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Introduction

Thank you for the opportunity to have input into the review of the Australian Consumer Law (ACL). It is very important that consumers' voices are heard loud and clear when it comes to the real world application of the law and whether it is operating as intended.

I will be addressing quite a few problems in the ACL and will reference my comments back to the Issues Paper.

I would welcome the opportunity to give evidence to any committee of inquiry on this matter.

I am a very disgruntled consumer who has tried for the past 10 months to get a refund for a seriously defective product, a \$73000 caravan, to no avail. I also run the Facebook page "Lemon Caravans in Aus" which has a growing number of members who are affected by sub standard manufacturing practices and lack of being able to enforce their rights under the ACL. I am also a lobbyist with the group Lemon Laws 4 Aus, run by Connie Cicchini.

No one should have to undergo the stress that I have been through in order to have their consumer rights recognised and upheld. This appears to be of more concern for purchasers of expensive products such as cars, caravans and other vehicles than of products of a lesser value. The emotional, physical and financial cost has been enormous.

For many, a caravan and towing vehicle may be the second biggest purchase in their lives, and often in their retirement years. The caravan becomes a major secondary, or even primary, home. Many caravans are now 'off road', enabling the traveller more access to remote destinations with no mobile phone coverage or mechanical services, meaning that the highest standards of safety and reliability are imperative.

However the entire industry, which is growing at a rate of knots, is not regulated. This has led to years of substandard workmanship, caravans which are not compliant to Australian Standards, and the introduction of a self regulatory body, RVMAP, which is made up of the very people who are engaging in these practices.

I will be arguing for the need for lemon laws in Australia, as indeed will many others. However I have a key proposal to make that is different. The lemon laws MUST include all VEHICLES, not just MOTOR VEHICLES.

My personal story

My husband Paul Haggerty and I purchased a [REDACTED]

████████████████████ in February 2015 for \$72990. We had friends who owned a similar van and they were very happy with it. We had seen ██████████ in caravan shows and looked at a second hand model and decided that we loved the look of the caravan. We were also assured by the brochure that claimed high quality craftsmanship and quality assurance at every stage of manufacture.

We purchased the caravan based on plans and photos, as the van was located on the ██████████ and we were in Rockhampton. We picked it up, were given a handover, but not offered any time to mechanically inspect the van. We were assured that both the manufacturer and the dealer had completed full pre delivery checks of the caravan and it was in perfect condition.

Within two hours of taking delivery the caravan started showing defects. The first problem we had was the left rear wheel being excessively hot. We were told by the service manager that the heat was being caused by the brakes bedding in and not to worry, it will sort itself out over time. He assured us it was safe to continue driving and would not do any permanent damage.

This seemed to be the case until a few months later someone told us our brakes were squealing. We then noticed that the brake drum had been badly heat affected. We had to take it to two places for repair because the first quote was rejected. The second repairer found that brake wheel drum was not round and apparently causing intense heat in the wheel. This was replaced and the caravan was serviced. It cost us 2 days accommodation and a lot of inconvenience, packing and unpacking, hitching and unhitching a number of times to get quotes and repairs. All of this while Paul is working 11 days on and 3 days off.

After a drive to far North Queensland late last year the brakes were once again squealing and overheated. We took the caravan to another brake specialist. He replaced or repaired every mechanical component of the brakes and replaced the cheap Chinese wheel bearings that could have caused serious issues while off roading. We test drove it and the drums over heated again. He backed off the brakes and still they over heated. His assessment now is that it must be an electrical fault causing the over heating as everything mechanical has been done to repair the brakes. This is now the third time the brakes have been repaired and they are still faulty.

This means that the caravan right now is not safe or legal to tow and is parked at a friend's place. As this was our home, it caused immense inconvenience to us. Paul is now using our old 12ft pop top while he works in Central Queensland and I am house sitting in far North Queensland.

The second safety related defect is the left hand indicator. This also occurred the first day of delivery but we only found out when we tried to relocate the caravan for the first time after our initial trip. It blows fuses in the caravan whilst travelling. It doesn't blow fuses while stationary. The consensus assessment is that a wire is moving within the wall and is intermittently touching something to short it. We have a quote that to fix the indicator will require removing the outer paneling of the caravan and will take about 26 hours of labour plus parts. We have had 5 separate professional opinions on this defect alone, all corroborating this assessment. Yet

both [REDACTED] claim it is a minor defect and can be fixed without taking the panels off. It would seem that they are not interested in where the short is, which is potentially dangerous. They would be happy just to run a new wire underneath the van as a patch. This is not a repair.

