to the guarantees.) If both parties can not agree on the situation or the remedy, the matter needs to be placed before the appropriate court. The court is the only authority under the ACL who can rule and make orders under the consumer guarantees.

In relation to the information on our website. You are correct this office can investigate and take action/prosecute against traders. However for this office to take action/prosecute the trader must first be committed an offence or suspected to have committed an offence. An offence is an action which has a punishment (jail term or fine) if committed. While there are a number of offences under the ACL the consumer guarantees are not offences because both the trader and consumers have rights under them. There is currently no information available which leads me to believe an offence has or may have been committed in your matter.

The ACL requires the consumer to take action against the supplier for consumer guarantees. There are also certain conditions which the consumer must meet before certain remedies are available to them. It is for this reason that information has been supplied to you regarding seeking legal advice.

As advised this office has sort a further response from the trader. If a response is provided it will be forwarded to you at that time.

If you have any questions please do not hesitate to contact me.

Regards

My claim that an offence has been committed.

I have done a lot more reading on the ACL and have found this on the ACCC web site:
"It is against the law for businesses to tell you or show signs stating that they do not give refunds under any circumstances, including for gifts and during sales."

In the emails we sent to you with our complaint, on 12 August 2015 [redacted] wrote:
"There is no offer of any refund , firstly my company has not and will not have the funds to offer you a refund and secondly [redacted] as the seller of the Caravan and [redacted] as the manufacturer of the caravan have not had the opportunity to inspect any of the issues with the caravan. "

In successive emails we tried to get him to admit that we had the right to a refund under ACL, IF there is a major fault. He refused. He clearly has no intention ever of giving a refund to anyone under any circumstances.

We offered the caravan for inspection with the conditions that he acknowledges our ACL rights and does not undertake any work on the caravan without our permission. He refused. He has been supplied with substantial photographic and video evidence of the faults.

As such, I believe that he HAS clearly broken the law and that Fair Trading Queensland should take action as per the advice on this page on your site: https://www.qld.gov.au/law/your-rights/consumer-rights-complaints-and-scams/make-a-consumer-complaint/understand-the-complaint-process/ "Alleged breaches of the law". We are simply unable to take any action ourselves and it is very frustrating that a retailer can simply stonewall a customer, tell lies about their rights and get away with it. He is a major dealer in QLD, so there are potentially many customers in our situation. We know of at least one other.

We have sought legal advice and sadly have been told that it could cost as much as the caravan is worth in order to get our rights upheld, with no guarantees of success in spite of the glaringly obvious case that we have a major fault with our caravan as defined under the ACL. So we find ourselves in a difficult position, with a very expensive lemon that won't be the same after the walls have been removed and replaced and with so many faults that it is likely that there is more to come in the future. We will have difficulty onselling it knowing all the problems. It is likely we will be substantially out of pocket no matter what action we take.

I hope you can take the time to review this case and take the appropriate action.

After escalating my complaint I received an email that placed me in the light of the perpetrator and the supplier at no fault.

In order to be entitled to a refund as a result of a major fault a customer must reject the goods and return the goods to the supplier. According to the information contained within your file you have not returned the goods to the supplier and notified them that you are rejecting the goods.

I note that the supplier has sought an opportunity to examine the caravan to determine the nature and extent of the defects you have identified. They have offered to arrange collection of the caravan and transport to their premises at their expense to allow an examination to take place. You have stated that you will not allow the trader an opportunity to examine the caravan unless they also enter into a prior undertaking to provide you with a full refund.

You should note the information in italics above that identified that a fault may not be considered to be major if it can be easily remedied. If a fault is determined not to be major then the supplier rather than the customer has the option to repair, refund or replace. If the parties cannot agree whether a fault/s are major or minor in nature it may need to be determined by a court of competent jurisdiction. As you have previously been advised, the OFT has no power to direct a trader to adopt any particular course of action in relation to consumer guarantee disputes.

Under s. 263 (2) (b) and s. 263 (3) the ACL provides for the product to be picked up by the supplier at their expense if it is too expensive for the consumer to return. This is what I requested in my rejection letter to the trader. Both the rejection and request were ignored by the investigator. I emailed the following rebuttal. The complaint was then escalated again to a higher level.

Thank you for taking the time to respond to my request for a review in a timely manner.

