



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

Case: S ECI 2023 01521
No. S ECI 2023 01521
Filed on: 29/05/2023 04:11 PM

B E T W E E N

James Kendall McCoy

Plaintiff

-and-

Hino Motors Ltd, First Defendant

Hino Motor Sales Australia Pty Ltd (ACN 064 989 724), Second Defendant

Defendants

STATEMENT OF CLAIM

Date of Document:	29 May 2023	Solicitors Code:	564
Filed on behalf of:	The Plaintiff		
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A PRELIMINARY

A.1 The Plaintiff and Group Members

1. This proceeding is commenced as a group proceeding pursuant to Part 4A of the *Supreme Court of Victoria Act 1986* (Vic) by the Plaintiff on his own behalf and on behalf of persons who or which:
 - (a) by 17 April 2023 have 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 (**Affected Vehicles**); and
 - (b) 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,

(Group Members).

2. As at the date of commencement of this proceeding, there are seven or more persons who have claims against the defendants in respect of the matters set out herein.
3. The Plaintiff, acquired an Affected Vehicle, being a new Hino 300 Series model 717 (the **Plaintiff's Affected Vehicle**) on or about 15 August 2022 otherwise than:
 - (a) by way of sale by auction; or
 - (b) for the purpose of re-supply or using it up or transforming it in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.

Particulars

- (i) *The Plaintiff purchased the Plaintiff's Affected Vehicle on or about 15 August 2022 from Prestige Hino in Dandenong South, Victoria (AHG1 PTY LTD Trading as Prestige Hino ABN 95 116 779 198).*
- (ii) *The Plaintiff paid \$72,800 (inclusive of GST) to purchase the Plaintiff's Affected Vehicle.*
- (iii) *The Plaintiff's purchase of the Plaintiff's Affected Vehicle was undertaken with financing.*
- (iv) *The Vehicle Identification Number of the Plaintiff's Affected Vehicle is JHHUCT1F90K045260.*

A.2 The Defendants

4. The First Defendant (**Hino Japan**) at all material times was and is:
 - (a) a company incorporated in Japan capable of being sued;
 - (b) in the business of:

- (i) designing and manufacturing vehicles and automotive products, including the Affected Vehicles;
 - (ii) marketing and distributing vehicles and automotive products, including the Affected Vehicles, internationally and in Australia; and
- (c) a “manufacturer” of the Affected Vehicles within the meaning of s 7 of the *Australian Consumer Law (ACL)* being Schedule 2 to the *Competition and Consumer Act 2010 (Cth) (CCA)* as a person who:
- (i) produced or assembled the Affected Vehicles;
 - (ii) held itself out to the public as the manufacturer of the Affected Vehicles;
 - (iii) caused or permitted its name, a name by which it carried on business and/or its brand or mark to be applied to the Affected Vehicles; and/or
 - (iv) caused or permitted the Second Defendant (**Hino Australia**) to hold Hino Japan out to the public as the manufacturer of the Affected Vehicles in connection with the supply or possible supply of the Affected Vehicles or the promotion of the Affected Vehicles.

5. Hino Australia at all material times was and is:

- (a) a company incorporated in Australia capable of being sued;
- (b) a wholly owned subsidiary of Hino Japan;
- (c) in the business of importing, distributing and marketing vehicles and automotive products, including the Affected Vehicles, in Australia; and
- (d) a “manufacturer” within the meaning of s 7 of the ACL as a person who did not manufacture the Affected Vehicles but imported them into Australia when the manufacturer of the Vehicles did not have a place of business in Australia.

6. Each of the defendants are and were:

- (a) a “corporation” within the meaning of ss 51AB and 52 of the *Trade Practices Act 1974 (Cth) (TPA)*; and
- (b) a “person” within the meaning of ss 18, 21, 54, 55 and 59 of the ACL.

B COMPLIANCE REGIME FOR MOTOR VEHICLES IN AUSTRALIA

B.1 Motor Vehicle Standards Act 1989

7. At all material times prior to 1 July 2021, the *Motor Vehicle Standards Act 1989* (Cth) (**Motor Vehicle Standards Act**) prohibited a person from supplying to the market a new vehicle that did not:

- (a) comply with the national standards; and
- (b) have fitted an identification plate of a type prescribed by the Motor Vehicle Standards Act, namely a plate certifying compliance with the national standards (**Compliance Plate**).

Particulars

- (i) *Motor Vehicle Standards Act, s 14.*

8. At all material times prior to 1 July 2021, the Motor Vehicle Standards Act prohibited the importation of a road vehicle that did not:

- (a) comply with the national standards; and
- (b) have a Compliance Plate fitted.

Particulars

- (i) *Motor Vehicle Standards Act, s 18.*

9. At all material times prior to 1 July 2021, the Motor Vehicle Standards Act:

- (a) required the importer of a road vehicle to do all things reasonable and necessary to ensure that when the vehicle is supplied to the market it still complied with the national standards and still had a Compliance Plate fitted; and
- (b) prohibited the importer of a road vehicle from modifying the vehicle in a way that made it not comply with the national standards.

Particulars

- (i) *Motor Vehicle Standards Act, s 17.*

10. At all material times prior to 1 July 2021, approval from the Minister was required in order for a Compliance Plate to be fitted on a vehicle (**Compliance Plate Approval**).

Particulars

(i) *Motor Vehicle Standards Act, s 10A.*

11. At all material times prior to 1 July 2021, an application for Compliance Plate Approval was required to be in accordance with the approved form and to be accompanied by material sufficient to establish compliance with the national standards or relevant parts of the national standards to which the application was made.

Particulars

(i) *Motor Vehicle Standards Regulations 1989 (Cth), reg 4.*

12. At all material times prior to 1 July 2021:
- (a) the approved forms for Compliance Plate Approval were to be submitted through the Road Vehicle Certification System (**RVCS**) administered by the Vehicle Safety Standards Branch (**VSSB**) of the Commonwealth Department of Infrastructure and Regional Development (**DIRD**);
 - (b) in order to submit the approved forms for Compliance Plate Approval through RVCS, a company or person had to register with RVCS as a licensee;
 - (c) Compliance Plate Approval was issued by the Minister to, and in the name of, the licensee;
 - (d) a licensee was required to submit, via RVCS, four forms for each vehicle type in respect of which it sought Compliance Plate Approval, namely:
 - (i) a compliance approval (motor vehicle) form;
 - (ii) a selection of test fleet forms for each applicable Australian Design Rule (**ADR**) in respect of each variant of a vehicle type that it sought to supply to the Australian market;
 - (iii) a summary of evidence report in relation to each of the national standards applicable to the relevant type of vehicle for which Compliance Plate Approval was sought; and
 - (iv) a road vehicle descriptor form; and
 - (e) if approval was given under s 10A(1) of the Motor Vehicle Standards Act, the licensee was responsible for ensuring that Compliance Plates were only fixed to

vehicles that met the requirements of the Motor Vehicles Standards Act, or the Compliance Plate Approval.

13. At all material times until 30 June 2021, if a licensee failed to comply with a condition to which a Compliance Plate Approval was subject, the Minister could cancel, suspend or vary the Compliance Plate Approval for vehicles of that type.

Particulars

- (i) *Motor Vehicle Standards Act, s 11.*

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

14. A Compliance Plate Approval that was in force immediately prior to 1 July 2021 is taken to continue in force until 1 July 2023 subject to the Motor Vehicle Standards Act.

Particulars

- (i) *Road Vehicle Standards (Consequential and Transitional Provisions Act) 2018 (Cth) (Transitional Provisions), Sch 3, s 4.*

15. A Compliance Plate Approval that was in force immediately prior to 1 July 2021 is taken to be granted for a period of 5 years if during the period from 1 July 2021 to 31 December 2021:

- (a) the Minister is provided in the approved form with:
 - (i) a written acknowledgement of the conditions applying to road vehicle type approvals and that a breach of any of those conditions is an offence under the *Road Vehicle Standards Act 2018 (Cth) (Road Vehicle Standards Act)*;
 - (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 the Compliance Plate Approval; and
- (b) the applicable charges are paid (**New Approval**).

Particulars

- (i) *Transitional Provisions, Sch 3, s 5(1).*

16. Evidence that enabled the Minister to grant a Compliance Plate Approval is taken to be sufficient to satisfy the continued compliance with the relevant criteria for granting a New Approval unless the evidence is found to be false or misleading, or is found to omit any matter or thing without which the evidence is misleading.

Particulars

- (i) *Transitional Provisions, Sch 3, s 5(3)(a)(i).*

17. Any written conditions to which a Compliance Plate Approval was subject are taken to be conditions that are specified to a New Approval.

Particulars

- (i) *Transitional Provisions, Sch 3, s 5(3)(c).*

18. Evidence that demonstrated that conditions of a Compliance Plate Approval were satisfied are taken to be sufficient to satisfy the relevant conditions of a New Approval unless the evidence is found to be false or misleading, or is found to omit any matter or thing without which the evidence is misleading.

Particulars

- (i) *Transitional Provisions, Sch 3, s 5(3)(d)(i).*

19. The New Approval is subject to the Road Vehicle Standards Act.

Particulars

- (i) *Transitional Provisions, Sch 3, s 5(4).*

B.3 Road Vehicle Standards Act 2018

20. At all material times from 1 July 2021, the Road Vehicle Standards Act prohibited the importation of a road vehicle into Australia unless, among other things, the road vehicle is of a type which is on the register of approved vehicles (**RAV**).

Particulars

- (i) *Road Vehicle Standards Act, s 22.*
- (ii) *Road Vehicle Standards Rules 2019 (Cth) (**Road Vehicles Standards Rules**), r 16.*

21. 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 the vehicle was provided for the first time in Australia and the vehicle is not on the RAV.

Particulars

- (i) *Road Vehicle Standards Act, s 24.*

22. At all material times from 1 July 2021, a person may apply to the Secretary for the grant of an approval to enter vehicles of a particular type on the RAV (**Road Vehicle Type Approval**).

