



No. S EC

Case: S ECI 2023 01521

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**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST**

JAMES KENDALL MCCOY

Plaintiff

and

HINO MOTORS LTD

First Defendant

HINO MOTOR SALES AUSTRALIA PTY LTD (ACN 064 989 724)

Second Defendant

DEFENCE

Date of document: 12 April 2024

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Unless otherwise stated:

- A. defined terms bear the same meaning as in the Statement of Claim filed 29 May 2023 (**Claim**); and
- B. a reference to ADR 80 in this Defence refers to the ADR 80 Determination 80/00, ADR 80 Determination 80/01, ADR 80/00, ADR 80/01, ADR 80/02 and ADR 80/03 (as defined in paragraph 32 below) as in force and applicable at the relevant time.

Global Answer

In answer to the whole Claim: insofar as the Plaintiff seeks to establish any pleaded cause of action in reliance upon mandatory steps taken by one or both Defendants under Australian law, the Defendants deny that the Claim is maintainable.

Balance of Defence

Otherwise to the Claim, the Defendants say as follows:

A. PRELIMINARY

A.1 The Plaintiff and Group Members

1. In answer to paragraph 1 of the Claim, the Defendants:
 - (a) admit that the Plaintiff brings the proceeding on his own behalf and seeks to bring the proceeding as a representative party on behalf of persons described in paragraph 1 of the Claim, pursuant to Part 4A of the Supreme Court Act 1986 (Vic);

- (b) insofar as the paragraph pleads that the proceeding has been validly commenced as a group proceeding pursuant to Part 4A, do not plead to the paragraph because it does not allege a material fact;
 - (c) do not know and cannot admit that by 17 April 2023 any person on whose behalf the Plaintiff seeks to bring the proceeding purchased, leased or otherwise acquired an interest in Australia in a Hino branded vehicle fitted with a diesel engine that was manufactured during the period from 1 January 2003 to 22 August 2022;
 - (d) do not know and cannot admit that any person on whose behalf the Plaintiff seeks to bring the proceeding are not any of the following:
 - (i) a Hino authorised dealer;
 - (ii) a related body corporate (as defined by s 50 of the *Corporations Act 2001* (Cth) (**Corporations Act**) of either defendant; or
 - (iii) a Justice or the Chief Justice of the Supreme Court of Victoria or a Justice or the Chief Justice of the High Court of Australia.
2. In answer to paragraph 2 of the Claim, insofar as that paragraph contains any allegations against them, the Defendants do not know and cannot admit the allegations in this paragraph.
3. In answer to paragraph 3 of the Claim, the Defendants:
- (a) admit that:
 - (i) Hino Australia supplied a Hino vehicle model 300 717 MT 3430 Wide Tipper of engine variant N04C-WM (VIN: JHHUCT1F90K045260) (**Plaintiff's Affected Vehicle**) to Prestige Hino, Dandenong South in early August 2022;
 - (ii) the Plaintiff's Affected Vehicle is a Hino branded vehicle fitted with a diesel engine that was manufactured during the period from 1 January 2003 to 22 August 2022;
 - (iii) the Plaintiff's Affected Vehicles is therefore an Affected Vehicle;
 - (b) say that:
 - (i) on or about 15 August 2022, an 'Agreement for sale of new motor vehicle' between Prestige Hino, Dandenong South (ABN 95 116 779 198) and a 'McCoy Civil Works' (ABN 64 833 831 733) was signed on behalf of 'McCoy Civil Works' for the sale of the Plaintiff's Affected Vehicle;
 - (ii) 'McCoy's Civil Works' was the business name associated with ABN 64 833 831 733 between 19 November 2020 and 12 May 2022, which, during that time, was registered to a James Kendall McCoy;
 - (iii) a 'New Vehicle Tax Invoice' from Prestige Hino, Dandenong South (ABN 95 116 779 198) dated 29 August 2022 was addressed to James McCoy in relation to Plaintiff's Affected Vehicle;

- (c) say further that:
- (i) the Plaintiff's Affected Vehicle was a European Certified Affected Vehicle (see paragraph 35 below); and
 - (ii) in the absence of further particulars, they otherwise do not know and cannot admit the circumstances of the Plaintiff's acquisition of the Plaintiff's Affected Vehicle.

A.2 The Defendants

4. In answer to paragraph 4 of the Claim:

(a) Hino Japan:

- (i) admits the allegations in subparagraph 4(a);
 - (ii) in answer to the allegations in subparagraph 4(b):
 - A. admits that;
 - 1) at all material times it was and is in the business of designing and manufacturing vehicles and automotive products;
 - 2) the Affected Vehicles were designed by it;
 - 3) apart from those vehicles identified in subparagraph (a)(ii)B below, the Affected Vehicles were manufactured in Japan by it;
 - B. says further that certain Affected Vehicles were manufactured in Hino Japan's subsidiary's manufacturing facilities in Thailand;
 - C. otherwise denies the allegations in this subparagraph; and
 - (iii) in answer to the allegations in subparagraph 4(c):
 - A. admits that at all material times from the commencement of the CCA on 1 January 2011, it was and is a "manufacturer" of the Affected Vehicles within the meaning of s 7 of the ACL, being Schedule 2 to the CCA;
 - B. admits the allegations in subparagraphs (i), (iii) and (iv); and
 - C. otherwise denies the allegations in this subparagraph; and
- (b) Hino Australia does not plead to this paragraph as it does not contain any allegations against it.

5. In answer to paragraph 5 of the Claim:

- (a) Hino Japan does not plead to this paragraph as it does not contain any allegations against it;
- (b) Hino Australia:
 - (i) admits the allegations in subparagraphs 5(a) and 5(b);
 - (ii) in answer to the allegations in subparagraph 5(c);

- A. admits that at all material times it was and is in the business of importing, distributing and marketing in Australia heavy duty road vehicles and buses manufactured by Hino Japan or subsidiaries of Hino Japan;
- B. says further that, at all material times, it supplied:
 - 1) road vehicles to dealers, who are then responsible for selling those vehicles to end user customers;
 - 2) road vehicles directly to major fleet customers; and
 - 3) buses directly to end user customers; and
- C. otherwise denies the allegations in this subparagraph;

(iii) in answer to the allegations in subparagraph 5(d):

- A. admits that at all material times from the commencement of the CCA on 1 January 2011, it was and is a “manufacturer” of the Affected Vehicles within the meaning of s 7 of the ACL;
- B. admits that at all material times before 1 January 2011, it imported the Affected Vehicles into Australia when the manufacturer did not have a place of business in Australia; and
- C. refers to subparagraph 5(b)(ii)A above;
- D. otherwise denies the allegations in this subparagraph.

6. In answer to paragraph 6 of the Claim, the Defendants:

(a) say that:

- (i) each of the Defendants is and was at all material times a corporation within the meaning of s 4 of the TPA as that Act was in force from time to time;
- (ii) deny that ss 51AB and 52 of the TPA provide a meaning of a “corporation”;
- (iii) say that each of the Defendants is and was at all material times a person for the purposes of ss 18, 21, 54, 55 and 59 of the ACL; and
- (iv) deny that ss 18, 21, 54, 55 and 59 of the ACL provide a meaning of a “person”.

(b) otherwise deny the allegations in this paragraph.

B. COMPLIANCE REGIME FOR MOTOR VEHICLES IN AUSTRALIA

B.1 Motor Vehicle Standards Act 1989

7. In answer to paragraph 7 of the Claim, the Defendants:

- (a) admit that at all material times prior to 1 July 2021, subject to s 14A referred to at subparagraph 7(b)(ii) below, the Motor Vehicle Standards Act prohibited a person from supplying to the market a new vehicle that:

- (i) did not comply with the national standards and was not taken to comply with the national standards by virtue of an approval given under s 10A(2); and
 - (ii) does not have an identification plate;
- (b) say further that:
- (i) an identification plate means a plate declaring the status of a road vehicle in relation to the national standards to be approved to be placed on vehicles of that type or description under procedures and arrangements provided for in ss 10(1) of the Motor Vehicle Standards Act (**Identification Plate**);

Particulars

Motor Vehicle Standards Act, s 5

- (ii) the Motor Vehicle Standards Act allows a person to supply to the market a vehicle to which s 14 applies in prescribed circumstances or with the written approval of the Minister; and

Particulars

Motor Vehicle Standards Act, s 14A

- (c) otherwise deny the allegations in this paragraph.

8. In answer to paragraph 8 of the Claim, the Defendants:

- (a) refer to and repeat paragraph 7 above; and
- (b) admit that at all material times prior to 1 July 2021, subject to ss 19 and 20 referred to at subparagraphs 8(d)(i) and 8(d)(ii) below, the Motor Vehicle Standards Act prohibited the importation of a road vehicle that:
 - (i) did not comply with the national standards and was not taken to comply with the national standards by virtue of an approval given under s 10A(2); and
 - (ii) did not have an Identification Plate fitted;

Particulars

Motor Vehicle Standards Act, s 18

- (c) otherwise deny the allegations in this paragraph; and
- (d) further say that:
- (i) the Motor Vehicle Standards Act allows a person to import a nonstandard road vehicle or a road vehicle that does not have an Identification Plate with the written approval of the Minister, which may be approval subject to written conditions determined by the Minister;

Particulars

Motor Vehicle Standards Act, s 19

- (ii) the Motor Vehicle Standards Act allows a person to import a nonstandard road vehicle or a road vehicle that does not have an Identification Plate:

- A. where the vehicle is to be exported from Australia (with or without further work being done on it) without having been used in transport in Australia; or
- B. in prescribed circumstances.

Particulars

Motor Vehicle Standards Act, s 20(1)

9. In answer to paragraph 9 of the Claim, the Defendants:
- (a) refer to and repeat paragraphs 7 and 8 above;
 - (b) admit that at all material times prior to 1 July 2021, under the Motor Vehicle Standards Act, the importer of a road vehicle was:
 - (i) required to do all things reasonable and necessary to ensure that, when the vehicle was supplied to market it still complies with the national standards and still has an Identification Plate; and
 - (ii) not permitted to modify the vehicle in a way that makes it not comply with the national standards and was not taken to comply with the national standards by virtue of an approval given under s 10A(2); and
 - (c) say further that the obligations on the importer applied only from the time of importation to its initial supply to market; and
 - (d) otherwise deny the allegations in this paragraph.
10. In answer to paragraph 10 of the Claim, the Defendants:
- (a) refer to and repeat paragraphs 7 to 9 above;
 - (b) say that, at all material times prior to 1 July 2021:
 - (i) approval from the Minister was required in order for an Identification Plate to be fitted on a new vehicle of a particular type (**MVSA Type Approval**);
 - (ii) MVSA Type Approval was to be given where new vehicles of a particular type:
 - A. complied with the national standards;
 - B. did not comply with the national standards, but the Minister was satisfied that such noncompliance was only in minor and inconsequential respects; or
 - C. were prescribed by the regulations and did not comply with the national standards, but the Minister was satisfied that the vehicles of that type complied with the national standards to an extent that made them suitable for supply to the market;

Particulars

Motor Vehicle Standards Act, ss 10A(1), (2) and (3)

- (iii) once a MVSA Type Approval was given for a new vehicle of a particular type, Identification Plates could be placed on any vehicle of that particular type, without any further need for approval to place an Identification Plate on a particular vehicle;

Particulars

Motor Vehicle Standards Act, ss 10, 10A, 13

- (iv) if the Minister granted an MVSA Type Approval, that particular approval was given a number and known as an Identification Plate Approval (**IPA**) Number.
 - (c) otherwise deny the allegations in this paragraph.
11. In answer to paragraph 11 of the Claim, the Defendants:
- (a) refer to and repeat paragraphs 7 to 10 above;
 - (b) say that at all material times prior to 1 July 2021 pursuant to procedures and arrangements determined under s 10(2) of the Motor Vehicle Standards Act, an application for an MVSA Type Approval was required to be made in accordance with the approved form and accompanied by material sufficient to establish the vehicle type's compliance with the national standards or relevant parts of the national standards in relation to which the application was made (**Compliance Material**);

Particulars

- A. Motor Vehicle Standards Act, s 10
 - B. Administrator of Vehicle Standards, Circular 0-1-2: A guide to the Certification of New Vehicles – Type Approval
 - C. Administrator of Vehicle Standards, Circular 0-2-11: General Procedures for Selection of Vehicles and Components for ADR Compliance Testing.
 - D. Administrator of Vehicle Standards, Circular 0-3-4: Certification Procedures for New Motor Vehicles as applicable from time to time during the relevant period.
- (c) otherwise deny the allegations in this paragraph.
12. In answer to paragraph 12 of the Claim, the Defendants:
- (a) refer to and repeat paragraphs 7 to 11 above;
 - (b) in answer to the allegations in subparagraphs 12(a) to 12(c):
 - (i) refer to and repeat subparagraph 10(b) above; and
 - (ii) otherwise admit the allegations in these subparagraphs;
 - (c) in answer to the allegations in subparagraph 12(d):
 - (i) say that:
 - A. approved forms were submitted via the RVCS by a signatory or agent (on behalf of a licensee);
 - B. various forms were required as Compliance Material for each vehicle type, including:

- 1) a compliance approval (motor vehicle) form;
 - 2) a "summary of evidence" report in relation to each of the national standards applicable to the relevant type of vehicle for which an MVSA Type Approval was sought;
 - 3) for certain national standards (not including ADR 80) applicable to the relevant type of vehicle for which an MVSA Type Approval was sought, a selection of test fleet form;
 - 4) a road vehicle descriptor form; and
 - 5) for certain vehicle types, a Sub-Assembly Data Sheet;
- (ii) deny that a selection of test fleet form was required to be submitted in an application for MVSA Type Approval for a vehicle type to which ADR 80 applied; and
- (d) in answer to the allegations in subparagraph 12(e), say that, if an MVSA Type Approval was given under s 10A(1) of the Motor Vehicle Standards Act, the licensee was responsible for ensuring that Identification Plates were only affixed to new vehicles which, at the time the Identification Plates were affixed:
- (i) conformed to the approved type; and
 - (ii) complied with all of the Australian Design Rules specified in Schedule 4 to that IPA; and
- (e) otherwise deny the allegations in this paragraph.
13. In answer to paragraph 13 of the Claim, the Defendants:
- (a) refer to and repeat paragraphs 7 to 12 above;
 - (b) say that at all material times until 30 June 2021:
 - (i) an MVSA Type Approval granted by the Minister may have been subject to written conditions determined by the Minister; and

Particulars

Motor Vehicle Standards Act, s 10A(4)

- (ii) where a person failed to comply with a condition to which an MVSA Type Approval was subject, the Minister may, having regard to all the relevant circumstances, have cancelled, suspended or varied the person's approval to place Identification Plates on road vehicles of that type; and
- (c) otherwise deny the allegations in this paragraph.

