



IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
Commercial Court
Group Proceedings List

Case: S ECI 2024 00234
No. S ECI 2024 00234 Filed on: 07/11/2024 09:01 AM

B E T W E E N

Krisoula El-Helou, Plaintiff

Plaintiff

-and-

Mercedes-Benz Australia / Pacific Pty Ltd (ACN 004 411 410), First Defendant

Mercedes-Benz Group AG, Second Defendant

Mercedes-Benz AG, Third Defendant

Defendants

AMENDED STATEMENT OF CLAIM
Amended pursuant to Reg. 36.04(1)(a) of the Supreme Court
(General Civil Procedure Rules) 2015 (VIC)

Date of Document: ~~22 January 2024~~ Solicitors Code: 19741, Martin del Gallego
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Filed on behalf of: Plaintiff

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1. INTRODUCTION

1. Australia has adopted the United Nations Economic Commission for Europe Regulation No 83 *Uniform provisions concerning the approval of vehicles with regard to the emission of pollutants according to engine fuel requirements*, Revision 4, incorporating the 06 series of amendments. That regulation, as amended, is currently set out in Vehicle Standard (Australian Design Rule 79/04 — Emission Control for Light Vehicles) 2011, Volume 2.
2. ADR 79/04 requires that diesel vehicles satisfy a ‘Type I test’, which specifies certain emissions limits, including as to nitrogen oxides (**NOx**). NOx compounds are formed in the cylinder of the engine of a vehicle during the high temperature combustion process. NOx is harmful to humans and to the environment. The impacts of NOx on human health include damage to the human respiratory tract and chronic breathing problems. NOx is also harmful to vegetation and reacts with other compounds to form acid rain and smog. ADR 79/04 is directed at curbing these environmental harms.
3. In addition to requiring that vehicles pass certain tests to ensure that they meet prescribed emissions standards, the regulation expressly prohibits the use of a ‘defeat device’, which is defined to mean:

... any element of design which senses temperature, vehicle speed, engine rotational speed, transmission gear, manifold vacuum or any other parameter for the purpose of activating, modulating, delaying or deactivating the operation of any part of the emission control system, that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use...
4. ADR 79/04 is a ‘national road vehicles standard’, within the meaning of the *Road Vehicles Standards Act 2018* (Cth), and its predecessor legislation. This legislation, coupled with the rules promulgated thereunder, prohibit various actions in relation to vehicles that do not comply with national road vehicles standards, such as importing or supplying such vehicles. State and Territory regulations further prohibit matters such as using non-compliant vehicles.
5. In this proceeding, the Plaintiff alleges, on behalf of herself and Group Members, that Mercedes-Benz has deployed “defeat devices” in its vehicles, including those sold in Australia. The effect of those devices was that the affected vehicles emitted higher

levels of pollutants in normal driving conditions than they did under the test conditions applied for the purposes of obtaining regulatory approval and significantly higher levels of pollutants than were permitted under the relevant regulations and contrary to Mercedes-Benz's representation that the vehicles complied with the national standards.

6. By this proceeding, purchasers of affected vehicles seek compensation from Mercedes-Benz Group AG, Mercedes-Benz AG (which manufactured the affected vehicles, and supplied them to Australia) and Mercedes-Benz Australia / Pacific Pty Ltd (which on-supplied them to the Australian market) for losses sustained by reason of the use of those devices in Mercedes-Benz vehicles. Mercedes-Benz represented to the Australian Government, and to group members, that the affected vehicles complied with applicable emissions standards.¹ By reason of the presence of the defeat devices, those representations were untrue. Had the representations not been made, the group members would not have acquired the affected vehicles and are entitled to compensation for the loss they have suffered as a result.

2. THE PARTIES AND GROUP MEMBERS

1. The Plaintiff commences this proceeding in a representative capacity pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) ('**SCA**') on her own behalf and on behalf of all persons who:
- (a) between 1 January 2008 and the date of commencement of these proceedings ('**Relevant Period**') acquired from the First Defendant or one of its retailers or dealers in Australia, an equitable or legal interest (including under a hire-purchase agreement, but excluding a mere leasehold interest) in a Mercedes-Benz diesel vehicle:
- (i) in the same kind of vehicle of the same engine type as the Applicant's Plaintiff's Second Vehicle (as defined in paragraph 3(b) below), as set out in Annexure A to this Statement of Claim, or
- (ii) any other Mercedes-Benz vehicle sold by the First Defendant or one of its retailers or dealers in Australia containing which contained, from the time of supply, the same or similarly operating Defeat Devices (as that

¹In this Statement of Claim, the Plaintiff alleges, on behalf of herself and Group Members, that the inclusion of "defeat devices" in the Affected Vehicles made them ineligible for certain Federal Government approvals. References to such issued approvals should be read, where applicable, as being to 'purported' approvals.

~~term is defined in paragraph 23 below~~ as one or more of the Mercedes Defeat Devices ~~pleaded~~ as defined in paragraph 25 below,

(‘Affected Vehicles’); or

- (b) at any time during the Relevant Period acquired in Australia title to an Affected Vehicle from, through or under a person who acquired the vehicle in the circumstances referred to in sub-paragraph (a) above,

but not including the Defendants, or anyone who is, or has been at any time since 1 January 2008:

- (c) a wholly or partly owned subsidiary of any of the Defendants;
- (d) any authorised dealer of any of the Defendants; or
- (e) any person described in s 33E(2) of the SCA; or
- (f) the Plaintiff’s legal representatives.

(‘Group Members’, which includes the Plaintiff).

2. As at the date of commencement of this proceeding, there are seven or more Group Members.
3. The Plaintiff:
- (a) is a natural person;
- (b) acquired an Affected Vehicle on or around 19 August 2016, which was later replaced with another Affected Vehicle in or around November 2017, and which remains in the ownership of the Plaintiff;

Particulars to (b)

- (1) the Plaintiff purchased a Mercedes-Benz G-Class GL 350 BlueTEC SUV (VIN WDC1668242A702701) from LSH Auto (Melbourne) Pty Ltd t/as Mercedes-Benz Melbourne on or around 19 August 2016, for the sum of AUD\$120,000 (**First Vehicle**);

- (2) the Plaintiff's purchase of the First Vehicle was financed pursuant to an Asset Loan Agreement between the Plaintiff and Mercedes-Benz Financial Services Australia Pty Ltd and dated 17 August 2016;
 - (3) in or around October 2017, the First Vehicle was involved in a car accident and was consequently written-off and replaced in or around November 2017 pursuant to a policy of insurance underwritten by QBE Insurance (Australia) Limited held by the Plaintiff, with an equivalent new vehicle, namely a Mercedes-Benz G-Class GLS 350d 4MATIC SUV (VIN WDC1668242B020111) (**Second Vehicle**); and
 - (4) the Plaintiff retains ownership of the Second Vehicle.
- (c) was at the relevant time a consumer as term is defined in s 3 of the *Australian Consumer Law ('ACL')*.

Particulars to (c)

- (1) Section 3(1) and 3(10) of the ACL. In her claim, the Plaintiff relies on subsection 3(1)(b) of the ACL.
- (2) References to the *Australian Consumer Law* or ACL in this pleading are references to Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**'CCA'**), whereby that law applies:
 - a. as a law of the Commonwealth pursuant to s 131(1) of the CCA to supplies of Affected Vehicles by corporations; and
 - b. as a law of each State or Territory pursuant to:
 - i. s 28 of the *Fair Trading Act 1987* (NSW) (**'NSW ACL'**);
 - ii. s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT) (**'ACT ACL'**);
 - iii. s 27 of the *Consumer Affairs and Fair Trading Act 1990* (NT) (**'NT ACL'**);

- iv. s 16 of the *Fair Trading Act 1989* (Qld) (**'Qld ACL'**);
 - v. s 14 of the *Fair Trading Act 1987* (SA) (**'SA ACL'**);
 - vi. s 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas) (**'Tas ACL'**);
 - vii. s 8 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic) (**'Vic ACL'**); and
 - viii. s 19 of the *Fair Trading Act 2010* (WA) (**'WA ACL'**),
- (together, **'State and Territory ACL'**).

(3) Further, references to the *Trade Practices Act 1974* (Cth) (**'TPA'**) in this pleading are to be read (as applicable) as references both to that legislation, and to cognate provisions under predecessor consumer protection legislation in each State and Territory (together, **'State and Territory Pre-ACL Legislation'**).

(4) The applicable State and Territory Pre-ACL Legislation with respect to each reference to the TPA is identified in the corresponding section of Schedule 2 to this Statement of Claim.

4. The First Defendant ~~is and was at all material times:~~

- (a) is and was at all material times a corporation registered in Australia, able to be sued in its corporate name and style;
- (b) is and was at all material times an importer, marketer and distributor of the Affected Vehicles;
- (c) is and was at all material times ~~at all relevant times~~ a 'manufacturer' of the Affected Vehicles, within the meaning of:
 - (i) s 7(1)(c) and, further and alternatively, s 7(1)(e) of the ACL; or s 74A(4) of the TPA because, at least until 1 July 2021, the First Defendant caused, or alternatively permitted, to be applied to the Affected Vehicles supplied by the First Defendant, the name "Mercedes-Benz Australia / Pacific Pty Ltd", that being a name by which the First Defendant carries on business;
 - or

Particulars to (i)

At least until 1 July 2021, compliance plates affixed to the Affected Vehicles bore the words “Mercedes-Benz Australia / Pacific Pty Ltd”.

(ii) alternatively under s 7(1)(e) of the ACL, and further and alternatively under s 74A(3)(b) or s 74A(4) of the TPA, (or both); because the First Defendant imported the Affected Vehicles into Australia, in circumstances where:

1. the First Defendant was not otherwise the manufacturer of the Affected Vehicles; and
2. at the time of each importation, until about 1 November 2019 the Second Defendant and further from about 1 November 2019 the Third Defendant, as manufacturers of the Affected Vehicles (as pleaded at paragraphs 5(d) and 6(c) below), did not have a place of business in Australia;

(d) has, and at all material times had, the Second Defendant as its ultimate parent entity; and

(e) has, and at all material times had, from about 1 November 2019 had the Third Defendant as its intermediate parent entity.

5. The Second Defendant is and was at all material times:

(a) a corporation registered in the Federal Republic of Germany, able to be sued in its corporate name and style;

(b) until 1 February 2022, known as Daimler AG;

(c) until about 1 November 2019, a developer, manufacturer and distributor of vehicles, including the Affected Vehicles;

(d) ~~until November 2019,~~ a ‘manufacturer’ of the Affected Vehicles, within the meaning of:

(i) ss 7(1)(a), 7(1)(b), 7(1)(c), and 7(1)(d) of the ACL, or any one of them; or

(ii) ss 74A(1), 74A(3)(a), 74A(3)(b), and 74A(3)(c) of the TPA, or any one of them, because the Second Defendant:

a. until about 1 November 2019, produced or assembled the Affected Vehicles;

b. held itself out to the public as the manufacturer of the Affected Vehicles;

c. caused, or alternatively permitted, to be applied to the Affected Vehicles supplied by the First Defendant, a name or brand or mark being:

i. a name by which the Second Defendant carries on business; or

ii. a brand or mark of the Second Defendant; and/or

d. caused or permitted the First Defendant, in connection with:

i. the supply or possible supply of the Affected Vehicles by the First Defendant; or

ii. the promotion of the supply or use of the Affected Vehicles by the First Defendant,

to hold out the Second Defendant to the public as the manufacturer of the goods;

Particulars to (d)

(1) At all relevant times, up to about 1 November 2019, the words "Daimler AG" were applied to a sticker applied to the Affected Vehicles.

(2) At all relevant times the Affected Vehicles were affixed with one or more of the following marks, or other trademarks registered to the Second Defendant in Australia:



MERCEDES-BENZ

(3) Further particulars may be provided.

- (e) a corporation carrying on business in Australia, within the meaning of s 5 of the CCA or s 5 of the TPA:
- (i) on its own account; and
 - (ii) further and alternatively, because the First Defendant was acting on behalf of the Second Defendant at all material times,

Particulars to (e)

- (1) Repeat the matters pleaded in paragraph 37 below, insofar as that paragraph relates to the Second Defendant.
- (2) The First Defendant was at all material times economically dependent on the Second Defendant for the supply of passenger vehicle stock for retail.
- (3) At all material times, the Second Defendant has been responsible for the management of the corporate group, including the First Defendant.
- (4) The First Defendant has at all material times been a consolidated subsidiary of the Second Defendant.
- (5) At all material times the Second Defendant has provided ad hoc financial support to the First Defendant.

- (6) From time to time until at least 2018, the Second Defendant has taken out loans on behalf of, and provided loans to, the First Defendant.
- (7) At all material times between at least 2008 and 2012, the Second Defendant paid premiums for directors and officers liability insurance and legal expenses insurance on behalf of the First Defendant.
- (8) From at least 2010, the Second Defendant has determined with which counterparties the First Defendant enters into derivative contracts.
- (9) At all material times from at least 2011, the Second Defendant has guaranteed debt instruments and securities issued by the First Defendant.
- (10) At all material times since at least 2013, the Second Defendant has guaranteed bank loans taken out by the First Defendant.
- (11) At all material times up to at least 2020, the Second Defendant has acquired derivatives from external parties on behalf of the First Defendant to hedge interest and currency risk of certain loans and borrowings.
- (12) Employees or representatives of the Second Defendant have from time to time visited Australia and engaged in commercial activities such as marketing.
- (13) The Second Defendant has from time to time used its Twitter (now 'X') account to engage with Australian consumers and to publicise information relating to Mercedes-Benz business in Australia.
- (14) The Second Defendant has from time to time used its Facebook account to publicise the use of Mercedes Benz vehicles in Australia.
- (15) The Second Defendant has from time to time used its YouTube account to publicise Mercedes Benz vehicles in Australia.

(16) Further particulars may be provided following discovery.

- (f) further and alternatively to (e) above, for vehicles sold after 1 January 2011, a person otherwise connected with each State or Territory, within the meaning of the State and Territory ACL, including:
- (i) s 32(d), NSW ACL;
 - (ii) s 11(d), ACT ACL;
 - (iii) s 31(d), NT ACL;
 - (iv) s 4A(d), Qld ACL;
 - (v) s 18(d), SA ACL;
 - (vi) s 10(d), Tas ACL;
 - (vii) s 12(1)(d), Vic ACL (from 1 July 2012 only); and
 - (viii) s 11(3)(d), WA ACL;
- (g) further and alternatively to (e) above, for vehicles sold prior to 1 January 2011 (or prior to 1 July 2012 in the case of Victoria), ~~was,~~ in relation to its conduct as alleged in this Statement of Claim, subject to the relevant provisions of the State and Territory Pre-ACL Legislation.

Particulars to (g)

Fair Trading Act 1987 (NSW), s 5A.

Fair Trading Act 1999 (VIC), s 6.

~~*Fair Trading Act 1989 (QLD), s 4.*~~

Fair Trading Act 1987 (WA), s 4.

Fair Trading Act 1992 (ACT), s 10.

~~*Fair Trading Act 1987 (SA), s 55.*~~

~~*Fair Trading Act 1990 (TAS), s 12.*~~

Consumer Affairs and Fair Trading Act 1990 (NT).

