

Caravan Industry Association of Australia submission into the review of the Australian Consumer Law

Executive Summary

Caravan Industry Association of Australia welcomes the opportunity to provide feedback on the Australian Consumer Law Review Interim Report.

Following consultation with the Association's key stakeholders through both personal contact and surveys that we have conducted with businesses in our industry covering the entire supply chain from manufacturers to suppliers, retailers, repairers and accommodation providers we provide the recommendations below.

As the peak national body for the Australian caravanning and camping industry we support the overarching objectives of the legislation, and encourage any mechanism which provides an open trading market allowing for consumers to get best value out of their interaction with the industry, and industry businesses to flourish under the certainty of fair competition and a consistent regulatory framework.

As part of our submission we provide the following recommendations for consideration which are not exhaustive of all the concerns which industry may have in relation to the legislation. We would welcome the opportunity to participate in any further discussions on the issues we have raised, or any other relevant issues raised by others

Recommendations

- Exemptions should be removed with all consumer transactions covered by the legislation and providing a level of remedy for the consumer;
- No parallel economy should operate in competition undermining innovative thought within traditional and fixed regulatory environments. The Australian Consumer Law should encompass not only new business models such as peer-to-peer structures, but also Governments, Charities, Not-for-Profits and the like. A competitive market should be encouraged to operate in all cases, providing benefit to consumers, and this should not be thwarted by exemptions and multi-regulatory applications in competition to genuine industry businesses;
- The Australian Consumer Law Review must be conducted with regard to other pieces of regulation and legislation, not in isolation;
- The stimulation of effective competition should be a standalone operational objective;

- Greater clarification needs to exist around “safe and fit for the purposes for which they were sold” in respect to legally or administratively deficient product which may be both safe and fit for purpose;
- Greater clarification needs to exist around “accessible and timely redress” particularly surrounding the expectations of the consumer where these do not match the physical or reasonable capability of the service provider;
- A more appropriate solution needs to be considered which may not necessarily end up in a State based Court or Tribunal. This is to manage situations where there is no basis in law or fact for the claim. A “triage” system is considered and proposed within this Submission;
- Introduction of a reporting mechanism which pushes out decisions with respect to the Australian Consumer Law from various States to educational advocates and distribution points within industry (e.g. industry associations);
- Greater clarification surrounding the definition of ‘major’ failure;
- Responsibility for the cost of returning the full product should be covered by the consumer in all cases except where the size of the failure has been quantified or the supplier agrees;
- Greater clarification regarding the obligations of party’s to the consumer along a supply chain process;
- Greater clarification (or restrictions) surrounding parallel importation or supply of a product to the Australian market already covered by an exclusive supply agreement; and
- Streamlining the path to remedy and empowering other Government agencies to assist in consumer matters ahead of (but with consistent application to) the Australian Consumer Law.

Preamble

The Australian caravanning and camping industry is large and diverse with an estimated 3,500 businesses directly supplying products to consumers, and for which the Australian Consumer Law is relevant. These businesses cover the entire supply chain ranging from component suppliers, manufacturers and assemblers, retailers, repairers, and accommodation providers, and are located the length and breadth of Australia. Many of the products and services provided by businesses within our industry are fully or partly consumed in regional Australia.

The total value of the caravanning and camping industry to the Australian economy annually is estimated at \$19.02 billion, and provides a highly anticipated release from everyday life or an opportunity for consumers to relax, refresh, recharge or reconnect with loved ones and nature. This means the consumer is heavily invested both financially and emotionally when interacting with businesses within the caravanning and camping sector. This weight of expectation means that the Australian Consumer Law is greatly relied upon by consumers in reconciling mentally whether harm or otherwise has been incurred through an individual transaction, the extent of this harm, and any appropriate remedy required.

At some point in their lifetime 85% of Australians have gone caravanning and camping with an estimated 7 million Australians having gone caravanning and camping in Australia within the past two years. The industry recognises that consumers are foundational to the current and future success of the

industry. As a result of this the industry is very responsive and nimble to the needs and expectations of the broader consumer base. This means that the industry strongly values a consumer legislative framework which is robust, provides certainty for all parties, is consistent in its application for all participants, and has appropriate measures by which recourse can be sought where **genuine** harm has occurred.

Objectives

Overarching objective

Caravan Industry Association of Australia supports the overarching objective of the legislation.

As an industry we embrace an open economy, one in which businesses are rewarded for their investment, innovation, and responsiveness to market conditions. This needs to occur in an environment where there are some guiding parameters in which all participants operating in the market must, at the absolute minimum, comply with. Therefore an **“all in” approach** must be considered for all operators within a market to generate the necessary objectives sought from the legislation. Exemptions (e.g. charities and not for profits) should be removed and all consumer transactions should be covered by the legislation and provide a level of remedy for the consumer.