B.2 Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018

14. In answer to paragraph 14 of the Claim, the Defendants:
- (a) refer to and repeat paragraphs 10 to 13 above;
 - (b) say that during the period 11 December 2018 until 1 July 2023 (**Transitional Period**):

- (i) MVSA Type Approvals granted under ss 10A(1) or (2) of the Motor Vehicle Standards Act in relation to vehicles of a particular type and in force immediately before 1 July 2021 were taken to continue in force during the Transitional Period and remained subject to the provisions of the Motor Vehicle Standards Act;

Particulars

Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018 (Cth), Sch 3, Item 4(1).

- (ii) if an MVSA Type Approval granted under ss 10A(1) or (2) of the Motor Vehicle Standards Act continued, or was taken to continue, in force during the Transitional Period and subject to the provisions of the Motor Vehicle Standards Act, then the Road Vehicle Standards Act and the related laws together defined as “new law” within the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018 (Cth)* did not apply, during the Transitional Period, to:
- A. the importation of vehicles to which the MVSA Type Approval applied; and
 - B. the provision of vehicles that have had Identification Plates affixed on them in accordance with the MVSA Type Approval;

Particulars

Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018 (Cth), Sch 3, Item 4(3).

- (iii) MVSA Type Approvals given under ss 10A(3) of the Motor Vehicle Standards Act and in force immediately before 1 July 2021 are taken to continue in force during the Transitional Period subject to the provisions of the Motor Vehicle Standards Act and related legislation;
- (iv) if an MVSA Type Approval given under s 10A(3) of the Motor Vehicle Standards Act continues or is taken to continue in force during the Transitional Period subject to the provisions of the Motor Vehicle Standards Act and related legislation then the Road Vehicle Standards Act, Road Vehicle Standards Rules and related legislation do not apply during the Transitional Period to the provision of vehicles that have had Identification Plates placed on them in accordance with the MVSA Type Approval;

Particulars

Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018 (Cth), Sch 3, item 6(1) and (3)

- (v) Section 17 of the Motor Vehicle Standards Act, which provides for the importation of a road vehicle that complies with the national standards and has an Identification Plate, continues in force during the Transitional Period;

Particulars

Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018 (Cth), Sch 3, item 14

- (vi) an authority to deal with an imported road vehicle under the *Customs Act 1901* (Cth) continues to be subject to an approval for an importer to take delivery of an imported vehicle given by the Minister during the Transitional Period and an approval may be granted for the delivery of a vehicle imported before or during the Transitional Period;
- (vii) if an approval for an importer to take delivery of an imported vehicle was granted before the Transitional Period for the delivery of a vehicle—the approval continues to allow delivery of the vehicle to be taken during the Transitional Period; and

Particulars

Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018 (Cth), Sch 3, item 15(a) to (c)

- (c) otherwise admit the allegations in this paragraph.

15. In answer to paragraph 15 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 10 to 14 above;
- (b) say that during the Transitional Period, if a person was the holder of an MVSA Type Approval granted under ss 10A(1) or (2) of the Motor Vehicle Standards Act that was in force immediately before 1 July 2021 and, during the 6 month period beginning immediately after 1 July 2021, the person provided to the Minister, in the approved form:
 - (i) written acknowledgement of the conditions applying to road vehicle type approvals, and that breach of any of those conditions is an offence under the Road Vehicle Standards Act; and
 - (ii) a signed declaration that the person satisfies the conditions applying to road vehicle type approvals in respect of the type of vehicle covered by an approval under the Motor Vehicle Standards Act; and
 - (iii) pays the charges payable,

then the person was taken to have been granted a road vehicle type approval under the Road Vehicle Standards Rules in respect of the type of vehicle covered by the MVSA Type Approval for a period of 5 years commencing on the day that the criteria above was satisfied (**Road Vehicle Type Approval**) and with the effect that the MVSA Type Approval ceased to be in force on that day; and

Particulars

Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018 (Cth), Sch 3, Item 5(1).

- (c) otherwise deny the allegations in the paragraph.

16. In answer to paragraph 16 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 10 to 15 above;

- (b) say that evidence that enabled the Minister to grant an MVSA Type Approval was taken to be sufficient to satisfy continued compliance with the relevant criteria for granting a Road Vehicle Type Approval under the Road Vehicle Standards Rules unless:
 - (i) the evidence was found to be false or misleading, or was found to omit any matter or thing without which the evidence was misleading; or
 - (ii) the person sought a variation of the Road Vehicle Type Approval under the Road Vehicle Standards Rules – in which case evidence that enabled the Minister to grant an old approval would not have been sufficient to meet the evidential requirements of the Road Vehicle Standards Rules; and

Particulars

*Road Vehicle Standards (Consequential and Transitional Provisions) Act
2018 (Cth), Sch 3, Item 5(3)*

- (c) otherwise admit the allegations in this paragraph.
17. In answer to paragraph 17 of the Claim, the Defendants:
- (a) refer to and repeat paragraphs 10 to 16 above;
 - (b) admit that during the Transitional Period any written conditions to which the MVSA Type Approval was subject were taken to be conditions that were specified in the Road Vehicle Type Approval; and
 - (c) further say that to the extent that a written condition to which the old approval was subject is inconsistent with:
 - (i) a condition to which a road vehicle type approval is subject under the Road Vehicle Standards Rules; or
 - (ii) a requirement of the Road Vehicle Standards Rules,
 - (iii) then, to the extent of the inconsistency, the Road Vehicle Standards Rules prevail; and
 - (d) otherwise deny the allegations in this paragraph.
18. In answer to paragraph 18 of the Claim, the Defendants:
- (a) refer to and repeat paragraphs 10 to 17 above;
 - (b) say that evidence that demonstrated that conditions of the MVSA Type Approval were satisfied was taken to be sufficient to satisfy the relevant conditions of the Road Vehicle Type Approval under the Road Vehicle Standards Rules unless:
 - (i) the evidence was found to be false or misleading, or was found to omit any matter or thing without which the evidence was misleading; or
 - (ii) to the extent that, the person sought a variation of the Road Vehicle Type Approval under the Road Vehicle Standards Rules; and

Particulars

Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018 (Cth), Sch 3, Item 5(3)(d)

- (c) otherwise deny the allegations in the paragraph.
19. In answer to paragraph 19 of the Claim, the Defendants:
- (a) refer to and repeat paragraphs 10 to 18 above;
- (b) say that if an MVSA Type Approval was taken to continue in force during the Transitional Period as pleaded at paragraph 15(b) above, then the approval was subject to, amongst other things, the Road Vehicle Standards Act and Road Vehicle Standards Rules and the related laws together defined as “new law” within the *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018 (Cth)*; and

Particulars

Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018 (Cth), Sch 3, Item 1(1), Item 5(4)

- (c) otherwise admit the allegations in the paragraph.

B.3 Road Vehicle Standards Act 2018

20. In answer to paragraph 20 of the Claim, the Defendants:
- (a) refer to and repeat paragraphs 21 and 22 below and say that at all material times from 1 July 2021 a person has been permitted to import a road vehicle where:
- (i) at the time of importation:
- A. the person is the holder of a Road Vehicle Type Approval or is authorised, in writing, by the holder of a Road Vehicle Type Approval to import the road vehicle;
- B. the Road Vehicle Type Approval is in force; and
- C. the road vehicle is of a type to which the Road Vehicle Type Approval applies; or

Particulars

Road Vehicle Standards Act, ss 2 and 22(2)(a)-(b)

- (ii) at the time of importation:
- A. the person is the holder of an import approval; and
- B. the import approval is in force; and
- C. the road vehicle is specified in the import approval; or

Particulars

Road Vehicle Standards Act, s 22(2)(c)

- (iii) if at the time of importation, a circumstance set out in the rules (which may include the Road Vehicle Standards Rules) applies; and

Particulars

Road Vehicle Standards Act, s 22(2)(d)

(b) otherwise deny the allegations in this paragraph.

21. In answer to paragraph 21 of the Claim, the Defendants:

(a) subject to the exceptions pleaded at subparagraph 21(b) below, admit that at all material times from 1 July 2021, the Road Vehicle Standards Act prohibited the provision of a motor vehicle to another person in Australia if:

(i) the vehicle is provided for the first time in Australia; and

(ii) the vehicle is not on the RAV; and

(iii) the motor vehicle was designed solely or principally for use in transport on public roads;

(b) say that at all material times from 1 July 2021, the Road Vehicle Standards Act did not prohibit the provision of a road vehicle provided in Australia for the first time if the vehicle is not on the RAV if:

(i) the road vehicle is provided to another person to in the circumstances set out in s 24(3);
or

(ii) the person providing the road vehicle is the holder of a non-RAV entry import approval that relates to the vehicle; or

(iii) the road vehicle is manufactured in Australia and the person providing the vehicle makes it clear to the recipient that:

A. the vehicle is not being provided for a purpose that involves use in transport on a public road; or

B. the vehicle is being provided for a purposes that involves use in transport on a public road only in exceptional circumstances; and

Particulars

Road Vehicle Standards Act, ss 24(3)-(4)

(c) otherwise deny the allegations in this paragraph.

22. In answer to paragraph 22 of the Claim, the Defendants:

(a) admit the allegations in paragraph 22;

(b) further say that:

(i) at all material times from 1 July 2021, a vehicle may also be entered onto the RAV if:

A. the Minister grants a concessional RAV entry approval, which allow individual vehicles that have concessions to be entered onto the RAV; or

Particulars

Road Vehicle Standards Act, s 15(2)(b)

- B. any other entry approval is granted as set out in the rules (which may include the Road Vehicle Standards Rules);

Particulars

Road Vehicle Standards Act, s 15(2)(c)

- (ii) if the Minister grants a Road Vehicle Type Approval, that particular approval is given a number and known as a Vehicle Type Approval (**VTA**) number;
- (iii) during the Transitional Period, procedures under the Road Vehicle Standards Act relating to Road Vehicle Type Approvals only applied in relation to types of Affected Vehicles following transfer of an IPA to a VTA;
- (iv) procedures under the Road Vehicle Standards Act relating to Road Vehicle Type Approvals only applied to types of Affected Vehicles where a VTA was held by Hino Australia in respect of that vehicle type; and
- (v) procedures under the Motor Vehicle Standards Act relating to MVSA Type Approval continued to apply to types of Affected Vehicles during the Transitional Period, where an IPA was held by Hino Australia in respect of that vehicle type.

23. In answer to paragraph 23 of the Claim, the Defendants:

- (a) refer to and repeat paragraph 22 above;
- (b) admit the allegations in paragraph 23; and
- (c) further say that:
 - (i) the application for Road Vehicle Type Approval must be accompanied by such documents as required by the form and the application fee; and
 - (ii) the signed declaration referred to at paragraph 23(b) is a declaration that:
 - A. at the time the application is made, the person is able to provide the supporting information for the approval; and
 - B. while the approval is in force, and for the period of 7 years after it expires, the person will be able to provide the original and any subsequent versions of the supporting information; and
 - C. while the approval is in force, the person will ensure that the supporting information is kept up to date.

Particulars

Road Vehicle Standards Rules, s 16(2)

24. In answer to paragraph 24 of the Claim, the Defendants:

- (a) admit the allegations in subparagraphs 24(a) and (b);
- (b) in answer to subparagraph 24(c):

- (i) say that at all material times from 1 July 2021, the Secretary may grant a Road Vehicle Type Approval to a person in respect of a type of vehicle if the Secretary is satisfied that the type of vehicle complies or substantially complies with the applicable national road vehicle standards, as in force at the time the Secretary decides the application having regard to the criteria under s 19 of the Road Vehicle Standards Rules; and

Particulars

Road Vehicle Standards Rules, s 19

- (ii) say further that a Road Vehicle Type Approval comes into force on the day specified in the approval and remains in force for 7 years, unless it is revoked earlier;

Particulars

Road Vehicle Standards Rules, s 22

- (iii) otherwise deny the allegations in this subparagraph;
- (c) in answer to subparagraph 24(d):
 - (i) refer to and repeat paragraph 23 above;
 - (ii) deny subparagraph (d)(iii) insofar as it purports to relate to ADR 80; and
 - (iii) otherwise admit the allegations in this subparagraph;
 - (d) in answer to subparagraph 24(e):
 - (i) deny that a Road Vehicle Type Approval is granted by the Secretary pursuant to s 15 of the Road Vehicle Standards Act;
 - (ii) say that s 15 of the Road Vehicle Standards Act provides for entry of a vehicle on the RAV in circumstances where the vehicle satisfies the requirements of an entry pathway; and
 - (iii) say further that:
 - A. except where the Road Vehicle Type Approval specifies that vehicles covered by the approval are not required to comply with the applicable national road vehicle standards in certain respects, it is a condition of a Road Vehicle Type Approval that a holder of the approval at all times:
 - 1) ensure that vehicles covered by the approval, at the time they are entered on the RAV, comply with the applicable national road vehicle standards as in force at that time; and
 - 2) is able to produce evidence that demonstrates that vehicles covered by the approval comply with those standards at the time they are entered on the RAV and the Secretary could take into account for the purposes of ss 19(2); and
 - B. where the approval specifies that vehicles covered by the approval are not required to comply with the applicable national road vehicle standards in certain respects, or

to a certain extent, in order to be entered on the RAV under the approval, then it is a condition of a Road Vehicle Type Approval that the holder of the approval at all times:

- 1) ensure that vehicles covered by the approval, at the time they are entered on the RAV, comply with the applicable national road vehicle standards as in force at that time, except in the respects, or to the extent, mentioned in ss (2); and
- 2) is able to produce evidence that demonstrates that vehicles covered by the approval comply with those standards to the extent mention in paragraph (a) and the Secretary could take into account for the purposes of ss 19(2); and

Particulars

Road Vehicle Standards Rules, ss 26(1) to (3)

- (iv) otherwise deny the allegations in this subparagraph.