6. The Third Defendant, since about 1 November 2019, has been:
- (a) a corporation registered in the Federal Republic of Germany, able to be sued in its corporate name and style;
 - (b) a developer, manufacturer and distributor of vehicles, including the Affected Vehicles;
 - (c) a 'manufacturer' of the Affected vehicles, within the meaning of ss 7(1)(a), 7(1)(b), 7(1)(c), and 7(1)(d) of the ACL or any one of them, because the Third Defendant;
 - (i) produced or assembled the Affected Vehicles;
 - (ii) held itself out to the public as the manufacturer of the Affected Vehicles;
 - (iii) caused, or alternatively permitted, to be applied to the Affected Vehicles supplied by the First Defendant, the name "Mercedes-Benz", that being a name by which the Third Defendant carries on business;
 - (iv) caused or permitted the First Defendant, in connection with:
 - a. the supply or possible supply of the Affected Vehicles by the First Defendant; or
 - b. the promotion of the supply or use of the Affected Vehicles by the First Defendant,

to hold out the Third Defendant to the public as the manufacturer of the goods;

Particulars to (c)

- (1) At all relevant times, from about 1 November 2019, the words "Mercedes-Benz AG" were applied to a sticker applied to the Affected Vehicles.
- (2) The 2019 Daimler AG Annual Report stated that Mercedes-Benz AG would be responsible for the business of Mercedes-Benz Cars and Vans from 1 November 2019 (at page 47 of that Report).

- (d) a corporation carrying on business in Australia, within the meaning of s 5 of the CCA, by reason of the matters pleaded in paragraph 37 below, insofar as that paragraph relates to the Third Defendant; and
- (e) further and alternatively to (d) above, a person otherwise connected with each State or Territory, within the meaning of the State and Territory ACL as pleaded in paragraph 5(f) above.

3. AUSTRALIAN DESIGN REQUIREMENTS

7. Each of the following standards was a 'national standard' within the meaning of s 7 of the *Motor Vehicle Standards Act 1989* (Cth) ('**MVS Act**') and/or a 'national road vehicle standard' within the meaning of s 12 of the *Road Vehicle Standards Act 2018* (Cth) ('**RVS Act**'), applicable during the Relevant Period:

- (a) *Vehicle Standard (Australian Design Rule 79/01 - Emission Control for Light Vehicles) 2005* (Cth) ('**ADR 79/01**');
- (b) *Vehicle Standard (Australian Design Rule 79/02 - Emission Control for Light Vehicles) 2005* (Cth) ('**ADR 79/02**');
- (c) *Vehicle Standard (Australian Design Rule 79/03 - Emission Control for Light Vehicles) 2011* (Cth) ('**ADR 79/03**'); and
- (d) the *Vehicle Standard (Australian Design Rule 79/04 – Emission Control for Light Vehicles) 2011* (Cth) ('**ADR 79/04**'),

Particulars to (d)

From 1 July 2021 ADR 79/04 continued in force as if it were a national road vehicle standard determined under *Road Vehicle Standards Act 2018* (Cth), s 12; *Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018* (Cth), (**RVS Transitional Act**) Schedule 3, ~~Part 2~~, item 2.

(each of them and together comprising '**Australian Design Rule 79**').

8. Throughout the Relevant Period, Australian Design Rule 79 applied to the design and construction of motor vehicles and accordingly was an applicable vehicle standard for the purposes of State and Territory Laws, except:

- (a) in the Australian Capital Territory, for vehicles which, despite non-compliance with Australian Design Rule 79, had been entered onto the Register of Approved Vehicles ('RAV') within the meaning of s 14 of the RVS Act; and
- (b) in the Northern Territory, for vehicles which, despite non-compliance with Australian Design Rule 79, had been entered onto the RAV and complied with the conditions for approval of entry (if any).

Particulars

The particulars to this paragraph are set out in the corresponding section of Schedule 1 to this Statement of Claim.

9. Throughout the Relevant Period, it was an offence under State and Territory laws for a person to use on a road a motor vehicle that did not comply with the applicable vehicle standards for the vehicle, including Australian Design Rule 79 as described in paragraph 8 above.

Particulars

The particulars to this paragraph are set out in the corresponding section of Schedule 1 to this Statement of Claim.

10. Throughout the Relevant Period, it was an offence under State and Territory laws for a person to use an unregistered motor vehicle on a road.

Particulars

The particulars to this paragraph are set out in the corresponding section of Schedule 1 to this Statement of Claim.

11. Throughout the Relevant Period, for a motor vehicle to be eligible for registration without conditions under State and Territory laws, it was required to comply with the applicable vehicle standards for the vehicle, including Australian Design Rule 79 as described in paragraph 8 above.

Particulars

The particulars to this paragraph are set out in the corresponding section of Schedule 1 to this Statement of Claim.

12. Throughout the Relevant Period, 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, including Australian Design Rule 79 as described in paragraph 8 above.

Particulars

The particulars to this paragraph are set out in the corresponding section of Schedule 1 to this Statement of Claim.

13. Throughout the Relevant Period, 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, including Australian Design Rule 79 as described in paragraph 8 above.

Particulars

The particulars to this paragraph are set out in the corresponding section of Schedule 1 to this Statement of Claim.

14. Throughout the Relevant Period, 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, including Australian Design Rule 79 as described in paragraph 8 above, and on discovering that it did not, the power to prohibit the use of the vehicle.

Particulars

The particulars to this paragraph are set out in the corresponding section of Schedule 1 to this Statement of Claim.

15. Throughout the Relevant Period prior to 1 July 2021:

- (a) it was an offence under Commonwealth law to supply to the market a motor vehicle that either did not comply with the applicable vehicle standards for the vehicle, or did not have an identification plate within the meaning of s 10 of the MVS Act (**'Compliance Plate'**);

Particulars to (a)

MVS Act, s 14.

- (b) it was an offence under Commonwealth law to import into Australia a motor vehicle that did not comply with the applicable vehicle standards for the vehicle, or did not have a Compliance Plate;

Particulars to (b)

MVS Act, s 18.

- (c) in order to be fitted with a Compliance Plate, vehicles were required to comply with the applicable vehicle standards for the vehicle, subject to limited exceptions set out in the MVS Act, s 10A.

Particulars to (c)

If new vehicles of a particular type did not comply with the national standards, then the Minister could give written approval for a Compliance Plate for vehicles of that type only if satisfied that the non-compliance was only in minor and inconsequential respects: MVS Act, s 10A(2) and (3).

16. From 1 July 2021 onwards:

- (a) it was an offence under Commonwealth law to import into Australia a motor vehicle if either:
- (i) between 1 July 2021 and ~~4 July~~ 30 June 2023 (the transitional period), the vehicle had not received an approval under the MVS Act which approval:
- (1) was in force immediately before commencement of the RVS Act or was granted after commencement of the RVS Act pursuant to the relevant transitional provisions; and
- (2) was taken to continue in force during the RVS Act's transitional period subject to the provisions of the MVS Act; or
- (ii) the importer was not the holder of a road vehicle type approval that was in force and applied to the vehicle, or authorised by such a holder, or the holder of a relevant import approval; and

Particulars to (a)

- (1) RVS Act, s 22.

(2) ~~Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018 (Cth), RVS Transitional Act, Schedule 3, Items ss 4 – 6.~~

(3) *Road Vehicle Standards Rules 2019 (Cth) (RVS Rules)*, rr 15, 19.

(b) the satisfaction of a 'grant of a road vehicle type approval' pathway required either that:

(i) the type of vehicle complied with the applicable national road vehicle standards, as in force at the time the Secretary approved the application; or

(ii) the type of vehicle substantially complied with the applicable national road vehicle standards, as in force at the time the Secretary decided the application, if the Secretary decided that:

(1) the type of vehicle's non-compliance ~~is~~ was only in minor or inconsequential respects; or

(2) the type of vehicle complies to an extent that ~~makes~~ made it suitable for use on a public road in Australia;

Particulars to (b)

(1) RVS Act, ss 14, 15.

(2) RVS Rules, rr 15, 19.

(3) A type of vehicle was suitable for use on a public road in Australia only if it would not pose an unacceptable risk to public safety and would be appropriate for such use.

(c) a vehicle could be entered on the RAV on the basis that it was a vehicle of a particular type only if it satisfied the requirements of the type approval pathway, including that a road vehicle type approval that was in force applied to that type of vehicle;

Particulars to (c)

(1) RVS Act, s 15.

(2) RVS Rules, rr 15, 19.

(d) it was an offence under Commonwealth law for a person to enter or authorise the entry of information on the RAV relating to (or purportedly relating) to a vehicle, knowing that the information is incorrect;

Particulars to (d)

RVS Act, s 17.

(e) it was an offence under Commonwealth law to provide a vehicle to another person in Australia for the first time if the vehicle was not entered on the RAV, unless certain exceptions applied.

Particulars to (e)

RVS Act, s 24 (subject to the exceptions in s 24(3) and (4)).

17. The Minister may issue a recall notice for a road vehicle if it appears to the Minister that the vehicle does not comply with applicable national road vehicle standards. It is an offence to fail to comply with any such recall notice.

Particulars

(1) RVS Act, ss 37, 38.

(2) RVS Rules, r 206.

4. DEFEAT DEVICES

18. Throughout the Relevant Period, Australian Design Rule 79 applied to each of the Affected Vehicles.

Particulars

Each of the Affected Vehicles was an M or N category vehicle with a gross vehicle mass less than or equal to 3.5 tonnes, within the meaning of reg 2.1 of Australian Design Rule 79.

19. Throughout the Relevant Period, each of the Affected Vehicles was required to comply with Australian Design Rule 79 in order lawfully to be ~~allowed to be~~ sold in Australia.

Particulars

Repeat paragraphs 7, 15, 16 and 18 above.

20. Throughout the Relevant Period, each of the Affected Vehicles was required to comply with Australian Design Rule 79, as described in paragraph 8 above, in order lawfully to be ~~allowed to be~~ driven on public roads in Australia.

Particulars

Repeat paragraphs 7 to 9 and 18 above.

21. Throughout the Relevant Period, each of the Affected Vehicles was required to comply with Australian Design Rule 79, as described in paragraph 8 above, in order lawfully to be ~~allowed to be~~ registered in Australia.

Particulars

Repeat paragraphs 7, 8, 11 and 18 above.

22. Throughout the Relevant Period, Australian Design Rule 79 prohibited the use of 'defeat devices' in vehicles.

Particulars

Australian Design Rule 79, Appendix A, rr 2.16, 5.1.2.1.

23. Throughout the Relevant Period, Australian Design Rule 79 defined a defeat device to mean "any element of design which senses temperature, vehicle speed, engine rotational speed, transmission gear, manifold vacuum or any other parameter for the purpose of activating, modulating, delaying or deactivating the operation of any part of the emission control system, that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use" ('**Defeat Device**').

Particulars

Australian Design Rule 79, Appendix A, r 2.16.

24. Throughout the Relevant Period, Australian Design Rule 79 provided that such an element of design may not be considered a Defeat Device if the need for the device is

justified in terms of protecting the engine against damage or accident and for safe operation of the vehicle (**'Damage and Safety Exception'**).

Particulars

Australian Design Rule 79, Appendix A, r 2.16.1.

25. From the time of supply, tThe Plaintiff's Second Vehicle contained, and further the Affected Vehicles contained one or more of, ~~the following~~ elements of design, which individually and further in combination, constituted a Defeat Device, as pleaded in paragraphs 25A and 25B below ('Mercedes Defeat Devices').:

25A. From the time of supply, the Mercedes Defeat Devices included one or more of the following elements of design ('Identified Defeat Devices'):

- (a) 'cycle detection', where an Affected Vehicle's Engine Control Unit (**'ECU'**) detects whether or not the vehicle has been prepared or operated in a manner consistent with the performance of the New European Driving Cycle (**'NEDC'**) and its pre-conditioning phase, which is an element of the 'Type I test' prescribed for emissions testing by Australian Design Rule 79. If the ECU does not detect the preparation for and/or operation in accordance with the NEDC, the ECU switches the vehicle's emissions control system to a mode that reduces the effectiveness of the system (an **'Alternative Mode'**);

Particulars to (a)

- (1) The mechanism/s by which the vehicle detects whether or not the vehicle has been prepared for or operated in a manner consistent with performance of the NEDC is not currently known to the Plaintiff.
- (2) The material features of the 'Alternative Mode' are a combination of one or more the following features: (i) reduction of the level of exhaust gas recirculation; and / or (ii) reduction of the rate of urea dosing; and / or (iii) other in-cylinder combustion alterations, such as the timing of fuel injection into the engine chamber. Which of the Mercedes Defeat Devices uses which one of these features, in what combination, or whether they utilise any other bespoke features is not currently known to the Plaintiff.

- (3) Whether the vehicle has one or more Alternative Modes is not currently known to the Plaintiff.
 - (4) The Alternative Mode reduces the effectiveness of the emissions control system primarily as follows: (i) reducing exhaust gas recirculation increases the emission of nitrogen oxides, primarily as a result of increasing the temperature of combustion; (ii) reducing the rate of urea dosing, which means there is less urea available to react with and neutralise nitrogen oxides, increasing tailpipe nitrogen oxide emissions; (iii) by changing the timing of diesel injection into the engine to enhance performance of the vehicle, increasing nitrogen oxides. To the extent that there are other features of the Alternative Mode unknown to the Plaintiff, she is not presently able to identify how they reduce the effectiveness of the emissions control system.
 - (5) Further particulars may be provided following discovery, or with the Plaintiff's evidence.
- (b) 'thermal window detection', where an Affected Vehicle's ECU activates an Alternative Mode when it senses that the ambient air temperature is outside a certain range;

Particulars to (b)

- (1) The Plaintiff repeats particulars (2), (3) and (4) sub-paragraph (a) above.
 - (2) An Alternative Mode is activated when the ECU senses that the ambient air temperature is around 18 degrees Celsius or lower.
 - (3) Further particulars may be provided following discovery, or with the Plaintiff's evidence, including as to whether an Alternative Mode is also activated when the ambient air temperature is above 30 degrees Celsius.
- (c) 'exhaust mass limit detection', where an Affected Vehicle's ECU activates an Alternative Mode ~~that reduces ammonia slip and urea consumption (thereby increasing the emission of nitrogen oxides)~~, when it senses that the Affected Vehicle's exhaust mass flow exceeds a pre-determined level;

Particulars to (c)

- (1) The Plaintiff repeats particulars (2), (3) and (4) sub-paragraph (a) above.
 - (2) The level/s of exhaust mass flow which trigger the operation of this Defeat Device is currently not known to the Plaintiff.
 - (3) Further particulars may be provided following discovery, or with the Plaintiff's evidence.
- (d) 'SCR temperature detection', where an Affected Vehicle's ECU activates an Alternative Mode ~~that reduces ammonia slip and urea consumption (thereby increasing the emission of nitrogen oxides)~~, when it senses that the vehicle's Selective Catalytic Reaction Catalyst ('**SCR**') reaches a certain temperature;

Particulars to (d)

- (1) The Plaintiff repeats particulars (2), (3) and (4) sub-paragraph (a) above.
 - (2) The temperature/s of the SCR which triggers the operation of this Defeat Device is not currently known to the Plaintiff.
 - (3) Further particulars may be provided following discovery, or with the Plaintiff's evidence.
- (e) 'AdBlue (urea) dosing detection', where an Affected Vehicle's ECU activates an Alternative Mode ~~that reduces ammonia slip and urea consumption (thereby increasing the emission of nitrogen oxides)~~, when it senses that the vehicle's average AdBlue consumption exceeds a certain rate; and

Particulars to (e)

- (1) The Plaintiff repeats particulars (2), (3) and (4) sub-paragraph (a) above.
- (2) The AdBlue consumption rate/s which trigger the operation of this Defeat Device is not currently known to the Plaintiff.
- (3) Further particulars may be provided following discovery, or with the Plaintiff's evidence.

- (f) EGR hot & idle protection, where an Affected Vehicle's ECU activates an Alternative Mode that reduces the vehicle's exhaust gas recirculation (**"EGR"**), when it senses that the engine is warmed up but idling; and

Particulars to (f)

- (1) The Plaintiff repeats particulars (2), (3) and (4) sub-paragraph (a) above.
- (2) The temperature/s at which the vehicle detects that the engine is warmed up is not presently known to the Plaintiff.
- (3) Further particulars may be provided following discovery, or with the Plaintiff's evidence.