Further, the legislation should not be reviewed or interpreted in isolation, as the new “trading environment” may be neither efficient or fair.

When instances of a competing party receiving preferential advantage occur, industry businesses seeking to invest and innovate are discouraged from doing so and the overarching objectives of the Australian Consumer Law breaks down. Examples of this include:

- Governments exempting themselves (or other community groups or landholders) from regulatory obligations competing commercial operators are required to operate under – non-compliant camping;
- Regulatory enforcement being unable to be met through ineffective resource allocation or desire by regulators e.g. supply to market occurring without necessary Australian Standards or Design Rules being met;

In addition, new business models such as peer-to-peer services are emerging. We note that these are a discussion point within the Review however we strongly consider that it is important that all such transactions are covered within any consumer legislation so that both consumers are protected and industry businesses are able to trade confidently, knowing there is no parallel economy operating in competition and undermining innovative thought within traditional and fixed regulatory environments.

There have been many reviews of regulations and legislative instruments which have occurred or are occurring since the implementation of the Australian Consumer Law and it is important that where there is cross over consideration needs to be given as to whether the Australian Consumer Law remains consistent with these. For example, with the departure of the motor vehicle manufacturing industry in 2017, the Government is currently undertaking a review of the Motor Vehicle Standards Act (MVSA).

The caravanning and camping industry welcomes many of the proposed revisions in respect to the treatment of caravanning and camping products to consumers through that information released as part of the MVSA Review, which if passed based on our understanding would provide consumers with far greater certainty in transacting within our industry. Some of the issues raised within the Review (and the changing business conditions and opportunities available to consumers post 2017) such as direct importation with overseas traders, and products carrying components which are either unsafe or not complying with Australian Standards need to also be reflected in any Review process of the Australian Consumer Law.

Operational Objectives

Once again, we broadly agree with the six operational objectives however there are elements within some of these which we seek to pass comment on (where they relate to items within the interim report).

“safe and fit for the purposes for which they were sold”

This operational objective needs some greater clarification. With the self-regulatory nature of the industry (from a supply of caravanning and camping product perspective), lack of barriers to entry into the industry, and a market which continues to rapidly grow ahead of the pace of the broader Australian economy, the caravanning and camping industry is seeing a range of products supplied to market which are below what we as industry would consider acceptable by the market.

This specifically refers to Australian Standards and Australian Design Rules which we would expect are required to be met prior to supply to market but due to regulatory resources, sees a number of products supplied to market below this burden. This does not mean however the product is not safe or for that matter fit for purpose e.g. a number plate mounting which is situated so that a part of the plate is above 1300mm from the ground is non-compliant according to ADR 61/02 Vehicle Markings, Section 9.1.1.1. with a consumer potentially subject to a traffic fine if caught. As an industry we have developed a random auditing program which monitors the product being supplied to market by participants (both local and imported), however this does not capture a percentage of the market who may not understand their obligations or choose to ignore their obligations.

We welcome the express announcement made through the Review of the MVSA that prior to supply to market all products must be compliant, and wonder how the Australian Consumer Law treats a product which may be safe, and technically performs the purpose for which it is sold, but may be legally deficient and which exposes the consumer to penalty, or through their short-cutting of the manufacturing process for convenience may receive a competitive advantage over an industry business satisfying their consumer (and legal) obligations.

“accessible and timely redress where consumer detriment has occurred”

Firstly, this operational objective needs greater clarification surrounding what is meant by accessible and timely redress. While we understand the need to be expedient and deal with consumer

rectification expeditiously, there are practical elements which may remain out of the control of the service provider e.g. availability of replacement parts or scheduling of repairs.

While the objectives need to ensure the consumer receives the necessary redress, the circumstances during which the consumer may be inconvenienced at times, may be unable to be met by industry within a timeframe which suits the consumers expectations e.g. the fitting of a replacement part and service in regional Australia when the consumer is on holiday and has fixed leave entitlements, or the supply of a replacement part where the retailer may not have a direct distribution relationship with a manufacturer/supplier or where the manufacturer/supplier may no longer be in business e.g. the sale of a second hand product.

This remains a level of concern from industry where the expectations of the consumer do not match the physical or reasonable capability of the service provider.

Further, where a consumer believes they have not received appropriate “compensation” where detriment has occurred, the Australian Consumer Law must also consider the path to an appropriate solution to be one which may not necessarily end up in a State based Court or Tribunal.