Sadly you have not read either my email or the case notes very accurately. There are errors of fact in your response.

You have also quoted to me a passage of the Act that I actually quoted to you with explanations of our claims. I felt that this showed that you did not read my email properly and that you were treating me as if I was ignorant of the ACL and had no understanding of the how the law operates. It felt very condescending. I believe that my email clearly showed a high degree of familiarity with both the law, my rights and responsibilities, and the compliance and enforcement obligations of the Office of Fair Trading Queensland. As such I hope that in future you will respond accordingly.

I will respond to your statements below.

1. You wrote: " You have stated that you will not allow the trader an opportunity to examine the caravan unless they also enter into a prior undertaking to provide you with a full refund."

This is an error of fact that would have been apparent had you read the full email chain I provided between [redacted] and myself, rather than relying on [redacted] incorrect interpretation.

In an initial email, prior to learning of our full rights and responsibilities, I did offer the supplier an opportunity to examine the caravan but not to have it sent to the Sunshine Coast to do so unless a refund would be given. We had good reasons for doing so.

On 12 August I wrote: "We are prepared to have the caravan inspected locally to confirm the issues that have arisen to facilitate a refund. I would have thought the photographic and video evidence we provided confirm the problems we are having. We are not prepared to have the van taken to the [redacted] until such time as a refund has been agreed to. The reasons for this are:
1. We need somewhere to live and we have a dog with us so that limits our options, especially in small country towns. A refund will enable us to quickly purchase another caravan.
2. We do not want to run the risk that you will just repair it and present it back to us, believing that this has fulfilled your obligations. We are legally entitled to a refund and have formally requested one."

After receiving further advice of our rights and responsibilities we DID NOT refuse to have the caravan returned for inspection. We put two conditions on its return. I quote from my email of 26 August 2015:
"We have received advice from Fair Trading Queensland regarding our rights and the procedure
for claiming a refund. To facilitate this will [sic] agree to allow you to transport the caravan to your
dealership [redacted] at your expense for inspection under the following
conditions.
1. You recognise our right to a refund under Australian Consumer Law for a major fault.
2. No work is undertaken on the caravan without our consent.
If the above is agreed to, we will agree to the caravan being made available to you to transport
to the dealership from Sunday 6 September."

We believe these to be two legal and reasonable requests prior to releasing our property (which is our home) into their custody. We did not demand a refund, we simply asked him to acknowledge this **as a right for a major failure**. We believe we have proven we have a major failure on 3 out of 4 counts under the Act. [redacted] only wanted to have the caravan returned for repairs. He would not budge from this position.

[redacted] response by email on 27 August 2015 was:
"I will not freight a caravan back to the Sunshine coast for an inspection it is simply as service offered to you to save you time. "

As you can see, your claim that we refused an inspection is an error of fact. In fact it was [redacted] who refused to conduct an inspection of the caravan if he was not given authority to also repair it as the only remedy for our claims.

2. You wrote: I have noted your comment that [redacted] have stated that they do not have the funds to refund you the purchase price of the caravan. Although that statement has been made, [redacted] has no obligation to offer a refund at this stage.

You have missed the point here. This statement is a breach of the ACL. It misleads us of our rights. Your brief as an ACL regulator is to enforce the ACL. You appear not to be concerned at all that the supplier has made a misleading statement to us. This is separate to the issue of whether we will or won't be entitled to a refund for a major failure. They should not be conflated. This is not only an issue for us but for all their customers. Prospective customers would not be aware that they are buying a caravan from a supplier that claims they are unable to afford a refund if the caravan has major failures.

Other examples.

Dear Paul,
Thank you for your email.

With regards to the matters raised I note these concerns relate to the quality of the caravan. Matters relating to the quality of goods or services are covered by the consumer guarantee provisions of the Australian Consumer Law. These provisions require the consumer to lodge his/her claim about the quality of a product with the Queensland Civil and Administrative Tribunal (QCAT) or the relevant court. I understand that you have already done so.

The Office of Fair Trading can look at matters relating to any misrepresentation of goods or services, however, a failure of a product or the lack of quality does not amount to a misrepresentation.