Particulars to paragraph 25A generally

- (1) The Plaintiff's Second Vehicle contains each of the Identified Defeat Devices.
- (2) The Plaintiff intends to seek leave to amend to plead further Identified Defeat Devices following discovery, or with the Plaintiff's evidence, if and when such Defeat Devices are sufficiently substantiated.

25B. The Mercedes Defeat Devices included elements of design, other than the Identified Defeat Devices, which constituted a Defeat Device ('Unidentified Defeat Devices').

Particulars

- (1) The existence of the Unidentified Defeat Devices is to be inferred from the following matters:
- a. a report prepared by Felix Domke, expert in emissions-related functionality in diesel electronic control units, dated 28 September 2020 and entitled "Mercedes E350T Emission System Analysis" indicates that Mercedes-Benz diesel vehicles have incorporated Defeat Devices other than the Identified Defeat Devices, including:
- i. 'NOx mass flow', where the vehicles' ECU activates an Alternative Mode when the NOx mass flow exceeds a calculated threshold;

- ii. 'Intake air temperature', where the vehicles' ECU activates an Alternative Mode when the intake air temperature is below a certain threshold;
 - iii. 'Restart protection', where the vehicles' ECU activates an Alternative Mode when the car is stopped and restarted within a short period of time; or
 - iv. 'Engine Start Temperature', where the vehicles' ECU activates an Alternative Mode depending on the combination of maximum observed engine temperature during a driving cycle, and the engine start temperature.
- b. the concealed nature of Defeat Devices, such that the Identified Defeat Devices are not comprehensive of all Defeat Devices in the Affected Vehicles;
- c. recall notices issued by the Kraftfahrt-Bundesamt (KBA), being the German Federal Motor Transport Authority, in relation to the use of unauthorised defeat devices or unauthorised reduction in the effectiveness of the emissions control system for Mercedes diesel Euro 5 vehicles manufactured between 2008 and 2014, with the following KBA reference numbers:
- i. 9715;
 - ii. 9992;
 - iii. 10005;
 - iv. 10162;
 - v. 10425;
 - vi. 11076; and
 - vii. 11210,
- (together, KBA Defeat Device Recall Notices).

(2) The Plaintiff is not in a position, prior to discovery, to identify the Unidentified Defeat Devices.

(3) The Unidentified Defeat Devices are within the Second and Third Defendants' means of knowledge.

(4) The Plaintiff repeats the general particulars to paragraph 25A above.

26. ~~The elements of design pleaded in the preceding paragraph constituted a Defeat Device ('Mercedes Defeat Devices').~~ Not used.

27. None of the Mercedes Identified Defeat Devices fell within the Damage and Safety Exception.

Particulars

(1) None of the Mercedes Identified Defeat Devices was required for the protection of an Affected Vehicle's engine against damage or accident and for safe operation of the vehicle.

(2) The temperature below which the thermal window detection switches the emissions control system to an Alternative Mode is not low enough to justify the strategy in terms of protecting the engine against damage or accident and for safe operation of the vehicle.

27A. By reason of the Mercedes Defeat Devices, each of the Affected Vehicles failed to comply with Australian Design Rule 79.

28. Until about 1 November 2019 ~~t~~The Second Defendant, and further from about 1 November 2019 the Third Defendant, programmed (or caused or permitted to be programmed) each of the Affected Vehicles to incorporate and use the Mercedes Defeat Devices.

Particulars

Repeat paragraphs 5(c) and 6(b) above, in relation to the Second and Third Defendants, respectively.

5. MISLEADING OR DECEPTIVE CONDUCT

A. GENERAL REPRESENTATION

29. The First Defendant, during the Relevant Period:

- (a) imported the Affected Vehicles into Australia;
- (b) in relation to the period prior to 1 July 2021, sought and obtained approval for ~~and affixed~~ Compliance Plates ~~to for~~ the Affected Vehicles identifying the vehicles' compliance with the MVSA Act, and during the period prior to 1 July 2023, affixed or caused to be affixed Compliance Plates to such Affected Vehicles;

Particulars to (b)

The First Defendant lodged applications with the Department of Infrastructure and Transport for an Identification Plate Approval, and in so doing, the First Defendant provided evidence items certifying that Affected Vehicles complied with the Australian Design Rules, including Australian Design Rule 79.

- (c) from the period from 1 July 2021 to 1 January 2022, sought and obtained the transition of any 'old approval' for Compliance Plates to be fitted to the Affected Vehicles to a 'new approval' for the Affected Vehicles under the RVS Act;

Particulars to (c)

- (1) 'Old approval' and 'new approval' have the meanings in RVS Transitional Act, Schedule 3, Item 5(1).
- (2) The First Defendant provided to the Department of Infrastructure, Transport, Regional Development and Communications a signed declaration that the First Defendant satisfied the RVS Rules' conditions applying to road vehicle type approvals.
- (d) in relation to the period from 1 July 2021, sought and obtained road vehicle type approval under the RVS Act for the types of Affected Vehicles ~~and registration of the Affected Vehicles on the RAV within the meaning of s 14 of the RVS Act~~ identifying the vehicles' compliance with that Act; and

Particulars to (d)

The First Defendant applied to the Department of Infrastructure, Transport, Regional Development and Communications for the grant of road vehicle type approvals to ~~enter~~ allow the Affected Vehicles to be entered on the RAV by satisfaction of the type approval pathway. The applications were accompanied by supporting documents purporting to demonstrate compliance with the national road vehicle standards.

- (e) in relation to the period from 1 July 2021, entered or authorised the entry of information on the RAV relating to Affected Vehicles by representing that each such vehicle satisfied the requirements of the type approval pathway; and
- (f) supplied the Affected Vehicles to the market in Australia.

30. By reason of the matters referred to in paragraph 29 above, and each of them, the First Defendant represented that the Affected Vehicles complied with the “national standards” within the meaning of s 7 of the MVS Act, or the “national road vehicle standards” within the meaning of s 12 of the RVS Act (**‘General Representation’**).

Particulars

The General Representation was directed to prospective purchasers of the Affected Vehicles, members of the trade, the Department of Infrastructure and Transport, and the Department of Infrastructure, Transport, Regional Development and Communications.

- 31. The General Representation was made in trade or commerce.
- 32. By reason of the matters referred to in paragraph 25, 25A and 25B~~26~~ above, the General Representation was and is false.
- 33. By reason of the matters referred to in paragraphs 29 to 32 above, the First Defendant has engaged in conduct that was misleading or deceptive or was likely to mislead or deceive, in contravention of s 18 of the ACL or s 52 of the TPA.
- 34. By reason of the matters referred to in paragraphs 29 to 32 above, the First Defendant engaged in conduct that was liable to mislead the public (including by reason of the matters pleaded in paragraphs 15 and 16 above) as to the nature, the manufacturing

process, the characteristics and/or the suitability for purpose of each of the Affected Vehicles, in contravention of s 33 of the ACL, or s 55 of the TPA.

Particulars

- (1) By seeking and obtaining the Federal regulatory approval pleaded in paragraph 29(b) above, the First Defendant enabled Compliance Plates to be physically affixed to the relevant Affected Vehicles, which Compliance Plates stated that the vehicle was “manufactured to comply with the [MVS Act]”, and the First Defendant caused those plates to be so affixed.
 - (2) By seeking and obtaining the Federal regulatory approval pleaded in paragraph 29(c) above, the First Defendant enabled the relevant Affected Vehicles to be entered on the RAV, a publicly searchable database, and the First Defendant caused those entries to be made.
 - (3) Obtaining the approvals referred to in particulars (1) and (2) above was a necessary pre-condition to the Affected Vehicles being lawfully imported into, and supplied in, Australia (refer paragraphs 15, 16 and 19 above).
 - (4) By reason of the matters referred to in particulars (1) to (3) above, or further or alternatively, by reason of the facts of importation and supply of the vehicles to the market in Australia, members of the public, comprising potential buyers for vehicles in the nature of the Affected Vehicles, were liable to understand that any Affected Vehicles available for sale in Australia by the First Defendant or its affiliated dealers complied with all relevant standards applicable to the sale of such vehicles.
 - (5) Further particulars may be provided.
35. By reason of the matters referred to in paragraphs 29 to 32 above, the First Defendant made a false or misleading representation that each of the Affected Vehicles:
- (a) was of a particular standard or quality; and / or
 - (b) had particular performance characteristics, uses or benefits,
- in contravention of s 29(1)(a) and (g) respectively of the ACL, or s 53(a) and (c) of the TPA.

36. The representation referred to in paragraph 35 above was made in connection with the supply or possible supply of goods or in connection with the promotion of the supply of goods.
37. By reason of the following matters and each of them, until about 1 November 2019 the Second Defendant, and further from about 1 November 2019 the Third Defendant, was a person “involved in” (within the meaning of that term as defined in s 2 of the ACL or s 75B of the TPA) the First Defendant’s contraventions of the ACL (or the TPA) pleaded in paragraphs 33, 34 and 35 above:
- (a) the Second Defendant and/or the Third Defendant designed and manufactured the Affected Vehicles, which included installing and / or programming (or causing or permitting the installation or programming of) the Mercedes Defeat Devices identified pleaded in paragraph 25 above in those vehicles, for the purpose of export to and sale in Australia;
 - (b) the Second Defendant and/or the Third Defendant supplied the Affected Vehicles to the First Defendant for sale in Australia;
 - (c) the Second Defendant and/or the Third Defendant conducted, or caused to be conducted, testing of, and provided information in respect of the Affected Vehicles, for the purpose of the First Defendant procuring the regulatory approvals referred to in paragraphs 29 (b) and (c) above;
 - (d) at all material times, the Second Defendant and/or the Third Defendant knew the facts pleaded in paragraphs 29, 30 and 32 above; ~~and~~

Particulars to (d)

Repeat sub-paragraphs (a) to (c) above and paragraphs 5, 6 and 28 above.

- (e) at all material times, the Second Defendant and/or the Third Defendant knew that the use of Defeat Devices was prohibited in Australia; and-

Particulars to (e)

- (1) The Second and Third Defendants were sophisticated manufacturers of vehicles for the European and Australian markets.

(2) At all material times, the use of a Defeat Device was prohibited under Australian Design Rule 79, and under the Economic Commission for Europe of the United Nations (UN/ECE) Regulation No. 83 – Uniform provisions concerning the approval of vehicles with regard to the emission of pollutants according to engine fuel requirements, on which Australian Design Rule 79 was modelled.

(3) The Second and Third Defendants conducted business in or were otherwise connected with Australia, as pleaded in paragraphs 5 and 6 above, respectively.

(f) the Second Defendant and/or the Third Defendant provided to the First Defendant the information necessary to procure the approvals referred to in sub-paragraphs (b) and (c) of paragraph 29 above.

38. Further and in the alternative, until about 1 November 2019 the Second Defendant, and further from about 1 November 2019 the Third Defendant, itself made the General Representation, by reason of the matters referred to in paragraph 37 above and each of them.

39. By reason of the General Representation, each of the Group Members respectively acquired an interest in one or more of the Affected Vehicles.

Particulars

But for the First Defendant making the General Representation ~~to the Australian Government~~ in the circumstances pleaded in paragraph 29 above, by reason of one or more of the matters pleaded in paragraphs 9 to 16 above, the Affected Vehicles would not have been available for sale in Australia.

40. Further and in the alternative, by reason of the General Representation, dealers made the Affected Vehicles available for sale in Australia.

Particulars

Repeat the particulars to paragraph 39 above.

41. In the premises, but for the General Representation, the Group Members would not have acquired an interest in the Affected Vehicles, or alternatively would not have paid the price they did for that interest.

Particulars

The Plaintiff would not have acquired the Second Vehicle, but for the General Representation.

42. In the premises and by reason of the contraventions referred to in paragraphs 33, 34 and 35 above and each of them, each of the Group Members has suffered loss or damage, ~~and is continuing to do so.~~

Particulars

- (1) The Group Members paid more for the interest they acquired in each of the Affected Vehicles than the true value of that interest at the time.
- (2) Further particulars will be provided with the Plaintiff's evidence.

43. The First Defendant and/or until 1 November 2019 the Second Defendant, and/or the Third Defendant from about 1 November 2019, is liable to compensate the Group Members for the loss or damage referred to in paragraph 42 above.

Particulars

- (1) ACL, s 236.
- (2) TPA, s 82.

B. FEDERAL GOVERNMENT REPRESENTATION

44. As was required for the First Defendant to supply the Affected Vehicles to the Australian market, the First Defendant submitted information to the Federal Government purporting to show that the Affected Vehicles complied with Australian Design Rule 79 (**'Federal Government Representation'**) by:

- (a) in relation to the period prior to 1 July 2021, submitting information to the Federal Government purporting to demonstrate that the Affected Vehicles were not 'non-standard vehicles';

Particulars

- (1) MVS Act, s 14.
- (2) 'Nonstandard' in relation to a road vehicle is defined in s 5 of the MVS Act to mean "not complying with the national standards and not taken to comply with the national standards by virtue of an approval given under subsection 10A(2)".
- (3) *Motor Vehicle Standards Regulations 1989* (Cth), r 4.

(b) in relation to the period prior to 1 July 2021, submitting information to the Federal Government purporting to show that the Affected Vehicles were entitled to a Compliance Plate; and/or

Particulars

- (1) MVS Act, s 14.
- (2) *Motor Vehicle Standards Regulations 1989* (Cth), r 4.

(c) ~~submitting information to the Federal Government purporting to show that the Affected Vehicles could be entered onto the RAV by satisfaction of the type approval pathway.~~ in relation to the period from 1 July 2021 to 31 December 2021, submitting or causing information to be submitted to the Federal Government purporting to show that the Affected Vehicles were entitled to be transitioned to a 'new approval' under the RVS Act;

Particulars

- ~~(1) RVS Act, Part 2, Division 3.~~
- ~~(2) *Road Vehicle Standards Rules 2019*, Part 3, Div 2.~~

RVS Transitional Act, Schedule 3, Item 5.

(d) during the period from 1 July 2021, submitting information to the Federal Government purporting to show that the Affected Vehicles were types of vehicles that were entitled to a grant of road vehicle type approval; and could be entered onto the RAV by satisfaction of the type approval pathway.

- (e) during the period from 1 July 2021, entering or authorising the entry of Affected Vehicles on the RAV by purporting to show that the vehicles satisfied the requirements of the type approval pathway.

Particulars to (d) and (d)

- (1) RVS Act, Part 2, Division 3.
 (2) *Road Vehicle Standards Rules 2019*, Part 3, Div 2.

44A. By reason of the matters referred to in paragraph 44 above, the First Defendant, by the Federal Government Representation, represented that the Affected Vehicles complied with the “national standards” within the meaning of s 7 of the MVS Act, or the “national road vehicle standards” within the meaning of s 12 of the RVS Act.

45. The Federal Government Representation was made in trade or commerce.

46. By reason of the matters referred to in paragraph 25, 25A and ~~paragraph 25B~~ above, the Federal Government Representation was and is false.

47. By reason of the matters referred to in paragraphs 44 to 46 above, the First Defendant has engaged in conduct that was misleading or deceptive or was likely to mislead or deceive the Federal Government, in contravention of s 18 of the ACL or s 52 of the TPA.

48. By reason of the matters referred to in paragraphs 44 to 46 above, the First Defendant made a false or misleading representation that each of the Affected Vehicles:

- (a) were of a particular standard or quality; and / or
 (b) had particular performance characteristics, uses or benefits,

in contravention of s 29(1)(a) and (g) respectively of the ACL or s 53(a) and (c) of the TPA.

49. The representation referred to in paragraph 48 above was made in connection with the supply or possible supply of goods or in connection with the promotion of the supply of goods.