Industry frustration has been voiced where on occasions they are required to respond to applications by consumers where there is no basis in law or fact for the claim. We believe in order for both consumers to receive appropriate action and business to only respond to legitimate claims that a triage system should be implemented (this has been extensively covered in the direct submission made by the Caravan, Camping & Touring Industry & Manufactured Housing Industry Association of NSW to this Review in its first round of consultation).

In essence this states that what the parties using the Tribunal system and exercising their rights under the ACL need is an integrated system focusing on reasonable outcomes for parties within a reasonable time frame at reasonable cost. This documented case management procedure (e.g. triage) will assist with both the management of caseloads and costs for parties, and enable the effective use of limited resources supporting the objective of timely redress.

In summary of the recommendation with respect to triage within a Court or Tribunal situation:

- The Court or Tribunal should adopt a policy to support a process to check applications (“the triage process”) prior to listing matters for hearing.
- The Court or Tribunal should ensure a dedicated resource (Judiciary officer, for example, a Magistrate, Member or Deputy Registrar or similar) is engaged to manage and oversee this process.
- Only after triage and confirmation from the Court or Tribunal should a matter be listed requiring the appearances of parties.
- The Court or Tribunal should communicate as soon as possible the new processes, policies and procedures to all relevant stakeholders.

Regulation Impact Statement

As an industry we support harmonisation, so that consumers who travel or transact across jurisdictions within the caravanning and camping industry, and caravanning and camping businesses which supply into other jurisdictions have certainty regarding their rights and obligations and this has an element of a consistent approach. This not only applies with regard to the Australian Consumer Law but also other elements of national regulation for which individual states (or local Governments) may draw down different revisions of certain regulations or have a different interpretation of the same regulation e.g. Buildings in a Noise Transport Corridor. (We also highlight you to the practical application as highlighted by the Victorian Caravan Parks Association in response to this Review regarding the application of the provisions of the Australian Consumer Law and Fair Trading Act 2012 (Vic) and the rights of parties to a frustrated contract, and the potential substantial loss by a business from circumstances out of the control of the business, where despite the desire to do so, the performance of the contract becomes impossible.

As an industry we further would seek a review of how the premise of a national law, adjudicated by multiple judicial mechanisms applies in a practical situation particularly in light of the operational objective of “*accessible and timely redress*”. We note particularly that:

- there continues to be a significant and practical cost of responding to applications particularly for regionally based businesses; and
- a more transparent or proactive mechanism should be implemented where decisions in one jurisdiction may be distributed not only within the regulatory and legal environment but pushed more broader so that potential educational advocates (such as industry associations) can provide appropriate learnings to industry businesses of current developments and decisions which may have occurred across border.

Other Broader Concerns and Considerations

Consumer Guarantees

The Australian Consumer Law provides for remedies, or more importantly, who chooses the remedy depending upon whether the failure is “major” or not.

While the premise as highlighted in the Issues Paper is that “*a consumer would not have bought it had they known about the problem*”, greater clarity surrounding this definition is sought by industry.

A caravan and / or motorhome may be one of the largest consumable items ever purchased in a person’s lifetime. A complex assembled or manufactured item, these products are made up of many moving parts and component products, some of which maintain their physical form throughout the assembly / manufacturing process e.g. air-conditioner. In addition, the Australian Standards and Design Rules recognise that caravans and motorhomes in Australia are subjected to some of the toughest usage, terrain, and environmental conditions in the world and hence the Standards and Design Rules reflect these.

Unfortunately failures do occur, and while the vast majority of these are dealt with swiftly and to the satisfaction of the consumer, there are a small number of instances where it is felt that the Australian

Consumer Law does not provide the necessary guidance for either the consumer or industry businesses in the resolving of an acceptable solution.