I note your comments about the Department providing indemnity and advise that the Office of Fair Trading does not provide any indemnity for consumer products. Any costs or loss incurred as a result of a failure of a consumer guarantee is a matter for the relevant court or tribunal to determine against the manufacturer or supplier of the goods or service. I note you had previously sought legal advice in relation to the contractual guarantee and can confirm this is the appropriate course of action in relation to indemnity.

[redacted]
Senior Compliance Officer
Investigations Branch

Dear Mrs [redacted]

Thank you for your recent correspondence dated 15 October 2015 about your caravan.

I am able to advise that an enquiry into this matter did not provide sufficient evidence to substantiate a breach of legislation administered by the Office of Fair Trading (OFT) for which enforcement action may be taken. The issues raised in your complaint fall under the Consumer Guarantees Section of The Australian Consumer Law and these matters must be taken before a tribunal. Accordingly, representations were made on your behalf to Spaceland Caravans Australia Pty. Ltd. in an effort to resolve the matter.

Despite the efforts made by the OFT on your behalf the trader was unwilling to provide you with compensation towards repairs elsewhere. [redacted] of [redacted] explained that he is happy to repair all problems at his workshop in Victoria. He will not pay someone else to carry out these repairs. He offers no other redress.

While the OFT took up this matter to assist you, it does not have the authority to adjudicate in marketplace disputes, nor can it direct a trader to take a particular course of action. Contractual disputes between consumers and traders may be brought before an appropriate court or tribunal where matters can be independently determined.

In this regard, you may wish to lodge a claim with the Queensland Civil and Administrative Tribunal (QCAT) where matters in dispute between consumers and traders, for amounts up to $25000, can be heard. QCAT can be contacted by telephoning 1300 753 228 in Brisbane or your local courthouse. Alternatively, you may wish to seek independent legal advice about the options available to you.

There are a number of ways to obtain legal advice. You can contact:

- the Legal Aid Queensland Call Centre, on telephone number 1300 651 188 for information and referral for legal advice; or
- the Queensland Law Society, on (07) 3842 5888 and ask them for the names of legal firms in your area which specialise in your particular type of legal problem.

I hope this information is of assistance to you.

If you wish to discuss this matter please do not hesitate to contact me on (07) 5430 8904.

Thank you for bringing this matter to our attention.

Yours sincerely

I refer to the complaint you lodged against [redacted] regarding faults with you [redacted] purchased in December 2015 for $55,000.

As discussed, I regret to confirm that my attempt to negotiate a settlement with [redacted] was unsuccessful. As you may appreciate, while the Department offers a conciliation service to help resolve disputes between consumers and traders, we are not able to compel either party to accept our recommendations for settlement. Ultimately, if either party chooses not to settle the matter by negotiation, the dispute can only be determined by a court.

If you intend to pursue this matter, you may consider the option of lodging a claim in the Magistrates Court. The Court deals with disputes between consumers and traders where the claim does not exceed $75,000. A lawyer cannot represent you or the trader if you are making a minor case claim for less than $10,000, unless all parties agree, or if the court grants special permission. However, you can choose to be represented by a lawyer if you are making a general procedure claim above $10,000.

Further information can be obtained by telephoning the Bunbury Magistrates Court on (08) 9781 4200 or you may wish to download explanatory brochures and application forms from the website www.magistratescourt.wa.gov.au<http://www.justice.wa.gov.au/>. You can also find claim examples on the Departments website at www.commerce.wa.gov.au/consumer-protection/magistrates-court<http://www.commerce.wa.gov.au/consumer-protection/magistrates-court>.

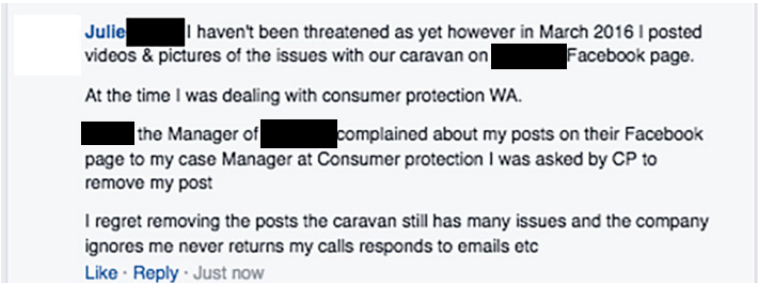
As the Department has been unable to resolve this complaint, I will now close the file. However, a record of your complaint has been entered into the Department's complaint database. Should similar complaints be received in the future then your complaint may be referred to in determining what action should be taken.