50. By reason of the matters referred to in paragraphs 44 to 46 above, the First Defendant engaged in conduct that was likely to mislead the public (including by reason of the

matters pleaded in paragraphs 15 and 16 above) as to the nature, the manufacturing process, the characteristics and / or the suitability for purpose of each of the Affected Vehicles, in contravention of s 33 of the ACL, or s 55 of the TPA.

51. By reason of the matters referred to in paragraph 37 above and each of them, applied mutatis mutandis to the contraventions of the ACL and the TPA pleaded in paragraphs 47, 48 and 50 above, until about 1 November 2019 the Second Defendant, and further from about 1 November 2019 the Third Defendant, was a person “involved in” the First Defendant’s said contraventions.
52. Further and in the alternative, until about 1 November 2019 the Second Defendant, and further from about 1 November 2019 the Third Defendant, itself made the Federal Government Representation, by reason of the matters referred to in paragraph 51 above, and thereby represented that the Affected Vehicles complied with the “national standards” within the meaning of s 7 of the MVS Act, or the “national road vehicle standards” within the meaning of s 12 of the RVS Act.
53. By reason of the Federal Government Representation, each of the Affected Vehicles received Federal Government approval by ~~being~~:
- (a) being affixed with a Compliance Plate; ~~or~~
- Particulars to (a)
- MVS Act, s 10A.
- (b) a road vehicle type approval being granted for that type of vehicle; and/or
- (c) being entered on the RAV.
- Particulars to ~~(b)~~(c)
- RVS Act, Part 2, Division 3.
54. Had the Affected Vehicles not received Federal Government approval, the Affected Vehicles would not have been made available for sale in Australia.
55. In the premises, had the Federal Government Representation not been made, the Group Members would not have acquired an interest in the Affected Vehicles.

56. In the premises and by reason of the contraventions referred to in paragraphs 47, 48, 50, 51 and 52 above and each of them, each of the Group Members has suffered loss or damage.

Particulars

- (1) Repeat the particulars to paragraph 42 above.
- (2) Further particulars may be provided.

57. The First and / or until about 1 November 2019 the Second Defendant and/or, from about 1 November 2019 the Third Defendant, is liable to compensate the Group Members for the loss or damage referred to in paragraph 56 above.

Particulars

- (1) ACL, s 236.
- (2) TPA, s 82.

C FEDERAL GOVERNMENT OMISSION

- 57A. During the Relevant Period, at no time when the First Defendant made a submission to the Federal Government did the Second Defendant (until about 1 November 2019) or Third Defendant (from about 1 November 2019) inform or cause the First Defendant to inform the Federal Government that any Affected Vehicle/s subject of the submission:

- (a) had a Defeat Device;
- (b) were 'nonstandard vehicles';
- (c) were not entitled to a Compliance Plate;
- (d) were not vehicles of a type or types that were entitled to road vehicle type approval;
- (e) could not be entered onto the RAV by satisfaction of the type approval pathway;
and/or
- (f) did not comply with Australian Design Rule 79.

(each omission, separately or together, being the 'Federal Government Omission').

57B. At the time or times specified in paragraph 57A, the Federal Government had a reasonable expectation that the Second Defendant (until about 1 November 2019) or Third Defendant (from about 1 November 2019) would disclose to it, or cause the First Defendant to disclose to it, that the Affected Vehicle/s subject of the said submission:

- (a) had a defeat device, if such a vehicle had a defeat device; and/or
- (b) was a 'nonstandard vehicle', if the Affected Vehicle was a 'nonstandard vehicle'; and/or
- (c) was not entitled to a Compliance Plate, if it was not entitled to a Compliance Plate; and/or
- (d) was not a vehicle of a type that was entitled to road vehicle type approval, if it was not of such a type; and/of
- (e) could not be entered onto the RAV by satisfaction of the type approval pathway, if it did not in fact satisfy the type approval pathway; and/or
- (f) did not comply with Australian Design Rule 79, if it did not comply with Australian Design Rule 79.

Particulars

- (i) Repeat paragraphs 37 and 44 above.
- (ii) If an Affected Vehicle/s the subject of the submission had any one or more of the qualities referred to in sub-paragraphs (a) to (f), then such a fact or facts would have been material to the decision of the Federal Government to grant an approval as set out in paragraph 57E below, with respect to the Affected Vehicles.
- (iii) Further particulars may be provided.

57C. The conduct pleaded in paragraph 57A above was in trade or commerce.

57D. The Second Defendant (until about 1 November 2019) and the Third Defendant (from about 1 November 2019) knew of the matters referred to in paragraphs 25 to 27A above (that each Affected Vehicle contained one or more of the Mercedes Defeat

Devices and therefore did not comply with Australian Design Rule 79), and yet did not inform, or cause the First Defendant to inform, the Federal Government that each or any Affected Vehicle had any one or more of the qualities referred to in sub-paragraphs (a) to (f) of paragraph 57A above.

Particulars

(1) Repeat paragraph 37 above.

(2) Repeat particulars (2), (3), (7), (8), and (9) to paragraph 90(j) below.

57E. Had the Second Defendant (until about 1 November 2019) and the Third Defendant (from about 1 November 2019) told, or caused the First Defendant to tell, the Federal Government any or any combination of the matters in sub-paragraphs (a) to (f) of paragraph 57A above applied to an Affected Vehicle at the time or times referred to in paragraph 57A above, then each of the Affected Vehicles would not have received Federal Government approval by:

(a) being affixed with a Compliance Plate;

Particulars to (a)

MVS Act, s 10A.

(b) a road vehicle type approval being granted for that type of vehicle; and/or

(c) being entered on the RAV.

Particulars to (b) and (c)

(1) RVS Act, Part 2, Division 3.

(2) RVS Rules, Part 3, Div 2.

57F. By reason of the matters referred to in paragraphs 57A to 57E above, the Second Defendant (until about 1 November 2019) and the Third Defendant (from about 1 November 2019) has engaged in conduct that was misleading or deceptive or was likely to mislead or deceive the Federal Government, in contravention of s 18 of the ACL or s 52 of the TPA.

57G. By reason of the matters referred to in paragraphs 57A to 57E above, the Second Defendant (until about 1 November 2019) and the Third Defendant (from about 1

November 2019) engaged in conduct that was likely to mislead the public (including by reason of the matters pleaded in paragraphs 15 and 16 above) as to the nature, the manufacturing process, the characteristics and/or the suitability for purpose of each of the Affected Vehicles, in contravention of s 33 of the ACL or s 55 of the TPA.

57H. Had the Affected Vehicles not received Federal Government approval, the Affected Vehicles would not have been made available for sale in Australia.

57I. In the premises, had the Federal Government Omission not been made, the Group Members would not have acquired an interest in the Affected Vehicles.

Particulars

The Plaintiff would not have acquired the Second Vehicle, but for the Federal Government Omission.

57J. In the premises and by reason of the contraventions referred to in paragraphs 57F and 57G above, each of the Group Members has suffered loss or damage.

Particulars

Repeat the particulars to paragraph 42 above.

57K. The Second Defendant (until about 1 November 2019) and the Third Defendant (from about 1 November 2019) is liable to compensate the Group Members for the loss or damage referred to in paragraph 57J above.

Particulars

(1) ACL, ss 236 and 237.

(2) TPA, s 82.

D. FEDERAL GOVERNMENT REPRESENTATION – FAILURE TO CORRECT OR QUALIFY

57L. At the time or times specified in paragraph 57A above, and therefore, the Federal Government had a reasonable expectation that the Second Defendant (until about 1 November 2019) and the Third Defendant (from about 1 November 2019) would correct or qualify, or cause the First Defendant to correct or qualify, the Federal Government Representation if the Affected Vehicle/s the subject of the submission had

one or more of the qualities referred to in sub-paragraphs (a) to (f) of paragraph 57A above.

Particulars

Repeat the particulars to paragraph 57B above.

57M. The Second Defendant (until about 1 November 2019) and the Third Defendant (from about 1 November 2019) failed to correct or qualify, or cause the First Defendant to correct or qualify, the Federal Government Representation.

57N. The conduct pleaded in paragraph 57M above was in trade or commerce.

57O. Had the Second Defendant (until about 1 November 2019) and the Third Defendant (from about 1 November 2019) not failed to correct or qualify, or cause the First Defendant to correct or qualify, the Federal Government Representation, and had in fact told, or cause the First Defendant to tell, the Federal Government any or any combination of the matters in sub-paragraphs (a) to (f) of paragraph 57A above applied to an Affected Vehicle at the time or times referred to in paragraph 57A above, then each of the Affected Vehicles would not have received Federal Government approval by:

(a) being affixed with a Compliance Plate;

Particulars to (a)

MVS Act, s 10A.

(b) a road vehicle type approval being granted for that type of vehicle; and/or

(c) entered on the RAV.

Particulars to (b) and (c)

(1) RVS Act, Part 2, Division 3.

(2) RVS Rules, Part 3, Div 2.

57P. By reason of the matters referred to in paragraphs 57L to 57O above, the Second Defendant (until about 1 November 2019) and the Third Defendant (from about 1 November 2019) has engaged in conduct that was misleading or deceptive or was

likely to mislead or deceive the Federal Government, in contravention of s 18 of the ACL or s 52 of the TPA.

57Q. Had the Affected Vehicles not received Federal Government approval, the Affected Vehicles would not have been made available for sale in Australia.

57R. In the premises, had the Second Defendant (until about 1 November 2019) and the Third Defendant (from about 1 November 2019) not failed to correct or qualify the Federal Government Representation, the Group Members would not have acquired an interest in the Affected Vehicles.

Particulars

The Plaintiff would not have acquired the Second Vehicle, but for the Second Defendant's failure to correct or qualify the Federal Government Representation.

57S. In the premises and by reason of the contravention referred to in paragraph 57P above, each of the Group Members has suffered loss or damage.

Particulars

Repeat the particulars to paragraph 42 above.

57T. The Second Defendant (until about 1 November 2019) and the Third Defendant (from about 1 November 2019) is liable to compensate the Group Members for the loss or damage referred to in paragraph 57S above.

Particulars

(1) ACL, ss 236 and 237.

(2) TPA, s 82.

6. NON-COMPLIANCE WITH GUARANTEE OF ACCEPTABLE QUALITY

58. The Affected Vehicles were supplied to ~~the Group Members, all or at least some of which were~~ consumers as defined in s 3(1) of the ACL or s 4B(1) of the TPA ('Consumers').

Particulars

- (1) The Affected Vehicles included vehicles:
- a. the price paid or payable for which was \$40,000 or less, prior to 1 July 2021; and/or
 - b. the price paid or payable for which was \$100,000 or less, from 1 July 2021; and/or
 - c. which were of a kind ordinarily acquired for personal, domestic or household use,
- such that ~~Group Members who purchased~~ the purchasers of such vehicles are taken to have acquired those vehicles as 'consumers' for the purposes of the ACL, pursuant to s 3(1), or for the purposes of the TPA, pursuant to s 4B(1).
- (2) Persons alleged to be consumers in a proceeding under the ACL or TPA are presumed to be so unless the contrary is established, pursuant to s 3(10) of the ACL and s 4B(3) of the TPA.
- (3) The Plaintiff acquired the Second Vehicle as a 'Consumer' by reason of subsection 3(1)(b) of the ACL.

59. Further and alternately, it was the First Defendant that supplied the Affected Vehicles (within the meaning of s 2 of the ACL and s 4 of the TPA) referred to in paragraph 58 above.

Particulars

Repeat paragraph 29 above.

60. The supply of the Affected Vehicles referred to in paragraph 58 above, to the extent it was the first supply of that Affected Vehicle to a Consumer, was in trade or commerce.
61. ~~The supply of the Affected Vehicles referred to in paragraph 58 above occurred, or alternatively included supplies that occurred, other than by way of sale by auction. Not used.~~

62. Insofar as the supply referred to in paragraphs 58 to ~~60~~64 above was to a Consumer, it was the subject of a statutory guarantee that the Affected Vehicle was of acceptable quality or of merchantable quality (**'Guarantee of Acceptable Quality'**).

Particulars

- (1) ACL, s 54(1).
- (2) TPA, s 71(1).

63. By reason of the matters pleaded in paragraphs 25, 25A and 25B~~26~~ above, the Affected Vehicles were not of acceptable quality, because they were not, from the time of supply:

- (a) “fit for all the purposes for which goods of that kind are commonly supplied”; and/or
- (b) “free from defects”,

within the meaning of s 54(2)(a) and (c) respectively of the ACL, and were for the same reason not of merchantable quality for the purposes of s 71(1) of the TPA, having regard to s 74D(3) of that Act.

64. Group Members who are Consumers, or who acquired an Affected Vehicle from a Consumer (other than for the purpose of re-supply) or who derived title to an Affected Vehicle through or under a Consumer (together, **'Affected Persons'**), suffered loss or damage because the Affected Vehicles in which each of them acquired an interest:

- (a) did not comply with the Guarantee of Acceptable Quality; and
- (b) as a result, the value of the Affected Vehicles was reduced below the price paid or payable by the Consumers.

Particulars

- (1) Repeat the particulars to paragraph 42 above.
- (2) Further particulars will be provided.

65. The failure to comply with the Guarantee of Acceptable Quality was a “major failure”, within the meaning of s 260 of the ACL, because:

- (a) the Affected Vehicles would “not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure”, within the meaning of s 260(1)(a); and / or
- (b) the Affected Vehicles are “substantially unfit for a purpose for which 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”, within the meaning of s 260(1)(c).

66. In the premises, in relation to Affected Vehicles supplied after 1 January 2011, the First Defendant as supplier is liable to compensate Group Members who are ~~Affected Persons~~ Consumers for the reduction in the value of the Affected Vehicles below the price paid or payable for them by the ~~Affected Persons~~ Consumers, resulting from the failure to comply with the Guarantee of Acceptable Quality, and any consequential losses or damage.

Particulars

- (1) ACL, s 259(3)(b), (4).
- (2) Group Members who are Consumers will suffer consequential loss, being the loss of amenity from use of the Affected Vehicles, in the event that, in relation to the presence of any Mercedes Defeat Devices in the Affected Vehicles, the Affected Vehicles are recalled, or a direction or order is made by the Federal Government, or a State or Territory Government, limiting or prohibiting the use of the Affected Vehicles.
- (3) Further particulars will be provided.

67. The Second Defendant, and further from about 1 November 2019 the Third Defendant, was the manufacturer of the Affected Vehicles, within the meaning of s 7 of the ACL and s 74A of the TPA.

Particulars

Repeat paragraph 5(d) and 6(c) above.

68. Further and alternately, the First Defendant was the manufacturer of the Affected Vehicles, within the meaning of s 7 of the ACL and s 74A of the TPA.

Particulars

Repeat paragraph 4(c) above.

69. In the premises, Group Members who are Affected Persons are entitled to recover damages from the Second Defendant, and further from about 1 November 2019 the Third Defendant, and further and alternately from the First Defendant as manufacturers, in respect of the breach of the Guarantee of Acceptable Quality.

Particulars

(1) ACL, s 271.

(2) TPA, s 74D.

70. The loss or damage that Group Members who are Affected Persons suffered, resulting from the failure to comply with the Guarantee of Acceptable Quality, included:

- (a) the reduction in the value of the goods, below the price which the ~~Affected Persons~~ Consumers paid to acquire their interest in the Affected Vehicles, or the average retail price of those vehicles at the time of supply, whichever is lower; and
- (b) consequential losses or damage.

Particulars

(1) ACL, s 272.

(2) TPA, s 74D.

(3) Group Members who are Affected Persons will suffer consequential loss, being the loss of amenity from use of the Affected Vehicles, in the event that, in relation to the presence of any Mercedes Defeat Devices in the Affected Vehicles, the Affected Vehicles are recalled, or a direction or order is made by the Federal Government, or a State or Territory Government, limiting or prohibiting the use of the Affected Vehicles.