Paul rigged up a temporary indicator so that we were still roadworthy. Without the temporary indicator the caravan was not roadworthy.

This was on top of about 20 other minor defects which arose, including having no hot water for our first shower in the ensuite. These defects were proof that the caravan was not quality controlled at every stage, as claimed in the brochure, or given a final inspection by either [REDACTED] the manufacturer, or had a pre delivery check by [REDACTED]. I have attached a report by a qualified caravan engineer, [REDACTED]. At the end of the report is the current list of defects.

We were not happy that our brand new caravan needed to be taken apart to repair and so decided it was time to ask for a refund. We have been trying to negotiate a refund for the caravan with the dealer since August 2015. This of course has not been forthcoming because they know that we need to take them to court to get it and at a quoted cost of legal fees of possibly as much as the caravan is worth, this of course will not happen. Even a simple letter of demand was quoted to us at \$1650. Office of Fair Trading have to date been unable to conciliate a refund with the dealer just stonewalling and claiming all defects are minor. I had previously reported this matter to the ACCC without success, and so submitted another report in January 2016, which is also attached. More on this later.

The third major safety related defect is that the caravan is 95kg over the Tare weight stated on the compliance plate. The stated Tare is 2600kg and the actual Tare is 2700kg (less 5kgs that was accidentally left in the van at the time of weighing). The ATM is 3000kg leaving only a payload of 305kg. Our caravan is fitted with two 95L water tanks (190kg), hot water tank of about 15L (15kg), a generator box for a generator (45kg), two x 9kg gas cylinders (18kg), space for two 20L gerry cans (40kg) and a tunnel boot to store essential tools and other items such as awnings (approx. 10kg tools, 20kg awning). When all that is loaded it weighs around 340 kgs. This means that without putting any personal effects or food into the caravan it is over weight. The Tare weight is a measured weight yet we believe that [REDACTED] [REDACTED] are averaging the weight as we know other owners of similar caravans have exactly the same Tare weight listed. They claim to weigh every caravan but evidence suggests that they don't. Most [REDACTED] owners report that when they take their caravan over a weigh bridge the weight is not as listed on the compliance plate. Often owners get a shock when they are severely overloaded and the only thing to do is to dump the water. This is a very serious issue, not only for legal towing requirements but also falsifying compliance plates. The compliance plates that they use also don't have the minimum legally required tyre information under VSB-1. See also the caravan engineers report attached.

The fourth major safety defect is that we have a report from the Queensland Electrical Safety Office that the electrical wiring is not compliant to Australian Standards 3000 and 3001. The 12V and 240V systems are not segregated. There is a plate inside the caravan with the 240V hot water switch and the 12V water pump.

Taking that out and looking behind it the wires are not segregated and cross over each other. My husband is an electrical linesman and he said that had the potential to energise the whole 12V system to 240V which could be fatal. We know of at least two other owners with the same configuration in caravans manufactured a year after ours, so it would seem to be a standard practice.

There are also possible non compliances, which were also detected by Energy Safe Victoria (report attached). The wiring is also not shielded from heat as it is right next to the outer aluminium skin without any additional insulation. That skin gets so hot it cannot be touched. Under Australian Design Rules the wiring has to be protected from heat and chafing. It also needs to be fixed at intervals of no less than 600mm. Behind the fridge the wiring hangs free for over 900mm.

ANY breach of Australian Standards is an offence under s. 106 of the ACL. I would also argue that as these are safety standards there is an assumption that it is also proof that the caravan is unsafe, which is a major defect.

Given this, you would think that the next step would be a fait accomplis. Regulators would investigate and prosecute. We would get our refund as we have been fighting for.

Sadly this has not been the reality.

Responses from regulators

To date I have reported the problems with the caravan to six regulators with varying responses. I will give a brief overview of these responses.