25. In answer to paragraph 25 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 22 to 24 above;
- (b) say that at all material times from 1 July 2021, the Secretary may grant a Road Vehicle Type Approval to a person in respect of a type of vehicle on either of the following bases:
 - (i) if the Secretary is satisfied that the type of vehicle complies with the applicable national road vehicle standards, as in force at the time the Secretary decides the application, and various other requirements are met; or:

Particulars

Road Vehicle Standards Rules, ss 19(1)(a)(i), (b) to (d).

- (ii) if the type of vehicle substantially complies with the applicable national road vehicle standards, as in force at the time the Secretary decides the application, and either:
 - A. the type of vehicle's non-compliance with the applicable national road vehicle standards, as in force at the time the Secretary decides the application, is only in minor and inconsequential respects; or
 - B. where subparagraph 25(ii)(A) above does not apply – the type of vehicle complies with the applicable national road vehicle standards, as in force at the time the Secretary decides the application, to an extent that makes it suitable for use on a public road in Australia; and

Particulars

Road Vehicle Standards Rules, ss 19(1)(a)(i), (b) to (d)

- (c) otherwise deny the allegations in this paragraph.

26. In answer to paragraph 26 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 20 to 25 above;

- (b) admit the allegations in paragraph 26; and
- (c) say further that, for the type approval pathway, information in relation to a vehicle may be entered on the RAV, by:
 - (i) the Secretary;
 - (ii) the holder of an Road Vehicle Type Approval that applies to the vehicle; or
 - (iii) a person authorised, in writing, by the holder of the Road Vehicle Type Approval to enter vehicles on the RAV under approval.

Particulars

Road Vehicle Standards Rules, ss 9(1)(a) - (b)

- 27. In answer to paragraph 27 of the Claim, the Defendants:
 - (a) refer to and repeat paragraphs 22 to 26 above;
 - (b) admit the allegations in paragraph 27; and
 - (c) rely on the terms of s 8 of the Road Vehicle Standards Rules as if they are pleaded in full.
- 28. In answer to paragraph 28 of the Claim, the Defendants:
 - (a) refer to and repeat paragraphs 22 to 27 above;
 - (b) deny that such a condition applies where the Road Vehicle Type Approval specifies that vehicles covered by the approval are not required to comply with the applicable national road vehicle standards in certain respects, or to a certain extent, in order to be entered on the RAV; and

Particulars

Road Vehicle Standards Rules, s 26(2), (3)

- (c) otherwise admit the allegations in this paragraph.
- 29. In answer to paragraph 29 of the Claim, the Defendants:
 - (a) refer to and repeat paragraphs 22 to 28 above;
 - (b) admit that at all material times from 1 July 2021, it is a condition of a Road Vehicle Type Approval that, if the holder of the approval becomes aware of an error in information entered on the RAV under the approval (whether by the holder of the approval or a person authorised in writing by the holder), the holder must notify the Secretary of the error as soon as practicable after becoming aware of the error; and

Particulars

Road Vehicle Standards Rule, s 28

- (c) otherwise deny the allegations in this paragraph.
- 30. In answer to paragraph 30 of the Claim, the Defendants:
 - (a) refer to and repeat paragraphs 22 to 29 above;

- (b) admit that the Minister may issue a recall notice for road vehicles of a particular kind if it appears to the Minister that the vehicle does not, or it is likely that it does not, comply with the applicable national road vehicle standards if:
 - (i) a person in trade or commerce, supplies a vehicle of that kind; and
 - (ii) it appears to the Minister that the non-compliance is of a substantive nature; and
 - (iii) it appears to the Minister that one or more suppliers of such vehicles, or such components, have not taken satisfactory action to prevent those vehicles causing injury to any person or rectify the non-compliance;
- (c) otherwise rely on the terms of s 206 of the Road Vehicle Standards Rules as if they are pleaded in full; and
- (d) otherwise deny the allegations in this paragraph.

31. In answer to paragraph 31 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 22 to 30 above;
- (b) in answer to subparagraph 31(a):
 - (i) deny there would be any such contravention if the information or document was not false or misleading in a material particular; and
 - (ii) otherwise admit the allegations in this subparagraph;
- (c) admit the allegations in subparagraphs 31(b) and (c);
- (d) in answer to subparagraphs 31(d) and (e):
 - (i) admit that, at all material times from 1 July 2021:
 - A. it was a contravention of the Road Vehicle Standards Act if a person enters a vehicle on the RAV and the vehicle does not satisfy the requirements of an entry pathway as described in s 15(2) of the Road Vehicle Standards Act;
 - B. it was a contravention of the Road Vehicle Standards Act if the person is a holder of a Road Vehicle Type Approval and the person authorises another person, in writing, to enter information on the RAV, the other person purports to enter the vehicle on the RAV, and the vehicle does not satisfy the requirements of an entry pathway as described in s 15(2) of the Road Vehicle Standards Act; and
 - C. Road Vehicle Type Approval constituted an entry pathway under s 15(2) of the Road Vehicle Standards Act; and
 - (ii) otherwise admit the allegations in these subparagraphs.

B.4 Australian Design Rules

32. In answer to paragraph 32 of the Claim, the Defendants:

- (a) admit that:

- (i) from 23 December 1999 until 3 November 2005:
- A. ADR 80/00, Emission Control for Heavy Vehicles', being Schedule D to the Road Vehicle (National Standards) Determination No 2 of 1999 (Cth) (**ADR 80/00 Determination**); and
 - B. 'ADR 80/01, Emission Control for Heavy Vehicles', being Schedule E to the Road Vehicle (National Standards) Determination No 2 of 1999 (Cth) (**ADR 80/01 Determination**);
- (together, **ADR 80 Determinations**)
- were national standards pursuant to s 7 of the Motor Vehicle Standards Act;
- (ii) from 4 November 2005 to 1 July 2021:
- A. Vehicle Standard (Australian Design Rule 80/00 — Emission Control for Heavy Vehicles) 2005 (Cth) (**ADR 80/00**), being a standard materially identical to the ADR 80/00 Determination; and
 - B. Vehicle Standard (Australian Design Rule 80/01 — Emission Control for Heavy Vehicles) 2005 (Cth) (**ADR 80/01**), being a standard materially identical to the ADR 80/01 Determination;
- were national standards pursuant to s 7 of the Motor Vehicle Standards Act;
- (iii) from 14 December 2006 to 1 July 2021, Vehicle Standard (Australian Design Rule 80/02 — Emission Control for Heavy Vehicles) 2006 (Cth) (**ADR 80/02**), was a national standard pursuant to s 7 of the Motor Vehicle Standards Act;
- (iv) from 14 December 2006 to 1 July 2021, Vehicle Standard (Australian Design Rule 80/03 — Emission Control for Heavy Vehicles) 2006 (Cth) (**ADR 80/03**) was a national standard pursuant to s 7 of the Motor Vehicle Standards Act; and
- (v) at all material times from 1 July 2021, each of
- A. ADR 80/00
 - B. ADR 80/01
 - C. ADR 80/02
 - D. ADR 80/03
- was a national standard pursuant to s 12 of the Road Vehicle Standards Act;
- (b) otherwise deny the allegations in this paragraph.
33. In answer to paragraph 33 of the Claim, the Defendants:
- (a) refer to and repeat paragraphs 32 and 34 of the Defence;
 - (b) rely on the terms of ADR 80 for their full force and effect;

- (c) admit that, at all material times, ADR 80 applied to M and N category vehicles with a Gross Vehicle Mass greater than 3.5 tonnes; and
- (d) otherwise deny the allegations in this paragraph.

34. In answer to paragraph 34 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 32 and 33 above;
- (b) in answer to subparagraph (a):
 - (i) refer to and repeat subparagraphs 32(a)(i)A and 32(a)(ii)A above;
 - (ii) admit that ADR 80/00 applied in relation to the Affected Vehicles as follows:
 - A. the standards set out in:
 - 1) ADR Determination 80/00 applied from 23 December 1999 to 3 November 2005; and
 - 2) ADR 80/00 applied at all material times from 4 November 2005, such that Hino Australia could seek and obtain an MVSA Type Approval for relevant types of Affected Vehicles in reliance upon ADR Determination 80/00 and ADR 80/00 during those respective periods of time; and
 - B. the standards set out in ADR Determination 80/00 and ADR 80/00 were obligatory:
 - 1) from 1 January 2002 in relation to new model vehicles with an engine which operates on diesel produced on or after 1 January 2002; and
 - 2) from 1 January 2003 in relation to other vehicles (which are not new model vehicles) with an engine which operates on diesel produced on or after 1 January 2003, where a new model vehicle is a model first produced with a date of manufacture on or after 1 January 2002;
 - (iii) say further that the vehicles complying with ADR 80/01 need not comply with ADR 80/00;

Particulars

ADR 80/00, clause 2.6

- (iv) rely on the contents of ADR 80/00 Determination and ADR 80/00 for their full force and effect; and
- (v) otherwise deny the allegations in this subparagraph;
- (c) in answer subparagraph (b):
 - (i) refer to and repeat paragraph 32(a)(i)B and 32(a)(ii)B above;
 - (ii) admit that ADR 80/01 applied in relation to the Affected Vehicles as follows:
 - A. the standards set out in:

- 1) ADR 80/01 Determination applied from 23 December 1999 until 3 November 2005; and
- 2) ADR 80/01 applied from 4 November 2005,

such that Hino Australia could seek and obtain an MVSA Type Approval in reliance upon ADR 80/01 Determination and ADR 80/01 during those respective periods of time;

B. the standards set out in ADR 80/01 and ADR Determination 80/01 were obligatory:

- 1) from 1 January 2007 in relation to new model vehicles with an engine which operates on diesel, produced on or after 1 January 2007; and
- 2) from 1 January 2008 in relation to other vehicles (which are not new model vehicles) with an engine which operates on diesel produced on or after 1 January 2008,

where a new model vehicle is a vehicle of a model first produced with a date of manufacture on or after 1 January 2005;

(iii) say further that vehicles complying with ADR 80/02 need not comply with ADR 80/01;

Particulars

ADR 80/01, clause 2.5

(iv) rely on the contents of ADR 80/01 for its full force and effect; and

(v) otherwise deny the allegations in this subparagraph;

(d) in answer to subparagraph (c):

(i) refer to and repeat subparagraph 32(a)(iii);

(ii) admit that ADR 80/02 applied in relation to the Affected Vehicles as follows:

A. the standards set out in ADR 80/02 applied from 14 December 2006, such that Hino Australia could seek and obtain an MVSA Type Approval in reliance upon ADR 80/02 during that time;

B. between 14 December 2006 and 19 December 2007, the standards set out in ADR 80/02 were obligatory:

- 1) from 1 January 2007 in relation to vehicles with an engine which operates on diesel produced on or after 1 January 2007;
- 2) from 1 January 2008 in relation to other vehicles (which are not new model vehicles) with an engine which operates on diesel produced on or after 1 January 2008,

where a new model vehicle is a model first produced with a date of manufacture on or after 1 January 2007;

C. from 20 December 2007, the standards set out in ADR 80/02 were obligatory:

- 1) from 1 January 2007 in relation to new model vehicles with an engine which operates on diesel produced on or after 1 January 2007; and
- 2) from 29 February 2008 in relation to other vehicles (which are not new model vehicles) with an engine which operates on diesel produced on or after 29 February 2008,

where a new model vehicle is a model first produced with a date of manufacture on or after 1 January 2007;

- (iii) say further that vehicles complying with ADR 80/03 need not comply with ADR 80/02;

Particulars

ADR 80/02, cl 2.5

- (iv) rely on the contents of ADR 80/02 for its full force and effect; and
- (v) otherwise deny the allegations in this subparagraph;
- (e) in answer to subparagraph (d):
- (i) refer to and repeat subparagraph 32(a)(iv) above;
 - (ii) admit that ADR 80/03 applied in relation to the Affected Vehicles as follows:
 - A. the standards set out in ADR 80/03 applied from 14 December 2006, such that Hino Australia could seek and obtain an MVSA Type Approval in reliance upon ADR 80/03 from that date onwards;
 - B. the standards set out in ADR 80/03 were obligatory:
 - 1) from 1 January 2010 in relation to new model vehicles produced on or after 1 January 2010; and
 - 2) from 1 January 2011 in relation to other vehicles (other than new model vehicles) produced on or after 1 January 2011,

where a new model vehicle is a vehicle of a model first produced with a date of manufacture on or after 1 January 2010;
 - (iii) rely on the contents of ADR 80/03 for its full force and effect; and
 - (iv) otherwise deny the allegations in this subparagraph;
- (f) say further that:
- (i) compliance with ADR 80 was not required in respect of Affected Vehicles whose Identification Plate was affixed before 1 January 2003, or for vehicles of a new model, before 1 January 2002 (**Pre-ADR 80 Affected Vehicles**);
 - (ii) Pre-ADR 80 Affected Vehicles were not required to comply with ADR 80;
 - (iii) Hino Australia did not seek or obtain an MVSA Type Approval, or an Road Vehicle Type Approval, for any types of Pre-ADR 80 Affected Vehicle in reliance upon ADR 80; and

- (iv) in relation to certain Japanese Certified Affected Vehicles (see paragraph 54 of the Defence) corresponding to certain types for which Hino Australia sought and obtained MVSA Type Approval in reliance upon ADR 80/03, Hino Australia demonstrated compliance with the standards through the Japanese Safety Regulations for Road Vehicles and the Announcement Prescribing Details of Safety Regulations for Road Vehicles effective as of 1 July 2015 (known as the "Japanese post-Post New Long Term Standard" (**Japanese PPNLT Standard (E9)**), which was accepted as a Minor and Inconsequential Non Compliance with ADR 80/03 by the Administrator under s10A(2) of the Motor Vehicle Standards Act.