Particulars

- (i) *Road Vehicle Standards Act, s 15.*

- (ii) *Road Vehicle Standards Rules, r 16.*

23. At all material times from 1 July 2021, the application for Road Vehicle Type Approval must, amongst other things:

- (a) be in the approved form; and
- (b) include a signed declaration that, inter alia, at the time that the application is made, the information in support of the application can be provided.

Particulars

- (i) *Road Vehicle Standards Act, s 15.*

- (ii) *Road Vehicle Standards Rules, r 16(2).*

24. At all material times from 1 July 2021:

- (a) an application for Road Vehicle Type Approval was to be submitted through the Road Vehicle Regulator (**ROVER**) system administered by DIRD (which from about June 2022 became known as the Department of Infrastructure, Transport, Regional Development, Communications and the Arts);
- (b) in order to submit the approved forms for Road Vehicle Type Approval through ROVER, a company or person had to register with ROVER as an applicant;
- (c) Road Vehicle Type Approval was issued by the Secretary (or the Secretary's delegate) to, and in the name of, the applicant;

- (d) an applicant for Road Vehicle Type Approval was required to submit, via ROVER, documentation in support of that application, which relevantly included:
- (i) a declaration that the vehicle type identified in the application complies with the national road vehicle standards, relevantly ADR 80, in respect of such vehicles as it sought to supply to the Australian market under such type approval;
 - (ii) supporting information in relation to each of the national standards applicable to the relevant type of vehicle for which approval was sought;
 - (iii) where the applicant relied on certification issued by a foreign government or authority, a document stating compliance of the vehicle the subject of the application with that foreign approval and the equivalent standards applied in the grant of that foreign approval with the relevant ADRs; and
- (e) if the type application was given under s 15 of the Road Vehicle Standards Act, the registered type approval holder was responsible for ensuring that the vehicles in respect of which the approval was granted comply with the applicable road vehicle standards in force from time to time, and to report non-compliance to DIRD.

25. At all material times from 1 July 2021, the Secretary may grant a Road Vehicle Type Approval if, amongst other things, the type of vehicle complies with the applicable national road vehicle standards.

Particulars

- (i) *Road Vehicle Standards Act, s 15.*
- (ii) *Road Vehicle Standards Rules, rr 15 and 19.*

26. At all material times from 1 July 2021, information in relation to a vehicle may be entered on the RAV by the holder of a Road Vehicle Type Approval.

Particulars

- (i) *Road Vehicle Standards Rules, r 9.*

27. At all material times from 1 July 2021, a vehicle was on the RAV if all of the information identified in r 8 of the Road Vehicle Standards Rules was entered on the RAV in relation to that vehicle.

Particulars

(i) Road Vehicle Standards Rules, r 8.

28. At all material times from 1 July 2021, it was a condition of a Road Vehicle Type Approval that the holder of the approval:
- (a) ensured that vehicles covered by the approval complied with the applicable national road vehicle standards as in force at the time; and
 - (b) was able to produce evidence that demonstrates that the vehicles covered by the approval comply with those standards at the time they were entered on the RAV.

Particulars

(i) Road Vehicle Standards Rules, r 26.

29. At all material times from 1 July 2021, it was a condition of a Road Vehicle Type Approval that the holder of the approval must notify the Secretary 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) as soon as the holder of the approval became aware of the error.

Particulars

(i) Road Vehicle Standards Rules, r 28.

30. At all material times from 1 July 2021, the Minister may issue a recall notice for vehicles of a particular kind if it appears to the Minister that a road vehicle of a particular kind does not, or it is likely that it does not, comply with the applicable national road vehicle standards and it appears to the Minister that the non-compliance is of a substantive nature.

Particulars

(i) Road Vehicle Standards Rules, r 206.

31. At all material times from 1 July 2021, it was a contravention of the Road Vehicles Standards Act if a person:
- (a) gave information or a document to another person under or for the purposes of the Road Vehicles Standards Act and the information or document was false or

misleading or omitted any matter or thing without which the information or document was misleading;

- (b) entered information on the RAV, the information related or purportedly related to a vehicle, and the information was incorrect;
- (c) was the holder of a Road Vehicle Type Approval, authorised another person in writing to enter information on the RAV, the other person entered information on the RAV, the information related or purportedly related to a vehicle, and the information was incorrect;
- (d) entered a vehicle on the RAV and the vehicle did not satisfy the requirements of an entry pathway, which included Road Vehicle Type Approval; or
- (e) was the holder of a Road Vehicle Type Approval, the person authorised another person in writing to enter a vehicle on the RAV, the other person entered or purportedly entered the vehicle on the RAV, and the vehicle did not satisfy the requirements of an entry pathway, which included Road Vehicle Type Approval.

Particulars

- (i) *Road Vehicle Standards Act, ss 16, 18, 32.*

B.4 Australian Design Rules

32. At all material times, ADR 80 was:

- (a) a national standard for the purposes of the Motor Vehicle Standards Act; and
- (b) a national road vehicle standard for the purposes of the Road Vehicle Standards Act.

Particulars

- (i) *Motor Vehicle Standards Act, s 7.*
- (ii) *Road Vehicle Standards Act, s 12.*
- (iii) *Road Vehicle (National Standards) Determination No 2 (1999) (Cth).*
- (iv) *Vehicle Standard (Australian Design Rule 80/00 – Emission Control for Heavy Vehicles) 2005 (Cth).*

- (v) *Vehicle Standard (Australian Design Rule 80/01 – Emission Control for Heavy Vehicles) 2005 (Cth).*
- (vi) *Vehicle Standard (Australian Design Rule 80/02 – Emission Control for Heavy Vehicles) 2006 (Cth).*
- (vii) *Vehicle Standard (Australian Design Rule 80/03 – Emission Control for Heavy Vehicles) 2006 (Cth).*

33. At all material times, ADR 80 applied to the Affected Vehicles being M and N category vehicles with a gross vehicle mass greater than 3.5 tonnes.

Particulars

- (i) *ADR 80/00, r 2.1.*
- (ii) *ADR 80/01, r 2.1.*
- (iii) *ADR 80/02, r 2.1.*
- (iv) *ADR 80/03, r 2.1.*

34. At all material times, ADR 80 applied to the Affected Vehicles as follows:

- (a) ADR 80/00 applied to:
 - (i) models of Affected Vehicles that were first produced between 1 January 2002 and 31 December 2006; and
 - (ii) existing models of Affected Vehicles that were produced between 1 January 2003 and 31 December 2007;
- (b) ADR 80/01 applied to existing models of Affected Vehicles that were produced between 1 January 2008 and 28 February 2008;
- (c) ADR 80/02 applied to:
 - (i) models of Affected Vehicles that were first produced between 1 January 2007 and 31 December 2009; and
 - (ii) existing models of Affected Vehicles that were produced between 29 February 2008 and 31 December 2010; and
- (d) ADR 80/03 applied to:

- (i) models of Affected Vehicles that were first produced after 1 January 2010; and
- (ii) existing models of Affected Vehicles that were produced after 1 January 2011.

Particulars

- (i) *ADR 80/00, r 2.*
- (ii) *ADR 80/01, r 2.*
- (iii) *ADR 80/02, r 2.*
- (iv) *ADR 80/03, r 2.*

35. The “Alternative Standards” in r 6:

- (a) of the ADR 80/00 were deemed to be the equivalent to the technical requirements of ADR 80/00;
- (b) of the ADR 80/01 were deemed to be the equivalent to the technical requirements of ADR 80/01;
- (c) of the ADR 80/02 were deemed to be the equivalent to the technical requirements of ADR 80/02; and
- (d) of the ADR 80/03 were deemed to be the equivalent to the technical requirements of ADR 80/03,

(Alternative Standards).

Particulars

- (i) *The Alternative Standards were standards introduced by the European Commission or Council, the United States Environmental and Protection Agency, and the Japanese Ministry of Land, Infrastructure and Transport.*

B.5 Registration Requirements

36. At all material times, it was an offence under State and Territory laws for a person to use, or permit to be used, a motor vehicle on a road that did not comply with the applicable vehicle standards for the vehicle.

Particulars

- (i) *Particulars of the State and Territory laws can be provided upon request.*

37. At all material times, ADR 80 applied to the design and construction of heavy vehicles and accordingly was an applicable vehicle standard for the purposes of State and Territory laws.

Particulars

- (i) *Particulars of the State and Territory laws can be provided upon request.*

38. At all material times, it was an offence under State and Territory laws for a person to use an unregistered motor vehicle on the road.

Particulars

- (i) *Particulars of the State and Territory laws can be provided upon request.*

39. At all material times, for a motor vehicle to be eligible for registration without conditions or exemptions under State and Territory laws it was required to comply with the applicable vehicle standards for the vehicle.

Particulars

- (i) *Particulars of the State and Territory laws can be provided upon request.*

40. At all material times, an application for registration or renewal of registration could be refused under State and Territory laws if the vehicle did not comply with the applicable vehicle standards.

Particulars

- (i) *Particulars of the State and Territory laws can be provided upon request.*

41. At all material times, a motor vehicle's registration could be suspended or cancelled under State and Territory laws if the vehicle did not comply with the applicable vehicle standards.