(4) Further particulars will be provided.

7. NON-COMPLIANCE WITH EXPRESS WARRANTY

71. By reason of the matters referred to in paragraph 29 above, the First Defendant gave an “express warranty” (within the meaning of s 2 of the ACL or s 74A(1) of the TPA) that the Affected Vehicles complied with the “national standards” within the meaning of s 7 of the MVS Act, or the “national road vehicle standards” within the meaning of s 12 of the RVS Act (**‘Express Warranty’**).
72. The Express Warranty related to:
- (a) the “quality, state, condition, performance or characteristics” of the Affected Vehicles, within the meaning of “express warranty” in s 2 of the ACL; or
 - (b) the “quality, performance or characteristics” of the Affected Vehicles, within the meaning of “express warranty” in s 74A of the TPA.
73. By reason of the matters referred to in paragraphs 58 to 60, 71 and 72 above, in relation to Consumers who did not acquire their vehicles by way of sale by auction, the First Defendant guaranteed as supplier that it would comply with the Express Warranty.

Particulars

- (1) ACL, s 59(2).
- (2) TPA, s 74A(1).

74. By reason of the matters referred to in paragraphs 25, 25A and 25B~~26~~ above, the First Defendant did not comply with the guarantee that it would comply with the Express Warranty (or comply with the Express Warranty).
75. The failure to comply with the guarantee of the Express Warranty was a “major failure” within the meaning of s 260 of the ACL.

Particulars

Repeat paragraph 65 above.

76. Because of the matters pleaded in paragraph 74 and / or 75 above, those Group Members who are ~~Consumers~~ Affected Persons, have suffered loss, because the Affected Vehicles in which each of them acquired an interest:

- (a) did not comply with the Express Warranty; and
- (b) as a result, the value of the Affected Vehicles was less than the price paid or payable by the Consumers.

Particulars

- (1) Repeat the particulars to paragraph 42.
- (2) Further particulars will be provided.

77. In the premises, the First Defendant is liable as supplier to compensate those Group Members who are Consumers for the reduction in the value of the Affected Vehicles below the price paid or payable by the Consumers for them, resulting from the failure to comply with the Express Warranty, and any consequential losses or damage.

Particulars

- (1) ACL, s 259(3)(b), (4).
- (2) TPA, s 74G(1).
- (3) Group Members who are Consumers will suffer consequential loss, being the loss of amenity from use of the Affected Vehicles, in the event that, in relation to the presence of any Mercedes Defeat Devices in the Affected Vehicles, the Affected Vehicles are recalled, or a direction or order is made by the Federal Government, or a State or Territory Government, limiting or prohibiting the use of the Affected Vehicles.
- (4) Further particulars will be provided.

78. Further and in the alternative, the First Defendant is liable as manufacturer to compensate those Group Members who are ~~Consumers~~ Affected Persons for:

- (a) under the ACL, the reduction in the value of the goods resulting from the failure to comply with the Guarantee of Acceptable Quality, below the price which the Consumers paid to acquire their interest in the Affected Vehicles, or the average retail price of those vehicles at the time of supply, whichever is lower, and any consequential losses or damage; and

Particulars to (a)

- (1) Repeat the particulars to paragraph 70 above.
 - (2) Further particulars will be provided.
- (b) under the TPA, (and without the need to establish the matters referred to in paragraph 75 above), the loss referred to in paragraph 76 above.

Particulars to (b)

TPA, s 74G.

79. Until about 1 November 2019, tThe Second Defendant, and further from about 1 November 2019 the Third Defendant, by reason of the matters referred to in paragraph 37 above and each of them insofar as they relate to the Second and Third Defendants respectively, also gave the Express Warranty.
80. By reason of the matters referred to in paragraph 79 above, in relation to the Consumers, until about 1 November 2019 the Second Defendant, and further from about 1 November 2019 the Third Defendant, guaranteed as manufacturer that it would comply with the Express Warranty.

Particulars

- (1) ACL, s 59(1).
 - (2) TPA, s 74A(1).
81. By reason of the matters referred to in paragraphs 25, 25A and 25B26 above, until about 1 November 2019 the Second Defendant, and further from about 1 November 2019 the Third Defendant, did not comply with the guarantee that it would comply with the Express Warranty.
82. Because of the matters pleaded in paragraph 81 above, those Group Members who are Consumers-Affected Persons have suffered loss because the Affected Vehicles in which each of them acquired an interest:
- (a) did not comply with the Express Warranty; and

- (b) as a result, the value of the Affected Vehicles was less than the price paid or payable by the Consumers.

Particulars

- (1) Repeat the particulars to paragraph 42 above.
- (2) Further particulars will be provided.

83. In the premises, until about 1 November 2019 the Second Defendant, and further from about 1 November 2019 the Third Defendant, as manufacturer is liable to compensate those Group Members who are ~~Consumers~~ Affected Persons for:

- (a) under the ACL, the reduction in the value of the goods resulting from the failure to comply with the Express Warranty, below the price which the Consumers paid to acquire their interest in the Affected Vehicles, or the average retail price of those vehicles at the time of supply, whichever is lower, and any consequential losses or damage; and

Particulars to (a)

Repeat the particulars to paragraph 70 above.

- (b) under the TPA, (and without the need to establish the matters referred to in paragraph 75 above), the loss referred to in paragraph 76 above.

Particulars to (b)

TPA, s 74G.

8. CONTRAVENTION OF A SAFETY STANDARD

84. At all relevant times, Australian Design Rule 79, being a “national standard” and / or a “national road vehicle standard”, was taken to be a “safety standard” for the purposes of s 106 of the ACL, and a “prescribed consumer product safety standard” for the purposes of s 65C of the TPA

Particulars

- (1) MVS Act, s 41.
- (2) RVS Act, s 77.

85. By reason of the matters referred to in paragraphs 25, 25A and 25B26 above, the Affected Vehicles did not comply with the safety standards referred to therein.
86. The Affected were, or alternatively included, vehicles that were “consumer goods”, within the meaning of s 2 of the ACL or were “intended to be used, or are of a kind likely to be used, by a consumer” within the meaning of s 65C of the TPA (**‘Consumer Vehicles’**).

Particulars

- (1) In relation to the Plaintiff’s claim, the Second Vehicle was a passenger vehicle.
- (2) Further particulars may be provided with the Plaintiff’s evidence.

87. By reason of the matters pleaded in paragraphs 85 and 86 above:
- (a) the First Defendant, in supplying the Consumer Vehicles to Group Members in trade or commerce, contravened s 106(1) of the ACL or s 65C(1) of the TPA;
- (b) further and alternatively, the First Defendant, in manufacturing the Affected Vehicles, contravened s 106(3) of the ACL;
- (c) the Second Defendant, and further from about 1 November 2019 the Third Defendant, in manufacturing the Affected Vehicles, contravened s 106(3) of the ACL, and
- (d) further and alternatively, until about 1 November 2019 the Second Defendant, and further from about 1 November 2019 the Third Defendant, was “involved in” the contravention of the First Defendant pleaded in paragraphs 87(a) and / or 87(b) above.

Particulars to (d)

Repeat paragraph 37 above.

88. By reason of the conduct of the First and/or Second Defendant, and/or Third Defendant from about 1 November 2019, referred to in paragraph 87 above, Group Members who acquired an interest in Consumer Vehicles have suffered ~~and are continuing to suffer~~ loss or damage.

Particulars

- (1) Repeat the particulars to paragraph 42 above.
- (2) Further particulars will be provided.

89. The First and / or Second Defendant, and/or Third Defendant from about 1 November 2019, is liable to compensate the Group Members who acquired an interest in Consumer Vehicles for that loss or damage.

Particulars

- (1) ACL, ss 236 and 237.
- (2) TPA, s 82.

9. UNCONSCIONABLE CONDUCT

90. By reason of the following matters and each of them, until about 1 November 2019 ~~the~~ The Second Defendant, and ~~further~~ from about 1 November 2019 the Third Defendant, engaged in the ~~following~~ conduct which was, in all the circumstances ~~and~~ by reason of all of these matters and each of them, unconscionable (~~Unconscionable Conduct~~):

- (a) until about 1 November 2019 the Second Defendant, and ~~further~~ from about 1 November 2019 the Third Defendant, programmed (or caused to be programmed) the Affected Vehicles to contain the Mercedes Defeat Devices; and
- (b) the Mercedes Identified Defeat Devices did not fall within the Damage and Safety Exception;
- (c) the Mercedes Identified Defeat Devices significantly increased the Affected Vehicles' 'exhaust emissions' (including the emissions of NOx) in normal driving conditions, beyond that permitted by the tests prescribed for the Affected Vehicles by Australian Design Rule 79 from time to time;

Particulars to (c)

- (1) The Identified Defeat Devices, or one or more of them, increased the emissions of NOx in the Plaintiff's Second Vehicle up to

about 2.4 times the limit prescribed by Australian Design Rule 79.

(2) Further particulars may be provided after discovery, or with the Plaintiff's evidence.

(c1) increasing NOx emissions is detrimental to human health and to the environment;

(d) the presence of the Mercedes Defeat Devices in the Affected Vehicles meant that:

- (i) it was unlawful for the Affected Vehicles to be imported to, or supplied to the market in, Australia;
- (ii) it was unlawful for the Affected Vehicles to be used on the road in Australia; and
- (iii) the Affected Vehicles could not be registered in the States and Territories of Australia;

(d1) until about 1 November 2019 the Second Defendant, and from about 1 November 2019 the Third Defendant, caused the Group Members to acquire Affected Vehicles which the Group Members were not aware had the characteristics described in sub-paragraph (d) above;

(e) removal of the Mercedes Defeat Devices would cause damage to the Affected Vehicles;

Particulars to (e)

Removal of the Defeat Devices may have the following deleterious impacts on the Affected Vehicles:

(1) reduced durability of the exhaust gas recirculation ('EGR') system;

(2) reduced durability of the selective catalytic reduction ('SCR') system;

(3) reduced power and acceleration capabilities; and

(4) increased fuel and AdBlue usage.

Further particulars may be provided following discovery, or with the Plaintiff's evidence.

- (f) until about 1 November 2019 the Second Defendant, and ~~further~~ from about 1 November 2019 the Third Defendant, either made or was involved in the making of, the General Representation;
- (g) the General Representation was false;
- (h) until about 1 November 2019 the Second Defendant, and ~~further~~ from about 1 November 2019 the Third Defendant, either made or was involved in the making of, the Federal Government Representation;
- (i) the Federal Government Representation was false; ~~and~~
- (i1) until about 1 November 2019 the Second Defendant, and from about 1 November 2019 the Third Defendant, made the Federal Government Omission which was misleading or deceptive;
- (i2) until about 1 November 2019 the Second Defendant, and from about 1 November 2019 the Third Defendant, failed to correct or qualify the Federal Government Representation which was misleading or deceptive; and
- (j) ~~at all material times~~ until about 1 November 2019 the Second Defendant, and ~~further~~ from about 1 November 2019 the Third Defendant, was or ought to have been aware of the matters referred to in sub-paragraphs (a) through (e), (g) and (i) above, ~~and intentionally concealed those matters from the Federal Government and / or the public.~~

Particulars to (j)

The Plaintiff is able to provide some particulars based on the limited information and documentation available to her at this time:

- (1) Repeat paragraph 37 above.
- (2) It is in the nature of each of the Mercedes Defeat Devices that they were deliberately programmed, or caused to be programmed, into the Affected Vehicles. Accordingly, the

Affected Vehicles' actual manufacturers knew or ought to have known of their presence.

- (3) Save for the 'thermal window detection' Defeat Device, none of the Identified Defeat Devices was an element of design which could conceivably protect the engine against damage or accident, or which could be justified for safe operation of the vehicle, so as to fall within the Damage and Safety Exception. The temperature at which the thermal window detection operated was far outside the range at which that element of design could be justified for safety reasons (around zero degrees Celsius). Accordingly, the Affected Vehicles' actual manufacturers knew or ought to have known that the Identified Defeat Devices did not fall within the Damage and Safety Exception.
- (4) It is in the nature of each of the Identified Defeat Devices that they significantly increase, in normal driving conditions, the emission of NOx beyond that permitted by the tests prescribed for the Affected Vehicles by Australian Design Rule 79 from time to time, such that the Affected Vehicles' actual manufacturers knew or ought to have known that.
- (5) That increasing NOx emissions is detrimental to human health and the environment is a matter of public knowledge, and accordingly was known or ought to have been known to the Affected Vehicles' actual manufacturers.
- (6) It is in the nature of (and is a purpose of) each of the Identified Defeat Devices that they reduce urea (AdBlue) consumption. The Affected Vehicles' actual manufacturers therefore were aware or ought to have been aware that any removal of those devices would have the opposite effect.
- (7) The Korea Fair Trade Commission ('KFTC') is a quasi-judicial authority, which exercises regulatory powers in relation to competition and consumer protection issues in Korea: The

KFTC, following an investigative process, has made findings to the effect that:

- (i) Mercedes-Benz AG (the Third Defendant) made false labels and deceptive advertisements about the effectiveness of emission control devices on its diesel passenger vehicles, and secretly and deliberately installed software that hampered the performance of the SCR in those vehicles (KFTC press release dated 7 February 2022);
- (ii) Mercedes-Benz Group AG (the Second Defendant) colluded with other vehicle manufacturers to introduce software that reduces the amount of AdBlue dosing in their development of SCR (KFTC press release dated 9 February 2023).

(8) It may be inferred that the facts found by the KFTC, referred to in particular (7) above are true facts.

(9) Further particulars may be provided following discovery, or with the Plaintiff's evidence.

90A. Further and in the alternative, the First Defendant, by reason of the following matters and each of them, engaged in conduct which was, in all the circumstances, unconscionable:

- (a) repeat sub-paragraphs (a) to (h), (e), (g) and (i) of paragraph 90 above;
- (b) the First Defendant caused the Group Members to acquire Affected Vehicles which they were not aware had the characteristics described in sub-paragraph (d) of paragraph 90 above;
- (c) the First Defendant made the General Representation;
- (d) the First Defendant made the Federal Government Representation; and
- (e) the First Defendant ought to have known that the Affected Vehicles contained one or more Mercedes Defeat Devices, and therefore did not comply with Australian Design Rule 79, in circumstances where the First Defendant, as

applicant for the relevant Compliance Plates up to 1 July 2021, and for entry on the RAV from 1 July 2021, was required to demonstrate control over all stages of the design, componentry and manufacturing process.

Particulars to (e)

Repeat the particulars to paragraphs 29(b) and (c) above.

Particulars to 90A

Further particulars may be provided following discovery, or with the Plaintiff's evidence.

91. The ~~Unconscionable Conduct~~ conduct pleaded in paragraphs 90 to 90A above was in trade or commerce, in connection with the supply or possible supply of the Affected Vehicles to Group Members, in contravention of s 21 of the ACL and s 51AC of the TPA.
92. Because of the conduct of ~~the Second Defendant, and further from about 1 November 2019 the Third Defendant~~, referred to in paragraph 90 and 91 above, Group Members have suffered ~~and are continuing to suffer~~ loss or damage

Particulars

- (1) Repeat the particulars to paragraph 42 above.
- (2) Further particulars will be provided.

93. The First Defendant, until about 1 November 2019 the Second Defendant, and further from about 1 November 2019 the Third Defendant, is liable to compensate the Group Members for that loss or damage.

Particulars

- (1) ACL, s 236.
- (2) TPA, s 82.