- A caravan/motorhome is a high value item and therefore the definition of major failure is vital in determining where the consumer seeks a full refund for a product failure which is incidental to being safe or fit for purpose but which the consumer would not have bought it had they known about the problem – this is open to subjective analysis and abuse by the consumer, and needs to be tightened up on;
- Due to the nomadic nature of caravanning and camping, product failures can occur at the most inconvenient or remote places, and in this scenario the cost of returning the full product is at considerable cost. As noted in the Issues Paper – consumers are responsible for returning goods that fail to comply with a consumer guarantee unless the cost of doing so is ‘significant’ due to the size, weight or difficulty of removal. In this instance, the business must organise and pay for the return or exchange – this imposes an unfair obligation on behalf of the supplier where the nature or the size of the failure is yet to be quantified;
- There is some industry confusion regarding where a “refund” of a product occurs for which stamp duty and on-road costs have been incurred, if the supplier is responsible for such costs, and if so, how the supplier arranges for a reimbursement of such costs;
- Under consumer guarantees, the consumer is eligible to seek remedy from anyone along the supply chain e.g. supplier in this case being the retailer, or the manufacturer. We are seeing a growing number of cases because of the component nature of the parts making up a caravan / manufacturer where retailers / dealers (despite having the contractual relationship with the consumer and the legal requirement to satisfy) are advising the consumer to go direct to either the manufacturer or the component supplier. This is using the provisions of the Australian Consumer Law identifying that the consumer has a remedy against parties other than themselves. It also recognises in some cases where the contractual relationship between the dealer / retailer and the manufacturer or component supplier is not covered under the Australian Consumer Law and therefore exposes them to substantial risk and out of pockets. This is a concern to industry and it seeks clarification of party’s obligations through a supply chain process;
- While in theory it may seem appropriate for a retailer / dealer to carry sufficient stock to meet a consumer’s potential failure of a component product, in reality the stock holding required would not be commercially viable and “*timely redress*” may not be able to be achieved (for reasons previously identified);
- The issues of parallel distribution of component supplies where a product is either imported into Australia direct, or is fitted to a larger product which is imported into Australia. e.g. fridges and air-conditioners are imported and distributed throughout Australia by a number of named global brands under an exclusive distribution agreement for which local offices, supply networks, service facilities etc. exist. These products are also subject to strict Australian standards which these genuine distribution networks adhere to and supply under. In recent times we have seen demands on these company’s where consumers have purchased over the internet or internationally product which carries the global name of the fridge or air-conditioner but which is not approved or suitable for the Australian market (this we would suggest is both

not safe nor is fit for purpose). In seeking service or warranty these consumers approach the Australian distributor only to be turned away given these products are illegal for use in Australia and there are hefty fines for the distributor to undertake work on such products. The consumer under these circumstances invariably has little protection under the Australian Consumer Law.

As previously stated if, as above, the definition surrounding 'major' failure can be addressed it is considered that a 'lemon' provision can be managed within this definition as opposed to having a specific Lemon Law provision.

Streamlining the Path to Remedy

As an industry we acknowledge that there are a number of Government agencies and legislation which may be able to assist in protecting consumers, outside of strictly the Australian Consumer Law or under delegated authority.

A review of the Department of Infrastructure and Regional Development website notes the following statement:

"The Australian Government regulates the manufacture, importation and first supply to the market of road vehicles to ensure an acceptable level of safety, emission control and anti-theft protection across the Australian vehicle fleet. The Department of Infrastructure and Regional Development administers these arrangements under the Motor Vehicle Standards Act 1989 and Motor Vehicle Standards Regulations 1989. Vehicle standards are set through the Australian Design Rules (ADRs). Additionally, the Department of Infrastructure and Regional Development carries out safety investigations and monitors vehicle recalls on behalf of the Australian Competition and Consumer Commission.

The Department of Infrastructure and Regional Development considers complaints about vehicles with safety issues that will or may cause injury within the terms of the Competition and Consumer Act 2010, or that may not be compliant with the ADRs or other legislative requirements of the Motor Vehicle Standards Act 1989 and Motor Vehicle Standards Regulations 1989. Investigations may be conducted where there is evidence to support a systemic issue."

Further, notes on the website state:

"The Department also assists the Australian Competition and Consumer Commission (ACCC) in carrying out safety investigations, and provides specialist technical advice regarding vehicle safety matters."

Caravan Industry Association of Australia has a strong working relationship with Vehicle Safety Standards branch of the Department of Infrastructure and Regional Development as well as strong dialogue with both the Review team for the MVSA Review and the Minister responsible for the Review in the Hon Paul Fletcher MP.

While we acknowledge that the Review is still underway and that the updated legislation is yet to pass through Parliament, announcements made in the lead-in to the calling of the election have been broadly supported as aligning with our industry's view of:

- Ensuring both Australian and imported product will have the same regulatory oversight and construction standards applied; and
- The current form of self-declaration will be replaced by a risk-profiled identification process and type approval system.

As an industry we have been frustrated at the speed at which non-compliances have been identified and action taken. We understand that this is procedural and requires a level of inter-agency assistance, however the level of willingness (and confidence in gaining a result) in bringing issues of non-compliance to the attention of the Department has waned while we await the new legislative framework to come into existence.

This being said, we welcome the comments issued by Minister Fletcher in February 2016 in regard to the planned Reforms and subsequent dialogue with both the Department and the Review team.