35. In answer to paragraph 35 of the Claim, the Defendants:

- (a) say that for engines which operate on diesel, the "Alternative Standards" deemed to be equivalent to the technical requirements of ADR 80/00 and ADR 80/00 Determination are each of:
 - (i) the UN ECE Regulation 49, Revision 3, Amendment 1, incorporating the 03 Series of amendments, or the technical requirements of Directive 1999/96/EC of the European Parliament and Council of 13 December 1999 amending Directive 88/77/EEC; and
 - (ii) the USA Code of Federal Regulations, Part 86 – Control of air pollution from new and in-use motor vehicles and new and in-use motor vehicle engines certification and test procedures - Subpart A 40 CFR 86.098-11 Emission standards for 1998 and later model year diesel heavy-duty engines and vehicles; and Subpart N 40 CFR 86.1300 series – Emission Regulations for new Otto-cycle and diesel heavy duty engines; gaseous and particulate exhaust test procedures,

Particulars

ADR 80/00, clauses 6.1 and 6.2; ADR 80/00 Determination, clauses 7.1, 7.2

- (b) say that for engines which operate on diesel the "Alternative Standards" deemed to be equivalent to the technical requirements of ADR 80/01 and ADR 80/01 Determination are each of:
 - (i) subject to cl 6.1.1 of ADR 80/01, the UN ECE Regulation 49, Revision 3, Amendment 2, incorporating the 04 Series of Amendments (Regulation 49/04), or Directive 1999/96/EC of the European Parliament and Council of 13 December 1999 and Commission Directive 2001/27/EC of 10 April 2001, amending Directive 88/77/EEC (**European Emissions Testing Standard (Euro III)**); and
 - (ii) USA Code of Federal Regulations, Part 86 – Control of air pollution from new and in-use motor vehicles and new and in-use motor vehicle engines certification and test procedures - Subpart A 40 CFR 86.004-11 Emission standards for 2004 and later model year diesel heavy-duty engines and vehicles; and Sub Part N 40 CFR 86.1300 series –

Emission Regulations for new Otto-cycle and diesel heavy duty engines; gaseous and particulate exhaust test procedures (**US Emissions Testing Standard**); and

- (c) say that for engines which operate on diesel, the “Alternative Standards” deemed to be equivalent to the technical requirements of ADR 80/02 are the technical requirements of each of:
- (i) subject to cl 6.1.1 and 6.1.3 of ADR 80/02, Directive 2005/55/EC of the European Parliament and Council of 28 September 2005, together with the technical requirements of Commission Directive 2005/78/EC of 14 November 2005 and Commission Directive 2006/51/EC of 6 June 2006 (**European Emissions Testing Standard (Euro V)**); and
 - (ii) subject to cl 6.2.1 to 6.2.6 of ADR 80/02, the US Emissions Testing Standard; and
 - (iii) subject to cl 6.3.1 to 6.3.3 of the ADR 80/02, the Japanese Ministry of Land, Infrastructure and Transport Announcement No. 619 of 15 July 2002 (as last amended by Announcement No 872 of 16 August 2005), Chapter 2, Section 1, Article 41 (Emission Control Device), paragraph (5) [JE05-Mode Mean Value Regulations at Time of Completion Inspection, etc. for Diesel Motor Vehicles (with GVM exceeding 3.5 tons) (**Japanese Emissions Testing Standard**); and

Particulars

ADR 80/02, clauses 6.1, 6.2 and 6.3

- (d) say that for engines which operate on diesel, the “Alternative Standards” deemed to be equivalent to the technical requirements of ADR 80/03 are the technical requirements of each of:
- (i) subject to cl 6.1.1 and 6.1.3 of ADR 80/03, European Emissions Testing Standard (Euro V);
 - (ii) subject to cl 6.2.1 to 6.2.5 of ADR 80/03, United States Code of Federal Regulations (CFR), Part 86 – Control of air pollution from new and in-use motor vehicles and new and in-use motor vehicle engines certification and test procedures - Subpart A 40 CFR 86.007-11 Emission standards and supplemental requirements for 2007 and later model year diesel heavy-duty engines and vehicles;
 - (iii) subject to cl 6.3.1 to 6.3.4 of ADR 80/03, the Japanese Emissions Testing Standard;
 - (iv) subject to cl 6.6.1 to 6.6.3 of ADR 80/03, Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 together with the technical requirements of Commission Regulation (EU) No 582/2011 of 25 May 2011 (**European Emissions Testing Standard (Euro VI)**);
 - (v) subject to cl 6.7.1 and 6.7.3 of ADR 80/03, United Nations Regulation No 49, Uniform provisions concerning the measures to be taken against the emission of gaseous and particulate pollutants from compression-ignition engines for use in vehicles, and the emission of gaseous pollutants from positive-ignition engines fuelled with natural gas or

liquefied petroleum gas for use in vehicles, incorporating the 05 Series of Amendments onwards;

Particulars

ADR 80/03, clauses 6.1, 6.2 6.3, 6.6 and 6.7

- (e) rely on the terms of ADR 80/00, ADR 80/00 Determination, ADR 80/01, ADR 80/01 Determination, ADR 80/02 and ADR 80/03, as amended from time to time for their full force and effect; and
- (f) otherwise admit the allegations in paragraph 35.

B.5 Registration Requirements

36. In answer to paragraph 36 of the Claim, the Defendants:

- (a) admit that at all material times until 9 February 2014:
 - (i) under the law of New South Wales, it was an offence for a person to use a registrable vehicle on a road unless the vehicle complied with the applicable vehicle standards for the vehicle;

Particulars

- A. *Road Transport (Vehicle Registration) Regulation 1998* (NSW), cl 57(1)
- B. *Road Transport (Vehicle Registration) Regulation 2007* (NSW), cl 52(1)(b)

- (ii) under the law of Victoria, it was an offence for a person to use or cause or permit to be used, on a highway a vehicle (whether or not registered) that does not comply with any standard for registration that is applicable to the vehicle;

Particulars

- A. *Road Safety (Vehicles) Regulations 1999* (Vic), reg 819(3)
- B. *Road Safety (Vehicles) Regulations 2009* (Vic), reg 258

- (iii) under the law of Queensland, it was an offence for a person to drive or park, or permit someone else to drive or park, a vehicle on a road unless the vehicle is otherwise constructed and loaded to comply with the vehicle standards;

Particulars

- A. *Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 1999* (Qld), s 5(1)
- B. *Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 2010* (Qld), s 5(1)

- (iv) under the law of South Australia, it was a breach of a vehicle standards requirement for a person to drive on a road, a vehicle which does not comply with a requirement of the vehicle standards;

Particulars

Road Traffic Act 1961 (SA), ss 111, 116(1), 117(1) and 118(1)

- (v) under the law of the Australian Capital Territory, it was an offence for a driver or operator of a vehicle to contravene a provision of the vehicle standards;

Particulars

Road Transport (Vehicle Registration) Regulation 2000 (ACT), s 109(2)

- (vi) under the law of Western Australia, it was an offence for a person to drive, use or permit a vehicle on a road unless the vehicle complied with the Vehicle Standards applying to the vehicle; and

Particulars

Road Traffic (Vehicle Standards) Regulations 2002 (WA), reg 8

- (vii) under the law of Tasmania, it was an offence for a person to use, cause or permit the use of, a vehicle or combination on a public street unless the vehicle or combination complies with each provision of the Vehicle Standards applying to the vehicle or combination;

Particulars

Vehicle and Traffic (Vehicle Standards) Regulation 2001 (Tas), reg 4

- (b) admit that at all material times from 10 February 2014, it was an offence:
- (i) under the laws of New South Wales, Victoria, Queensland, South Australia, the Australian Capital Territory and Tasmania for a person to use or permit to be used, on a road a heavy vehicle that contravenes a heavy vehicle standard applying to the vehicle; and

Particulars

A. *Heavy Vehicle (Adoption of National Law) Act 2013 (NSW), s 4*

B. *Heavy Vehicle National Law Application Act 2013 (Vic), s 4*

C. *Heavy Vehicle National Law 2012 (Qld), s 60(1)*

D. *Heavy Vehicle National Law (South Australia) Act 2013 (SA), s 4*

E. *Heavy Vehicle National Law (ACT) Act 2013 (ACT), s 7*

F. *Heavy Vehicle National Law (Tasmania) Act 2013 (Tas), s 4*

G. *Vehicle and Traffic (Vehicle Standards) Regulation 2001 (Tas), reg*

4 under the law of Western Australia, for a person to drive, use, or permit a vehicle to be driven or used, unless it complies with each provision in the Road Traffic (Vehicles) Regulations 2014 (WA) that applies to the vehicle or a combination of which the vehicle is a part;

Particulars

Road Traffic (Vehicles) Regulations 2014 (WA), reg 232

- (c) admit that at all material times, under the law of the Northern Territory, a person was prohibited from driving, or causing or permitting to be driven, on a road or in a public place a vehicle that does not comply with a requirement of the Regulations applicable to it; and

Particulars

Motor Vehicles (Standards) Regulations 2003 (NT), reg 35

- (d) say further that, to the best of their knowledge, no Australian State or Territory regulator has taken or is taking any step to deregister an Affected Vehicle on the basis that, by reason of the contraventions or non-compliance alleged in the Claim, the vehicle did not comply with the applicable vehicle standards for the vehicle; and
- (e) otherwise deny the allegations contained in this paragraph.
37. In answer to paragraph 37 of the Claim, the Defendants:
- (a) refer to and repeat paragraphs 32 and 34 above;
- (b) rely on the ADR 80 Determinations, ADR 80/00, ADR 80/01, ADR 80/02 and ADR 80/03 (as applicable) for their full force and effect;
- (c) admit that the ADR 80 Determinations, ADR 80/00, ADR 80/01, ADR 80/02 and ADR 80/03 (as applicable at relevant times) were an applicable vehicle standard under the laws of New South Wales, Western Australia, Victoria, Tasmania, South Australia, the Australian Capital Territory and the Northern Territory;

Particulars

- A. *Heavy Vehicle (Vehicle Standards) National Regulation 2013 (NSW), Sch 1, Part 1*
- B. *Heavy Vehicle National Law (NSW), s 59(1)*
- C. *Heavy Vehicle (Adoption of the National Law) Act 2013 (NSW), s 4*
- D. *Road Transport (Vehicle Registration) Regulation 2017 (NSW), cl 59(b)*
- E. *Road Transport (Vehicle Registration) Regulation 2007 (NSW), cl 51 and Sch 2, cl 11 and 12*
- F. *Road Transport (Vehicle Registration) Regulation 1998 (NSW), cl 56 and Sch 4, cl 11 and 12*
- G. *Road Traffic (Vehicles) Regulations 2014 (WA), regs 236 and 238*
- H. *Road Traffic (Vehicle Standards) Rules 2002 (WA), rr 13 and 14*
- I. *Heavy Vehicle National Law (Victoria), s 59(1)*
- J. *Heavy Vehicle National Law Application Act 2013 (Vic), s 4*
- K. *Road Safety (Vehicles) Regulations 2009 (Vic), Sch 2, regs 19 and 20*
- L. *Road Safety (Vehicles) Regulations 1999 (Vic), Sch 8, regs 19 and 20*

- M. *Heavy Vehicle National Law (Tasmania)*, s 59(1)
- N. *Heavy Vehicle National Law (Tasmania) Act 2013 (Tas)*, s 4
- O. *Vehicle and Traffic (Vehicle Standards) Regulation 2001 (Tas)*, regs 19 and 20
- P. *Heavy Vehicle National Law (South Australia) Act 2013 (SA)*, s 4
- Q. *Heavy Vehicle National Law (South Australia)*, s 59(1)
- R. *Road Traffic (Vehicle Standards) Rules 1999 (SA)*, rr 19 and 20
- S. *Heavy Vehicle National Law (ACT) Act 2013 (ACT)*, s 7
- T. *Heavy Vehicle National Law (ACT)*, s 59(1)
- U. *Road Transport (Vehicle Registration) Regulation 2000 (ACT)*, Sch 1, Parts 1 and 3
- V. *Road Transport (Vehicle Registration) Regulation 2000 (ACT)*, Sch 1, cl 1.16 and 1.17
- X. *Motor Vehicles (Standards) Regulations 2003 – Australian Vehicle Standards Rules (NT)*, Pt 3.

- (d) admit that under the law of Queensland, at all material times from 1 September 2010, the ADR 80 Determinations, ADR 80/00, ADR 80/01, ADR 80/02 and ADR 80/03 (as applicable at relevant times) were an applicable vehicle standard; and

Particulars

- A. *Heavy Vehicle National Law Act 2012 (Qld)*, s 4
- B. *Heavy Vehicle National Law (Queensland)*, s 59(1)
- C. *Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 2010 (Qld)*, s 5

- (e) otherwise deny the allegations contained in this paragraph.

38. In answer to paragraph 38 of the Claim, the Defendants:

- (a) admit that at all material times, it was an offence:
- (i) under the law of New South Wales to use an unregistered registrable vehicle on a road;

Particulars

- A. *Road Transport (Vehicle Registration) Act 1997 (NSW)*, s 18
- B. *Road Transport Act 2013 (NSW)*, s 68(1)

- (ii) under the law of the Australian Capital Territory, to use, or permit or allow a person to use, an unregistered registrable vehicle, or a vehicle with suspended registration, on a road or road related area;

Particulars

Road Transport (Vehicle Registration) Act 1999 (ACT), s 18(1)

- (iii) under the law of Victoria, to use on a highway a motor vehicle unless that motor vehicle is registered or exempt from registration;

Particulars*Road Safety Act 1986 (Vic), s 7(1)*

- (iv) under the laws of Queensland, to use or permit to be used a vehicle on a road that is not a registered vehicle;

Particulars

A. *Transport Operations (Road Use Management – Vehicle Registration) Regulation 1999 (Qld), s 10*

B. *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010 (Qld), s 11*

C. *Transport Operations (Road Use Management- Vehicle Registration) Regulation 2021 (Qld), s 10*

- (v) under the laws of Tasmania, to use or permit the use of a motor vehicle on a public street unless the vehicle is registered;

Particulars*Vehicle and Traffic Act 1999 (Tas), s 27(1)*

- (vi) under the law of the Northern Territory, to drive or employ, permit or suffer a person to drive on a public street or public place, a heavy vehicle which is not registered;

Particulars*Traffic Act 1987 (NT), s 33A*

- (vii) under the law of South Australia, to drive an unregistered motor vehicle, or cause an unregistered motor vehicle to stand, on a road;

Particulars*Motor Vehicles Act 1959 (SA), s 9*

- (viii) under the law of Western Australia, to use a vehicle of a prescribed class on any road if a vehicle licence is required and has not been granted or issued or is not current; and

Particulars*Road Traffic (Vehicles) Act 2012 (WA), s 4*

- (b) otherwise deny the allegations contained in this paragraph.