Queensland Office of Fair Trading

I first complained to QLD OFT in August 2015. My complaint was referred for conciliation, which failed. The dealer at [REDACTED] didn't accept that we had defects and offered to repair the caravan. As we had already tried to have the caravan repaired through [REDACTED] and had been largely ignored, we were at the point where we wanted to exercise our right to a refund. We no longer had any confidence in the brand, both from our experience and that of others we had been in contact with on social media.

The response from QLD OFT was that there was nothing more they could do for us and to seek independent legal advice, which we did. It was at this stage we were informed of the staggering costs that we may face if we were to pursue our rights through the courts. We were told it could cost up to the value of the caravan with no guarantee of success and the possibility of having costs awarded against us. We were advised to accept the repairs and move on.

I escalated my complaint and it was reviewed and dismissed. The reviewer made errors in fact and accused us of being uncooperative regarding an inspection of the caravan, which was not true. The dealer refused to transport the caravan back to the [REDACTED] unless he could also repair it. We said he could inspect it but no repairs were to be done without our consent. The dealer refused this compromise. Yet we were being made out as being the 'bad guys' in this negotiation by regulators

who were supposed to be upholding our rights.

I then had to escalate my complaint once again. This time it was handled by the Business Manager, State-wide Operations [REDACTED]. For the first time we had a compassionate response to our plight from a person who had personal experience with lemons. This made all the difference. He referred it again to conciliation, which once again failed. The dealer simply dug his heels in and refused to accept that we had a major failure as defined by s. 260 of the ACL. He claimed every issue was simple to repair and had now also started to try to blame us for some of the defects. By this time even more defects had become apparent.

The officer in charge of the conciliation contacted me by phone and gave me incorrect advice about the ACL and once again said they had no power to do anything. I argued that as a regulator, and having read their policies and procedures, that in fact they had a wide range of powers but that they were choosing not to take action, for whatever reason.

Over the months I have discussed this further and at length with both [REDACTED] and his stand in for 6 weeks, [REDACTED]. Both had a lot of sympathy with our plight but have also reiterated that they have limited capacity to do anything to help us. To date we are still in limbo.

Our story is a common one. Most consumers give up at the first rejection of their complaint to the QLD OFT. I am fortunate to have a background in political science and a good understanding of legislation, regulations, policies and procedures. In spite of this, to date, I have not been able to convince the QLD OFT to take any action on our behalf. We are unable to take action in QCAT because of the \$25000 limit, therefore we are relegated to the District Court and tens of thousands of dollars in legal fees just to run a case. This is a serious impediment to justice for consumers.

We are still weighing up our options and waiting on responses from other regulators before we take more drastic action.

ACCC

I have made three separate complaints to the ACCC as the problems worsened. The most recent complaint was in January 2016. I was notified that my complaint, which included information on non compliance to Australian Standards, was referred to the Product Safety Branch on 9 February. It is now 27 May and I have heard nothing in response. There has been no voluntary recall or prosecution, as stated on their web site here: <https://www.productsafety.gov.au/content/index.phtml/itemId/970225> (Accessed 27 May 2016).

They claim that if a product is found to be non-compliant to mandatory Australian Standards, proof of which I provided, the following would occur:

1. The hazardous products will be removed from the marketplace. They must immediately stop selling products, remove all products from the market place and recall products from the supply chain and consumer.
2. They will take compliance and enforcement action. They note that the supplier

may be charged with a criminal offence with strict liability and no defence and a maximum penalty of \$1.1m for a company. The dealer and manufacturer both operate under a company structure.

Nearly four months later and in spite of a potential safety hazard, especially as these caravans are marketed as being off road and used out of range of mobile connection or mechanical expertise, nothing has happened.

Energy Safe Victoria

Myself and another [REDACTED] owner in NSW [REDACTED] who is an electrical engineer, reported concerns about the electrical wiring to Energy Safe Victoria. [REDACTED] is located in Melbourne, Victoria. We supplied multiple photos and reports. Based on this evidence, Energy Safe Victoria decided to audit [REDACTED] on 19 January 2016. They found [REDACTED] to be non compliant to Australian Standards AS/NZS 2001:2008 and AS/NZS 3000:2007 on six counts (email report attached) for the caravans that were currently under manufacture in the factory.