Particulars

(i) *Particulars of the State and Territory laws can be provided upon request.*

42. At all material times, a motor vehicle's registration could be refused or suspended or cancelled if:

(a) under New South Wales laws:

- (i) the vehicle is not an eligible vehicle;
- (ii) the relevant authority reasonably believes that information given in the application for registration is false or misleading;
- (iii) a defect notice issued in relation to the vehicle has not been complied with and the date for compliance specified in the notice has expired;
- (iv) the relevant authority reasonably believes that the ownership, possession, control or description of the registrable vehicle (or of any part of the registrable vehicle) as recorded on the Register is uncertain;
- (v) the registration has been issued erroneously;

(b) under Victorian laws;

- (i) the vehicle is not eligible for registration;
- (ii) the relevant authority reasonably believes that information given in the application is false or misleading;
- (iii) the relevant authority reasonably believes that the vehicle or part of the vehicle has, or may have, been illegally imported;
- (iv) a vehicle defect notice relating to the vehicle has not been cleared by the date for compliance specified in the notice;
- (v) the relevant authority reasonably believes the ownership, possession, control or description of the vehicle as recorded on the register is uncertain;

- (vi) the relevant authority reasonably believes the vehicle or part of the vehicle has, or may have, been illegally imported;
- (c) under Queensland laws:
- (i) the relevant authority reasonably believes information given in the application is false or misleading;
 - (ii) the approval was issued because of a document or representation that is false or misleading or obtained or made in another improper way;
 - (iii) a defect notice issued in relation to the vehicle has not been complied with and the date for compliance specified in the notice had expired;
- (d) under South Australian laws;
- (i) the relevant authority reasonably believes that information disclosed in the application for registration or any evidence provided by the applicant is or may be inaccurate, incomplete or misleading;
 - (ii) the relevant authority reasonably believes that information recorded in the register of motor vehicles in relation to the vehicle is or may be inaccurate, incomplete or misleading;
 - (iii) the vehicle was registered in error;
 - (iv) the vehicle has been suspended and the reason for suspension still exists following a period of notice;
- (e) under Tasmanian laws:
- (i) the relevant authority reasonably believes that information given in or in relation to the application for registration is false or misleading;
 - (ii) the vehicle has been registered in error;
 - (iii) the vehicle is no longer eligible for registration;
 - (iv) the responsibility for the vehicle or the description of the vehicle as recorded in the register of motor vehicles and trailers is uncertain;

- (v) a vehicle defect notice has been issued in respect of the vehicle, the time for compliance with the notice has passed, and the notice has not been complied with;
- (f) under Australian Capital Territory laws;
- (i) the vehicle is not an eligible vehicle;
 - (ii) the relevant authority believes on reasonable grounds that information given in, or in relation to, the application for registration is false, misleading or incomplete in a material particular;
 - (iii) a defect notice issued in relation to the vehicle has not been complied with and the date for compliance specified in the notice has expired;
 - (iv) the ownership, possession, control or description of the vehicle as recorded in the register is uncertain;
 - (v) the vehicle has been registered in error;
- (g) under Northern Territory laws:
- (i) the registration of a motor vehicle has been obtained by fraud or deception;
 - (ii) the motor vehicle has been registered in error;
 - (iii) a defect notice issued in relation to the vehicle has not been complied with and a person fails to show reasonable cause.

Particulars

- (i) *Particulars of the State and Territory laws can be provided upon request.*

43. At all material times, State and Territory laws gave authorised officers and police officers the power to inspect a motor vehicle to determine if it complied with the applicable vehicle standards, and on discovering that it did not, the power to:

- (a) issue a warning of a defect notice;
- (b) impose conditions on the use of the vehicle; or
- (c) prohibit the use of the vehicle.

Particulars

- (i) *Particulars of the State and Territory laws can be provided upon request.*

C MISCONDUCT

C.1 Announcements of Misconduct

44. On 4 March 2022, Hino Japan made an announcement entitled “Misconduct concerning Engine Certification” which stated:

Hino Motors, Ltd. (Hino) has identified past misconduct in relation to its applications for certification concerning the emissions and the fuel economy performance of its engines for the Japanese market.

Hino has identified misconduct concerning the falsification of engine performance data in its emissions durability testing for the A05C (HC-SCR) medium duty engine, and in the measurement of fuel economy performance in certification tests for two heavy duty engine models, A09C and E13C. Hino has also confirmed that those engines have problems in engine performance.

Accordingly, today, Hino has decided to suspend the sale of those three engine models and their corresponding vehicles in Japan.

In addition, Hino has identified a problem concerning the fuel economy performance of the N04C (Urea-SCR) light duty engine. However, no misconduct in relation to the certification testing of this engine has been identified to date.

...

2. Current Findings and Hino’s Decision

Hino’s current findings and plan to address the engines subject to the 2016 Emission Regulations are as follows.

- *A05C (HC-SCR), medium duty engine*

Findings:

Hino discovered that, in a durability test for emissions performance, which is one of the engine certification tests, the second muffler of the emissions after-treatment system was replaced during the test and the*

test was continued using the replaced muffler. This change was made after learning that emissions performance would deteriorate over time and that the engine may not meet the regulatory emissions standards.

In addition, Hino has also confirmed through emission durability retesting that there is a possibility that this engine may exceed regulatory emissions standards over the course of the vehicle's full useful life.

...

Decision:

Hino will suspend sales of HINO Ranger vehicles equipped with this engine model. In addition, Hino will prepare measures, up to and including a recall, as soon as possible for in-use vehicles to address the risk that emissions from the affected vehicles may exceed regulatory limits over their full useful life. Hino will also implement remedial measures in order to resume sales.

- *A09C and E13C, heavy duty engine*

Findings:

Hino discovered that, while measuring fuel consumption in a certification test, the fuel flow rate calibration value of the dynamometer panel was altered to make it appear advantageous in relation to fuel economy. This caused an altered value that was better than the actual value to be displayed on the fuel consumption meter.

In addition, Hino has confirmed through a technical review that the actual fuel economy performance does not meet the reported value.

Decision:

Hino will suspend sales of its heavy duty truck, the HINO Profia, and its heavy duty bus, the HINO S'elega, which are equipped with those engine models. Hino will implement remedial measures in order to resume sales. At the same time, Hino will confirm the correct reported value and take necessary measures for in-use vehicles.

...

- N04C (Urea-SCR), light duty engine

Findings:

The investigation is ongoing and Hino has not identified any misconduct in relation to engine testing to date. However, the technical review has identified that the engine's actual fuel economy may not meet the reported fuel economy value.

Decision:

Hino will confirm the correct reported value and take necessary measures for in-use vehicles. This engine model is currently not offered for sale because of a model changeover of HINO's Liesse II vehicle, a light duty bus.

...

4. Causes and Remedial Measures

Based on the findings to date, Hino believes that it failed to appropriately respond to internal pressures to achieve certain targets and meet schedules that were placed on Hino employees. Hino management takes these findings extremely seriously.

...

5. Going Forward

Going forward, Hino will continue to conduct a thorough investigation of the facts related to engine certification procedures, verify compliance in the certification process, and verify engine performance.

In addition, in view of the significance of the issues, Hino will form a special investigation committee consisting of independent outside experts. The committee will conduct an investigation to clarify the extent of the identified issues and an in-depth analysis into the root causes. In addition, the committee will propose remedial measures concerning engine development processes and best practice at Hino.

45. On 11 March 2022, Hino Japan made an announcement entitled "Establishment of a Special Investigation Committee", which stated:

Hino Motors, Ltd. hereby announces that having confirmed past misconduct in the applications for certification of engines for the Japanese market, it established the following Special Investigation Committee composed of outside legal experts and an outside expert with technical knowledge today.

46. On 25 March 2022, Hino Japan made an 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” which stated:

... it was determined that there was misconduct concerning falsification of engine performance in the fuel consumption measurements in the certification tests for the “N04C (Urea- SCR)” light-duty engine (installed on light-duty buses), which was being investigated at the time of the announcement on March 4, 2022.

...

The details of the adverse disposition scheduled to be rendered against the Company by the Ministry of Land, Infrastructure, Transport and Tourism and the facts constituting the cause are as follows:

<i>Details of the adverse disposition</i>		<i>Facts constituting the cause of the adverse disposition</i>
<i>Overview</i>	<i>Model subject to revocation of the homologation</i>	
<i>Revocation of the type approval of the device for the device to prevent the emission of carbon monoxide of the A05C medium-duty engine</i>	<i>A05C-TFA, A05C-TFB</i>	<i>Part (catalyst) replaced during the long-distance durability tests relating to exhaust emission performance, and even though there was no technical basis that the exhaust emission performance met the standards, it was rated as meeting the standards and the type approval was improperly acquired.</i>
<i>Revocation of the type approval for the common structure model equipped with the A05C medium-duty engine and the fuel consumption rating</i>	<i>Common name: Hino Ranger FC-DH0</i>	<i>Improperly obtained type approval through being equipped with a carbon monoxide emission prevention device that had improperly acquired type approval.</i>
<i>Revocation of the type approval for the common structure</i>	<i>Common names: Hino S'elega, Hino Profia FR-</i>	<i>Test data acquired through an inappropriate method (improper operation of the fuel flow meter)</i>

<i>model equipped with the A09C heavy-duty engine and the fuel consumption rating</i>	<i>DH0, FW-DH0, FN-DH0, FH-DH0, PR-DH0, SH-DH0, FR-HH0, FW-HH0, RU-DH0</i>	<i>during the fuel consumption measurement tests, and even though there was no technical basis that the fuel economy performance met the standards, it was rated as meeting the standards, and the type approval was improperly acquired.</i>
<i>Revocation of type approval for the common structure model equipped with the E13C heavy-duty engine and the fuel consumption rating</i>	<i>Common names: Hino-S'elega, Hino Profia FR-DH0, FW-DH0, SH-DH0, SS-DH0, RU-DH0</i>	<i>Test data acquired through an inappropriate method (improper operation of the fuel flow meter) during the fuel consumption measurement tests, and even though there was no technical basis that the fuel economy performance met the standards, it was rated as meeting the standards, and the type approval was improperly acquired.</i>

...

In relation to the "N04C (Urea-SCR)" light-duty engine installed on light-duty buses, at the time of the announcement on March 4, 2022, technical verification revealed that the actual fuel economy performance was less than the specification value, and therefore, we continued our investigation with the possibility of misconduct in mind. Based upon the judgment for the inspection by the Ministry of Land, Infrastructure, Transport and Tourism, Hino has determined that there was misconduct concerning falsification of engine performance in the fuel consumption measurement tests on the engines.

...

