



## Improving consumer guarantees and supplier indemnification provisions under the Australian Consumer Law

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## About Caravan Industry Association of Australia

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 safe, 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.

As the peak national body for the Australian caravanning and camping industry, Caravan Industry Association of Australia represents over 6,000 industry businesses across the entire supply chain. The caravanning and camping industry is significant in Australia as evidenced by the following:

- An annual economic contribution to the Australian economy of \$23 billion;
- There are 6,000 businesses across the supply chain, including 2,000 caravan parks;
- The caravanning and camping industry has 53,000 direct employees in Australia;
- 50,000 jobs in Australia across 6,000 business, 90% being SMEs; and
- 800,000 recreational vehicles registered in Australia, 90% of these were manufactured in Australia.

In addition to our industry reach, we regularly interact with consumers who use our industry product or who have desires to do so in the future. This includes an active email database of 800,000 consumers and a social community in excess of 200,000. This makes us well placed to provide solutions with regard to the distribution of educational materials developed out of the current review.

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## Summary

Caravan Industry Association of Australia supports the intent of consumer protection and welcomes the Government's ongoing review of the Australian Consumer Law (ACL) to ensure it remains relevant to protect both consumers and businesses alike.

Caravan Industry Association of Australia is also encouraged by the focus on supplier/manufacture relationships and the impact that this has on business relations and consumer outcomes. The recreational vehicle industry has around 4000 businesses across the supply chain including dealers, repairers, manufacturers of recreational vehicles, and component suppliers and manufacturers. This issue is highly relevant to them.

It is our belief that consumers and businesses would benefit from an ongoing education campaign that highlight the rights and responsibilities of manufacturers, suppliers and consumers regarding consumer law. A recreational vehicle is an immensely complex product that, while manufactured / assembled in a single space, receives interconnecting components from across Australia and the world. Such components are heavily intertwined in construction eg carpentry, walls, chassis etc while other involve consumables such as TV's, cooking facilities and whitegoods which a consumer would commonly have within their domestic residence. This complexity and bringing together of otherwise household items and the vehicle, results in occasional flaws, following usage in terrain which can include significant vibration, where consumers may subsequently require some action to remedy.

Further, while there is evidence that consumers have more information and resources available at their fingertips than ever before, this does not translate into more accurately being able to 'self assess' what their rights are under the ACL, and in particular distinguishing between a major and minor failure. Recreational vehicles are highly desired and conjure much anticipation and excitement by our consumers. Whether this be the opening up a lifetime of holiday plans, the connection to one's family or friends, or the escapism from everyday life, a recreational vehicle lifestyle is something which is a highly emotional purchase. For our manufacturing industry, these products are complex in their construction and are often bespoke or personal in nature to cater for our consumer's intended use or preferences. This creates at times an expectation gap by consumers between what is rightfully entitled when a problem occurs, and by the supply chain regarding who remedies the problem.

With regard to the supplier and manufacturer relationship, Caravan Industry Association of Australia again strongly recommends the use of an educational campaign targeted at industry and consumers to assist in identifying the rights and responsibilities of manufacturers / dealers and component suppliers right across the supply chain. Recreational vehicles are not the only complex products that, when a product failure emerges, have several parties that must work together to achieve an acceptable outcome for the consumer. Motor vehicles, boats, and other watercraft, IT hardware, and white goods are also in a very similar position to the recreational vehicle industry.

To frame our recommendations, in February 2022 we conducted an online survey amongst our major retailers across the industry with 53 responses being recorded. Where percentages are quoted below, these relate to the results from this online survey of industry.



## Part A: Receiving Remedies (Consumers)

### Summary of Recommendations

- Highly supportive of an ongoing education campaign, highlighting consumers rights and business responsibilities under ACL. This should be ongoing.
- If a regulatory change is to be made, this should be once more specific data is available, particularly with the technical change made in December 2020 to the ACL.
  - These changes around what constitutes a 'major' or a 'minor' fault should be given a chance to 'wash through' the system to determine their impact on consumer and business relations before future changes are made.
- Increased harmonisation across states and territories in terms of enforcing ACL.
  - In some states (such as NSW with Motor Dealers & Repairers Act 2013) there are existing mechanisms that support consumers receiving remedies. This includes strengthening protection for consumers in NSW by aligning the dealer guarantee with the ACL. This applies to motorhomes and campervans, however not to towable recreational vehicles such as caravans / camper-trailers.
  - These should be consistent with the national provisions and not provide alternative remedies, noting that in the current NSW review they are strengthening protections for consumers through aligning the dealer guarantee with the ACL (noting that this does not apply to trailers or towable recreational vehicles, but does to motorhomes and campervans).
- Current existence of state based frameworks including Fair Trading mediation (in NSW) and Victorian Civil & Administrative Tribunal (VCAT) have also been reported to be positive mechanisms for establishing rights under ACL interpretation.