They commented that they couldn't confirm that our caravans were non compliant as they hadn't inspected them so we needed to report our problems to our State based Electrical Safety Office.

Energy Safe Victoria gave [REDACTED] four weeks to become compliant. Upon reauditing they found them to be complaint. In spite of evidence that these manufacturing practices had been ongoing since at least August 2014, when my caravan was manufactured and had the same non compliances as evidenced by the photos, they chose to drop the matter and not prosecute. This left potentially hundreds or perhaps even thousands of non compliant caravans in the market place. I reported this on social media and this was received with a lot of concern and a hope that a recall would happen.

I asked for this decisions to be reviewed and my complaint escalated. I was emailed that this would happen and it had been referred for review. To date I have had no further response.

Electrical Safety Office Queensland

After the result from Energy Safe Victoria and further discussion with the inspector [REDACTED] I made a complaint to the Electrical Safety Office Queensland. An inspector was sent out to inspect my caravan and he expressed multiple concerns about compliance with Australian Standards. I then requested a written report and was presented with one definite non compliance and a few other possible non compliances (attached). They appeared to want to sit on the fence somewhat, claiming that the Australian Standards are not easy to interpret. This is contrary to the firm statements from Energy Safe Victoria with definite non compliances, most of which were also present in my caravan.

However, one non compliance is still illegal under the s.106 of the ACL. My caravan was sold to me illegally. It is unsafe and unroadworthy. I have forwarded this report to QLD OFT who have yet to do anything about it.

Vehicle Safety Standards (VSS), Department of Infrastructure and Regional

Development

The VSS publishes the Vehicle Safety Bulletin (VSB-1 https://infrastructure.gov.au/roads/vehicle_regulation/bulletin/vsb1/index.aspx) to inform vehicle manufacturers of their obligations to Australian Standards and Australian Design Rules in a simplified form.

I made a complaint to them on 13 January 2016. On 29 February 2016 I received a response requesting much more detailed information regarding my complaint. I provided this detail on 14 March and included reports and photos. As I had not heard back regarding the supply of further information, I emailed a follow up in early May. I have yet to receive a response.

VSB-1 s. 6 states:

If a road trailer does not comply with the requirements of the *Motor Vehicle Standards Act 1989* (the Act) or this bulletin, the manufacturer or importer is required to [condensed]:

1. Conduct a safety investigation into the issues surrounding the non-compliance...
2. ... cease supplying the affected vehicles to the market immediately and to notify owners that the vehicle does not comply and should be withdrawn from service until action can be undertaken to correct the non-compliance...
3. ... determine if the non compliance is a safety related issue, in which case a voluntary or mandatory recall is to occur...

To date this has not happened. There are potentially hundreds or thousands of [REDACTED] in the market place that are non compliant to Australian Standards. Neither VSS, Energy Safe Victoria or the ACCC have acted on the evidence.

Energy Safe Victoria should have made [REDACTED] aware of this requirement. If not, VSS should be making [REDACTED] of this requirement. Neither have.

Once again, this leads to consumer frustration. We know our rights, we know what is supposed to be done, but it just isn't. The principles are well documented in policy, on web sites, in procedure manuals etc. however they are not implemented. Whether this is due to over work, lack of budgets, laziness, lack of willingness to make a commitment or whatever cause needs further investigation.

Victorian Office of Consumer Affairs

In response to my complaint, they simply stated that they were unable to act and to continue to work with the QLD OFT. I found this difficult to believe since the manufacturer was in their jurisdiction.

Analysis

This clearly demonstrates that the regulatory system in Australia is fundamentally flawed. In spite of multiple levels of evidence, inspections, arguments, policies, procedures, regulations, guidelines and laws, no regulatory authority can be forced to act, just as suppliers cannot be forced to give a refund.

There are thousands of wonderful words printed in these documents and posted on web sites, leading consumers to believe they will be supported, but at the end of the day if they can't be enforced they are not worth the paper they are written on. They

are simply there as window dressing. It is politically correct but not reasonably enforceable.

This causes even more frustration to the consumer, who knows they are in the right, have evidence that it is not a single issue and could affect hundreds or thousands of other consumers, and not even the regulators will support them. There is nowhere else to turn but to give in or spend considerable sums of money.