39. In answer to paragraph 39 of the Claim, the Defendants:

- (a) admit that at all material times:

- (i) under the laws of New South Wales and the Australian Capital Territory, for a registrable vehicle to be eligible to be registered without conditions, the vehicle was required to comply with the applicable vehicle standards for the vehicle;

Particulars

- A. *Road Transport (Vehicle Registration) Regulation 1998 (NSW), cl 7(1)(a)*
- B. *Road Transport (Vehicle Registration) Regulation 2007 (NSW), cl 6(1)(a)*
- C. *Road Transport (Vehicle Registration) Regulation 2017 (NSW), cl 6(1)(a)*
- D. *Road Transport (Vehicle Registration) Regulation 2000 (ACT), s 26(1)(a)*

- (ii) under the law of Victoria, for a vehicle to be eligible to be registered without conditions, the vehicle was required to comply with the provisions of the standards for registration that apply to the vehicle;

Particulars

- A. *Road Safety (Vehicles) Regulations 1999 (Vic), reg 202(1)(a)*
- B. *Road Safety (Vehicles) Regulations 2009 (Vic), reg 14(1)(a)*
- C. *Road Safety (Vehicles) Regulations 2021 (Vic), reg 24(1)(a)*

- (iii) under the law of Queensland, for a vehicle to be eligible to be registered without conditions, the vehicle was required to conform with the requirements applying to the vehicle under a vehicle law;

Particulars

- A. *Transport Operations (Road Use Management-Vehicle Registration) Regulation 1999 (Qld), s 8(1)*
- B. *Transport Operations (Road Use Management- Vehicle Registration) Regulation 2010 (Qld), s 9*
- C. *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021 (Qld), s 18(1)(a)*

- (iv) under the law of South Australia, the Registrar could refuse to register a vehicle if the vehicle did not comply with an Act or law that regulates the design, construction or maintenance of such a vehicle;

Particulars

- Motor Vehicles Act 1959 (SA), s 24(3)(b)*

- (v) under the law of Western Australia:

- A. at all material times to 26 April 2015, for a vehicle to be licensed for unlimited use, the vehicle was required to conform, in every respect, to the requirements of the vehicle standards; and

Particulars

Road Traffic (Licensing) Regulations 1975 (WA), reg 9(2)

- B. at all material times from 27 April 2015, for a vehicle to be licensed for unlimited use, the vehicle was required to comply in every respect, with the standards and requirements set out in Parts 8, 10 and 11 of the Road Traffic (Licensing) Regulations 1975 (WA) being the Regulations that apply to that kind of motor vehicle.

Particulars

Road Traffic (Vehicles) Regulations 2014 (WA), reg 34

- (vi) under the law of Tasmania, for a motor vehicle to be eligible for registration the vehicle was required to comply with the relevant vehicle standards; and

Particulars

A. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2000 (Tas), regs 45(1)(a)*

B. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010 (Tas), reg 52(1)(a)*

- (b) otherwise deny the allegations contained in this paragraph.

40. In answer to paragraph 40 of the Claim, the Defendants:

- (a) refer to and repeat paragraph 39 above;
- (b) say that, at all material times, an application for registration or renewal of registration would be either approved or refused in accordance with applicable State and Territory laws; and
- (c) otherwise admit the allegations in this paragraph.

Particulars

A. *Road Transport (Vehicle Registration) Regulation 1998 (NSW), cl 7(1), 13(1) and 32(7)*

B. *Road Transport (Vehicle Registration) Regulation 2007 (NSW), cl 6(1), 12(1) and 30(7)*

C. *Road Transport (Vehicle Registration) Regulation 2017 (NSW), cl 6(1), 12(1) and 36(6)c*

D. *Road Transport (Vehicle Registration) Regulation 2000 (ACT), ss 26(1), 32(1)(a) and 68(9)(a)*

E. *Road Safety (Vehicles) Regulations 1999 (Vic), regs 202, 214(1) and 227(7)*

- F. *Road Safety (Vehicles) Regulations 2009* (Vic), regs 14(1), 29(1) and 69(4)
- G. *Road Safety (Vehicles) Regulations 2021* (Vic), regs 24(1), 48(1), 84
- H. *Transport Operations (Road Use Management-Vehicle Registration) Regulation 1999* (Qld), s 8, 14(1) and 37(11)
- I. *Transport Operations (Road Use Management- Vehicle Registration) Regulation 2010* (Qld), s 9, 12, 17(1) and 43(11)
- J. *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021* (Qld), s 18, 22(1) and 34
- K. *Motor Vehicles Act 1959* (SA), s 24(3)
- L. *Road Traffic (Licensing) Regulations 1975* (WA), reg 9(2)
- M. *Road Traffic (Vehicles) Regulations 2014* (WA), reg 34
- N. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2000* (Tas), regs 45(1), 49(1) and 60(2)
- O. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010* (Tas), regs 52(1)(a), 57(1) and 68(2)

41. In answer to paragraph 41 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 39 and 40 above;
- (b) say that, at all material times, a vehicle's registration could only be suspended or cancelled in accordance with the procedures and on the bases set out in State and Territory laws;

Particulars

- A. *Road Transport (Vehicle Registration) Regulation 1998* (NSW), cl 42(1)
- B. *Road Transport (Vehicle Registration) Regulation 2007* (NSW), cl 41(1)
- C. *Road Transport (Vehicle Registration) Regulation 2017* (NSW), cl 45(1)
- D. *Road Safety (Vehicles) Regulations 1999* (Vic), regs 245 and 246
- E. *Road Safety (Vehicles) Regulations 2009* (Vic), regs 114 and 117
- F. *Road Safety (Vehicles) Regulations 2021* (Vic), regs 129 and 132
- G. *Transport Operations (Road Use Management) Act 1995* (Qld), s 18(1)
- H. *Transport Operations (Road Use Management – Vehicle Registration) Regulation 1999* (Qld), s 47

- I. *Transport Operations (Road Use Management – Vehicle Registration) Regulation 2010* (Qld) Sch 7, Item 1
- J. *Transport Operations (Road Use Management – Vehicle Registration) Regulation 2021* (Qld) Sch 7, Item 1
- K. *Motor Vehicles Act 1959* (SA), s 55A(1)
- L. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2000* (Tas), reg 64(1)
- M. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010* (Tas), reg 72(1)
- N. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2021* (Tas), reg 104(1)
- O. *Road Transport (Vehicle Registration) Regulation 2000* (ACT), s 84(1)
- P. *Motor Vehicles Act 1949* (NT), s 102(2)

- (c) otherwise deny the allegations in this paragraph; and
- (d) say further that, to the best of their knowledge, no Australian State or Territory regulator has taken or is taking any step to deregister an Affected Vehicle on the basis that, by reason of the contraventions or non-compliance alleged in the Claim, the vehicle did not comply with the applicable vehicle standards for the vehicle.

42. In answer to paragraph 42 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 39 to 41 above;
- (b) say that, at all material times, a vehicle's registration could only be refused or suspended or cancelled in accordance with the procedures and on the bases set out in State and Territory laws;
- (c) in answer to subparagraph (a):
 - (i) admit that at all material times under New South Wales laws, a motor vehicle's registration:
 - A. could be suspended or cancelled in the circumstances alleged in subparagraphs (iii), (iv) and (v);
 - B. could be refused in the circumstances alleged in subparagraphs (i), (ii) and (iv);
 and
 - (ii) otherwise deny the allegations in this subparagraph;

Particulars

- A. *Road Transport (Vehicle Registration) Regulation 1998* (NSW), cl 13(1), cl 38(d) and cl 42(1)

- B. *Road Transport (Vehicle Registration) Regulation 2007* (NSW),
cl 12(1), cl 36(d) and cl 41(1)
- C. *Road Transport (Vehicle Registration) Regulation 2017* (NSW),
cl 12(1), cl 41(d) and cl 45(1)

(d) in answer to subparagraph (b):

- (i) admit that at all material times before 9 November 2009 under Victorian laws, a motor vehicle's registration:
 - A. could be suspended or cancelled in the circumstances alleged in subparagraphs (iv) and (v);
 - B. could be refused in the circumstances alleged in subparagraphs (i) and (ii);

Particulars

- A. *Road Safety (Vehicles) Regulations 1999* (Vic), regs 214, 245 and 246

- (ii) admit that at all material times after 9 November 2009 under Victorian laws, a motor vehicle's registration:
 - A. could be suspended or cancelled in the circumstances alleged in subparagraphs (iii), (iv), (v) and (vi);
 - B. could be refused in the circumstances alleged in subparagraphs (i),(ii), (iii) and (vi);
and

Particulars

- A. *Road Safety (Vehicles) Regulations 2009* (Vic), regs 29, 114 and 117
- B. *Road Safety (Vehicles) Regulations 2021* (Vic), regs 48, 129 and 132

(iii) otherwise deny the allegations in this subparagraph;

(e) in answer to subparagraph (c):

- (i) admit that at all material times under Queensland laws, a motor vehicle's registration:
 - A. could be suspended in the circumstances alleged in subparagraph (ii);
 - B. could be cancelled in the circumstances alleged in subparagraphs (ii) and (iii);
 - C. could be refused in the circumstances alleged in subparagraph (i); and
- (ii) otherwise deny the allegations in this subparagraph;

Particulars

- A. *Transport Operations (Road Use Management) Act 1995* (Qld),
s 18(1)

- B. *Transport Operations (Road Use Management – Vehicle Registration) Regulation 1999 (Qld), s 14(1) and 47*
- C. *Transport Operations (Road Use Management – Vehicle Registration) Regulation 2010 (Qld), s 17(1) and Sch 7, Item 1*
- D. *Transport Operations (Road Use Management – Vehicle Registration) Regulation 2021 (Qld), s 22(1) and Sch 7, Item 1*

(f) in answer to subparagraph (d):

- (i) admit that at all material times under South Australian Laws, a motor vehicle's registration:
 - A. could be suspended in the circumstances alleged in subparagraphs (i) to (iii);
 - B. could be cancelled in the circumstances alleged in subparagraphs (i) to (iv);
 - C. could be refused in the circumstances alleged in subparagraph (i); and
- (ii) otherwise deny the allegations in this subparagraph.

Particulars

Motor Vehicles Act 1959 (SA), s 24 and 55A

(g) in answer to subparagraph (e):

- (i) admit that at all material times under Tasmanian Laws, a motor vehicle's registration
 - A. could be suspended or cancelled in the circumstances alleged in subparagraphs (ii) to (v);
 - B. could be refused in the circumstances alleged in subparagraphs (i) and (iv); and
- (ii) otherwise deny the allegations in this subparagraph.

Particulars

- A. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2000 (Tas), regs 49(2), 61(9)(g) and 64(1)*
- B. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010 (Tas), regs 57(2), 69(9)(g) and 72(1)*
- C. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2021 (Tas), regs 82(3), 101(10)(g) and 104(1)*

(h) in answer to subparagraph (f):

- (i) admit that at all material times under Australian Capital Territory laws, a motor vehicle's registration:
 - A. could be suspended or cancelled in the circumstances alleged in subparagraphs (iii) to (v);

- B. could be refused in the circumstances alleged in subparagraphs (i), (ii) and (iv);
and
- (ii) otherwise deny the allegations in this subparagraph;

Particulars

*Road Transport (Vehicle Registration) Regulation 2000 (ACT), ss 32(1),
78(1) and 84(1)*

- (i) in answer to subparagraph (g):
- (i) admit that at all material times under Northern Territory laws, a motor vehicle's registration could be cancelled in the circumstances alleged in subparagraphs (i) to (iii);
and
- (ii) otherwise deny the allegations in this subparagraph.

Particulars

Motor Vehicles Act 1949 (NT), ss 102(2) and 128A(14)

- (j) rely on the contents of the legislative provisions providing for the circumstances in which a motor vehicle's registration could be refused, suspended or cancelled, as amended from time to time at all material times, for their full force and effect; and
- (k) otherwise deny the allegations in this paragraph.
43. In answer to paragraph 43 of the Claim, the Defendants admit that:
- (a) at all material times before 10 February 2014, New South Wales law gave authorised officers and police officers the power to inspect a registrable vehicle for the purpose of deciding its identity, condition or the status of any registration of permit relating to the vehicle, and on discovering that it was defective, the power to issue a warning or defect notice, impose conditions on the use of the vehicle or prohibit the use of the vehicle;

Particulars

- A. *Road Transport (Vehicle Registration) Act 1997 (NSW), s 26*
- B. *Road Transport (Vehicle Registration) Regulation 1998 (NSW), cl 77*
- C. *Road Transport Act 2013 (NSW), s 76*
- D. *Road Transport (Vehicle Registration) Regulation 2017 (NSW), cl 80*

- (b) at all material times before 10 February 2014, Australian Capital Territory law gave police officers or authorised persons the power to inspect a registrable vehicle on a road or road related area to find out its identity, condition or the stays of any registration or permit relating to the vehicle, and on discovering a defective vehicle, the power to either issue a warning or defect notice, impose conditions on the use of the vehicle or prohibit the use of the vehicle;

Particulars

Road Transport (Vehicle Registration) Act 1999 (ACT), s 25

- (c) at all material times, South Australian law gave authorised officers the power to inspect a vehicle for compliance purposes and to search any such vehicle for compliance reasons if they believe on reasonable grounds that the vehicle has, is or is likely to be used in the commission of an Australian road law offence or in the commission of a breach of an approved road transport compliance scheme or may have been involved in an accident.