### **Do you have any information on consumers claiming refunds for new motor vehicles? If so, please provide details on how long after purchase refunds are requested, and the prevalence of such requests.**

The caravan industry is well versed in dealing with consumer complaints and handling them accordingly. This is not necessarily a reflection of the craftsmanship of caravan manufacturing in this country, but rather due to the nature of a caravan purchase, i.e., likely being the second most expensive purchase a consumer makes in their lifetime after their home. This results in more pressure being applied to the purchase which is already a highly emotive decision. Additional research indicates that many new recreational vehicle purchases occur after a significant change in living circumstances such as retiring, having children, children leaving home or other family changes.<sup>1</sup>

To highlight this, 90% of relevant survey respondents indicated that they had been approached by consumers seeking a remedy to a product failure in the last five years. Of these, 75% had

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<sup>1</sup> Caravan Industry Association of Australia, *The RV Consumer 2018, 2018*.



experienced consumers seeking a refund on their recreational vehicle purchase; with these requests for refunds occur anywhere from a week to seven years after purchase.

*We would receive a request for replacement or full refund on a 0.01% of caravans produced. Usually this claim is a result of frustration of acceptable quality. It is an extreme case whereby a refund is offered by us as it is extremely unlikely a repair cannot be undertaken.* - **Importer/Manufacturer, Nationwide.**

### **Do you have any information or data to support the view consumers are 'gaming' the system to obtain replacement new motor vehicles or refunds?**

While there are undoubtedly legitimate consumer claims arising following the purchase of a recreational vehicle, industry businesses also reported instances where consumers had 'fallen out of love' with the product. This was being seen as a motivator by several industry members on instances where consumers were searching for a refund, but were not entitled to it.

*Unfortunately the power is in the consumers hands whereby if they don't agree with the outcome of what has been lawfully achieved by the manufacturer or dealer then the consumer can go onto any number of forums, sites and seek to destroy the businesses reputation resulting in uneducated feedback in a public space* - **Manufacturer/Dealer, Nationwide.**

Consumers are reported using calculated language to push buttons such as 'not fit for purpose' when the reality is that while something about the RV may be a constraint, it is not a 'fitness for purpose issue'.

Hence, the issue appears to be around education and consumers understanding what their rights are and where the responsibility of businesses end in regard to this. An economy wide education program would assist in this.

### **For new motor dealer representatives, please provide any relevant information or data on how providing remedies has impacted your business.**

Typically, complaints are handled appropriately with mutually agreeable outcomes for consumer. One business reported in a survey response:

*"Each request is treated on its merits and has been resolved with a mutually agreeable outcome depending on the situation. Some have been refunded, some have been replaced and some have been repaired. As a Dealership we have been involved in 18 separate incidences of Refunding or Replacing a new Caravan since February 2021."* - **Dealer, Queensland.**

In the negative aspects; industry businesses have also reported extensive brand damage on social media and review sites despite the fact that claims had been dealt with appropriately. Excessive time used to cater to unwarranted requests is also a concern amongst dealers.



### **Do you think introducing a civil prohibition would deter businesses from failing to provide the applicable consumer guarantee remedy to consumers who are entitled to one?**

Industry survey responses indicate that a civil prohibition would not be an effective mechanism in deterring industry businesses from providing the applicable remedy to entitled consumers. Less than 1-in-5 (19%) of industry businesses who responded indicated that a civil prohibition would deter businesses from failing to provide the applicable consumer guarantee remedy (when entitled).

This is despite the fact that 90% of businesses surveyed had experienced a consumer seeking a remedy through the ACL process as indicated above.

### **What would be the most effective way of implementing a civil prohibition for a failure to provide a consumer guarantee remedy? Should the circumstances in which a penalty applies be limited in any way?**

If a civil prohibition is to be implemented, it should be reserved for systemic issues with clear criteria to preserve the right to dispute unreasonable claims or those claims that are made without merit.

Additionally, any implementation should be economy-wide as opposed to focussing on a specific sector.

Survey respondents also indicate that state agencies (such as VCAT) is appropriate where there is flagrant disregard for the consumer.  
If a civil prohibition is the adopted method

### **Are there any unintended consequences, risks or challenges that need to be considered with creating such civil prohibitions?**

If implemented needs to extend to component suppliers to RV manufacturers. Businesses that supply components to manufacturers are often reluctant to properly warrant their components, and this is something that can lead to more negative consumer outcomes.