10. AGGRAVATED AND EXEMPLARY DAMAGES

94. The Defendants are liable for exemplary and aggravated damages.

Particulars

- (1) Pursuant to s 236 of the ACL, a remedy of this nature not being excluded by s 87ZB of the CCA.
- (2) Pursuant to s 237 of the ACL, a remedy of this nature not being excluded by s 87ZB of the CCA.
- (3) Pursuant to s 82 of the TPA, a remedy of this nature not being excluded by s 87ZB of the TPA.
- (4) Repeat paragraphs 90 and 90A above.
- (5) The Defendants did not inform the Group Members that the Mercedes Defeat Devices existed and as a result of not informing their customers of that, the Defendants could make profits by causing the Group Members to acquire vehicles in circumstances where:
 - (i) if they had not engaged in the misleading, false or deceptive conduct alleged in Part 5, then the Group Members never would have bought the vehicles (as the Affected Vehicles would not have been available for sale, and further no reasonable and ordinary consumer would buy a vehicle knowing it is illegal to drive it);
 - (ii) if the Defendants had manufactured, programmed, and/or sold equivalent vehicles that complied with Australian Design Rule 79, they would have made less profit due to higher costs, lower revenue, or both,
 - (iii) the presence of the Mercedes Defeat Devices in the Affected Vehicles meant that it was unlawful for the Affected Vehicles to be imported to, or supplied to the market in, Australia.
- (6) The Defendants ought to be punished for breaching the emissions regulations in circumstances where those breaches led to the Group Members unknowingly causing excessive emissions that damage the natural and human environment and thereby harm the community as a whole. If such conduct is not punished or deterred through an award of exemplary damages, then there will not be enough of a disincentive for car manufacturers to not install defeat devices in future vehicles.

- (7) The Plaintiff was shocked to learn that her Second Vehicle contains Defeat Devices, and feels deceived and tricked by Mercedes. The Plaintiff is environmentally conscious and would never have bought a vehicle knowing that it contained Defeat Devices.
- (8) In the circumstances above, the Defendants contumeliously disregarded the rights of the Group Members:
- (i) to purchase and drive cars that complied with emissions regulations;
 - (ii) to drive cars that were not excessively productive of exhaust gas emissions;
 - (iii) to not have a vehicle supplied or caused to be supplied to them:
 - A. which was illegal to drive on roads in Australia;
 - B. which was not capable of being legally registered in each State and Territory;
 - C. which was liable to be recalled;
 - D. the use of which could be prohibited; and
 - E. the registration of which could be suspended or cancelled.

RELIEF CLAIMED

On the grounds stated in this statement of claim, the Plaintiff claims:

1. Damages, including exemplary and aggravated damages, pursuant to section 236 of the ACL or section 82 of the TPA.
2. Damages, including exemplary and aggravated damages, pursuant to section 239 of the ACL or section 74G of the TPA.
3. Damages pursuant to sections 271 and 272 of the ACL or section 74D of the TPA.
4. An award of damages pursuant to s 33Z(1)(e) of the SCA.
5. An award of damages pursuant to s 33Z(1)(f) of the SCA.
6. Interest pursuant to sections 60 and 101 of the SCA.
7. Costs.
8. Any further or other order that the Court deems fit.

COMMON QUESTIONS OF LAW AND FACT

The questions of law or fact common between the claims of the Plaintiff and the Group Members are summarised as follows (noting that the following questions are not intended to limit or otherwise alter the allegations pleaded in this Statement of Claim):

1. Whether the Plaintiff has proven on her own behalf and on behalf of the Group Members the allegations in the following paragraphs of the Statement of Claim: 4 to 57T64 (inclusive) and 8484 to 9390 (inclusive), including as to:

Defendants

- 1A. Whether each of the Defendants is and was at all material times a 'manufacturer' within the meaning of the ACL or the TPA.
- 1B. Whether the Second and Third Defendants, at the alleged times, were:

(a) carrying on business in Australia; or

(b) otherwise connected to the jurisdiction.

Defeat Devices

1C. Whether the Affected Vehicles contained one or more pleaded unlawful “Defeat Devices”, which impermissibly reduced the effectiveness of each vehicle’s emission control system during normal vehicle operation.

1D. Whether, by reason of the preceding fact pursuant to relevant Commonwealth, State and Territory motor vehicle legislation and regulation:

(a) it was unlawful for the Affected Vehicles to be imported to, or supplied to the market in, Australia;

(b) it was unlawful for the Affected Vehicles to be used on the road in Australia;

(c) the Affected Vehicles could not be registered in the States and Territories of Australia;

(d) the Affected Vehicles could be recalled;

(e) the use of the Affected Vehicles could be prohibited if such vehicle is inspected and found to be non-compliant; and

(f) the registration of Affected Vehicles could be suspended or cancelled.

1E. Whether the Second Defendant and the Third Defendant programmed (or caused or permitted to be programmed) unlawful Defeat Devices in the Affected Vehicles.

General Representation

1F. Whether the First Defendant made the “General Representation”, that the Affected Vehicles complied with applicable national standards.

1G. Whether the General Representation is or was:

(a) made in trade or commerce;

(b) false;

(c) misleading or deceptive or was likely to mislead or deceive, in contravention of s 18 of the ACL or s 52 of the TPA;

- (d) liable to mislead the public as to the nature, the manufacturing process, the characteristics and/or the suitability for purpose of each of the Affected Vehicles, in contravention of s 33 of the ACL, or s 55 of the TPA;
- (e) a false or misleading representation that each of the Affected Vehicles was of a particular standard or quality, and/or had particular performance characteristics, uses or benefits, in contravention of s 29 of the ACL or s 53 of the TPA; and
- (f) made in connection with the supply or possible supply of goods or in connection with the promotion of the supply of goods.

1H. Whether the Second and Third Defendants:

- (a) were 'involved in' the First Defendant's contraventions of the ACL or the TPA concerning the General Representation; or
- (b) themselves made the General Representation.

1I. Whether the General Representation caused:

- (a) the Group Members to acquire their interests in the Affected Vehicles, at the prices they paid for their interests; and
- (b) dealers to make the Affected Vehicles available for sale in Australia.

1J. Whether the contraventions concerning the General Representation caused the Group Members to suffer loss or damage.

1K. Whether the Defendants are liable to compensate the Group Members for that loss or damage.

Federal Government Representation

1L. Whether the First Defendant made the "Federal Government Representation" by submitting information to the Federal Government purporting to show that the Affected Vehicles complied with Australian Design Rule 79.

1M. Whether the Federal Government Representation is or was:

- (a) made in trade or commerce;

- (b) false;
- (c) misleading or deceptive or was likely to mislead or deceive, in contravention of s 18 of the ACL or s 52 of the TPA;
- (d) liable to mislead the public as to the nature, the manufacturing process, the characteristics and/or the suitability for purpose of each of the Affected Vehicles, in contravention of s 33 of the ACL, or s 55 of the TPA;
- (e) a false or misleading representation that each of the Affected Vehicles was of a particular standard or quality, and/or had particular performance characteristics, uses or benefits, in contravention of s 29 of the ACL or s 53 of the TPA; and
- (f) made in connection with the supply or possible supply of goods or in connection with the promotion of the supply of goods.

1N. Whether the Second and Third Defendants:

- (a) were 'involved in' the First Defendant's contraventions of the ACL or the TPA concerning the Federal Government Representation; or
- (b) themselves made the Federal Government Representation.

1O. Whether the Federal Government Representation caused:

- (a) each of the Affected Vehicles to receive Federal Government approval;
- (b) each of the Affected Vehicles to be made available for sale in Australia; and
- (c) the Group Members to acquire their interests in the Affected Vehicles, at the prices they paid for their interests.

1P. Whether the contraventions concerning the Federal Government Representation caused the Group Members to suffer loss or damage.

1Q. Whether the Defendants are liable to compensate the Group Members for that loss or damage.

Federal Government Omission

- 1R. Whether, in the context of the First Defendant's submissions regarding the Affected Vehicles to the Federal Government:
- (a) the Second or Third Defendants made the "Federal Government Omission" by failing to inform, or cause the First Defendant to inform, the Federal Government of matters including that the Affected Vehicles had a Defeat Device; and
 - (b) the Federal Government had a reasonable expectation that the Second or Third Defendants would disclose, or cause the First Defendant to disclose, such matters to it, if they were the case.
- 1S. Whether the Second or Third Defendant knew, or ought to have known, that the Affected Vehicles contained one or more of the Mercedes Defeat Devices and therefore did not comply with Australian Design Rule 79.
- 1T. Whether the Federal Government Omission:
- (a) was made in trade or commerce;
 - (b) was conduct that was misleading or deceptive or was likely to mislead or deceive the Federal Government, in contravention of s 18 of the ACL or s 52 of the TPA;
 - (c) was in connection with the supply or possible supply of goods or in connection with the promotion of the supply or use of goods;
 - (d) was likely to mislead the public as to the nature, the manufacturing process, the characteristics and/or the suitability for purpose of each of the Affected Vehicles, in contravention of s 33 of the ACL, or s 55 of the TPA;
 - (e) caused the Affected Vehicles to receive Federal Government Approval; and
 - (f) caused Group Members to acquire their interests in the Affected Vehicles.
- 1U. Whether the contraventions concerning the Federal Government Omission caused the Group Members to suffer loss or damage.

1V. Whether the Defendants are liable to compensate the Group Members for that loss or damage.

Federal Government Representation – Failure to Correct or Qualify

1W. Whether, in the context of the First Defendant’s submissions regarding the Affected Vehicles to the Federal Government:

- (a) the Federal Government had a reasonable expectation that the Second or Third Defendants would correct or qualify, or cause the First Defendant to correct or qualify, the Federal Government Representation if the Affected Vehicles had one or more of the given qualities, including having a Defeat Device; and
- (b) the Second and Third Defendants failed to correct, or failed to cause the First Defendant to correct, the Federal Government Representation as to those matters.

1X. Whether the failure to correct or qualify the Federal Government Representation:

- (a) was made in trade or commerce;
- (b) was conduct that was misleading or deceptive or was likely to mislead or deceive the Federal Government, in contravention of s 18 of the ACL or s 52 of the TPA; and
- (c) caused the Group Members to acquire their interests in the Affected Vehicles.

1Y. Whether the failure to correct or qualify the Federal Government Representation caused the Group Members to suffer loss or damage.

1Z. Whether the Defendants are liable to compensate the Group Members for that loss or damage.

Contravention of a safety standard

1AA. Whether Australian Design Rule 79 was a “safety standard” for the purposes of s 106 of the ACL and a “prescribed consumer product safety standard” for the purposes of s 65C of the TPA.

1BB. Whether the fact that the Affected Vehicles contained Defeat Devices meant that they did not comply with the above safety standards.

1CC. Whether the Affected Vehicles were (or included) “Consumer Vehicles”, being “consumer goods”, within the meaning of s 2 of the ACL or “intended to be used, or are of a kind likely to be used, by a consumer” within the meaning of s 65C of the TPA.

1DD. Whether:

(a) the First Defendant, in supplying the Consumer Vehicles to Group Members in trade or commerce, contravened s 106(1) of the ACL or s 65C(1) of the TPA;

(b) the First Defendant, in manufacturing the Consumer Vehicles, contravened s 106(3) of the ACL;

(c) the Second and Third Defendant, in manufacturing the Consumer Vehicles, contravened s 106(3) of the ACL;

(d) the Second and Third Defendant were “involved in” the First Defendant’s contravention of s 106(1) or (3) of the ACL or s 65C(1) of the TPA.

1EE. Whether the Defendants’ manufacture and/or supply of Consumer Vehicles that did not comply with the relevant safety standard caused the Group Members who acquired an interest in Consumer Vehicles to suffer loss or damage.

1FF. Whether the Defendants are liable to compensate the Group Members who acquired an interest in Consumer Vehicles for that loss or damage.

Unconscionable Conduct

1GG. Whether the Second and Third Defendant engaged in conduct which was, in all the circumstances, unconscionable.

1HH. Whether the First Defendant engaged in conduct which was, in all the circumstances, unconscionable.

1II. Whether the Defendants’ above unconscionable conduct:

(a) was in trade or commerce and in connection with the supply or possible supply of the Affected Vehicles to Group Members, in contravention of s 21 of the ACL and s 51AC of the TPA;

(b) caused the Group Members to suffer loss or damage; and

(c) means that the Defendants are liable to compensate the Group Members for that loss or damage.

2. Whether the Plaintiff has proven on her own behalf and on behalf of the Group Members who are Consumers (as defined in paragraph 58 of the Statement of Claim) or Affected Persons (as defined in paragraph 64 of the Statement of Claim) the allegations in paragraphs 58 to 83, 55 to 67 (inclusive) of the Statement of Claim, including as to:

Guarantee of Acceptable Quality

2A. Whether the Affected Vehicles were goods of a kind ordinarily acquired for personal, domestic or household use, and so whether the Affected Vehicles were, for that reason, supplied to “Consumers” as defined in s 3(1), ACL.

2B. Whether the supply of Affected Vehicles to Consumers was the subject of the Guarantee of Acceptable Quality.

2C. Whether the fact that the Affected Vehicles contained Defeat Devices meant that they were not of acceptable quality within the meaning of s 54 of the ACL (or merchantable quality within the meaning of ss 71 and 74D of the TPA).

2D. Whether that failure to comply with the Guarantee of Acceptable Quality:

(a) caused a reduction in value of the Affected Vehicles;

(b) caused the Group Members who are Consumers and/or Affected Persons to suffer loss or damage;

(c) was a “major failure”, within the meaning of s 260 of the ACL; and

(d) means that:

1. the First Defendant as supplier under s 259 of the ACL is liable to compensate Group Members who are Consumers for the relevant loss or damage; and/or

the First, Second and Third Defendant as manufacturers under s 272 of the ACL or s 74D of the TPA are liable to compensate Group Members who are Affected Persons for the for the relevant loss or damage.

Express Warranty

- 2E. Whether the First Defendant gave the “Express Warranty”, that is, that the Affected Vehicles complied with relevant national vehicle standards, under s 2 of the ACL or s 74A(1) of the TPA.
- 2F. Whether the First Defendant guaranteed as supplier to Consumers who did not acquire their vehicles by way of sale by auction that it would comply with the Express Warranty.
- 2G. Whether the fact that the Affected Vehicles contained Defeat Devices meant that the First Defendant failed to comply with:
- (a) the Express Warranty; or
 - (b) the guarantee that it would comply with the Express Warranty.
- 2H. Whether that failure to comply with the Express Warranty:
- (a) was a “major failure”, within the meaning of s 260 of the ACL;
 - (b) caused the value of the Affected Vehicles to be less than the price paid or payable by the Consumers;
 - (c) caused the Group Members who are Consumers and/or Affected Persons to suffer loss or damage; and
 - (d) means that the First Defendant:
 - i. as supplier under s 259 of the ACL or s 74G of the TPA is liable to compensate Group Members who are Consumers for the relevant loss or damage; and/or
 - ii. as manufacturer under s 272 of the ACL or s 74D of the TPA, is liable to compensate Group Members who are Affected Persons for the relevant loss or damage.
- 2I. Whether the Second and Third Defendants also gave the Express Warranty and each guaranteed as manufacturer that it would comply with the Express Warranty.
- 2J. Whether the fact that the Affected Vehicles contained Defeat Devices meant that the Second and Third Defendants each failed to comply with that guarantee.

- 2K. Whether the failure to comply with that guarantee:
- (a) caused the value of the Affected Vehicles to be less than the price paid or payable by the Consumers;
 - (b) caused Group Members who are Affected Persons to suffer loss or damage; and
 - (c) means that the Second Defendant and the Third Defendant, as manufacturer, are each liable to compensate those Group Members who are Affected Persons for the relevant loss or damage.
3. ~~Whether the Plaintiff has proven on her own behalf and on behalf of the Group Members who are Consumers (as defined in paragraph 58 of the Statement of Claim) the allegations in paragraphs 68 to 80 of the statement of claim Not used.~~
4. Whether damages can and ought to be awarded on a no transaction basis.
5. Whether damages can ~~and ought to~~ be awarded on an aggregate basis, and, if so, the quantum of those damages.
6. Whether exemplary damages can and ought to be awarded, and, if so, the quantum of those damages.
7. Whether aggravated damages can be awarded.