Particulars

Road Traffic Act 1961 (SA), ss 40Q, s40R

- (d) at all material times, Queensland law gave authorised officers the power to inspect or test the vehicle to check whether it complies with a transport Act;

Particulars

Transport Operations (Road Use Management) Act 1995 (Qld) ss 34(2) and 36(1) and 38

- (e) at all material times, Victorian law gave authorised officers and police officers the power to inspect a motor vehicle which is used on a highway if the authorised officers and police officers believe on reasonable grounds that the driver or motor vehicle has not complied with the Road Safety Act 1986 (Vic) or regulations, and on discovering non-compliance, the power to:

- (i) issue a warning or vehicle defect notice;
- (ii) impose conditions on the use of the vehicle; or
- (iii) prohibit the use of the vehicle;

Particulars

- A. *Road Safety Act 1986 (Vic), s 13(1)*
- B. *Road Safety Act 1986 (Vic), s 14*

- (f) at all material times, Tasmanian law gave police officers and authorised officers the power to inspect a vehicle for the purpose of ascertaining whether the vehicle complied with the applicable standards and, on discovering non-compliance, the power to issue a warning or a defect notice;

Particulars

- A. *Vehicles and Traffic Act 1999 (Tas), s 49(1)(d) and (f)*
- B. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2000 (Tas), regs 68 and 70*
- C. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010 (Tas), regs 85 and 87*
- D. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2021 (Tas), regs 117 and 119*

- (g) at all material times, Northern Territory law gave inspectors, authorised officers and police officers the right to examine or inspect a vehicle on a public street for any purpose of the Motor

Vehicles Act 1949 (NT), and where that inspection or examination showed that the motor vehicle is defective, the power to issue a defect notice;

Particulars

Motor Vehicles Act 1949 (NT), ss 128 and 128A

- (h) at all material times, Western Australian law gave police officers the power to inspect a vehicle:
- (i) for mass, dimension or loading requirement compliance purposes, and, on discovering non-compliance, the power to issue a defect notice; and
 - (ii) if, in the police officer's opinion, the vehicle does not comply, and is not exempt from compliance, with the regulations or the Vehicle Standards, and, on discovering non-compliance, the power to issue a compliance notice or defect notice;

Particulars

- A. *Road Traffic (Vehicle Standards) Regulations 2002 (WA), regs 61 and 62(1)*
- B. *Road Traffic (Administration) Act 2008 (WA), s 52(2)*
- C. *Road Traffic (Vehicles) Act 2012 (WA), s 71, s 132(2)(b)(i) to (iv) and (vii)*

- (i) at all material times from 10 February 2014, the laws of New South Wales, the Australian Capital Territory, South Australia, Queensland, Victoria and Tasmania gave police officers and authorised officers or (in the case of the Australian Capital Territory) authorised examiners the power to enter and inspect a heavy vehicle for monitoring purposes to determine if it complied with the heavy vehicle standards, and, on discovering non-compliance, the power to issue:
- (i) a major defect notice; or
 - (ii) a minor defect notice; or
 - (iii) a self-clearing defect notice; or
 - (iv) a defect notice;

Particulars

- A. *Heavy Vehicle (Adoption of National Law) Act 2013 (NSW), s 4*
- B. *Heavy Vehicle National Law (ACT) Act 2013 (ACT), s 7*
- C. *Heavy Vehicle National Law (South Australia) Act 2013 (SA), s 4*
- D. *Heavy Vehicle National Law (Queensland), ss 520(1) and 526*
- E. *Heavy Vehicle National Law Application Act 2013 (Vic.) s 4*
- F. *Heavy Vehicle National Law (Tasmania) Act 2013 (Tas), s 4*

- (j) otherwise deny the allegations in this paragraph.

C. ALLEGED MISCONDUCT

C.1 Announcements of Alleged Misconduct

44. In answer to paragraph 44 of the Claim:

- (a) Hino Japan:
- (i) admits that on or about 4 March 2002 it made a public announcement entitled 'Misconduct concerning Engine Certification' (**4 March Statement**);
 - (ii) admits that the English version of the 4 March Statement included the statements extracted at paragraph 44 of the Claim;
 - (iii) relies on the 4 March Statement for its full force and effect and as an accurate statement of the facts;
 - (iv) further says that the engines referred to as those affected by the issues in the 4 March Statement were certain variants in engine groups N04C (Urea-SCR), A05C (HC-SCR), A09C (Urea-SCR) and E13C (Urea-SCR) which, at all material times, were not exported to Australia and are therefore not fitted in any Affected Vehicles; and

Particulars

N04C-WA, N04C-WB, A05C-TF, A05C-TG, A09C-UY, A09C-UV,
A09C-UU, A09C-UT, A09C-VA, A09C-VL, A09C-VK, A09C-VJ, A09C-
VH, A09C-VM, E13C-AB, E13C-AC, E13C-AD, E13C-AE, E13C-AF,
E13C-AG, E13C-AJ and E13C-AK

- (v) otherwise admits the allegations in this paragraph;
- (b) Hino Australia does not plead to the allegations in this paragraph as it contains no allegations against it.

45. In answer to paragraph 45 of the Claim:

- (a) Hino Japan:
- (i) admits that on or about 11 March 2022 it made a public announcement entitled 'Establishment of a Special Investigation Committee' (**11 March Statement**);
 - (ii) admits that the English version of the 11 March Statement included the statements extracted at paragraph 45 of the Claim;
 - (iii) relies on the 11 March Statement for its full force and effect and as an accurate statement of the facts;
 - (iv) further says that:
 - A. it established a Special Investigation Committee (**SIC**) on or about 11 March 2022; and
 - B. the purpose of the SIC was to:

- 1) investigate past misconduct in applications for certification concerning the emissions and fuel economy performance of vehicle engines for the Japanese market;
 - 2) undertake “true cause analysis;” and
 - 3) provide its opinion on recurrence prevention measures; and
- (v) otherwise admits the allegations in this paragraph;

(b) Hino Australia does not plead to the allegations in this paragraph as it contains no allegations against it.

46. In answer to paragraph 46 of the Claim:

(a) Hino Japan:

- (i) admits that on or about 25 March 2022 it made a public announcement entitled ‘Submission of a statement to the Ministry of Land, Infrastructure, Transport and Tourism and misconduct concerning the “N04C (Urea-SCR)” light duty engine’ (**First 25 March Statement**);
- (ii) admits that the English version of the First 25 March Statement included the statements extracted at paragraph 46 of the Claim;
- (iii) relies on the First 25 March Statement for its full force and effect and as an accurate statement of the facts;
- (iv) further says that the engines referred to in the First 25 March 2022 Statement were the same as those referred to in the 4 March Statement and refers to paragraph 44(a)(iv) above and the particulars thereto; and
- (v) otherwise admits the allegations in this paragraph; and

(b) Hino Australia does not plead to the allegations in the paragraph as it contains no allegations against it.

47. In answer to paragraph 47 of the Claim:

(a) Hino Japan:

- (i) admits that on or about 25 March 2022 it made a public announcement entitled ‘Recall of vehicles equipped with the “A05C (HC-SCR)” medium duty engine’ (**Second 25 March Statement**);
- (ii) admits that the English version of the Second 25 March Statement included the statements extracted at paragraph 47 of the Claim;
- (iii) relies on the Second 25 March Statement for its full force and effect and as an accurate statement of the facts;

- (iv) says further that the Second 25 March Statement was made only in relation to certain variants of the A05C (HC-SCR) engine certified for and sold in the Japanese market, which engine variants are not fitted in any Affected Vehicles; and

Particulars

- A. A05C-TF and A05C-TG;
- B. As to A05C (HC-SCR) medium duty engine, Hino Japan refers to paragraph 44(a)(iv) above and the particulars thereto;
- (v) otherwise admits the allegations in this paragraph; and
- (b) Hino Australia does not plead to the allegations in this paragraph as it contains no allegations against it.

48. In answer to paragraph 48 of the Claim:

- (a) Hino Japan:
- (i) admits that on or about 2 August 2022 it made a public announcement entitled 'Investigation Results by the Special Investigation Committee, and Recurrence Prevention Measures and Other Responses' (**First 2 August Statement**);
- (ii) admits that the English version of the First 2 August Statement included the statements extracted at paragraph 48 of the Claim;
- (iii) relies on the First 2 August Statement for its full force and effect and as an accurate statement of the facts;
- (iv) says further that, for on-road vehicles, "*Reference (iii)*>Outline of findings by models" in the First 2 August Statement was made only in relation to certain variants of E13C (Urea-SCR), A09C (Urea-SCR), A05C (Urea-SCR), A05C (HC-SCR), J05E (Urea-SCR), N04C(HC-SCR) (2019-year model), N04C(HC-SCR) (2017-year model), N04C (Urea-SCR), E13C (Urea-SCR), A09C (Urea-SCR), A05C (HC-SCR), J08E (HC-SCR), J07E (HC-SCR), J05E (HC-SCR) and N04C (HC-SCR);

Particulars

E13C-AB, E13C-AC, E13C-AD, E13C-AE, E13C-AF, E13C-AG,
E13C-AJ, E13C-AK, A09C-UT, A09C-UU, A09C-UV, A09C-UY,
A09C-VA, A09C-VH, A09C-VJ, A09C-VK, A09C-VL, A09C-VM, A05C-
TC, A05C-TD, A05C-TE, A05C-TJ, A05C-TF, A05C-TG, J05E-UU,
N04C-VU, N04C-VT, N04C-WD, N04C-WE, N04C-VU, N04C-VT,
N04C-WA, N04C-WB, E13C-VH, E13C-VJ, E13C-VK, E13C-VL,
E13C-VM, E13C-VN, E13C-VP, E13C-VR, E13C-VS, E13C-WE,
E13C-WF, E13C-WG, E13C-YA, E13C-YB, E13C-YC, E13C-YD,
E13C-YE, E13C-YF, E13C-YG, E13C-YH, E13C-YJ, E13C-YK, E13C-
YN, A09C-TL, A09C-TM, A09C-TP, A09C-TR, A09C-TV, A09C-UA,
A09C-UB, A09C-UC, A09C-UD, A09C-UF, A09C-UG, A09C-UH,

A09C-UJ, A09C-UL, A05C-TA, A05C-TB, J08E-VF, J08E-VG, J08E-VH, J07E-TK, J07E-TL, J07E-TM, J07E-TS, J07E-TT, J07E-TV, J07E-TY, J07E-UA, J05E-TM, J05E-TN, J05E-TS, J05E-TT, J05E-TU, J05E-UB, J05E-UC, N04C-UL, N04C-UM, N04C-UN, N04C-UP and N04C-UQ

(v) say further that:

- A. among the engine variants listed in the particulars to subparagraph (a)(iv) above, at all material times only variants A05C-TC, A05C-TD, A05C-TE, and J05E-TS were exported to Australia and therefore fitted in any Affected Vehicles; and
- B. the other engine variants listed in the particulars to subparagraph (a)(iv) above were not exported to Australia and are not fitted in any Affected Vehicles; and

(vi) otherwise admits the allegations in this paragraph; and

(b) Hino Australia does not plead to the allegations in paragraph 48 as it contains no allegations against it.

49. In answer to paragraph 49 of the Claim:

(a) Hino Japan does not plead to the allegations in this paragraph as it contains no allegations against it; and

(b) Hino Australia:

(i) admits that on or about 2 August 2022 it made a public announcement entitled 'Hino Australia Engine Certification Misconduct Announcement' (**Second 2 August Statement**);

(ii) admits that the Second 2 August Statement included the statements extracted at paragraph 49 of the Claim;

(iii) relies on the Second 2 August Statement for its full force and effect and as an accurate statement of the facts;

(iv) refers to and repeats paragraph 48 above; and

(v) otherwise admits the allegations in this paragraph.

50. In answer to paragraph 50 of the Claim:

(a) Hino Japan:

(i) admits that on 12 August 2022, it released a copy of the SIC's report dated 1 August 2022, entitled 'Investigation Report (Summary)' (**SIC Report Summary**);

(ii) admits that the SIC Report Summary included the statements extracted at paragraph 50 of the Claim;

(iii) relies on the SIC Report Summary for its full force and effect;

- (iv) says that it will rely at trial on sections of the SIC Report Summary which relate to engine types installed in Affected Vehicles as an accurate statement of the facts;
 - (v) refers to and repeats paragraph 48 above; and
 - (vi) otherwise admits the allegations in this paragraph; and
- (b) Hino Australia does not plead to the allegations in the paragraph as it contains no allegations against it.

51. In answer to paragraph 51 of the Claim:

- (a) Hino Japan:
- (i) admits that on or about 22 August 2022 it made a public announcement entitled 'Additional Findings Concerning Engine Certification' (**22 August Statement**);
 - (ii) admits that the English version of the 22 August Statement included the statements extracted at paragraph 51 of the Claim;
 - (iii) relies on the 22 August Statement for its full force and effect and as an accurate statement of the facts;
 - (iv) further says N04C (HC-SCR) (2019 model) was not exported to Australia and is therefore not fitted in any Affected Vehicles; and
 - (v) otherwise admits the allegations in this paragraph; and
- (b) Hino Australia does not plead to the allegations in this paragraph as it contains no allegations against it.

52. In answer to paragraph 52 of the Claim:

- (a) Hino Japan:
- (i) admits that on 9 September 2022 it made a public announcement entitled 'Notification Submitted to MLIT of Recall of Vehicles Equipped with the E13C Heavy-Duty Engine' (9 September Statement);
 - (ii) admits that the English version of the 9 September Statement included the statements extracted at paragraph 52 of the Claim;
 - (iii) relies on the 9 September Statement for its full force and effect and as an accurate statement of the facts;
 - (iv) further says that:
 - A. the engine referred to in the 9 September 2022 Statement was E13C (Urea-SCR, E9), including on-road and non-road diesel engine variants;
 - B. at all material times E13C (Urea-SCR, E9) was not exported to Australia;
 - C. the non-road engine variants referred to in the 9 September 2022 Statement included E13C-YS, E13C-YM, P11C-VN, which, at all material times, were not

vehicles for which Hino Japan sought MVSA Type Approval or Road Vehicle Type Approval;

D. that 'Profia' and 'S'elega' models:

- 1) are and were at all material times certified for and sold in the Japanese market; and
- 2) have never been exported to Australia; and

(v) otherwise admits the allegations in this paragraph; and

(b) Hino Australia does not plead to the allegations in the paragraph as it contains no allegations against it.

