

Jeremy Gordon
PO Box 354, Corinda, 4075 QLD
Mobile: 0428 238 955
Email: jg@jgmail.com

ACL Review
Consumer Affairs Australia
and New Zealand (CAANZ)
Via online submission

4 December 2016

Submission to ACL Review

I am a barrister in Queensland. I also sit as a member of the Queensland Civil and Administrative Tribunal.

I have comments to make on the question of access to Australian Consumer Law remedies in private legal actions. My comments would appear to be pertinent to sections 1.3.4 - Small Business access to remedies (private legal actions) and 3.1.4 Access to remedies.

The Queensland Civil and Administrative Tribunal (QCAT) hears minor civil disputes up to \$25,000 in an informal way, where the rules of evidence are relaxed, where proceedings are usually inquisitorial, and where normally parties are self-represented. Apart from the filing fee, no costs are awarded to the successful party. Claims above \$25,000 in Queensland are dealt with by the mainstream courts where the procedure is likely to be adversarial and costs are at large.

QCAT therefore provides an efficient and cost effective dispute resolution process in Queensland for claims of up to \$25,000, highly suited to dealing with compensation claims for breaches of the ACL consumer guarantees.

Unfortunately there are gaps in the QCAT jurisdiction which mean that access to redress for breach of the consumer guarantees is not comprehensive:-

- (a) Some businesses in Queensland are unable to apply to QCAT to seek compensation for breach of the consumer guarantees in respect of goods and services supplied to them.
- (b) Individuals and business are unable to apply to QCAT to seek compensation for breach of the consumer guarantees in respect of goods and services supplied to them by some businesses.

This is because QCAT only has jurisdiction in claims for a debt or a liquidated demand of money or in trader-trader or trader and consumer disputes.¹

¹ Section 11 of the *Queensland Civil and Administrative Tribunal Act 2009* and Schedule 3 (the definition of “minor civil dispute”). See also section 50 of the *Fair Trading Act 2009* which limits QCAT’s jurisdiction under the ACL to its “minor civil dispute” jurisdiction.

This excludes services provided to, or by, businesses which are not traders – for example lawyers,² medical professionals,³ podiatrists,⁴ accountants, auditors,⁵ surveyors, valuers,⁶ marine surveyors,⁷ advocacy consultants,⁸ architects,⁹ professional town planning consultants,¹⁰ optometrists¹¹, migration agents,¹² periodontists,¹³ general accounting and financial management services¹⁴, Brisbane City Council (when acting as an assessment manager for applications for development approval)¹⁵ and probably not music teachers,¹⁶ counsellors, therapists, financial planners and so on (this list of non-traders expands as decisions are published).

If QCAT does not have jurisdiction, a party in this type of claim has to go to the Magistrates Court. This may not be their preferred option, because lawyers are more likely to be involved and they may be at risk in costs.

Here are two examples of the effect of the gap in QCAT's jurisdiction:-

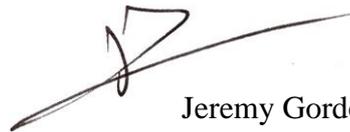
Example 1

QCAT can hear a claim (covered by the ACL) brought by a manufacturer and repairer of spectacles for damages because they purchased a defective photocopier, but cannot hear a similar claim from an optician (unless that optician merely manufactures and repairs spectacles and provides no ophthalmic services) (Pike v Rockhampton Optical Pty Ltd [2011] QCATA 200).

Example 2

QCAT cannot hear a claim for damages (covered by the ACL) against migration agents for failure properly to provide services (Aguilar v Egnalig [2014] QCATA 219). However if the migration agents sued in QCAT for their fees, QCAT could hear the client's complaint as a set-off against that claim (but QCAT couldn't deal with a claim by the client beyond the amount of the fees because it would then be a counterclaim).

Kind regards



Jeremy Gordon

² *Singleton v KRG Conveyancing Centre trading as KRG Law* [2010] QCAT 708.

³ *Holman v Deol* [1979] 1 NSWLR 640.

⁴ *McDonald v Kenmore Podiatry Pty Ltd* [2012] QCAT 126

⁵ *Safe and Sound Building Society v SRJ Audit Pty Ltd* [2015] QCATA 109.

⁶ *Early Property Group Pty Ltd t/a Early Group Valuers v Cavallaro* [2010] QCATA 65.

⁷ *Gall & Anor v Lakatoi Pty Ltd t/as Maritime Solutions Most Things Nautical* [2014] QCAT 557

⁸ *Butler v Corporate Consulting Services Pty Ltd* [2012] QCAT 258.

⁹ *Blackwhite Pty Ltd v Ryall Smyth Architects Pty Ltd* [2013] QCAT 142.

¹⁰ *Davy v Ryter Planning Pty Ltd* [2010] QCATA 96

¹¹ *Pike v Rockhampton Optical Pty Ltd* [2011] QCATA 200, but as found in that appeal not an optician asked simply to manufacture spectacles to a prescription.

¹² *Aguilar v Egnalig* [2014] QCATA 219.

¹³ *Sizintseva v Benowa Mansions Periodontal Specialist Centre* [2014] QCATA 249

¹⁴ *Hi Dow Australia Pty Ltd v Shivlosh Australia Pty Ltd* [2015] QCATA 155

¹⁵ *Aronis v Brisbane City Council* [2014] QCAT 287

¹⁶ In *Pisa v Rountree* [2010] QCATA 064 the appeal tribunal expressed “considerable doubt” that a music teacher was a trader, without deciding the point (the appeal was dealt with on other grounds).