Response to the Issues Paper

Section One

The overarching objective of the ACL 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. (p. 6)

Firstly, in reality consumers are not empowered. It is a nice sentiment but not practically applied. A consumer may know the ACL in great detail (as I do), may have many documents and reports to prove their assertion of major failures, yet a supplier knows that all they have to do is refuse a refund and the consumer has to take legal action. Depending on the State or Territory and the value of the defective product, this can cost from hundreds of dollars to tens of thousands of dollars. For vehicles, as the Queensland Government enquiry into lemon laws noted, the success of legal action had a very low rate of success or uptake by disgruntled consumers.

Suppliers know the various Offices of Fair Trading and Consumer Affairs are powerless or will not act. They know that they do not really have to negotiate in good faith and can blame the consumer for many and various faults. The burden is then on the consumer to prove otherwise.

More evidence of this are the campaigns of Destroy my Jeep and Teg Sethi's "I made a mistake I bought a lemon" social media campaign. Ashton Wood partially crowd funded destroying his Jeep as he didn't want to pass the problems onto other consumers. He is running another campaign to Tank my Dodge. Teg's Youtube video went viral, both in Australia and China. He eventually got his refund but it cost him thousands to produce his social media campaign. In addition, he was forced to sign a 'gag' document, which he also had to renegotiate, the original being totally ridiculous. Consumers should not have to sign any documentation to receive their rights under the ACL.

Courts appear to encourage negotiating a compromise rather than upholding the consumer's full rights under the ACL. This has been anecdotally reported to me personally by people I have met through advocating for lemon laws for caravans.

Problems with the ACL and litigation is also reported by Professor Corones in his submission to the Queensland enquiry into Lemon Laws.

"It is not possible to draw any firm conclusions about the effectiveness of QCAT as a dispute resolution mechanism for cases involving lemons; however, the small number of reported cases strongly suggests that it not effective."

<http://www.parliament.qld.gov.au/work-of-committees/committees/LACSC/inquiries/past-inquiries/04-Lemons> (Submission 4)

Trying to find caselaw on successful cases of vehicle consumers winning over dealers and manufacturers is extremely limited. To date I have only found one, being the case of Boyd v Arigrison (attached). This case related to a defective tractor. Mr Boyd did win the case but with severe detriment to his health and bank balance.

This also demonstrates that it is more than just 'motor vehicles' i.e. cars, that have lemons. Mr Boyd's lemon was a road registered tractor.

There is also the issue of the ACCC and Fiat Chrysler Australia, which was a compromise deal that favoured the manufacturer well and truly over the consumer. Some consumers may not get any redress under this deal until 2017.

It is clear that the ACL and regulators can not and do not achieve the overarching objectives as it currently stands. Trade is not fair because of the impediments to redress for the average consumer. Consumer well being and rights are not held at the centre of regulatory objectives, in spite of the rhetoric. Rather it is more a case of critical mass. Compromise is favoured over full redress, in spite of the consumer spending good money for an inferior product.

Competition has not improved anything in the caravan manufacturing industry. There are over 100 manufacturers and there are reports that all of them produce lemons and most of them deny this and put the consumer through multiple hoops to get repairs and will never agree to a refund.

██████████ of ██████████ reported over more than 10 years on a caravan owners forum the litany of defects in new caravans. He supplied multiple photos and descriptions of appalling manufacturing practice. I have copies of this if required. He is now retired and his sons manage the business. I have spoken at length to his ██████████ who is very bitter and vocal about the industry. He will not deal with ██████████ as they firstly won't approve proper repair of the caravan, seeking only to patch it up. They don't pay their bills until threatened with action. He doesn't want to do any warranty work for manufacturers as they all want to beat him down and make him do dodgy work. I know that this company is one of the best in caravan repairs but they refused my request to inspect my caravan and liaise with ██████████ to make the repairs, should we be forced into this position if we couldn't secure a refund. I asked whether he would testify at a trial and I cannot repeat here what his response was.

We had a similar response from two other more local caravan repairers. In effect, not only were we unable to get a refund, we were unable to get the caravan repaired to good standards within a 400km radius of where the caravan is located.

I have only anecdotally heard of one refund for a caravan ever being secured.

The lack of both regulation and regulatory will (not authority as that is already there) is to blame.