Feedback indicated civil prohibitions may negatively impact on the mental health of business operators and there is growing concern that unreasonable claims are being settled, in part, due to a fear that not settling a claim (however spurious) may result in more wide ranging consequences such as a social media backlash.

Other suggestions include allowing the consumer to go direct to the manufacturer if the supplier / dealer doesn't provide adequate assistance.

### **What is the preference? (Status Quo, Education Campaign, Civil Prohibition)**

It is the strong preference of the caravan industry that an ongoing economy wide education program be adopted to better educate consumers and industry regarding their responsibilities under the ACL. This is supported by the survey findings that an education campaign (48%) is ahead of maintaining the status quo (32%) with civil prohibition being the least preferred outcome (19%).



A campaign would be aimed at improving awareness and understanding of the consumer guarantees, including when they have a right to seek a remedy and the types of remedies they are entitled to, according to the circumstances.

For suppliers and manufacturers, the campaign would be aimed at improving their understanding of key consumer guarantees, when these guarantees apply, and the types of remedies to be provided, according to the circumstances.



## Part B: Supplier Indemnification

### Summary of Recommendations

- It is the strong position of Caravan Industry Association of Australia that an ongoing education campaign be created to highlight the roles and responsibilities of manufacturer/supplier relations. This can be delivered through industry associations on a federal and state level in partnership with the relevant regulatory bodies.
- However, If civil prohibition is to be pursued, enforcement should be reserved for serious/systemic issues and clear criteria, all of which would need to be met, before penalties applied.
- Any regulatory changes need to be economy-wide as motor vehicles are not the only high value / complex product in the Australian economy.
- Enforcement also needs to preserve trader rights to dispute claims on reasonable grounds, especially with complex products like RVs, to avoid the unintended consequence of traders forgoing their rights out of fear.

### Prelude

The caravan industry trade sector has a significant footprint with 4000 businesses in the industry that deal both on a B2B and a B2C level.

This includes nearly 400 different manufacturers and the significant supply chain network including 1,144 dealers and the parts & accessories, component manufacturer sub sectors. Many businesses operate both direct to consumers as well as supplying other businesses.

For example, a fridge in a caravan may be built in Sweden, then added to an Australian made caravan in Melbourne, before being sold at a dealership in Brisbane.

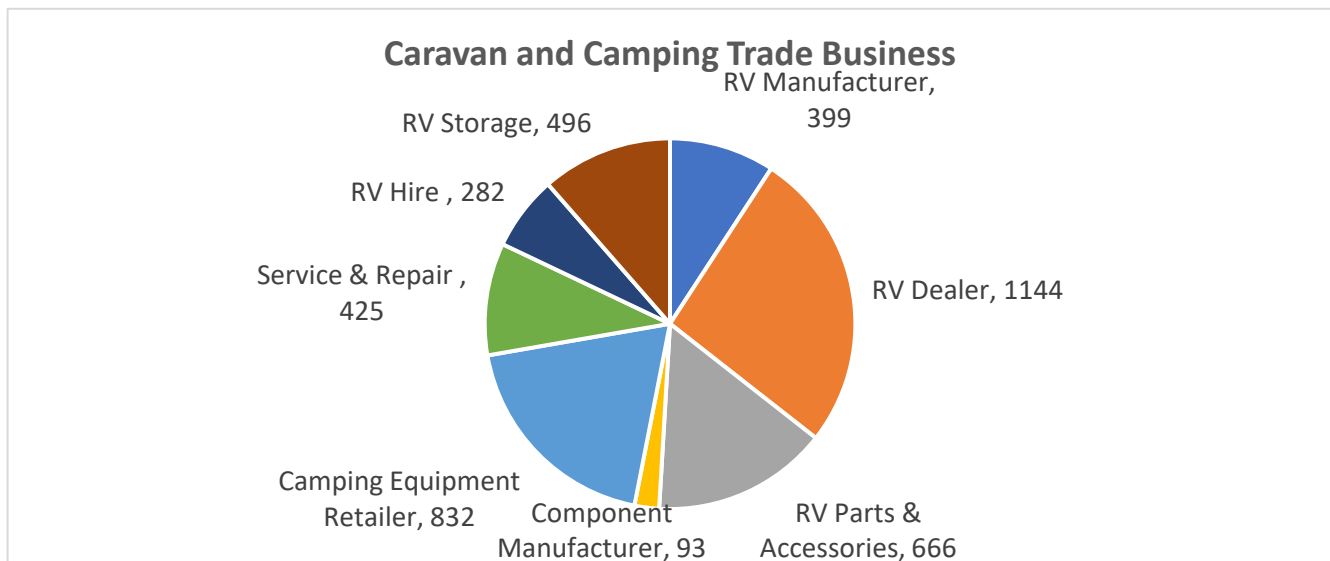


Figure 1: Source, NEM Australiasia, 2019.