Misconduct was confirmed in that, after becoming aware of the possibility that the fuel economy performance did not meet the standards, the tests were conducted under conditions that were advantageous for fuel consumption, such as commencing measurements of fuel consumption while the engine was idling before the fuel flow rate had stabilized, and that the best figures from the results of multiple measurements were adopted, during the fuel consumption measurement for the certification tests.

47. On 25 March 2022, Hino Japan made an announcement entitled "Recall of vehicles equipped with the "A05C (HC-SCR)" medium-duty engine" which stated:

Hino Motors, Ltd. (Hino) would like to announce that, today, a notification was submitted to the Ministry of Land, Infrastructure, Transport and Tourism in relation to the recall below of some models of “HINO Ranger” medium-duty trucks equipped with the “A05C (HC-SCR)” medium-duty engine for which misconduct was identified in the engine certification applications and problems were identified in engine performance. This is a provisional measure to restore the performance of the exhaust emissions purification catalyst in response to the possibility that the amount of nitrogen oxide in the exhaust emissions may exceed the regulation value due to aging. By taking regular measures until permanent measures can be implemented, customers will be able to use their vehicle without any problems.

...

The regeneration control program of the HC-SCR catalyst for the exhaust emissions purification device is inappropriate, and there is a possibility that the sulfur component in the exhaust emissions that adheres to the catalyst will not be removed and may accumulate. Therefore, the performance of the catalyst deteriorates over time, and the emission value of nitrogen oxide in the exhaust emissions may exceed the regulation value.

...

As a provisional measure, the vehicles will be inspected, and, if regeneration of HC-SCR catalyst functions, work to regenerate the SCR catalyst will be carried out. If regeneration fails or cannot be successfully completed, the catalyst will be replaced. In addition, HC-SCR catalyst regeneration work (no cost to the customer) will be added to the inspection and maintenance items in the maintenance notes and will be carried out regularly. As soon as permanent measures are decided, we will implement these new measures.

48. On 2 August 2022, Hino Japan made an announcement entitled “Investigation Results by the Special Investigation Committee, and Recurrence Prevention Measures and Other Responses” which stated:

The Special Investigation Committee’s investigation revealed long-term misconduct concerning applications for engine certification. Hino considers that the background to this incident is its management’s failure to sufficiently engage with the frontline workforce, creating an environment and mechanism prioritizing meeting schedules and numerical goals over due processes. The Company’s inward-looking and conservative culture also prevented each employee from

carrying out his or her work with a sense of involvement and solidarity. Hino also lacked awareness in and a mechanism for managing its business operations as a corporate organization, for which Hino believes its management bears responsibility. Hino takes the Committee's report seriously, will identify with whom the responsibility lies, and implement strict measures.

...

1. Overview of the misconduct uncovered by the Special Investigation Committee

(i) Vehicle diesel engines (on-road engines)

Emissions-related: Misconduct was found relating mainly to durability tests for a wide range of models released at the time of the 2003 emissions regulations (new short-term regulations/E6) and thereafter.

Fuel efficiency related: Misconduct was found relating to fuel efficiency measurements mainly in heavy-duty engines after the introduction of the 2005 emissions regulations (new long-term regulations/E7) when fuel efficiency standards for heavy-duty vehicles were introduced and the relevant vehicles became eligible under the tax benefit system.

(ii) Industrial diesel engines (off-road engines)

Emissions related: Misconduct was found relating mainly to durability tests for a wide range of models released at the time of the 2011 regulations (Tier 3.5 regulations) and thereafter.

(iii) False reporting in response to a request by the Ministry of Land, Infrastructure, Transport and Tourism ("MLIT") in 2016 calling for Hino to report whether any misconduct occurred during emissions/fuel efficiency tests conducted before applying for certification

...

Hino has found non-achievement of performance as set forth below through in-house technical verification that it conducted concurrently with the investigations by the Special Investigation Committee (additional findings following the March 4 release).

(1) Vehicle diesel engines (on-road engines)

2016 emissions regulations (post- post-new long-term regulations/E9)	
Heavy-duty engine "E13C"	There is a possibility that this engine may exceed the emissions regulation values due to aging.
2009 emissions regulations (post-new long-term regulations/E8); 2005 emissions regulations (new long-term regulations/E7)	
Heavy-duty engine "E13C"	Actual fuel efficiency performance failed to meet the specification values.
Heavy-duty engine "A09C"	Actual fuel efficiency performance failed to meet the specification values.

...

(2) Industrial diesel engines (off-road)

2014 emissions regulations (Tier 4 regulations)	
Heavy-duty engine "E13C-YS"	There is a possibility that this engine may exceed the emissions regulation values due to aging.
Heavy-duty engine "E13C-YM"	There is a possibility that this engine may exceed the emissions regulation values due to aging.
Heavy-duty engine "P11C-VN"	There is a possibility that this engine may exceed the emissions regulation values due to aging.

...

(1) Vehicle diesel engines (on-road engines)

<Issues related to emissions>

For a wide range of models, after the introduction of the 2003 emissions regulations (new short-term regulations/E6), when Hino adopted emissions after-treatment systems to comply with stricter regulation values, and accordingly, introduced tests to confirm emissions durability performance (durability tests),

misconduct was discovered, mainly in relation to the durability tests, as detailed below.

*1 There is a possibility of exceeding the regulation values.

*2 Deviates from the specification values of fuel consumption.

	2016 emissions regulation (Post- post-new long-term regulations/E9),							2009 emissions regulations (New long-term regulations/E7)	2003 emissions regulations (New short-term regulations/E6)
	E13C *1*2	A09C *2	A05 (Urea-SCR)	A05C (HC-SCR) *1	J05E	N04C (Urea-SCR) *2	N04C (HC-SCR) 2019 model [current model]		
(1) - (7), (8), (10): Issues related to durability tests (9): Issues related to regeneration tests									
(1) Measured emissions values at the measurement points considerably different from those stipulated under laws and regulations		■						■	■
(2) Neglected measuring emissions values at the measurement points stipulated under laws and regulations			■	■				■	■
(3) Ceased performing durability tests in the middle of such tests and did not run engines until the end of the time specified under laws and regulations								■	■
(4) Did not perform durability tests								■	■
(5) Altered the test data to falsely reflect that emissions values were measured at the measurement points stipulated under laws and regulations		■						■	■
(6) Diverted other data, such as the data measured at the time of development, because there was no test data which measured emissions values at the measurement points stipulated under laws and regulations			■	■				■	■

(7) Did not use actual durability test results and calculated the deterioration factor by altering test data by diverting other data or fabricated values, such as the data measured at the time of development	■				■			■	■	■	■
(8) Among items stated in durability test documents, made false statements on test conditions, such as “Running time” or “Method to measure emissions,” or deterioration factor	■	■	■	■	■			■	■	■	■
(9) Did not perform regeneration tests stipulated under laws and regulations, and as a result, did not calculate regeneration correction coefficient through actual measurement									■		
(10) Continued durability tests without undergoing necessary procedures despite replacing parts, etc. during the durability tests		■		■		■			■		

<Issues related to fuel consumption measurement>

Since the introduction of the 2005 emissions regulations (new long-term regulations/E7), whereby Hino became subject to tax preferential treatment as a result of the fuel consumption standards for heavy-vehicles introduced, misconduct was discovered in relation to the fuel consumption measurements, mainly for heavy-duty engines.

- *Heavy-duty engines, “E13C” and “A09C”*

At the time of the 2005 emissions regulations (new long-term regulations/E7), it was discovered that Hino aimed to achieve the fuel consumption standards in order to be eligible for tax preferential treatment but failed to achieve its goal, and thus, it engaged in misconduct by intentionally adjusting the calibration values of the fuel flowmeter in order to meet the specification values required for application. Thereafter, Hino proceeded with development on the premise that the fuel consumption standards had been achieved under the 2005 emissions regulations. Regarding the 2009 emissions regulations (post- new long-term regulations/E8) and 2016 emissions regulations (post- post- new long-term regulations/E9), Hino continued to intentionally adjust the calibration values of the fuel flowmeter.

- Light-duty engine, “N04C (Urea-SCR)"/2016 emissions regulations (post-post- new long-term regulations/E9)

In order to satisfy the specification values, Hino measured the idling fuel flow quantity before the fuel flow quantity was stabilized and engaged in misconduct by intentionally selecting advantageous fuel consumption data.

(2) Industrial diesel engines (off-road engines)

For a wide range of models, after the introduction of the 2011 regulations (Tier 3.5 regulations), it was discovered that misconduct occurred, mainly in relation to the durability test processes, as detailed below. In particular, for the three models of heavy-duty engines (E13C-YS, E13C-YM, and P11C-VN), performance values were intentionally falsified, despite individuals being aware of the possibility of such values not conforming with the values required by the regulations.

	2014 regulations Tier 4 regulations							2011 regulations Tier 3.5 regulations
	E13C-YS*	E13-YM*	P11C-VN*	J08E-VV·WW	J08E-YD	J05E-UM·UN	J05E-VB·VA	
(1) to (3), (5) to (9): Issues related to durability tests (4), (10): Issues related to regeneration tests								
(1) Altered test data to make it appear as if emissions values were measured at the measurement points specified under laws and regulations	■		■	■	■	■	■	■
(2) Altered data to values different from the actually measured results	■		■	■		■		■
(3) Continued durability tests by replacing engine parts and without undergoing necessary procedures	■	■		■		■		■
(4) Calculated regeneration coefficients using measurement results of both the warming up and cooling down conditions of the NRTC mode, while it was necessary to calculate the regeneration coefficients using the warming up condition of the NRTC mode								■
(5) Improper frequency of regeneration test	■		■	■		■		■
(6) Failed to explain to the certifying body the reasons for non-selection of measurement results, among the measurement results of durability tests					■		■	

(7) Used fabricated data for calculation of deterioration factor when there were no results measured at the measurement points specified under laws and regulations			■					
(8) Arbitrarily selected values after performing multiple measurements at each measurement point specified under laws and regulations	■	■						
(9) Diverted data as if it was measured at the specified measurement points, despite results having been measured at the non-specified measurement points specified under laws and regulations	■	■						
(10) Changed the ECU settings to improve emission performance at the time of durability tests or monitored certification tests	■	■	■					

49. On 2 August 2022, Hino Australia made an announcement entitled “Hino Australia Engine Certification Misconduct Announcement”, which stated:

Hino Motors, Ltd. (HML) has today released the findings of the Special Investigation Committee (SIC) which has been investigating misconduct concerning engine emissions certification in Japan. The investigation was commissioned in March 2022, following HML identifying past misconduct in relation to its applications for certification concerning the emissions and fuel economy performance of its engines for the Japanese market.