Specifically, we believe that the industry audit program can assist in the genuine identification of unsafe vehicles which put the lives of consumers at risk, but more importantly, we are encouraged by a number of announcements considered:

- 3rd party inspection services;
- Strengthening the penalty provisions in the MVSA including the introduction of a range of enforcement tools including infringement notices, withdrawing approvals, fines, and enforceable undertakings; and
- Use the provisions of the Regulatory Powers Act 2014, whereby the Department will take enforcement action rather than relying purely on the ACCC as the enforcing party.

These will have impact on businesses supplying product to market, and should provide for a better and safer experience by the Consumer. That being said, where a product is identified as being unsafe or not fit for purpose, the provisions of the Australian Consumer Law will need to kick in, and it will be necessary that appropriate coverage is provided for consumers where in many cases these instances identified are where a consumer has purchased directly from an international source, through a distribution network which no longer exists, or through a consumer to consumer purchase.

As an industry we support any initiatives which provide for a safer consumer experience and a more robust regulatory enforcement scheme whereby genuine business operators supplying a product compliant to Australian Standards and Design Rules are not disadvantaged by competing against individuals and businesses who are not meeting these standards. The thought of the Department working ahead of the Australian Consumer Law to uphold the ideals of the legislation is something we are supportive of, and seek how we can work in partnership with Government to ensure that products within our industry are *“safe and fit for purpose”*.

Who are we?

Caravan Industry Association of Australia is the peak national body for the caravanning and camping industry in Australia. Our organisation’s vision is *“to lead and champion a robust, compliant and*

sustainable caravanning and camping industry” in Australia, with all operational pillars – marketing; research; lobbying and advocacy; compliance, accreditation and training – working towards this vision.

Caravan Industry Association of Australia operates as a not-for-profit organisation with a membership base comprising the individual state caravanning and camping industry associations, who we work collaboratively with on matters concerning the caravanning and camping industry in Australia:

Our members are:

- Caravan, Camping and Touring Industry and Manufactured Housing Industry Association of NSW Limited
- Caravan Industry Association Western Australia Incorporated
- Northern Territory Caravan Parks Association Incorporated
- Caravan Trade and Industries Association of Queensland
- Caravan Parks Association of Queensland Limited
- Caravan and Camping Industries Association of South Australia Incorporated
- Caravan Parks Association of South Australia Incorporated
- Caravanning Tasmania Incorporated
- Victorian Caravan Parks Association Inc.
- Caravan Trade and Industries Association of Victoria

As the peak national body for the Australian caravanning and camping industry, Caravan Industry Association of Australia represents over 3,500 industry businesses across the entire supply chain. Many of these industry businesses financially support the organisation by voluntarily making a contribution towards a cooperative fund that aims to grow the market and support the sustainability of the greater industry. In addition, we communicate regularly with consumers who have an interest in caravanning and camping and have an online active database of over 313,000 consumers, and social media sites which number more than 115,000 participants.

The caravanning and camping industry is significant in Australia as evidenced by the following fast facts:

- The total value of the caravanning and camping industry to the Australian economy annually is an estimated \$19.02 billion.
- Approximately 3,500 caravan and camping industry businesses directly supply product to consumers, covering the entire supply chain from manufacturers to suppliers, retailers, repairers and accommodation providers.
- The caravanning and camping industry has 53,000 direct employees in Australia.
- A total of 22,711 recreational vehicles (towable and motorised) were manufactured in 2015, representing a significant 6.6% increase from production outputs in 2014 – the highest production levels in 37 years.
- A caravan or campervan is manufactured every five minutes in the working week in Australia.
- 586,585 recreational vehicles (RVs) were registered across the country as at 31 January 2015, comprising of 58,375 campervans and 528,210 caravans – an annual increase of 4.5%.

- Domestic and International visitors generated 49.7 million nights in caravan parks and camping grounds around Australia, contributing AU\$8.6 billion of visitor expenditure to the economy.
- 11 million overnight caravan and camping trips (domestic and international) were undertaken throughout Australia in 2015 – a 7% increase from 2014.

Conclusion

As the peak national body for a sector which is heavily invested in the operation of the Australian Consumer Law we have a keen interest in the progress of the Review of the legislation. We request the opportunity to participate in further discussions on matters which have been raised above, or with regard to relevant issues raised by others as part of the Review, and prior to any final report outlining recommendations be provided to Government.

We specifically ask to be kept abreast of developments with regard to the Review, and wish to be noted as a stakeholder in the process.

Thank you for your consideration of the matters raised in this submission, and if you have any questions please feel free to contact me direct on 03 9815 2015 or via email on stuartl@caravanindustry.com.au

Kind regards

A handwritten signature in blue ink, appearing to read 'Stuart Lamont'.

Stuart Lamont
Chief Executive Officer