53. In answer to paragraph 53 of the Claim:

(a) Hino Japan:

- (i) admits that on or about 16 September 2022 it made a public announcement entitled 'Hearing Conducted by the Ministry of Land, Infrastructure, Transport and Tourism' (**16 September Statement**);
- (ii) admits that the English version of the 16 September Statement included the statements extracted at paragraph 53 of the Claim;
- (iii) relies on the 16 September Statement for its full force and effect and as an accurate statement of the facts;
- (iv) further says that:
 - A. the on-road engines referred to in the 16 September 2022 Statement were E13C-ABA and E13C-ABB;

Particulars

E13C-AB, E13C-AC, E13C-AD, E13C-AE, E13C-AF, E13C-AG,
E13C-AJ and E13C-AK

- B. at all material times E13C-ABA and E13C-ABB were not exported to Australia and are therefore not fitted in any Affected Vehicles;
- C. the non-road diesel engine variants referred to in the 16 September 2022 Statement included E13C-YS, E13C-YM and P11C-VN, which, at all material times, were not vehicles for which Hino Japan sought MVSA Type Approval or Road Vehicle Type Approval; and

(v) otherwise admits the allegations in this paragraph; and

(b) Hino Australia does not plead to the allegations in this paragraph as it contains no allegations against it.

D. ALLEGED MISLEADING OR DECEPTIVE CONDUCT

D.1 Alleged Representations to the Commonwealth

54. In answer to paragraph 54 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 10 to 12, 16, 23 to 25 and 32 to 35 above
- (b) deny that they sought approval from the Commonwealth in respect of individual Affected Vehicles;
- (c) say that Hino Australia sought and obtained MVSA Type Approval and, after 1 July 2021, Road Vehicle Type Approval for types of Affected Vehicles and, in seeking that approval relied on the Alternative Standards, including:
 - (i) for certain types of Affected Vehicles certified in Japan, the Japanese Emissions Testing Standard or the Japanese PPNTL Standard (E9) (**Japanese Certified Affected Vehicles**);
 - (ii) for types of Affected Vehicles certified in Europe, the European Emissions Testing Standard (Euro III), the European Emissions Testing Standard (Euro V) or the European Emissions Testing Standard (Euro VI) (**European Certified Affected Vehicles**);
 - (iii) for types of Affected Vehicles certified in the US, the US Emissions Testing Standard (**US Certified Affected Vehicles**);
- (d) say that at all material times the Alternative Standards and Japanese PPNTL Standard (E9) require testing to be undertaken on representative vehicles for each applicable type, and did not require testing or data collection with respect to every individual Affected Vehicle; and
- (e) rely on the terms of the Alternative Standards and Japanese PPNTL Standard (E9) for their full force and effect;
- (f) admit that at all material times in seeking approval from the Commonwealth to import the Affected Vehicles into, and supply the Affected Vehicles in, Australia, Hino Australia:
 - (i) provided to DIRD results from tests, or summaries of the results from tests, conducted by or on behalf of Hino Japan which purported to satisfy, ADR 80 or an Alternative Standard; or
 - (ii) provided to the Commonwealth approvals from a relevant testing authority outside Australia, or details of such approvals, based on results from tests conducted by or on behalf of Hino Japan which purported to satisfy, an Alternative Standard; and
 - (iii) identified the test results and approvals described at (i)-(ii) above in the application form;
- (g) say that they will rely at trial on the approved forms Hino Australia submitted for MVSA Type Approval and Road Vehicle Type Approval for their full force and effect;
- (h) in the absence of further particulars are unable to plead further; and
- (i) otherwise deny the allegations in this paragraph.

55. In answer to paragraph 55 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 32 to 35 and 44 to 54 above and 56 below;
- (b) admit that the test results and approvals referred to in subparagraph 54(f) above for types of Affected Vehicles fitted with an engine variant referred to in subparagraph 48(a)(v)A above did not satisfy the test requirements of the applicable Alternative Standard only insofar as such non-satisfaction is set out in the First 2 August Statement,
- (c) say that the allegations pleaded at paragraphs 44 to 53 of the Claim if proven do not establish the allegations pleaded at paragraph 55;
- (d) say that the matter set out in subparagraph 55(b) above does not establish the allegations pleaded at paragraph 55;
- (e) reserve the right to plead further on the provision of adequate particulars; and
- (f) otherwise deny the allegations in this paragraph.

56. In answer to paragraph 56 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 54 and 55 above;
- (b) deny the allegations in subparagraph 56(a); and
- (c) in answer to subparagraph 56(b):
 - (i) refer to and repeat paragraphs 44 to 53 above;
 - (ii) say that the allegations pleaded at paragraphs 54 and 55, if proven, do not establish the allegation pleaded at subparagraph 56(b);
 - (iii) say further that the allegations in subparagraph 56(b) are vague, embarrassing and liable to be struck out and they reserve the right to plead further on provision of adequate particulars;
 - (iv) say further or alternatively that if tests and approvals referred to in subparagraph 54(f) above were not conducted in accordance with ADR 80 or an Alternative Standard and/or did not satisfy the requirements of ADR 80 or an Alternative Standard this does not have the effect that Affected Vehicles did not satisfy ADR 80 or an Alternative Standard; and
 - (v) otherwise deny the allegations in this subparagraph.

57. In answer to paragraph 57 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 10 to 12, 16, 23 to 25, 32 and 54 to 56 above; and
- (b) otherwise deny the allegations in this paragraph.

58. In answer to paragraph 58 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 10 to 12, 16, 23 to 25, 32 and 54 to 57 above; and
- (b) otherwise deny the allegations in this paragraph.

59. In answer to paragraph 59 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 54 to 58 above;

- (b) say that any representations made by them in applying for MVSA Type Approval and, after 1 July 2021, Road Vehicle Type Approval, were not made “in trade or commerce” for the purposes of s 52 of the TPA and s 18 of the ACL; and
- (c) otherwise deny the allegations in this paragraph.

D.2 Alleged Representations to Consumers

60. In answer to paragraph 60 of the Claim:

- (a) Hino Japan:
 - (i) refers to and repeats paragraph 4 above;
 - (ii) denies that it supplied or otherwise dealt with the Affected Vehicles in Australia, or dealt with persons who purchased, leased or dealt with the Affected Vehicles in Australia;
 - (iii) denies that it applied for Identification Plates for vehicles in Australia; and
 - (iv) in the alternative to the extent that Hino Japan applied for Identification Plates for Affected Vehicles in Australia (which is denied), says further that:
 - A. for each Affected Vehicle, s 10(1) and s 10A of the Motor Vehicle Standards Act, and, after 1 July 2021, s 15 of the Road Vehicle Standards Act required a person to affix an Identification Plate to it and/or enter the vehicle on the RAV before making the vehicle available for supply to the market;
 - B. there was no right to modify or omit the legally prescribed content of any Identification Plate affixed to an Affected Vehicle; and
 - C. to the extent that it engaged in conduct for the purposes of fulfilling the legal obligations described in subparagraph A above, it did not make any representation, and nor did it make a representation that each Affected Vehicle had been tested in accordance with, and had satisfied, the requirements of Australian law for importing and supplying motor vehicles.
 - (v) otherwise denies the allegations in this paragraph; and
- (b) Hino Australia does not plead to this paragraph as it contains no allegations against it.

61. In answer to paragraph 61 of the Claim:

- (a) Hino Japan refers to and repeats paragraph 60 and otherwise denies paragraph 61 insofar as it contains any allegations against it; and
- (b) Hino Australia:
 - (i) refers to and repeats paragraphs 5 and 54 above;
 - (ii) admits that it:
 - A. distributed, supplied, promoted and otherwise dealt with the Affected Vehicles as vehicles that were for use as road vehicles in Australia; and

- B. distributed, supplied, promoted and otherwise dealt with the Affected Vehicles as vehicles which had Identification Plates affixed;
- (iii) otherwise denies the allegations in this paragraph; and
- (iv) says further that:
 - A. for each Affected Vehicle, it was legally obliged by s 10(1) and s 10A of the Motor Vehicle Standards Act, and, after 1 July 2021, s 15 of the Road Vehicle Standards Act to affix an Identification Plate to it and/or enter the vehicle on the RAV before making the vehicle available for supply to the market;
 - B. it had no right to modify or omit the legally prescribed content of any Identification Plate affixed to an Affected Vehicle; and
 - C. in fulfilling the legal obligation described in subparagraph A above, it did not make any representation, and nor did it make a representation that each Affected Vehicle had been tested in accordance with, and had satisfied, the requirements of Australian law for importing and supplying motor vehicles.

62. In answer to paragraph 62 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 54 to 61 above;
- (b) say that the facts pleaded in paragraphs 55 and 56 do not establish that the content of any Identification Plate affixed to an Affected Vehicle was false or misleading; and
- (c) otherwise deny the allegations in this paragraph.

63. In answer to paragraph 63 of the Claim:

- (a) Hino Japan:
 - (i) refers to and repeats paragraphs 60 and 62;
 - (ii) says that by reason of the matter pleaded at paragraph 60(a)(iv)A and 60(a)(iv)B, if the Second Compliance Representation was made (which is denied) it was not conduct to which s 52 of the TPA or s 18 of the ACL applied; and
 - (iii) otherwise denies the allegations in paragraph 63; and
- (b) Hino Australia does not plead to this paragraph as it does not contain any allegations against it.

64. In answer to paragraph 64 of the Claim:

- (a) Hino Japan does not plead to this paragraph as it does not contain any allegations against it;
- (b) Hino Australia:
 - (i) refers to and repeats paragraphs 60 to 62 above;
 - (ii) says that by reason of the matter pleaded at paragraph 61(b)(iv)A and 61(b)(iv)B, if the Second Compliance Representation was made (which is denied) it was not conduct to which s 52 of the TPA or s 18 of the ACL applied; and

(iii) otherwise denies the allegations in this paragraph.

D.3 Alleged Misleading or Deceptive Conduct by Silence

65. In answer to paragraph 65 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 54 to 64 above; and
- (b) otherwise deny the allegations in this paragraph.

66. In answer to paragraph 66 of the Claim, the Defendants:

- (a) refer to and repeat paragraph 54 to 65 above; and
- (b) otherwise deny the allegations in paragraph 66.

67. In answer to paragraph 67 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 54 and 66 above; and
- (b) otherwise deny the allegations in this paragraph.

E. CONSUMER GUARANTEES

E.1 Hino Supplied Goods to Consumers

68. The Defendants admit the allegations in paragraph 68 of the Claim.

69. In answer to paragraph 69 of the Claim, the Defendants:

- (a) refer to and repeat paragraph 4 above;
- (b) otherwise do not know and cannot plead to the circumstances of acquisition of the Affected Vehicles by the Plaintiff and Group Members and the allegations in this paragraph.

70. In answer to paragraph 70 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 3 and 69 above;
- (b) admit that if the Plaintiff acquired the Plaintiff's Affected Vehicle on or after 15 August 2022 and:
 - (i) the amount paid or payable for the goods was less than \$100,000; and
 - (ii) was acquired for use principally in the transport of goods on public roads,
 then the Plaintiff acquired the Plaintiff's Affected Vehicle as a consumer for the purposes of the ACL; and
- (c) otherwise do not know and cannot plead to the circumstances of acquisition of the Affected Vehicles by the Plaintiff and Group Members and the allegations in this paragraph.

71. In answer to paragraph 71 of the Claim, the Defendants:

- (a) admit that if Group Members acquired their Affected Vehicles:
 - (i) for use principally in the transport of goods on public roads; and
 - (ii) the amount paid or payable for the Affected Vehicle as worked out s 3(4) to (i) of the ACL did not exceed:
 - A. on and from 1 July 2021, \$100,000;

B. between 1 January 2011 and 1 July 2021, \$40,000,
they are taken by s 3(1) of the ACL to have acquired their Affected Vehicle as
consumers; and

- (b) otherwise do not know and cannot plead to the circumstances of any acquisition of the Affected Vehicles, or of any interests in Affected Vehicles, including the nature of any such interests, by the Plaintiff and Group Members; and
- (c) reserve the right to plead further on provision of proper particulars.

72. In answer to paragraph 72 of the Claim, the Defendants:

- (a) admit that if a Group Member who obtained an Affected Vehicle on or after 1 January 2011:
 - (i) acquired the Affected Vehicle from a consumer other than for the purpose of re-supply; or
 - (ii) derived titled to the Affected Vehicle through or under the consumer,
 that Group Member is an “affected person” in relation to the Affected Vehicle within the meaning of s 2 of the ACL; and
- (b) otherwise do not know and cannot plead to the circumstances of acquisition of the Affected Vehicles by the Plaintiff and Group Members; and
- (c) reserve the right to plead further on provision of proper particulars.

E.2 Guarantee as to Merchantable and Acceptable Quality

73. In answer to paragraph 73 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 68 to 71 above; and
- (b) say that, pursuant to s 54 of the ACL, if a person supplied the Affected Vehicles in trade or commerce to a consumer and the supply did not occur by way of sale by auction, there was a guarantee that those goods were of acceptable quality; and
- (c) otherwise do not know and cannot plead to the allegations in this paragraph.

74. In answer to paragraph 74 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 32 to 35, 54 to 56, 60, 61, 65 and 68 to 73 above; and
- (b) otherwise deny the allegations in this paragraph.

E.3 Guarantee as to Fitness for Purpose

75. In answer to paragraph 75 of the Claim, the Defendants:

- (a) say that:
 - (i) the Affected Vehicles were designed, manufactured, sold and supplied to be driven on public roads, including but not limited to Australia; and
 - (ii) driving on public roads was among the normal and obvious uses of the Affected Vehicles; and
- (b) otherwise deny the allegations in this paragraph.