The SIC report has identified misconduct in relation to Japanese emissions certification tests that have been relied on for the sale of a number of engine variants in Hino 500 Series Standard Cab FC, FD, FE medium-duty trucks and Hino Poncho Buses sold in Australia.

50. On 12 August 2022, Hino Japan released a copy of the Special Investigation Committee’s report dated 1 August 2022 and entitled “Investigation Report (Summary)”, which stated:

Chapter 3. Issues related to on-road engines

...

(2) Issues which occurred at the time under the E6 regulations and at the time under the E7 regulations

A. Issues related to emissions

(a) Misconduct related to conducting durability tests

As the schedule for securing certification test benches to measure emissions values was tight, instances of failing to move engines to the certification test benches to measure emissions values according to the initial schedule occurred, such as when unexpected trouble occurred during durability tests. As a result, the following misconduct occurred in the durability tests:

- (i) The emissions values were measured at measurement points which significantly deviated from the measurement points prescribed by laws and regulations;*
- (ii) The emissions values at some of the measurement points prescribed by laws and regulations were not measured;*
- (iii) The durability tests were stopped halfway through, and engines were not rotated until the end of the time prescribed by laws and regulations (therefore, the measurement of emissions values at the measurement points prescribed by laws and regulations was also not conducted); and*
- (iv) The required durability tests themselves were not conducted.*

(b) Rewriting test data of durability tests

With the occurrence of the misconduct related to durability tests, emissions values were not measured at the measurement points prescribed by the laws and regulations, and sometimes the test data itself did not exist in the first place. As a result, the following misconduct occurred:

- (v) The test data was rewritten as if emissions values were measured at the measurement points prescribed by laws and regulations; and*
- (vi) As no test data obtained by measuring emissions values at the measurement points prescribed by laws and regulations existed, other data including measurement data at the time of development was diverted.*

Further, even if durability tests were conducted and emissions values were measured at the measurement points prescribed by laws and regulations, some emissions values did not satisfy the Regulation Values, or when using the test data, some deterioration factors did not become zero. As the concept that

“deterioration factors are zero” had already grown in the Powertrain Evaluation & Engineering Department, the cause of deterioration factors not becoming zero was not traced, and the necessary measurement was not re-conducted; therefore, the following misconduct occurred:

(vii) The deterioration factors were calculated after rewriting test data, such as by diverting other data or unfounded values including measurement data at the time of development, and not using the results of durability tests as they were.

(c) False statements in the document of durability tests

With the occurrence of the above misconduct, the following misconduct was also thought to have occurred at Hino:

(viii) The false statements were made in test conditions including “running time” and “emissions measurement method” or deterioration factors, from among the matters to be stated in the document of durability tests.

B. Issues related to fuel consumption

Hino adopted a policy to obtain the tax incentives for E13C’s representative models that addressed the E7 regulations; and during such process, misconduct of changing fuel flow meter adjustment values occurred. Further, also for representative models of A09C launched in May 2007, a policy to obtain the tax incentives was adopted; therefore, misconduct similar to that of E13C may have occurred.

(3) Issues which occurred at the time under the E8 regulations

Under the E8 regulations, the maximum value regulation of NOx was drastically tightened; and at Hino, in order to comply with the tightened NOx regulation, an after-treatment system, NOx catalyst (SCR), was introduced, and the DOC and the DPF were also improved to comply with the tightened PM regulations. During the above process, any of the above misconduct (i) through (viii) occurred with respect to the engines that addressed E8 regulations (however, (i) and (iii) have not been found).

When the after-treatment system, NOx catalyst (SCR), was introduced to comply with the E8 regulations and catalyst deterioration began to have an effect on the emissions values, there were more instances of the emissions values not

satisfying the Regulation Values if the durability test result were used as they were. Accordingly, there may have been more instances of the above misconduct (vii) occurring after application of the E8 regulations when the Regulation Values were not satisfied.

Furthermore, with respect to regeneration tests,⁶ the following misconduct also occurred because persons in charge had a misunderstanding, to begin with, that use of test results measured during development would suffice; and the Kf values (values used for weighting fuel consumption in relation to a regeneration adjustment coefficient) and Ki values (values used for weighting emissions values in relation to a regeneration adjustment coefficient), which are required to achieve the fuel consumption and emissions Development Target Values, were determined at the development stage.

- (ix) The regeneration test provided under laws and regulations was not implemented, and as a result, the regeneration correction coefficient was not calculated based on actual measurement.

Furthermore, after the E8 regulations, there were instances when a durability test was continued after replacing components because the components broke during the durability test. Under the laws and regulations, test cars and test engines running during the durability test must be inspected and maintained after every certain number of kilometers run; furthermore, when it becomes inevitably necessary to conduct maintenance on a temporary basis at a time and by a method other than the designated time and method, the substance of the maintenance must be recorded in the “Long- Distance Run (Part 3) Inspection and Maintenance Record” after the maintenance. Furthermore, while running, components related to emissions performance such as motor and carbon monoxide emission prevention device may not be replaced, except for components that are replaced on a regular basis, and if a there was a replacement for an inevitable reason, the replaced components must be kept during the period of the type-approval application so that they may be presented as necessary. However, specifically the following misconduct occurred, because Hino failed to take necessary measures.

- (x) The durability test was continued without following the necessary procedures despite replacing components during the durability test.

(4) Issues which occurred at the time under the E9 regulations

Hino improved its emissions reduction technology on the engine side, as well as improving NOx catalysts (SCR), in response to the imposition of stricter NOx Regulation Values and fuel efficiency improvement under the E9 regulations. In the development period from the E8 and the E9 regulations spanning seven years, at Hino, the Development Function is believed to have been extremely busy, as multiple tasks coincided in the period under the E9 regulations, such as a simultaneous full-model change of heavy- and medium-duty engines, making adjustments to comply with stricter NOx regulations, and plant relocation.

Among the models that addressed the E9 regulations, Hino has already announced the occurrence of misconduct for E13C, A09C and N04C (Urea-SCR7) concerning fuel efficiency measurement in certification tests, as well as misconduct concerning durability tests for A05C (HC-SCR). The Committee, however, has also examined, in the Investigation, whether there were issues concerning other models that addressed the E9 regulations, and whether there were other issues concerning any of these Four Models.

...

Chapter 4 Off-road Engine Issues

...

(2) Issues that occurred at the time of the Tier 3.5 Regulations

There are five models of engines that addressed the Tier 3.5 Regulations, and in all of the models, the NOx value exceeded the Regulation Value (2.0g/kWh) at all of the measurement points in the durability test. The following misconduct arose to deal with the situation:

- (i) Rewriting of the test data as if the emissions values had been measured at the measurement points specified by laws and regulations;*
- (ii) Rewriting to numerical values which differed from the measurement results; and*
- (iii) Despite replacement of the engine parts during the durability test, continuation of the durability test without going through the necessary procedures.*

In addition, the following misconducts also occurred in the regeneration test:

- (iv) *Originally, it was necessary to calculate the regeneration correction coefficient using the hot engine state of the NRTC mode, but the regeneration coefficient was calculated using the measurement results of both the hot engine state and the cold engine state of the NRTC mode; and*
- (v) *insufficient continuous number of runs in the regeneration test.*

(3) Issues that occurred at the time of the Tier 4 Regulations

Hino introduced Urea-SCR as an after-treatment system in the off-road engines in order to respond to the significantly stricter NOx regulations. At the time of the Tier 4 Regulations, the following misconduct also occurred:

- (vi) *Failure to explain to the certification body the reason why a specific measurement result out of the measurement results in the durability test was not selected;*
- (vii) *When no measurements results had been taken at the measurement point specified by laws and regulations, use of fictitious numerical values when calculating the deterioration correction coefficient;*
- (viii) *Arbitrary selection of values after performing multiple measurements at each measurement point;*
- (ix) *Diversion to the measurement results at the measurement points specified by laws and regulations despite the measurement results having been taken at measurement points other than the measurement points specified by laws and regulations; and*
- (x) *Change in the ECU settings in order to improve emissions performance during the durability test and witnessed certification test.*

The misconduct that occurred for each model at the time of the Tier 4 Regulations is as summarized below.

J08E-YD: (i), (vi)
J08E-VV: (i), (ii), (iii), (v)
P11C-VN: (i), (ii), (v), (vii), (x)
E13C-YS: (i), (ii), (iii), (v), (viii), (ix), (x)
E13C-YM: (iii), (viii), (ix), (x)

J05E-UN:	(i), (ii), (iii) (the test results for J08E-VV substituted for the durability test), (v)
J05E-VB:	(i), (vi) (the test results for J08E-YD substituted for the durability test)
J08E-WV:	(i), (ii), (iii), (v) (the test results for J08E-VV substituted for all of the durability tests, witnessed certification tests, and regeneration tests)
J05E-UM:	(i), (ii), (iii), (v) (the test results for J08E-VV substituted for the durability tests, the test results for J05E-UN substituted for the witnessed certification tests and regeneration tests)
J05E-VA:	(i), (vi) (the test results for J08E-YD substituted for the durability test)

51. On 22 August 2022, Hino Japan made an announcement entitled “Additional Findings Concerning Engine Certification” which stated:

The newly-discovered misconduct also relates to a light-duty engine, N04C (HC-SCR) (2019 model), with respect to which no misconduct was previously detected in the certification process. Accordingly, Hino is suspending shipments of HINO Dutro, a light-duty truck equipped with the engine in question, as of today. Hino will follow MLIT’s instructions in taking response measures going forward.