As requested I have attached a summary of the response provided by Goldstar RV Pty Ltd for your information. I have also included a link to the department's website and details relating to making a freedom of information application.

http://www.commerce.wa.gov.au/corporate/making-freedom-information-application

Thank you for bringing this matter to our attention.

I did respond to Jason's claims through CP they where well aware of the faults with the caravan however it was evident CP where on there side not the consumers side.
I will admit I did put pictures & comments on Goldstar Facebook page I was frustrated and at wits end I was asked to remove them from CP and stupid me I did remove the comments I wish I knew about your group sooner as I felt so alone
I have emailed you the independent fault list however I have an updated one I'm working on.



CP is Consumer Protection in WA. Same complainant as in the email above these statements. Note that even the regulator is complicit in silencing the consumer, having more regard for the business.

Christine [redacted]

I purchased a [redacted] advertised as built for the off road adventure. The salesman assured me it was suitable for a trip to Cape York as long as we stayed on the main development roads, which we did. While travelling into Weipa the whole independent suspension ripped away from the main body of the camper. At this stage the camper was 18 months old! After numerous emails and phone calls to [redacted], the assembler of [redacted] in Australia, I decided not to pursue the matter any further as it would have to be taken to court. [redacted] were far from co-operative in even recompensing me for added expenses due to losing our accomodation and kitchen facilities. ACCC assured me I would have a good case but the time and lawyer costs were the deciding factors not to go through with the claim. [redacted] hav now changed the wording on their web page!!

Like · Reply · 2 hrs

Bob [redacted] consumer protection in W.A. bow to these dodgy dealers and Manufacturers Too hard basket I've been down that road All those people working in that department need to be weeded out Getting paid to sit in their aircondition office paid for jack shit and talk the talk Colin Barnet needs to start sorting this crap out Employ a pest control to fumicgate the joint

Like · Reply · 2 · 28 mins

Julie [redacted] Totally agree with you Bob. CP are totally useless they did not assist me. I've learnt more from this page from Tracy Leigh and other members

CP suggested I get a independent fault report on our caravan which we did CP requested a copy I emailed it to CP without my permission CP emailed it to [redacted]

Like · Reply · 20 mins

Andrew Lundy Is it becoming more apparent that CA type agency staff are motivated to settle cases regardless of affected consumer. (path of least resistance and work effort). The settlement count reflects as a good servant, buffs the personal resume and + promotional opportunities.

Like · Reply · 30 mins · Edited

Kim [redacted] Whats new the whole industry is corrupt all the way from top to bottom and including our Government Departments. This whole industry needs a serious inquiry. At the moment I don't trust any of them!

Like · Reply · 2 · 11 hrs

Marge [redacted] Phoned Department of Consumer Affairs in ADELAIDE when we took deliver our supposedly new van and found out it was a used van. Was told by a lady called Caroline over the phone that they couldn't do anything as we had taken delivery of the van.

Like · Reply · 1 · January 18 at 6:09pm

Hi Tracy

I joined your site as I don't want to buy a Lemon Caravan as I've known of a few. There needs to be a Lemon Law for not only caravans and RVs but cars too.

The Australian Consumer Law is a fine piece of legislation but it's just that. The reality is that no government or government departments actually enforce the ACL.

I have been battling a unconscionable motor dealer in Queensland for 10 months. Queensland Office of Fair Trading has no teeth and cannot actually help as they have no real enforcement powers. NSW OFT is the same. All talk. NSW and QLD for people to go to either NCAT or QCAT and spend their own money and time and I'm talking months of talk fest till a hearing to try to get justice. Even then the Tribunals treat you like the criminal and try everything to avoid ruling on the most blatant breach of the ACL by a dealer or manufacturers.

The Australian Attorney-General has abrogated the upholding of the law and now the ACCC "oversees and upholds", what a joke, the ACL.

The ACCC do not care about you and I but will only listen if there are 10,000, 100,000 or more complaints and then they have no part to play in actually helping victims.

As Australians I don't know how we can get our laws enforced when all the bodies that are supposed to protect us and uphold the Laws refuse to do so unless it's politically correct.