## **Which option in the would you prefer to be adopted?**

Caravan Industry Association of Australia, in line with industry feedback, is of the position that an education campaign would be the most effective in improving supplier / manufacturer relationship. However, this should be ongoing as a three month period is not long enough to create lasting changes. This education campaign could be delivered by peak industry bodies at both a national and state level to improve the likelihood that businesses take part and so are aware of their responsibilities.

However we note that broadly speaking the manufacturer / supplier relationship appears to be strong in the caravan industry. Industry responses to the survey highlight that 42% are in favour of an education campaign while 25% of businesses prefer the status quo. 17% are in favour of the introduction of a civil prohibition for not indemnifying suppliers, with this number being replicated for introduction of a civil prohibition for retaliating against suppliers for seeking to enforce indemnification.

Following additional consultation with industry, if a civil prohibition is introduced, it should be in regard to the retaliation of importers/manufacturers as there is currently limited difficulty in receiving indemnification from manufacturers, and, instead, the small minority of those who choose to retaliate against suppliers should be the target of any prohibition.

## **Have business sought indemnification from manufacturers under the existing law? If not, please provide details.**

Responses to the survey indicate that 37% of suppliers/dealers had sought indemnification from manufacturers through existing law while 47 % had not. The remainder (16%) were not sure if they had.

In general, most suppliers report a positive experience in resolving this with their manufacturers, however there are some issues that arose in the responses. Some businesses have reduced their purchase orders from manufacturers after investigation, however it is noted that this was the decision of the dealership in light of the manufacturer providing a product which had received several consumer complaints.

## **Have you experienced difficulties getting indemnified from manufacturers? If so, please provide details.**

While some suppliers report difficulties and manufacturers pushing back against suppliers, but generally the relationships appear to be strong. This is highlighted by the fact that 89% of suppliers reported no difficulties in getting indemnified from manufacturers. Some of the individual feedback further demonstrates that a civil prohibition is unlikely to improve this figure. As such, it supports the notion that a civil prohibition, if introduced, is best used to

However where there are issues, it is with manufacturers being keen to keep the issues between dealer (supplier) and consumer, rather than engage proactively, however this appears to be in the minority of cases according to industry feedback. This poses as issue as manufacturers are liable to cooperate with suppliers in consumer remedies.



### **Would your inclination to seek an indemnification change if a civil prohibition was introduced?**

Based on survey results, 10% of suppliers said they would seek indemnification more frequently with 32% indicating that it would not change if a civil prohibition was introduced. The remaining 58% are unsure as to how it would impact their behaviour.

This indicates that more information needs to be provided to determine if this is a viable solution, and industry needs to be informed of this.

### **Have you experienced retribution from a manufacturer after seeking indemnification? If so, please provide details.**

82% of suppliers that were surveyed have not experienced retribution / retaliation following requests for indemnification. This demonstrates that it is not a wide reaching issue, however those 18% that have experienced this indicated that manufacturers denied that a consumer complaint was warranted, with the business relationship ebbing as a result.

Another respondent indicated that the manufacturer stopped providing product to the dealer following the request for indemnification.

*A heated debate took place with the manufacturer where the consumer had a genuine claim. This is detrimental to your own business creating strained relationships and the customer losing confidence in your business.* - **Dealer, Victoria.**

### **Would your inclination to seek indemnification change if a civil prohibition on retaliation was introduced?**

From the survey presented to industry, 20% of suppliers indicated that the introduction of a civil prohibition against retribution was introduced would change, with 73% saying it would not impact. In terms of suggestions in



## Conclusion

Caravan Industry Association of Australia once again welcomes the focus on ACL and acknowledges the vital role it plays in improving consumer outcomes. As the largest remaining automotive manufacturing sector in Australia, the caravan industry is acutely aware of the need for consumers to be aware of their rights, additionally, industry to be aware of their responsibilities to the consumer.

With the raft of changes that has occurred over the past three years, including changes to the definition of a 'major fault' to include a sum of 'minor faults' it is the strong position of Caravan Industry Association of Australia that these changes be allowed to wash through the system to determine their impact on consumer outcomes. An economy-wide education program would assist with this and should be ongoing.

Any introduction of civil prohibitions should be reserved for systemic issues with clear criteria to preserve the right to dispute unreasonable claims. In regard to manufacturer / supplier relations, any new measures should focus on prohibiting retribution following a request for indemnity from a supplier. This would assist in maintaining positive supplier / manufacturer relationships and only punishing manufacturers that blatantly disregard their obligations.

Do not hesitate to reach out if you require any further information regarding our submission, our details are below.

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