■ *Additional findings*

[Details of the misconduct]

It was revealed that, in filing an application for emissions certification, (i) Hino was required to measure emissions at least twice at the respective measurement points during durability tests, but failed to reach the required number of measurements at some measurement points; and (ii) Hino was required to calculate deterioration factors using the measurement data obtained in (i), but calculated them based on the measurement data obtained by measuring emissions only once at the respective measurement points. In addition, while the technical verification did not find the possibility that N04C (HC-SCR) (2019 model) exceeds the regulation values, this will be confirmed by on-site inspection by MLIT in the future.

[Root causes]

The root causes include the lack of understanding of applicable laws and regulations, and inadequate internal rules and standards, and the lack of a mechanism to ensure the propriety of certification processes.

[Model applicable] N04C (HC-SCR) (2019 model) subject to the 2016 emissions regulations (post- post- new long-term regulations/E9)

Among vehicle engines, all the models subject to the 2016 emissions regulations (post- post- new long-term regulations/E9) are applicable, and among industrial engines, all the models subject to the 2014 regulations (the Tier 4 regulations) are or are likely to be applicable. However, for the models other than N04C (HC-SCR) (2019 model), it has been discovered that durability tests, which are the base for conducting appropriate measurements at each measurement point, were not appropriately conducted, and shipments of these models and vehicle types in which they are mounted have already been suspended.

52. On 9 September 2022, Hino Japan made an announcement entitled “Notification Submitted to MLIT of Recall of Vehicles Equipped with the E13C Heavy-Duty Engine” which stated:

Today, Hino Motors, Ltd. (Hino) submitted to the Ministry of Land, Infrastructure, Transport and Tourism (MLIT) a notification of the recall of its “HINO Profia” heavy-duty trucks and “HINO S’elega” heavy-duty buses equipped with the E13C heavy-duty engine, in connection with the previously announced engine certification application and engine performance issues.

As part of this recall, Hino will conduct periodic inspections of the catalyst in the exhaust emissions after-treatment system to verify the nitrogen oxide purification rate and nitrogen oxide levels in the exhaust emissions. In cases where the amount of nitrogen oxide exceeds a certain amount, Hino will replace the catalyst as a provisional measure. Hino will continue to conduct periodic inspections and maintenance until permanent measures have been developed in order to ensure that customers will be able to use their vehicle without any concerns. We sincerely apologize for the significant disruption to our customers. Customers using the affected vehicles will be promptly contacted by the appropriate dealers.

...

In addition, in cooperation with the construction machinery manufacturers, notifications were submitted to MLIT of recalls in relation to construction machinery equipped with certain engines. Those notifications of recalls concern three non-road engine models (E13C-YS, E13C-YM, P11C-VN) in relation to which issues with engine certification applications and engine performance have been identified.

...

During DPR Regeneration under the high-speeds and high-loads, due to issues with the regeneration control program of the DPR (Diesel Particulate Active Reduction System), the temperature of the catalyst that purifies nitrogen oxide (Urea-SCR catalyst) may increase and the catalyst may deteriorate faster than intended. Therefore, the performance of the Urea-SCR catalyst may deteriorate over time, and the nitrogen oxide in the exhaust emissions may exceed the regulatory value.

...

As a provisional measure, we will conduct inspections of the purification rate of the Urea-SCR catalyst for all affected vehicles. If the emission value of nitrogen oxide in the exhaust emissions exceeds a certain level, the Urea-SCR catalyst will be replaced. In addition, we will add the inspection of the purification rate of the SCR catalyst (at no cost to the customer) to the inspection and maintenance items in the maintenance records and will conduct regular inspections. As soon as permanent measures are confirmed, we will implement those new measures.

53. On 16 September 2022, Hino Japan made an announcement entitled “Hearing Conducted by the Ministry of Land, Infrastructure, Transport and Tourism” which stated:

Today, the Ministry of Land, Infrastructure, Transport and Tourism (“MLIT”) held a hearing into the misconduct regarding the applications for certification of vehicle engines sold in Japan announced on August 2 and August 22, 2022. During the hearing, Hino Motors, Ltd. (“Hino”) submitted that it had no objection to MLIT’s account of the underlying facts concerning engines certified for sale in Japan that form the basis of the administrative penalties to be imposed on Hino. Hino is committed to cooperating and following all directions from MLIT.

...

The details of the administrative penalty to be imposed on Hino by MLIT and the underlying facts are outlined below

<i>Details of the administrative penalty</i>		<i>Underlying facts</i>
<i>Overview</i>	<i>Engine model subject to revocation of type approval</i>	

<p><i>Revocation of the type approval for the device installed in the E13C heavy-duty engine responsible for preventing the emission of carbon monoxide</i></p>	<p><i>E13C-ABA E13C-ABB</i></p>	<p><i>The programming of the engine control unit (ECU) in production engines was different from the ECU programming used during certification durability testing. Moreover, even though there was no technical basis to conclude that the engine's exhaust emission performance met the relevant standard, it was represented as meeting the relevant standard, and the type approval was improperly acquired.</i></p>
<p><i>Revocation of the type approval for the device installed in the E13C-YS engine for construction machinery and similar equipment responsible for preventing the emission of carbon monoxide</i></p>	<p><i>E13C-YS</i></p>	<p><i>The programming of the ECU in production engines was different from the ECU programming used during certification durability testing. Moreover, even though there was no technical basis to conclude that the engine's exhaust emission performance met the relevant standard, it was represented as meeting the relevant standard, and the type approval was improperly acquired.</i></p>
<p><i>Revocation of the type approval for the device installed in the E13C-YM engine for construction machinery and similar equipment responsible for preventing the emission of carbon monoxide</i></p>	<p><i>E13C-YM</i></p>	<p><i>Data at some of the measurement points in the durability tests were falsified or otherwise manipulated, and, even though there was no technical basis to conclude that the engine's exhaust emission performance met the relevant standard, it was represented as meeting the relevant standard. Accordingly, the type approval was improperly acquired.</i></p>
<p><i>Revocation of the type approval for the device installed in the P11C engine for construction machinery and similar equipment responsible for preventing the emission of carbon monoxide</i></p>	<p><i>P11C-VN</i></p>	<p><i>Data at some of the measurement points in the durability tests were falsified or otherwise manipulated, and, even though there was no technical basis to conclude that the engine's exhaust emission performance met the relevant standard, it was represented as meeting the relevant standard. Accordingly, the type approval was improperly acquired.</i></p>

D MISLEADING OR DECEPTIVE CONDUCT

D.1 Representations to the Commonwealth

54. At all material times, in seeking approval from the Commonwealth to import into Australia and supply the Affected Vehicles in Australia, Hino Japan and/or Hino Australia provided:

- (a) results from tests conducted by or on behalf of Hino Japan which purported to be conducted in accordance with, and to satisfy, ADR 80 or an Alternative Standard; and/or
- (b) approvals from a relevant testing authority outside Australia, based on results from tests conducted by or on behalf of Hino Japan which purported to be conducted in accordance with, and to satisfy, an Alternative Standard,

(Relevant Test Results and Approvals) and therefore represented that the tests from which the Relevant Test Results and Approvals had been obtained had been conducted in accordance with, and satisfied, ADR 80 or an Alternative Standard **(First Compliance Representation)**.

55. The tests from which the Relevant Test Results and Approvals were obtained were not:

- (a) conducted in accordance with ADR 80 or an Alternative Standard; and/or
- (b) did not satisfy the requirements of ADR 80 or an Alternative Standard.

Particulars

- (i) *Paragraphs 44 to 53 above are repeated.*
- (ii) *Further particulars may be provided following discovery, the issuing of subpoenas and service of the Plaintiff's expert evidence.*

56. By reason of the conduct pleaded in paragraphs 54 and 55 above:

- (a) type approvals for the Affected Vehicles were obtained by misrepresentation and other misleading and deceptive conduct; and
- (b) at least some of the Affected Vehicles had:
 - (i) greater emissions than had been certified; and/or
 - (ii) worse fuel economy than had been certified.

Particulars

- (i) *The fuel economy performance for the A09C and E13C engine models did not meet the reported value: Hino's announcement entitled "Misconduct concerning Engine Certification" dated 4 March 2022.*
- (ii) *A problem had been identified concerning the fuel economy of the N04C engine model: Hino's announcement entitled "Misconduct concerning Engine Certification" dated 4 March 2022.*
- (iii) *Emissions from the E13C and A05C engine models exceed prescribed regulatory limits: Hino's announcement entitled 'Investigation Results by the Special Investigation Committee, and Recurrence Prevention Measures and Other Responses' dated 2 August 2022.*
- (iv) *Further particulars may be provided following discovery, the issuing of subpoenas and the service of expert evidence.*

- 57. The Commonwealth relied upon the First Compliance Representation in granting approval to import and supply the Affected Vehicles.
- 58. By reason of the matters pleaded in paragraph 55 and 56 above, the First Compliance Representation was false or misleading.
- 59. By reason of the matters pleaded in paragraphs 54 to 58 above, Hino Japan and/or Hino Australia engaged in conduct in trade or commerce that was misleading or deceptive or was likely to mislead or deceive in contravention of s 52 of the TPA and s 18 of the ACL.

D.2 Representations to Consumers

- 60. At all material times, Hino Japan supplied and otherwise dealt with the Affected Vehicles as vehicles that were for use as road vehicles in Australia, and/or applied Compliance Plates to vehicles, and thereby made a representation to all persons purchasing, leasing or dealing with the Affected Vehicles that the Affected Vehicles:
 - (a) had been tested in accordance with the requirements of Australian law for importing and supplying motor vehicles; and/or
 - (b) had satisfied the requirements of Australian law for importing and supplying motor vehicles,

(Second Compliance Representation).