The legal framework

There are two specific impediments to consumers enacting their rights under the ACL.

Firstly, the definition of a major failure, whilst it would seem very clear and easy to understand, has proved open to challenge.

For example, my caravan has defective brakes that have been repaired three times and are still defective. The left hand indicator randomly shorts out and the short is in the wall of the caravan. The caravan is not compliant to Australian Standards.

In spite of these three issues, there is a reluctance from both regulators and inspectors to commit to the absolute fact of a 'major defect'. This then empowers suppliers to refuse to accept that there are major failures and to give the requisite refund.

Under s.260 a major failure is defined as:

- (a) the goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure; or
- (b) the goods depart in one or more significant respects:
 - (i) if they were supplied by description--from that description; or
 - (ii) if they were supplied by reference to a sample or demonstration model--from that sample or demonstration model; or
- (c) the goods are substantially unfit for a purpose for which goods of the same kind are commonly supplied and they cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or
- (d) the goods are unfit for a disclosed purpose that was made known to:
 - (i) the supplier of the goods; or
 - (ii) a person by whom any prior negotiations or arrangements in relation to the acquisition of the goods were conducted or made;and they cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose; or
- (e) the goods are not of acceptable quality because they are unsafe.

I have strenuously argued that my caravan has major defects under all five subsections.

a. Would a reasonable consumer purchase a \$73000 caravan that has over 30 defects, is not compliant to Australian Standards and is unroadworthy, if they had been informed of these facts prior to purchase? I would suggest not. This doesn't appear to ever be referenced in any discussion on major failures as it is a very subjective test.

b. The description in the brochure claims that the caravan is manufactured to the highest standards and is quality controlled throughout every stage of manufacture. It also claims that the caravan is a 'go anywhere in Australia' caravan, implying that it is fully off road. None of this is true. I received an email from [REDACTED] stating that this caravan is classified as 'semi off road'. There couldn't be quality control and pre delivery inspections given the litany of defects. It is not compliant to Australian Standards for the electrical wiring.

c. The goods are substantially unfit for purpose. The caravan is unroadworthy. It has 95kg less payload than advertised and cannot carry all the is required for off road travel. It cannot be used fully off road as claimed in the advertising.

d. Prior to purchase, we told the sales rep that we were purchasing this caravan as a long term investment. I am a photographer and wanted to be able to travel to remote places. We were going to live in the van as Paul was working in areas around the Central Coast of QLD. We were assured by the sales rep that this caravan would be perfect for these requirements. Upon further investigation it would appear that this is not true.

e. The caravan is not of acceptable quality because it is unsafe. It doesn't comply to Australian Standards for electrical wiring. It doesn't have properly functioning brakes. It doesn't have a properly functioning left hand indicator.

In spite of repeatedly emailing this to the dealer, the manufacturer and the QLD OFT, we have still been unable to secure a refund. I have reams of evidence, reports, photos and videos and yet still I am unable to find a way to enforce my rights without it costing money that we cannot afford to spend.

The second impediment is the physical, emotional and financial cost of pursuing consumer rights under the ACL. In my experience, most if not all consumers give in. I cannot begin to describe what this has cost me in terms of my physical and mental health; my relationship; the imposition on my limited available time; the anguish and frustration; the financial cost of the interest on the loan, accommodation when the caravan was being repaired; the hundreds or perhaps thousands of hours of my time in emailing and phoning regulators, repairers, the dealer, the manufacturer, other owners in similar circumstances, social media commentary and this submission.

It is very clear that there are serious deficiencies in both the interpretations of definitions and the means by which a consumer can access appropriate redress and enact their rights.

New rights and protections

Lemon Laws

The Queensland Government conducted a review into Lemon Laws in 2015. The terms of reference used the term 'motor vehicles'. I made a submission to the review, arguing that my caravan was considered a motor vehicle under Queensland law and gave references. However the Committee disagreed and didn't include my submission in their report. This highlights the need to be very clear as to what vehicles lemon laws will apply to, as there will still be a confusion requiring the consumer to go to lengthy processes and expense proving that their vehicle should be covered.

Lemon Laws have been successfully applied in the US for around 40 years. Australia has become a dumping ground because we do not have adequate consumer protections for vehicles. Caravan manufacturers also relish this lack of regulatory rigour and know very well they will not be subjected to any serious consequences.