Finally we do need Lemon Legislation but the existing ACL protects us now but no one will enforce it so why do we have parliament and laws. The ordinary person will get fined or prosecuted by the authorities but not the criminals. Our great country is going down hill fast. Cheers [redacted]

Rob [redacted] Qld.

"I am able to advise that an enquiry into this matter did not provide sufficient evidence to substantiate a breach of legislation administered by the Office of Fair Trading (OFT) for which enforcement action may be taken.

The issues raised in your complaint fall under the Consumer Guarantees Section of The Australian Consumer Law and these matters must be taken before a tribunal."

I certainly don't know how much evidence they needed. We had it. Advise qcat, bit of a joke as only $25,000 or own legal.

Maryann [redacted]

January 3 at 11:55am

Dear all, just to let you know what is happening with our [redacted] van we purchased from South Australia. The chassis on our van broke on the 25th August 2016 when we were travelling back from Cairns. The caravan was 21 months old at that time. We had had so many problems with the van from the beginning but I will list those things in another post. We tried to get the manufacturer to help us with the van but got nowhere so in the end we had a patch job done to get the van home. Our insurance co told us this was covered when it happened but six weeks later said it was not due to it being a manufacturing fault. They will now no longer insure the van. We went to south australia consumer affairs, sent the reports from the insurer pictures and anything else we could. We kept contacting [redacted] Caravans but after going to SA consumer affairs [redacted] advised us we would wait 10 years for our van to be fixed as we dared to take him to consumer affairs. Consumer affairs advised us that [redacted] would give us another caravan if we paid them $15,000.00 to $20,000.00 but they would have to see the van in south australia first. (We have been advised by the insurance co that the van is not suitable to go on the road). Then [redacted] said they would have the van in South Australia to fix but that is all they have to say. They do not have to advise us what they will do or how it will be done. When we tried to get consumer affairs to request this we were told that [redacted] made an offer they do not have to put anything on paper. [redacted] sent us to a guy in Dandenong at one stage to get a quotation on the damage but then said the quotation was too high and that they wanted say over how the company would fix the van. When we asked what the quotation was we were told it was none of our business. We were told when we brought the van that if anything was wrong with it at any time there would always be someone who could fix the van in any state you were in. Consumer affairs has now told us they are closing the file on this because [redacted] have made us two offers and we have refused them. If anyone has any ideas or suggestions where we can go with this it would be appreciated we are at our wits end we brought this van in good faith paid $45,000.00 for it and now it is stuffed and can't be insured or driven on the road and [redacted] just gets to walk away because they say to consumer affairs oh we will do this but the van has to go back to south australia and we are in victoria.

Dear Mr [redacted]

I refer to the complaint you lodged with the Office of Fair Trading (OFT) dated 25 February 2016 regarding [redacted].

Representations were made on your behalf to Searles RV Centre in an effort to resolve the matter and a copy of the traders response is attached for your information.

While the OFT took up this matter to assist you, it does not have the authority to adjudicate in marketplace disputes, nor can it direct a trader to take a particular course of action. Contractual disputes between consumers and traders may be brought before an appropriate court or tribunal where matters can be independently determined.

In this regard, you may wish to lodge a claim with the Queensland Civil and Administrative Tribunal (QCAT) where matters in dispute between consumers and traders, for amounts up to $25000, can be heard. QCAT can be contacted by telephoning 1300 753 228 in Brisbane or your local courthouse. Alternatively, you may wish to seek independent legal advice about the options available to you.

There are a number of ways to obtain legal advice. You can contact:

- the Legal Aid Queensland Call Centre, on telephone number 1300 651 188 for information and referral for legal advice; or
- your local Community Legal Service. or
- the Queensland Law Society, on (07) 3842 5888 and ask them for the names of legal firms in your area which specialise in your particular type of legal problem.

I hope this information is of assistance to you.

If you wish to discuss this matter please do not hesitate to contact me.

Thank you for bringing this matter to our attention.

Yours sincerely

APPENDIX TWO

Examples of defects and lemon caravans. In spite of these defects which show an unsafe and defective product, consumers have had to resort to legal action in many cases where the regulator has refused to act, in spite of receiving this sort of evidence and expert reports.


I WOULDN'T RECOMMEND
AND
CARAVANS
ADELAIDE
RIDGE 4X4
RYDER