61. At all material times, Hino Australia distributed, supplied, promoted and otherwise dealt with the Affected Vehicles as vehicles that were for use as road vehicles in Australia, and/or as vehicles which had Compliance Plates affixed, and thereby made the Second Compliance Representation to all persons purchasing, leasing or dealing with the Affected Vehicles.
62. By reason of the matters pleaded in paragraph 55 and 56 above, the Second Compliance Representation was false or misleading.
63. By reason of the matters pleaded in paragraphs 60 and 62 above, Hino Japan engaged in conduct in trade or commerce that was misleading or deceptive or was likely to mislead or deceive in contravention of s 52 of the TPA and s 18 of the ACL.
64. By reason of the matters pleaded in paragraphs 61 and 62 above, Hino Australia engaged in conduct in trade or commerce that was misleading or deceptive or was likely to mislead or deceive in contravention of s 52 of the TPA and s 18 of the ACL.

D.3 Misleading or Deceptive Conduct by Silence

65. Further or in the alternative, Hino Japan and/or Hino Australia by applying for and obtaining approval to import and supply the Affected Vehicles in Australia and/or then importing and supplying the Affected Vehicles in Australia created a reasonable expectation:
 - (a) on the part of the Commonwealth; and
 - (b) on the part of persons purchasing, leasing or dealing with the Affected Vehicles, that:
 - (c) the Affected Vehicles had been tested in accordance with the requirements of Australian law for importing and supplying motor vehicles; and/or
 - (d) the Affected Vehicles had satisfied the requirements of Australian law for importing and supplying motor vehicles.
66. Given the reasonable expectation on the part of the Commonwealth and persons purchasing, leasing or dealing with the Affected Vehicles, Hino Japan's and/or Hino

Australia's failure to disclose the matters referred to in paragraph 55 was misleading or deceptive conduct or conduct that was likely to mislead or deceive.

67. By reason of the matters pleaded in paragraphs 65 and 66 above, Hino Japan and/or Hino Australia engaged in conduct in trade or commerce that was misleading or deceptive or was likely to mislead or deceive in contravention of s 52 of the TPA and s 18 of the ACL.

E CONSUMER GUARANTEES

E.1 Hino Supplied Goods to Consumers

68. The Affected Vehicles were "goods" within the meaning of s 2 of the ACL.
69. At all material times from 1 January 2011, Affected Vehicles of which Hino Japan was the manufacturer were supplied to the Plaintiff and Group Members, in trade and commerce, by Hino authorised dealers and by other retailers selling Hino vehicles, including second hand dealers, otherwise than by way of sale by auction.
70. The Plaintiff acquired the Plaintiff's Affected Vehicle as a consumer as:
- (a) the amount paid or payable for the Plaintiff's Affected Vehicle was less than \$100,000; and/or
 - (b) the Plaintiff's Affected Vehicle was acquired for use principally in the transport of goods on public roads.
71. Some Group Members acquired their Affected Vehicles, or alternatively an interest in their Affected Vehicle, as "consumers" within the meaning of s 3 of the ACL as:
- (a) the Affected Vehicles were acquired for use principally in the transport of goods on public roads;
 - (b) the amount paid or payable for the Affected Vehicles on and from 1 July 2021 was \$100,000 or less; and/or
 - (c) the amount paid or payable for the Affected Vehicle before 1 July 2021 was \$40,000 or less.

Particulars

- (i) *Further particulars will be provided following the initial trial of the Plaintiff's claim.*

72. Other Group Members who obtained an Affected Vehicle, or an interest in an Affected Vehicle, on or after 1 January 2011 are “affected persons” within the meaning of s 2 of the ACL as:

- (a) they acquired the Affected Vehicle from a consumer other than for the purposes of re-supply; or
- (b) they derived title to the Affected Vehicles through or under a consumer.

Particulars

- (i) *Further particulars will be provided following the initial trial of the Plaintiff's claim.*

E.2 Guarantee as to Merchantable and Acceptable Quality

73. By reason of:

- (a) the matters pleaded in paragraphs 68 to 71 above; and
- (b) s 54 of the ACL,

there was a guarantee that the Affected Vehicles would be of acceptable quality.

74. By reason of the matters pleaded in paragraph 55 above, the Affected Vehicles were not of acceptable quality because:

- (a) the Relevant Test Results and Approvals were not:
 - (i) conducted in accordance with ADR 80 or an Alternative Standard; and/or
 - (ii) did not satisfy the requirements of ADR 80 or an Alternative Standard;
- (b) and therefore the Affected Vehicles:
 - (i) were not compliant with Australian standards; and
 - (ii) further or alternatively, were unable lawfully to be registered or used on public roads in Australia.

E.3 Guarantee as to Fitness for Purpose

75. The nature of the Affected Vehicles is that they were designed, manufactured, sold and supplied to be driven on public roads in Australia and that was their normal and obvious use.
76. Having regard to the matters pleaded in paragraph 75:
- (a) by purchasing an Affected Vehicle, the Plaintiff and each Group Member made clear and disclosed that they were acquiring the Affected Vehicles for the purpose of driving them on public roads in Australia; and
 - (b) further or alternatively, by supplying the Affected Vehicles, including with a Compliance Plate, the suppliers of those vehicles represented that they were reasonably fit for use as a motor vehicle on public roads in Australia.
77. By reason of:
- (a) the matters pleaded in paragraphs 68 to 71 and 76 above; and
 - (b) s 55 of the ACL,
- there was a guarantee that the Affected Vehicles would be reasonably fit for the purpose of being used a motor vehicle on public roads in Australia.
78. By reason of the matters pleaded in paragraph 55 above, the Affected Vehicles were not reasonably fit for the purpose of being used as a motor vehicle on public roads in Australia because:
- (a) the Relevant Test Results and Approvals were not:
 - (i) conducted in accordance with ADR 80 or an Alternative Standard; and/or
 - (ii) did not satisfy the requirements of ADR 80 or an Alternative Standard;
 - (b) and therefore the Affected Vehicles:
 - (i) were not compliant with Australian standards; and
 - (ii) further or alternatively, were unable lawfully to be registered or used on public roads in Australia.

E.4 Major Failure

79. The failure to comply with the guarantees as pleaded in paragraphs 74 and 78 above was a “major failure” within the meaning of s 260 of the ACL as:
- (a) the Affected Vehicles would not have been acquired by a reasonable consumer fully acquainted with the nature and extend of the failure; or
 - (b) the Affected Vehicles are substantially unfit for a purpose for which the goods of the same kind are commonly supplied and they cannot, easily and within a reasonable time, be remedied to make them fit for such a purpose.

F UNCONSCIONABLE CONDUCT

80. The Plaintiff repeats paragraphs 44 to 56(b) above.
81. The conduct of Hino Japan referred to in the previous paragraph occurred in circumstances where:
- (a) Hino Japan concealed from regulators and from the Plaintiff and Group Members that the Affected Vehicles had not been tested in accordance with ADR 80 or the Alternative Standards and/or did not satisfy the requirements of ADR 80 or the Alternative Standards;
 - (b) the purpose and function of the Relevant Tests and Certifications was to satisfy regulators that the Affected Vehicles had been tested in accordance with, and/or satisfied the requirements of, ADR 80 or the Alternative Standards when they did not;
 - (c) Hino Japan thereby cheated on the emissions and fuel economy tests in the process of obtaining regulatory approval to import and sell the Affected Vehicles in Australia, and thereby obtained approval to import and sell the Affected Vehicles in Australia as a result of that cheating;
 - (d) the Commonwealth, and thereby the public (including consumers), were primarily reliant upon Hino Japan to conduct or procure any testing with integrity, and were misled;
 - (e) consumers in Australia were in a considerably weaker position than Hino Japan, and had no means of knowing that Hino Japan was engaged in cheating on its

emissions and fuel economy tests and whether and to what extent that materially impacted on the Affected Vehicle;

- (f) Hino Japan by reason of the matters set out in (a) – (e) obtained an unfair advantage over other manufacturers and suppliers of motor vehicles;
- (g) further or alternatively, Hino Japan held itself out as being environmentally responsible; and
- (h) as a result of Hino Japan’s cheating, Hino Japan and/or Hino Australia (for the benefit of Hino Japan) were able to publish advertisements and marketing materials which falsely represented to the public (including consumers) that the Affected Vehicles were:
 - (i) environmentally friendly; and/or
 - (ii) produced lower emissions than the true position in respect of some vehicles; and/or
 - (iii) provided greater fuel economy than the true position in respect of some vehicles,

which allowed Hino Japan and/or Hino Australia (to Hino Japan’s benefit) to engage in a favourable and unfair comparison with other brands of vehicles.

Particulars

- (i) *From at least July 2007 until on or about 7 October 2022, Hino Japan had and published to the public a corporate mission to “To make the world a better place to live by helping people and goods get where they need to go—safely, economically and with environmental responsibility—while focusing on sustainable development”. See the “Hino Sustainability Report 2018”, page 11.*
- (ii) *On at least 14 October 2019, 24 May 2020, 21 June 2020, 12 May 2021, 27 and 29 July 2021, 21 October 2021, 21 and 23 December 2021, 17 March 2022 and 16 June 2022, the corporate mission described in (i) was published on Hino Japan’s website.*
- (iii) *From at least 2015 to 2022, the corporate mission described in (i) was published in Hino Japan’s annual Corporate Governance Report.*

- (iv) *On 7 October 2022, Hino Japan made an announcement entitled “Measures addressing Certification Issues” which stated that Hino Japan’s corporate mission is “To make the world a better place to live by helping people and goods get where they need to go.”*
- (v) *On at least 10 January 2023, the corporate mission described in (iv) was published on Hino Japan’s website.*
- (vi) *Further particulars may be provided following discovery.*

82. By reason of the matters pleaded in paragraphs 80 and 81 above, Hino Japan, in trade or commerce, engaged in conduct in connection with the supply of goods that was, in all the circumstances, unconscionable and in contravention of s 51AB of the TPA and s 21 of the ACL.