Date: 7 November 2024



.....
Signed by Martin del Gallego
Lawyer of the Plaintiff

1. Place of trial—

Melbourne

2. Mode of trial—

Judge of the Court sitting alone

3. This writ was filed—

for the plaintiff by Piper Alderman, solicitors, of Level 23, 1 Farrer Place, Sydney NSW 2000

4. The address of the plaintiff is—

Krisoula El-Helou
100 Pleasant Road
Hawthorn East VIC 3123

5. The address for service of the plaintiff is—

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Level 23, 1 Farrer Place
SYDNEY NSW 2000

6. The email address for service of the plaintiff is—

MdelGallego@piperalderman.com.au

7. The address of the defendant is—

First Defendant

Mercedes-Benz Australia / Pacific Pty Ltd
Head Office
44 Lexia Place
Mulgrave VIC 3170
AUSTRALIA

Second Defendant

Mercedes-Benz Group AG
Mercedesstraße 120
Stuttgart
Baden – Württemberg 70372
FEDERAL REPUBLIC OF GERMANY

Third Defendant

Mercedes-Benz AG
Mercedesstraße 120
Stuttgart
Baden – Württemberg 70372

FEDERAL REPUBLIC OF GERMANY

Schedule 1**Australian Design Requirements - Particulars****1. Particulars to paragraph 8 of the Statement of Claim**a. NSW:

- i. *Road Transport (Vehicle Registration) Regulation 2017* (NSW), Schedule 2, clauses 21 and 22;
- ii. *Road Transport (Vehicle Registration) Regulation 2007* (NSW), Schedule 2, clauses 11 and 12; and
- iii. *Road Transport (Vehicle Registration) Regulation 1998* (NSW), Schedule 4, r 11 and 12.

b. Victoria:

- i. *Road Safety (Vehicles) Regulations 2021* (Vic), Schedule 1, clauses 21 and 22;
- ii. *Road Safety (Vehicles) Interim Regulations 2020* (Vic), Schedule 2, clauses 16 and 17;
- iii. *Road Safety (Vehicles) Regulation 2009* (Vic), Schedule 2, clauses 19 and 20); and
- iv. *Road Safety (Vehicles) Regulations 1999* (Vic), Schedule 8, clauses 19 and 20.

c. Queensland:

- i. *Transport Operations (Road Use Management - Vehicle Standards and Safety) Regulation 2021* (Qld), Schedule 1, clauses 21 and 22;
- ii. *Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 2010* (Qld), Schedule 1, clauses 7 and 8; and
- iii. *Transport Operations (Road Use Management - Vehicle Standards and Safety) Regulation 1999* (Qld), Schedule 1, clauses 7 and 8.

- d. South Australia:
 - i. *Road Traffic (Light Vehicle Standards) Rules 2018 (SA)*, rr 21 and 22;
 - ii. *Road Traffic (Light Vehicle Standards) Rules 2013 (SA)*, rr 19 and 20;
and
 - iii. *Road Traffic (Vehicle Standards) Rules 1999 (SA)*, rr 19 and 20.
- e. Western Australia:
 - i. *Road Traffic (Vehicles) Regulations 2014 (WA)*, rr 236 and 238; and
 - ii. *Road Traffic (Vehicle Standards) Rules 2002 (WA)*, rr 13 and 14.
- f. ACT:
 - i. *Road Transport (Vehicle Registration) Regulation 2000 (ACT)*,
Schedule 1, clauses 1.15, 1.16 and 1.16A.
- g. Northern Territory:
 - i. *Motor Vehicles (Standards) Regulations - Australian Vehicle Standards Rule 1989 (NT)*, r 27 and Schedule 6, rr 13, 19, 20 and 22.
- h. Tasmania:
 - i. *Vehicles and Traffic (Vehicle Standards) Regulation 2024 (Tas)*, rr 14
and 15;
 - ii. *Vehicles and Traffic (Vehicle Standards) Regulation 2014~~04~~* (Tas), rr 19
and 20; and
 - iii. *Vehicle and Traffic (Vehicle Standards) Regulations 2001~~14~~* (Tas), rr
19 and 20.

2. Particulars to paragraph 9 of the Statement of Claim

- a. NSW:
 - i. *Road Transport (Vehicle Registration) Regulation 2017 (NSW)*, r 60;

- ii. *Road Transport (Vehicle Registration) Regulation 2007* (NSW), r 52(1);
and
 - iii. *Road Transport (Vehicle Registration) Regulation 1998* (NSW), rr 56
and 57.
- b. Victoria:
 - i. *Road Safety (Vehicles) Regulations 2021* (Vic), r 294(1);
 - ii. *Road Safety (Vehicles) Interim Regulations 2020* (Vic), r 253(1);
 - iii. *Road Safety (Vehicles) Regulations 2009* (Vic), r 258(2); and
 - iv. *Road Safety (Vehicles) Regulations 1999* (Vic), r 258.
- c. Queensland:
 - i. *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021* (Qld), r 8;
 - ii. *Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 2010* (Qld), r 5(1); and
 - iii. *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 1999* (Qld), r 5(1).
- d. South Australia:
 - i. *Road Traffic Act 1961* (SA), s 116(1), 117(1) and 118(1).
- e. Western Australia:
 - i. *Road Traffic (Vehicles) Regulations 2014* (WA), r 232; and
 - ii. *Road Traffic (Vehicle Standards) Regulations 2002* (WA), r 8.
- f. ACT:
 - i. *Road Transport (Vehicle Registration) Regulation 2000* (ACT), r 109(2).

- g. Northern Territory:
 - i. *Motor Vehicles (Standards) Regulations 2003* (NT), r 35.
- h. Tasmania:
 - i. *Vehicles and Traffic (Vehicle Standards) Regulation 2024* (Tas), r 5;
 - ii. *Vehicles and Traffic (Vehicle Standards) Regulation 201404* (Tas), r 4;
and
 - iii. *Vehicle and Traffic (Vehicle Standards) Regulations 200144* (Tas), r 4.

3. Particulars to paragraph 10 of the Statement of Claim

- a. NSW:
 - i. *Road Transport Act 2013* (NSW), s 68(1); and
 - ii. *Road Transport (Vehicle Registration) Act 1997* (NSW), s 18.
- b. Victoria:
 - i. *Road Safety Act 1986* (Vic), s 7(1).
- c. Queensland:
 - i. *Transport Operations (Road Use Management--Vehicle Registration) Regulation 2021* (Qld), r 10;
 - ii. *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010* (Qld), r 11; and
 - iii. *Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999* (Qld), r 10.
- d. South Australia:
 - i. *Motor Vehicles Act 1959* (SA), s 9.
- e. Western Australia:
 - i. *Road Traffic (Vehicles) Act 2012* (WA), s 4; and

- ii. *Road Traffic Act 1974* (WA), s 15.
- f. ACT:
 - i. *Road Transport (Vehicle Registration) Act 1999* (ACT), s 18(1).
- g. Northern Territory:
 - i. *Traffic Act 1987* (NT), s 33(1).
- h. Tasmania:
 - i. *Vehicle and Traffic Act 1999* (Tas), s 27(1).

4. Particulars to paragraph 11 of the Statement of Claim

- a. NSW:
 - i. *Road Transport (Vehicle Registration) Regulation 2017* (NSW), r 6(1);
 - ii. *Road Transport (Vehicle Registration) Regulation 2007* (NSW), r 6(1);
and
 - iii. *Road Transport (Vehicle Registration) Regulation 1998* (NSW), r 7.
- b. Victoria:
 - i. *Road Safety (Vehicles) Regulations 2021* (Vic), rr 24 and 48;
 - ii. *Road Safety (Vehicles) Interim Regulations 2020* (Vic), rr 14 and 31;
 - iii. *Road Safety (Vehicles) Regulation 2009* (Vic), rr 14(1) and 29(1); and
 - iv. *Road Safety (Vehicles) Regulations 1999* (Vic), rr 202 and 214.
- c. Queensland:
 - i. *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021* (Qld), r 18;
 - ii. *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010* (Qld), r 9); and

- iii. *Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999*, (Qld), r 8.
- d. South Australia:
 - i. *Motor Vehicles Act 1959* (SA), s 24(1).
- e. Western Australia:
 - i. *Road Traffic (Vehicles) Regulations 2014* (WA), r 34; and
 - ii. *Road Traffic Act 1974* (WA), s 17(2).
- f. ACT:
 - i. *Road Transport (Vehicle Registration) Regulation 2000* (ACT), r 26(1).
- g. Northern Territory:
 - i. *Motor Vehicles Act 1949* (NT), s 8.
- h. Tasmania:
 - i. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2021* (Tas), r 77;
 - ii. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010* (Tas), r 52; and
 - iii. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2000* (Tas), r 45.

5. Particulars to paragraph 12 of the Statement of Claim

- a. NSW:
 - i. *Road Transport (Vehicle Registration) Regulation 2017* (NSW), rr 6(1), 12(1) and 30(6);
 - ii. *Road Transport (Vehicle Registration) Regulation 2007* (NSW), rr 6(1), 12(1) and 30(7); and

- iii. *Road Transport (Vehicle Registration) Regulation 1998* (NSW), rr 7(1), 13(1), 32(7).
- b. Victoria:
- i. *Road Safety (Vehicles) Regulations 2021* (Vic), rr 24, 48(1), 84(4);
 - ii. *Road Safety (Vehicles) Interim Regulations 2020* (Vic), rr 14(1), 31(1), 65(4);
 - iii. *Road Safety (Vehicles) Regulation 2009* (Vic), rr 14(1), 29(1) and 69(4);
and
 - iv. *Road Safety (Vehicles) Regulations 1999* (Vic), rr 202(1), 214(1) and 227(7).
- c. Queensland:
- i. *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021* (Qld), rr 18(1), 23(1) and 34(2);
 - ii. *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010* (Qld), rr 17(1) and 43(11); and
 - iii. *Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999* (Qld), rr 14(1) and 37(11).
- d. South Australia:
- i. *Motor Vehicles Act 1959* (SA), s 24(3).
- e. Western Australia:
- i. *Road Traffic (Vehicles) Act 2012* (WA), s 5(3)(a)(i); and
 - ii. *Road Traffic Act 1974* (WA), s 17(2).
- f. ACT:
- i. *Road Transport (Vehicle Registration) Regulation 2000* (ACT), rr 26(1), 32(1)(a) and 68(9)(a).

- g. Northern Territory:
 - i. *Motor Vehicles Act 1949* (NT), ss 8 and 102(2)(c).
- h. Tasmania:
 - i. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2021* (Tas), rr 82(2), 84(2) and 100(2);
 - ii. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010* (Tas), rr 57(1), 59(2) and 68(2); and
 - iii. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2000* (Tas), rr 49(1), 51(2) and 60(2).

6. Particulars to paragraph 13 of the Statement of Claim

- a. NSW:
 - i. *Road Transport (Vehicle Registration) Regulation 2017* (NSW), r 45(1);
 - ii. *Road Transport (Vehicle Registration) Regulation 2007* (NSW), r 41(1);
and
 - iii. *Road Transport (Vehicle Registration) Regulation 1998* (NSW),
r 42(1).
- b. Victoria:
 - i. *Road Safety (Vehicles) Regulations 2021* (Vic), rr 129(1)(b), 130(1)
and 132;
 - ii. *Road Safety (Vehicles) Interim Regulations 2020* (Vic), rr 112(1)(b),
113(1) and 115;
 - iii. *Road Safety (Vehicles) Regulation 2009* (Vic), rr 114(b), 115(1) and
117; and
 - iv. *Road Safety (Vehicles) Regulations 1999* (Vic), rr 245(1)(b) and 246(1).
- c. Queensland:
 - i. *Transport Operations (Road Use Management—Vehicle Registration)
Regulation 2021* (Qld), r 5;

- ii. *Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010* (Qld), r 58; and
 - iii. *Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999* (Qld), r 48.
- d. South Australia:
 - i. *Motor Vehicles Act 1959* (SA), s 55A(1).
- e. Western Australia:
 - i. *Road Traffic (Vehicles) Act 2012* (WA), s 9; and
 - ii. *Road Traffic Act 1974* (WA), s 23A.
- f. ACT:
 - i. *Road Transport (Vehicle Registration) Regulation 2000* (ACT), r 84(1)(b).
- g. Northern Territory:
 - i. *Motor Vehicles Act 1949* (NT), ss 102 and 128A.
- h. Tasmania:
 - i. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2021* (Tas), rr 77(1)(a) and 104(1)(b);
 - ii. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010* (Tas), rr 52(1)(a) and 72(1)(b); and
 - iii. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2000* (Tas), rr 45 and 64(1)(b).

7. Particulars to paragraph 14 of the Statement of Claim

- a. NSW:
 - i. *Road Transport Act 2013* (NSW), s 76(4);
 - ii. *Road Transport (Vehicle Registration) Act 1997* (NSW), s 26;

- iii. *Road Transport (Vehicle Registration) Regulation 2017* (NSW), r 80;
 - iv. *Road Transport (Vehicle Registration) Regulation 2007* (NSW), r 70;
and
 - v. *Road Transport (Vehicle Registration) Regulation 1998* (NSW), rr 77.
- b. Victoria:
- i. *Road Safety Act 1986* (Vic), ss 13(2) and 14.
- c. Queensland:
- i. *Transport Operations (Road Use Management) Act 1995* (Qld), s 34(2), s 36(1);
 - ii. *Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 2021* (Qld), rr 9 and 11;
 - iii. *Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 2010* (Qld), r 8; and
 - iv. *Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 1999* (Qld), r 14.
- d. South Australia:
- i. *Road Traffic Act 1961* (SA), ss 40Q(2) and 145.
- e. Western Australia:
- i. *Road Traffic Act 1974* (WA), s 29;
 - ii. *Road Traffic (Vehicle Standards) Regulations 2002* (WA), r 61;
 - iii. *Road Traffic (Administration) Act 2008* (WA), s 52(2); and
 - iv. *Road Traffic (Vehicles) Act 2012* (WA), s 71(1).
- f. ACT:
- i. *Road Transport (Vehicle Registration) Act 1999* (ACT), s 25.

g. Northern Territory:

- i. *Motor Vehicles Act 1949* (NT), ss 128 and 128A.

h. Tasmania:

- i. *Vehicles and Traffic Act 1999* (Tas), s 49(1)(f);
- ii. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2021* (Tas), r 117;
- iii. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010* (Tas), r 85); and
- iv. *Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2000* (Tas), r 68.

Schedule 2**Applicable State and Territory Pre-ACL Legislation with respect to each reference to the TPA in the Statement of Claim**

1. **Paragraphs 4(c), 5(d), 67 to 70 of the Statement of Claim: a 'manufacturer' of the Affected Vehicles, within the meaning of s 74A of the TPA (or both)**
 - a. NSW:
 - i. Fair Trading Act 1987 (NSW), s 40T(3) and (4).
 - b. Northern Territory:
 - i. Consumer Affairs and Fair Trading Act 1990 (NT), s 72(3) and (4).
 - c. Victoria, Queensland, South Australia, Western Australia and Tasmania
 - i. The plaintiff relies upon the meaning of the term 'manufacturer' under a proper construction of the relevant State and Territory Pre-ACL Legislation.
2. **Paragraphs 33, 47, 57F and 57P of the Statement of Claim (misleading or deceptive or was likely to mislead or deceive: s 52 of the TPA)**
 - a. NSW:
 - i. Fair Trading Act 1987 (NSW), s 42.
 - b. Victoria:
 - i. Fair Trading Act 1999 (Vic), s 9.
 - c. Queensland:
 - i. Fair Trading Act 1989 (Qld), s 38.
 - d. South Australia:
 - i. Fair Trading Act 1987 (SA), s 56.
 - e. Western Australia:
 - i. Fair Trading Act 1987 (WA), s 10.
 - f. ACT:
 - i. Fair Trading Act 1992 (ACT), s 12.