76. In answer to paragraph 76 of the Claim, the Defendants:
- (a) refer to and repeat paragraphs 60, 61 and 65 and 75;
 - (b) in answer to subparagraph (a):
 - (i) say that the subparagraph is vague, embarrassing and liable to be set aside as it does not identify to whom the Plaintiff and each Group Member are alleged to have “made clear and disclosed” the alleged matters;
 - (ii) otherwise deny the allegations in this subparagraph;
 - (c) in answer to subparagraph (b):
 - (i) say that the subparagraph is vague, embarrassing and liable to be set aside as it does not identify who is said to be “the suppliers” of the Affected Vehicles that are alleged to have made the representation;
 - (ii) otherwise deny the allegations in this subparagraph.
77. In answer to paragraph 77 of the Claim, the Defendants:
- (a) refer to and repeat paragraphs 68 to 71 and 76 above; and
 - (b) otherwise admit the allegations in this paragraph.
78. In answer to paragraph 78 of the Claim, the Defendants:
- (a) refer to and repeat paragraphs 32 to 35, 54 to 56, 60, 61, 65 and 68 to 74 above; and
 - (b) otherwise deny the allegations in this paragraph.

E.4 Major Failure

79. In answer to paragraph 79 of the Claim, the Defendants:
- (a) refer to and repeat paragraphs 32 to 35, 54 to 56, 60, 61, 65, 68 to 78 above; and
 - (b) say there is a typographical error in paragraph 79(a) and they take the reference to “extend” to be a reference to “extent”;
 - (c) deny the allegations in this paragraph.

F. ALLEGED UNCONSCIONABLE CONDUCT

80. In answer to paragraph 80 of the Claim, the Defendants refer to and repeat paragraphs 44 to 56 above.
81. In answer to paragraph 81 of the Claim:
- (a) Hino Japan:
 - (i) refers to and repeats paragraphs 32 to 35, 44 to 56 above;
 - (ii) admits that a purpose and function of the Relevant Tests and Approvals was to satisfy regulators that the vehicles the subject of the Relevant Tests and Approvals had been tested in accordance with, and/or satisfied the requirements of, ADR 80 or the Alternative Standards;

(iii) in answer to subparagraphs (g) and (h), says that to the extent it is alleged that, in the corporate mission and announcements referred to in the particulars to subparagraph (h) that Hino Japan represented that the Affected Vehicles complied with the ADR 80 and Alternative Standards, that is denied; and

(iv) otherwise denies the allegations in this paragraph; and

(b) Hino Australia does not plead to this paragraph as it contains no allegations against it.

82. In answer to paragraph 82 of the Claim:

(a) Hino Japan:

(i) refers to and repeats paragraph 81 above; and

(ii) otherwise denies the allegations in this paragraph; and

(b) Hino Australia does not plead to this paragraph as it does not contain any allegations against it.

G. ALLEGED DECEIT

G.1 Hino Japan

83. In answer to paragraph 83 of the Claim:

(a) Hino Japan:

(i) refers to and repeats paragraphs 44 to 56, 60 and 62 above; and

(ii) denies the allegations in this paragraph; and

(b) Hino Australia does not plead to this paragraph as it does not contain any allegations against it.

84. In answer to paragraph 84 of the Claim, the Defendants:

(a) refer to and repeat paragraphs 44 to 56, 60, 62 and 83 above; and

(b) deny the allegations in this paragraph.

85. In answer to paragraph 85 of the Claim, the Defendants:

(a) refer to and repeat paragraphs 44 to 56, 60, 62, 83 and 84 above; and

(b) otherwise deny the allegations in this paragraph.

G.2 Alleged Deceit by Hino Australia as agent for Hino Japan

86. In answer to paragraph 86 of the Claim, the Defendants:

(a) refer to and repeat paragraph 5 above;

(b) say that, at all material times, Hino Australia:

(i) supplied vehicles designed and manufactured by Hino Japan;

(ii) was the only entity commissioned by Hino Japan to do so in Australia; and

(iii) otherwise deny the allegations in this paragraph.

87. In answer to paragraph 87 of the Claim:

- (a) Hino Japan:
 - (i) says that the allegation as pleaded is vague, embarrassing and liable to be struck out and that this paragraph does not comply with r 13.10(3)(b) of the *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*;
 - (ii) refers to and repeats paragraphs 44 to 56, 60, 61 and 86 above; and
 - (iii) otherwise denies the allegations in this paragraph; and
- (b) Hino Australia does not plead to this paragraph as it does not contain any allegations against it.

88. In answer to paragraph 88 of the Claim:

- (a) Hino Japan:
 - (i) refers to and repeats paragraphs 44 to 56, 60, 61, 86 and 87 above; and
 - (ii) says that it was aware that:
 - A. an Identification Plate was placed on Affected Vehicles sold in Australia; and
 - B. some Australian customers might take notice of an Identification Plate in the course of acquiring an Affected Vehicle; and
 - (iii) otherwise denies the allegations in this paragraph; and
- (b) Hino Australia denies the allegations in this paragraph insofar as it contains any allegations against it.

89. In answer to paragraph 89 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 44 to 56, 60, 62 and 86 to 88 above; and
- (b) otherwise deny the allegations in this paragraph.

90. In answer to paragraph 90 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 44 to 56, 60, 62 and 86 to 88 above; and
- (b) otherwise deny the allegations in this paragraph.

H. ALLEGED EQUITABLE MISREPRESENTATION

H.1 Alleged Second Compliance Representation by Hino Australia (including as agent for Hino Japan)

91. In answer to paragraph 91 of the Claim:

- (a) Hino Japan denies the allegations in this paragraph insofar as it contains any allegations against it; and
- (b) Hino Australia:

- (i) says that the allegation as pleaded is vague, embarrassing and liable to be struck out and that this paragraph does not comply with r 13.10(3) of the *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*;
 - (ii) refers to and repeats paragraph 61 above;
 - (iii) says that it was aware that:
 - A. an Identification Plate was placed on vehicles manufactured by Hino Japan and sold in Australia; and
 - B. some Australian customers might take notice of an Identification Plate in the course of acquiring a vehicle manufactured by Hino Japan; and
 - (c) otherwise denies the allegations in this paragraph.
92. In answer to paragraph 92 of the Claim, the Defendants:
- (a) refer to and repeat paragraphs 44 to 56, 61 and 91 above; and
 - (b) otherwise deny the allegations in this paragraph.
93. In answer to paragraph 93 of the Claim, the Defendants:
- (a) refer to and repeat paragraph 44 to 56, 60, 62 and 91 to 92 above; and
 - (b) otherwise deny the allegations in this paragraph.
94. In answer to paragraph 94 of the Claim, the Defendants:
- (a) refer to and repeat paragraph 5 above;
 - (b) say that Hino Australia:
 - (i) at all material times supplied vehicles designed and manufactured by Hino Japan;
 - (ii) was the only entity commissioned by Hino Japan to do so; and
 - (c) otherwise deny the allegations in this paragraph.
95. In answer to paragraph 95 of the Claim,:
- (a) Hino Japan:
 - (i) says that the allegation as pleaded is vague, embarrassing and liable to be struck out and that this paragraph does not comply with r 13.10(3)(b) of the *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*;
 - (ii) refers to and repeats paragraphs 44 to 56, 60, 61 and 94 above; and
 - (iii) otherwise denies the allegations in this paragraph; and
 - (b) Hino Australia does not plead to this paragraph as it does not contain any allegations against it.
96. In answer to paragraph 96 of the Claim:
- (a) Hino Japan:

- (i) refers to and repeats paragraphs 44 to 56, 60, 61, 94 and 95 above; and
 - (ii) says that it was aware that:
 - A. an Identification Plate was placed on Affected Vehicles sold in Australia; and
 - B. some Australian customers might take notice of an Identification Plate in the course of acquiring an Affected Vehicle; and
 - (iii) otherwise denies the allegations in this paragraph;
- (b) Hino Australia denies this paragraph insofar as it contains any allegations against it.

97. In answer to paragraph 97 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 44 to 56, 60, 62 and 94 to 96 above;
- (b) otherwise deny the allegations in this paragraph.

98. In answer to paragraph 98 of the Claim:

- (a) refer to and repeat paragraphs 44 to 56, 60, 62 and 94 to 97 above; and
- (b) otherwise deny the allegations in this paragraph.

H.2 Alleged Second Compliance Representation by Hino Japan

99. In answer to paragraph 99 of the Claim:

- (a) Hino Japan:
 - (i) says that the allegation as pleaded is vague, embarrassing and liable to be struck out and this paragraph does not comply with r 13.10(3)(b) of the *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*;
 - (ii) refers to and repeats paragraphs 44 to 56, 60 and 62 above; and
 - (iii) otherwise denies the allegations in this paragraph; and
- (b) Hino Australia does not plead to this paragraph as it does not contain any allegations against it.

100. In answer to paragraph 100 of the Claim:

- (a) Hino Japan:
 - (i) says that the allegation as pleaded is vague, embarrassing and liable to be struck out and that this paragraph does not comply with r 13.10(3)(b) of the *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*;
 - (ii) refers to and repeats paragraphs 44 to 56, 60 and 62 above; and
 - (iii) otherwise denies the allegations in this paragraph; and
- (b) Hino Australia does not plead to this paragraph as it does not contain any allegations against it.

101. In answer to paragraph 101 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 44 to 56, 60, 62, 99 and 100 above;

(b) otherwise deny the allegations in this paragraph.

102. In answer to paragraph 102 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 44 to 56, 60, 62 and 99 to 100 above; and
- (b) otherwise deny the allegations in this paragraph.

I. ALLEGED ACCESSORIAL LIABILITY

103. In answer to paragraph 103 of the Claim:

- (a) Hino Japan:
 - (i) says that the allegation as pleaded is vague, embarrassing and liable to be struck out and that this paragraph does not comply with r 13.10(3)(b) of the *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*;
 - (ii) refers to and repeats paragraphs 44 to 53 above;
 - (iii) says that it was aware that Hino Australia would supply vehicles including the Affected Vehicles to authorised dealers who would in turn sell the vehicles, including to Australian consumers;
 - (iv) otherwise denies the allegations in this paragraph; and
- (b) Hino Australia does not plead to this paragraph as it does not contain any allegations against it.

104. In answer to paragraph 104 of the Claim:

- (a) Hino Japan refers to and repeats paragraphs 44 to 53, 56 to 59 above, 60 to 65 above and 103 above;
- (b) Hino Australia refers to and repeats paragraphs 44 to 53, 56 to 59 above, 60 to 65 and 103 above; and
- (c) the Defendants otherwise deny the allegations in this paragraph.

J. ALLEGED LOSS OR DAMAGE

105. In answer to paragraph 105 of the Claim, the Defendants:

- (a) refer to and repeat paragraphs 1 and 54 to 102 above; and
- (b) otherwise deny the allegations in this paragraph.

K. CLAIMED EXEMPLARY DAMAGES

106. In answer to paragraph 106 of the Claim:

- (a) Hino Japan:
 - (i) refers to and repeats paragraphs 44 to 56 and 83 to 90 above;
 - (ii) says that:
 - A. the allegation as pleaded is vague, embarrassing, and liable to be struck out; and that this paragraph does not comply with r 13.10(3) of the *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*;

B. the facts relied on by the Plaintiff provide no basis for claiming that Hino Japan had the state of mind alleged; and

(iii) otherwise denies the allegations in this paragraph; and

(b) Hino Australia does not plead to this paragraph as it does not contain any allegations against it.

L. RELIEF

107. In answer to paragraph 107 of the Claim, the Defendants do not plead to this paragraph as it does not contain any allegations against them.

M. LIMITATION PERIOD

108. Further or alternatively, subject to the provision of further particulars of the Group Members' claims, the Defendants say that if any Group Member suffered loss or damage as alleged in the Claim (which is denied) as a result of any of the alleged conduct of the Defendants in paragraphs 59, 63, 64, 67, 73, 74, 77 to 79, 82, 104 and 105:

(a) where the alleged loss was first suffered by any Group Member by no later than 17 April 2017 and accordingly, the Group Member's alleged cause or causes of action accrued on or before that date;

(b) by reason of s 82(2) of the TPA or s 236(2) of the ACL, no action can be brought after 6 years from the date when the cause of action accrued;

(c) In the premises of the matters pleaded in subparagraphs 108(a) and (b) herein, any Group Members' claims arising from the allegations in paragraphs 59, 63, 64, 67, 73, 74, 77 to 79, 82, 104 and 105 are barred by s 82(2) or s 236(2).

109. Further or alternatively, subject to the provision of further particulars of the Group Members' claims, the Defendants say that if any Group Member suffered loss or damage as alleged in the Claim (which is denied) as a result of any of the alleged conduct of Hino Japan in paragraphs 83 to 85, 86 to 90 and 105 (which is denied):

(a) where the alleged loss was first suffered by any Group Member located in the Northern Territory by no later than 17 April 2020, no action can be brought after 3 years from the date when the cause of action accrued by reason of s 12(1)(b) of the Limitation Act 1981 (NT); and

(b) where the alleged loss was first suffered by any Group Member located outside Northern Territory by no later than 17 April 2017, no action can be brought after 6 years from the date when the cause of action accrued by reason of:

(i) s 11(1) of the *Limitation Act 1985* (ACT);

(ii) s 14(1)(b) of the *Limitation Act 1969* (NSW)

(iii) s 10(1)(a) of the *Limitation of Actions Act 1974* (QLD);

(iv) s 35(c) of the *Limitation of Actions Act 1936* (SA);

(v) s 4(1)(a) of the *Limitation Act 1974* (Tas);

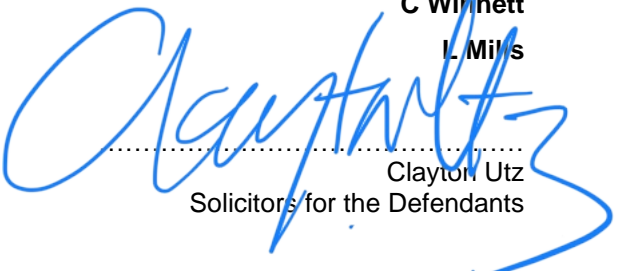
(vi) s 5(1)(a) of *Limitation of Actions Act 1958* (Vic);

(vii) s 38(1)(c)(vi) of the *Limitation Act 1935* (WA); and

(viii) s 13(1) of the *Limitation Act 2005* (WA);

(c) in the premises of the matters pleaded in subparagraphs 109(a) and (b) herein, any Group Member's claims arising from the allegations in paragraphs 83 to 90 and 105 (which is denied) is barred by reason of the provisions pleaded at subparagraph (b)(i) to (viii) above.

Date: 12 April 2024


C Wirnnett
L Mills
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Solicitors for the Defendants