The Queensland enquiry into lemon laws proposed the following in relations to the definition of a lemon 'motor vehicle' which I argue should simply be defined as a 'vehicle':

"The committee recommends the incorporation of clear and practical definitions and provisions into any nationally consistent laws applicable to new 'lemon' motor vehicles, including:

mandatory time and repair limits, such as imposing limits on the number of times a supplier/manufacture can attempt to repair a defect in a motor vehicle and the number of days the vehicle can be 'off the road', before a buyer must be offered a refund or replacement

clarity as to when a supplier/manufacture must repair, refund or replace a motor vehicle

an adequate definition of what constitutes a 'lemon' motor vehicle, such as –
adequate definitions of 'acceptable quality' and 'fit for purpose'
clarity as to the distinction between major and minor defects
clarity as to the distinction between a 'lemon' and generic design manufacturing defects (requiring general recall) or serious design safety defects (requiring urgent attention). "

(p.63)

I would add that the number of defects also needs to be taken into consideration. This is actually a critical point. If a vehicle has, for example, 10 defects, it is clear that both the manufacturing process and the quality control process has failed. We must remember that under the ACL, any defect is a breach of the consumer guarantee of 'acceptable quality'. Products are supposed to be supplied free of defects under s. 52 (2) (c). We appear to have a tolerance for defects in complex design systems such as vehicles which is perhaps not warranted. The law is clear on this and defects are not permissible. If this is both clearer and enforced, manufacturing standards will have to be improved, for the betterment of all consumers.

The issue then is whether the defect constitutes a major or minor failure and how clear that is in law. There has been so little case law in relation to vehicles that interpretation of the ACL under law in these instances has been lacking.

However I would argue that *Boyd v Agrisson* is a very informative and clear example of how the ACL should be applied. The case was heard in the Magistrates Court of Victoria on 3 October 2014, meaning it was tried under the current provisions of the ACL. The reasoning of Justice Ginnane is exceptional. He has a high regard for both the law and the consumer in this case and found for the Plaintiff. Even so, in subsequent media interviews Mr Boyd described the high price he had to pay to gain this decision (attached).

I propose that there is a simpler solution. Firstly, use the term VEHICLE, not MOTOR VEHICLE. Second, lemon laws should cover all vehicles that are captured under the definitions in the Motor Vehicle Standards Act 1989. In this Act, a caravan is captured under the definition 'road vehicle'. As all vehicles are that are registrable are required to comply to Australian Standards, I believe that is is also reasonable that they should be covered by lemon laws. They are manufactured, they are required to be registered for road use, they often have a higher price point than most

cars, they are sold by dealers who historically cannot be trusted to abide by the ACL and so therefore the consequences for the consumer is the same as for the purchase of a motor vehicle.

The above mentioned case law should be used to inform the language used in the definition of 'major failure'. This must be made much clearer.

I also believe that there must be an independent vehicle inspection advisory body in each State and Territory that will provide a low cost solution for consumers to have their vehicles independently assessed and reported under clearer guidelines. If these reports identify major failures then the ACL remedy must be applied. Regulators should have the authority to force suppliers to refund a consumer without redress to a tribunal or court if the evidence is provided. Of course there should be an appeal mechanism for both suppliers and consumers but this also needs to be carefully constructed.

Manufacturers should also be held much more to account for defective products. Suppliers can not usually know if a product such as a caravan is compliant to Australian Standards or the compliance plate is accurate. To expect them to weigh and inspect every vehicle is onerous. Manufacturers should also be able to be held to account for the repair, replace or refund provisions. There are too many defences currently for a supplier to claim they would not reasonably expected to know about a non compliance issue. Even though suppliers have a right to redress from a manufacturer, they also know what this will take for them to enforce and hence it is an impediment to them honouring consumer rights.

Conclusion

I have outlined my own horrendous experiences as a consumer with the ACL. I have outlined the deficiencies of regulatory authorities. I have argued for the need for lemon laws for all vehicles, not just motor vehicles. I have argued for more responsibility to be imposed on manufacturers and not just suppliers.

I believe that my experience is informative of all the deficiencies in the ACL and would welcome the opportunity to discuss this further.