G DECEIT

G.1 Hino Japan

83. Hino Japan made the Second Compliance Representation to the Plaintiff and Group Members:
- (a) knowing it to be untrue, or alternatively, in the absence of any genuine belief that the representation was true;
 - (b) intending that the Plaintiff and Group Members would rely on it in deciding to purchase, lease or otherwise acquire an interest in an Affected Vehicle.

Particulars

- (i) *Paragraphs 44 to 53 above are repeated.*
 - (ii) *Further particulars may be provided following discovery and the issuing of subpoenas.*
84. The Plaintiff and Group Members purchased, leased or otherwise acquired an interest in an Affected Vehicle because of the Second Compliance Representation.
85. By reason of the matters pleaded in paragraph 55, the Second Compliance Representation was false.

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

86. Hino Australia is and was at all material times Hino Japan's:

- (a) exclusive distributor in Australia, including of the Affected Vehicles; and
- (b) agent.

87. Hino Japan knew or intended that Hino Australia would make the Second Compliance Representation in the course of Hino Australia's importation and distribution of the Affected Vehicles to persons purchasing, leasing or otherwise acquiring an interest in an Affected Vehicle.

88. Hino Japan thereby authorised Hino Australia and/or intended that Hino Australia would make the Second Compliance Representation to the Plaintiff and Group Members when Hino Japan:

- (a) knew it to be untrue, or alternatively, in the absence of any genuine belief that the representation was true;
- (b) intending that the Plaintiff and Group Members would rely on it in deciding to purchase, lease or otherwise acquire an interest in an Affected Vehicle.

Particulars

(i) *Paragraphs 44 to 53 above are repeated.*

(ii) *Further particulars may be provided following discovery and the issuing of subpoenas.*

89. The Plaintiff and Group Members purchased, leased or otherwise acquired an interest in an Affected Vehicle because of the Second Compliance Representation.

90. By reason of the matters pleaded in paragraph 55, the Second Compliance Representation was false.

H EQUITABLE MISREPRESENTATION

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

91. Hino Australia made the Second Compliance Representation to the Plaintiff and Group Members intending that the Plaintiff and Group Members would rely upon it in deciding to purchase, lease or acquire an interest in an Affected Vehicle.
92. The Plaintiff and Group Members relied upon the Second Compliance Representation in purchasing, leasing or acquiring an interest in an Affected Vehicle.
93. By reason of the matters pleaded in paragraph 55, the Second Compliance Representation was false.
94. Hino Australia is and was at all material times Hino Japan's:
 - (a) exclusive distributor in Australia, including of the Affected Vehicles; and
 - (b) agent.
95. Hino Japan knew or intended that Hino Australia would make the Second Compliance Representation in the course of Hino Australia's importation and distribution of the Affected Vehicles to persons purchasing, leasing or otherwise acquiring an interest in an Affected Vehicle.
96. Hino Japan thereby authorised Hino Australia and/or intended that Hino Australia would make the Second Compliance Representation to the Plaintiff and Group Members when Hino Japan:
 - (a) knew it to be untrue, or alternatively, in the absence of any genuine belief that the representation was true;
 - (b) intending that the Plaintiff and Group Members would rely on it in deciding to purchase, lease or otherwise acquire an interest in an Affected Vehicle.

Particulars

- (i) *Paragraphs 44 to 53 above are repeated.*
- (ii) *Further particulars may be provided following discovery and the issuing of subpoenas.*

97. The Plaintiff and Group Members purchased, leased or otherwise acquired an interest in an Affected Vehicle because of the Second Compliance Representation.
98. By reason of the matters pleaded in paragraph 55, the Second Compliance Representation was false.

H.2 Second Compliance Representation by Hino Japan

99. As pleaded in paragraph 60 above, Hino Japan made the Second Compliance Representation to the Plaintiff and Group Members intending that the Plaintiff and Group Members would rely upon it in deciding to purchase, lease or acquire an interest in an Affected Vehicle.
100. Hino Japan made the Second Compliance Representation to the Plaintiff and Group Members knowing it to be untrue, or alternatively, in the absence of any genuine belief that the representation was true.

Particulars

- (i) *Paragraphs 44 to 53 above are repeated.*
- (ii) *Further particulars may be provided following discovery and the issuing of subpoenas.*
101. The Plaintiff and Group Members purchased, leased or otherwise acquired an interest in an Affected Vehicle because of the Second Compliance Representation.
102. By reason of the matters pleaded in paragraph 55, the Second Compliance Representation was false.

I ACCESSORIAL LIABILITY

103. Hino Japan engaged in the conduct pleaded in paragraph 44 to 53 above with the knowledge that Hino Australia would supply the Affected Vehicles to Hino dealers and other retailers who would in turn sell the Affected Vehicles to Australian consumers.
104. By reason of the matters pleaded in paragraph 103 above, Hino Japan was knowingly concerned in, or a party to, or aided, abetted, counselled or procured the following contraventions Hino Australia's contravention of s 52 of the TPA and s 18 of the ACL as pleaded in paragraphs 59, 64 and/or 65 above.

J LOSS OR DAMAGE

105. The Plaintiff and Group Members have purchased, leased or otherwise acquired an interest in an Affected Vehicle and have thereby suffered loss or damage.

Particulars

- (i) *The Plaintiff and Group Members acquired an interest in an Affected Vehicle that was of no or negligible value as at the time that interest was acquired, the vehicle had not been tested in accordance with the requirements of Australian law for importing and supplying motor vehicles and/or had not satisfied the requirements of Australian law for importing and supplying motor vehicles.*
- (ii) *By reason of the matters in (i) above, the Plaintiff and Group Members have suffered loss or damage equivalent to the entire consideration given by them to acquire their interest in the Affected Vehicle.*
- (iii) *Further or in the alternative, the loss or damage suffered by the Plaintiff and Group Members is the difference between the consideration given by them to acquire their interest in an Affected Vehicle and the value of that vehicle at the time of acquiring that interest had the non-compliance been known.*
- (iv) *Further or in the alternative, the loss or damage suffered by the Plaintiff and Group Members is the diminution in the value of their interest in the Affected Vehicle by virtue of, or resulting from, the disclosure of the non-compliance.*
- (v) *Further or in the alternative, the loss or damage suffered by the Plaintiff and some Group Members is the additional expenses incurred as a result of the Affected Vehicle's fuel performance being less than that which was certified.*
- (vi) *By reason of the matters in (i) above, the Plaintiff and some or all Group Members suffered excess financing costs in connection with acquiring their Affected Vehicle at a price which did not account for the reduction in value of that vehicle as described above in (ii) or, in the alternative, (iii) or, in the further alternative, (iv);*

(vii) *Further particulars of the Plaintiff's loss or damage may be provided following service of lay and expert evidence.*

K EXEMPLARY DAMAGES

106. By reason of the matters pleaded in paragraphs 44 to 56 and 83 to 90 above, Hino Japan engaged in conduct in contumelious disregard for the rights of the Plaintiff and Group Members.

L RELIEF

107. The Plaintiff on his own behalf and on behalf of Group Members seek:

- (a) an account of profits;
- (b) damages;
- (c) exemplary damages;
- (d) damages under s 236 of the ACL;
- (e) compensation under s 237 of the ACL;
- (f) damages under s 259(4) of the ACL;
- (g) compensation under s 259(3) of the ACL;
- (h) damages under s 271 of the ACL;
- (i) damages under s 82 of the TPA;
- (j) compensation under s 87 of the TPA;
- (k) interest; and
- (l) costs.

M COMMON QUESTIONS

108. The questions of law or fact common to the claims of the Plaintiff and Group Members are:
- (a) is Hino Japan a manufacturer within the meaning of s 7 of the ACL;
 - (b) is Hino Australia a manufacturer within the meaning of s 7 of the ACL;
 - (c) had the Affected Vehicles been tested in accordance with the requirements of ADR 80 or the Alternative Standards;
 - (d) did the Affected Vehicles satisfy the requirements of ADR 80;
 - (e) did Hino Japan make the:
 - (i) First Compliance Representation; and/or
 - (ii) Second Compliance Representation;
 - (f) did Hino Australia make the:
 - (i) First Compliance Representation; and/or
 - (ii) Second Compliance Representation;
 - (g) was the:
 - (i) First Compliance Representation; and/or
 - (ii) Second Compliance Representation;misleading or deceptive or likely to mislead or deceive;
 - (h) did the Commonwealth reply upon the First Compliance Representation;
 - (i) did the Plaintiff or Group Members rely upon the Second Compliance Representation;
 - (j) was there a guarantee that the Affected Vehicles would be of acceptable quality;
 - (k) were the Affected Vehicles of acceptable quality;
 - (l) was there a guarantee that the Affected Vehicles would be reasonably fit for use as a motor vehicle on public road in Australia;

- (m) were the Affected Vehicles reasonably fit for use as a motor vehicle on public roads in Australia;
- (n) was the failure to comply with the guarantees in ss 54 and 55 of the ACL a major failure within the meaning of s 260 of the ACL;
- (o) did Hino Japan engage in unconscionable conduct within the meaning of s 51AB of the TPA and s 21 of the ACL;
- (p) did Hino Japan make the Second Compliance Representation knowing that it was untrue or in the absence of any genuine belief that it was true;
- (q) did Hino Japan make the Second Compliance Representation with the intention that the Plaintiff and Group Members would rely upon it;
- (r) was Hino Australia the agent for Hino Japan in making the Second Compliance Representation;
- (s) was Hino Japan knowingly concerned in, or a party to, or aided, abetted, counselled or procured Hino Australia's contravention of s 52 of the TPA and/or s 18 of the ACL;
- (t) did Hino Japan engage in conduct in contumelious disregard for the rights of the Plaintiff and Group Members.

DATED: 29 May 2023

C Moore SC

R May

Maurice Blackburn Lawyers

Maurice Blackburn Lawyers
Solicitors for the Plaintiff