- g. Northern Territory:
 - i. Consumer Affairs and Fair Trading Act 1990 (NT), s 42.

- h. Tasmania:
 - i. Fair Trading Act 1990 (Tas), s 14

3. Paragraphs 34, 50 and 57G of the Statement of Claim (conduct that was liable to mislead the public as to the nature, the manufacturing process, the characteristics and/or the suitability for purpose: s 55 of the TPA)

- a. NSW:
 - i. Fair Trading Act 1987 (NSW), s 49.

- b. Victoria:
 - i. Fair Trading Act 1999 (Vic), s 10.

- c. Queensland:
 - i. Fair Trading Act 1989 (Qld), s 44.

- d. South Australia:
 - i. Fair Trading Act 1987 (SA), s 63.

- e. Western Australia:
 - i. Fair Trading Act 1987 (WA), s 17.

- f. ACT:
 - i. Fair Trading Act 1992 (ACT), s 19.

- g. Northern Territory:
 - i. Consumer Affairs and Fair Trading Act 1990 (NT), s 47.

- h. Tasmania:
 - i. Fair Trading Act 1990 (Tas), s 20.

4. **Paragraphs 35 and 48 of the Statement of Claim false or misleading representation as to a particular standard or quality; and/or particular performance characteristics or benefits: s 53(a) and (c) of the TPA.**

a. NSW:

i. Fair Trading Act 1987 (NSW), s 44(a) and (e).

b. Victoria:

i. Fair Trading Act 1999 (Vic), s 12(a) and (e).

c. Queensland:

i. Fair Trading Act 1989 (Qld), s 40(a) and (e).

d. South Australia:

i. Fair Trading Act 1987 (SA), s 58(a) and (e).

e. Western Australia:

i. Fair Trading Act 1987 (WA), s 12(1)(a) and (e).

f. ACT:

i. Fair Trading Act 1992 (ACT), s 14(1)(a) and (e).

g. Northern Territory:

i. Consumer Affairs and Fair Trading Act 1990 (NT), s 44(a) and (e).

h. Tasmania:

i. Fair Trading Act 1990 (Tas), s 16(a) and (e).

5. **Paragraphs 37, 51 and 87 of the Statement of Claim (involvement in contravention: s 75B of the TPA)**

a. NSW:

i. Fair Trading Act 1987 (NSW), s 61.

b. Victoria:

i. Fair Trading Act 1999 (Vic), s 145.

- c. Queensland:
 - i. *Fair Trading Act 1989 (Qld), s 5F.*
- d. South Australia:
 - i. *Fair Trading Act 1987 (SA), s 3(3).*
- e. Western Australia:
 - i. *Fair Trading Act 1987 (WA), s 68.*
- f. ACT:
 - i. *Fair Trading Act 1992 (ACT), s 40.*
- g. Northern Territory:
 - i. *Consumer Affairs and Fair Trading Act 1990 (NT), s 87.*
- h. Tasmania:
 - i. *Fair Trading Act 1990 (Tas), s 29*

6. Paragraph 43, 57, 89 and 93 of the Statement of Claim (liability for compensation: s 82 of the TPA)

- a. NSW:
 - i. *Fair Trading Act 1987 (NSW), s 68.*
- b. Victoria:
 - i. *Fair Trading Act 1999 (Vic), s 159.*
- c. Queensland:
 - i. *Fair Trading Act 1989 (Qld), s 99.*
- d. South Australia:
 - i. *Fair Trading Act 1987 (SA), s 84.*
- e. Western Australia:
 - i. *Fair Trading Act 1987 (WA), s 79.*

- f. ACT:
 - i. *Fair Trading Act 1992 (ACT), s 46.*
- g. Northern Territory:
 - i. *Consumer Affairs and Fair Trading Act 1990 (NT), s 91.*
- h. Tasmania:
 - i. *Fair Trading Act 1990 (Tas), s 37.*

7. **Paragraph 58 of the Statement of Claim (meaning of consumer: s 4B(1) of the TPA)**

- a. NSW:
 - i. *Fair Trading Act 1987 (NSW), s 5.*
- b. Victoria:
 - i. *The plaintiff relies upon the meaning of the term 'consumer' upon a proper construction of the *Fair Trading Act 1999 (Vic), s 159.**
- c. Queensland:
 - i. *Fair Trading Act 1989 (Qld), s 6.*
- d. South Australia:
 - i. *Fair Trading Act 1987 (SA), s 48.*
- e. Western Australia:
 - i. *Fair Trading Act 1987 (WA), s 6.*
- f. ACT:
 - i. *Fair Trading Act 1992 (ACT), s 6.*
- g. Northern Territory:
 - i. *Consumer Affairs and Fair Trading Act 1990 (NT), s 5.*
- h. Tasmania:
 - i. *Fair Trading Act 1990 (Tas), s 5.*

8. **Paragraph 58, Particular (2) of the Statement of Claim (presumption as to consumer: s 4B(3) of the TPA)**

a. NSW:

i. Fair Trading Act 1987 (NSW), s 81.

b. Victoria:

i. Fair Trading Act 1999 (Vic), s 32EB (whereby the Act is presumed to apply to a contract which is alleged to attract the application of the Act, and for the avoidance of doubt, that is alleged in this Claim).

c. Queensland:

i. Fair Trading Act 1989 (Qld), s 6(5).

d. South Australia:

i. Fair Trading Act 1987 (SA), s 48(3).

e. Western Australia:

i. Fair Trading Act 1987 (WA), s 6(4).

f. ACT:

i. Fair Trading Act 1992 (ACT), s 6(3).

g. Northern Territory:

i. Consumer Affairs and Fair Trading Act 1990 (NT), s 333.

h. Tasmania:

i. Not applicable.

9. **Paragraph 59 of the Statement of Claim (supply: s 4 of the TPA).**

a. NSW:

i. Fair Trading Act 1987 (NSW), s 4.

b. Victoria:

i. Fair Trading Act 1999 (Vic), s 3.

- c. Queensland:
 - i. *Fair Trading Act 1989 (Qld), s 5 and 5C.*
- d. South Australia:
 - i. *Fair Trading Act 1987 (SA), s 3(1).*
- e. Western Australia:
 - i. *Fair Trading Act 1987 (WA), s 5(1).*
- f. ACT:
 - i. *Fair Trading Act 1992 (ACT), s 7(1).*
- g. Northern Territory:
 - i. *Consumer Affairs and Fair Trading Act 1990 (NT), s 4.*
- h. Tasmania:
 - i. *Fair Trading Act 1990 (Tas), s 3.*

10. Paragraphs 62 and 63 of the Statement of Claim (guarantee of acceptable quality: s 71 of the TPA, having regard to s 74D(3) of the TPA)

- a. NSW:
 - i. *Fair Trading Act 1987 (NSW), s 40Q.*
- b. Victoria:
 - i. *Fair Trading Act 1999 (Vic), s 32I.*
- c. Queensland:
 - i. *Sale of Goods Act 1896 (Qld), s 17(c).*
- d. South Australia:
 - i. *Consumer Transactions Act 1972 (SA), s 6(4) and (5).*
- e. Western Australia:
 - i. *Fair Trading Act 1987 (WA), s 38.*

- f. ACT:
 - i. *Sale of Goods Act 1954 (ACT), s 19.*
- g. Northern Territory:
 - i. *Consumer Affairs and Fair Trading Act 1990 (NT), s 64.*
- h. Tasmania:
 - i. *Sale of Goods Act 1896 (Tas), s 19.*

11. Paragraphs 71 to 73, 80 of the Statement of Claim (express warranty: s 74A(1) of the TPA)

This aspect of the claim, in so far as it would have relied solely upon the State and Territory Pre-ACL Legislation, is pressed only in relation to the legislation set out below:

- a. NSW:
 - i. *Fair Trading Act 1987 (NSW), s 40T(1).*
- b. Northern Territory:
 - i. *Consumer Affairs and Fair Trading Act 1990 (NT), s 72.*
- c. Victoria, Queensland, South Australia, Western Australia and Tasmania
 - i. Not pressed.

12. Paragraphs 77, 78(b) and 83(b) of the Statement of Claim (liability of manufacturer or supplier to compensate for breach of express warranty: s 74G of the TPA)

This aspect of the claim, in so far as it would have relied solely upon the State and Territory Pre-ACL Legislation, is pressed only in relation to the legislation, and subject to the limitations, set out below:

- a. NSW:
 - i. *Fair Trading Act 1987 (NSW), s 40Z (only as to the First Defendant as the supplier of the Affected Vehicles).*

- b. Northern Territory:
 - i. Consumer Affairs and Fair Trading Act 1990 (NT), s 78 (only as to the First Defendant as the supplier of the Affected Vehicles).
- c. Victoria, Queensland, South Australia, Western Australia and Tasmania
 - i. Not pressed.

13. Paragraphs 84, 86 and 87(a) of the Statement of Claim (prescribed consumer product safety standard: s 65C of the TPA)

This aspect of the claim, in so far as it would have relied solely upon the State and Territory Pre-ACL Legislation, is not pressed.

14. Paragraph 91 of the Statement of Claim (unconscionable conduct: s 51AC of the TPA)

This aspect of the claim, in so far as it would have relied solely upon the State and Territory Pre-ACL Legislation, is pressed, subject to the limitations set out below:

- a. NSW:
 - i. Fair Trading Act 1987 (NSW), s 43 (only as to the First Defendant as the supplier of the Affected Vehicles).
- b. Victoria:
 - i. Fair Trading Act 1999 (Vic), s 8.
- c. Queensland:
 - i. Fair Trading Act 1989 (Qld), s 39 (only as to the First Defendant as the supplier of the Affected Vehicles).
- d. South Australia:
 - i. Fair Trading Act 1987 (SA), s 57.
- e. Western Australia:
 - i. Fair Trading Act 1987 (WA), s 11 (only as to the First Defendant as the supplier of the Affected Vehicles).
- f. ACT:
 - i. Fair Trading Act 1992 (ACT), s 13.

g. Northern Territory:

- i. *Consumer Affairs and Fair Trading Act 1990 (NT), s 43 (only as to the First Defendant as the supplier of the Affected Vehicles).*

h. Tasmania:

- i. *Fair Trading Act 1990 (Tas), s 15.*

Annexure A

<u>Mercedes-Benz Model</u>	<u>Model Year</u>	<u>Body Type</u>	<u>Engine</u>
<u>C300 CDI</u>	<u>2011</u>	<u>Sedan</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>C350 CDI</u>	<u>2009</u>	<u>Sedan / wagon</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>C350 CDI</u>	<u>2009</u>	<u>Sedan</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>C350 CDI</u>	<u>2011</u>	<u>Sedan</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>CLS350 BlueTEC</u>	<u>2013</u>	<u>Sedan</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>CLS350 CDI</u>	<u>2011</u>	<u>Sedan</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>CLS350 CDI Grand Edition</u>	<u>2009</u>	<u>Coupe</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>E280 CDI</u>	<u>2008</u>	<u>Sedan</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>E280 CDI</u>	<u>2009</u>	<u>Sedan</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>E300 BlueTEC</u>	<u>2013</u>	<u>Sedan</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>E300 CDI</u>	<u>2010</u>	<u>Sedan / wagon</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>E300 CDI</u>	<u>2010</u>	<u>Sedan / wagon</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>E300 CDI</u>	<u>2011</u>	<u>Sedan / wagon</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>E350 CDI</u>	<u>2009</u>	<u>Sedan / wagon</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>E350 CDI</u>	<u>2009</u>	<u>Sedan / wagon</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>E350 CDI</u>	<u>2010</u>	<u>Sedan / wagon</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>E350 CDI</u>	<u>2011</u>	<u>Sedan / wagon / coupe</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>G300 CDI</u>	<u>2010</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>G300 CDI</u>	<u>2011</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>G300 CDI</u>	<u>2012</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>G300 CDI</u>	<u>2013</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>G300 CDI</u>	<u>2014</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>G300 CDI</u>	<u>2015</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>G300 CDI</u>	<u>2016</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>G300 CDI</u>	<u>2017</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>G300 CDI</u>	<u>2018</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>G300 CDI</u>	<u>2019</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>G350 BlueTEC</u>	<u>2010</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>G350 CDI</u>	<u>2009</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>G350d</u>	<u>2013</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GL 350 BlueTEC</u>	<u>2012</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GL 350 BlueTEC</u>	<u>2013</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GL 350 BlueTEC</u>	<u>2014</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GL 350 BlueTEC</u>	<u>2015</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GL350 BlueTEC</u>	<u>2009</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GL350 BlueTEC</u>	<u>2009</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GL350 BlueTEC</u>	<u>2010</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GL350 BlueTEC</u>	<u>2011</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GL350 BlueTEC</u>	<u>2012</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GL350 BlueTEC</u>	<u>2016</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GL350 CDI</u>	<u>2009</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GL350 CDI</u>	<u>2009</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GL350 CDI</u>	<u>2010</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GLC 350d</u>	<u>2016</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GLC 350d</u>	<u>2017</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GLC 350d</u>	<u>2018</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GLC 350d</u>	<u>2019</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>

<u>GLE 350d</u>	<u>2015</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GLE 350d</u>	<u>2016</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GLE 350d</u>	<u>2017</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GLE 350d</u>	<u>2018</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GLE 350d</u>	<u>2019</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GLK320 CDI</u>	<u>2008</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GLK350 CDI</u>	<u>2009</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GLK350 CDI</u>	<u>2010</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GLK350 CDI</u>	<u>2012</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GLS 350d</u>	<u>2015</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GLS 350d</u>	<u>2016</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GLS 350d</u>	<u>2017</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GLS 350d</u>	<u>2018</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GLS 350d</u>	<u>2019</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>GLS 350d</u>	<u>2019</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>ML 350 BlueTEC</u>	<u>2011</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>ML 350 BlueTEC</u>	<u>2012</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>ML 350 BlueTEC</u>	<u>2013</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>ML 350 BlueTEC</u>	<u>2014</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>ML 350 BlueTEC</u>	<u>2015</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>ML280 CDI</u>	<u>2008</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>ML280 CDI</u>	<u>2009</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>ML280 CDI</u>	<u>2010</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>ML300 CDI</u>	<u>2008</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>ML300 CDI</u>	<u>2009</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>ML300 CDI</u>	<u>2010</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>ML300 CDI</u>	<u>2010</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>ML300 CDI</u>	<u>2011</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>ML350 BlueTEC</u>	<u>2009</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>ML350 BlueTEC</u>	<u>2010</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>ML350 BlueTEC</u>	<u>2011</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>ML350 CDI</u>	<u>2009</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>ML350 CDI</u>	<u>2010</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>R280 CDI</u>	<u>2008</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>R280 CDI</u>	<u>2009</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>R300 CDI</u>	<u>2009</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>R300 CDI</u>	<u>2010</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>R300 CDI</u>	<u>2011</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>R300 CDI</u>	<u>2012</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>R350 BlueTEC</u>	<u>2009</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>R350 CDI</u>	<u>2009</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>R350 CDI</u>	<u>2010</u>	<u>SUV</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>S350 BlueTEC</u>	<u>2011</u>	<u>Sedan</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>S350 BlueTEC</u>	<u>2012</u>	<u>Sedan</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>S350 BlueTEC</u>	<u>2013</u>	<u>Sedan</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>S350 BlueTEC</u>	<u>2014</u>	<u>Sedan</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>S350 BlueTEC</u>	<u>2015</u>	<u>Sedan</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>S350 BlueTEC</u>	<u>2016</u>	<u>Sedan</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>S350 BlueTEC</u>	<u>2017</u>	<u>Sedan</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>S350 CDI</u>	<u>2009</u>	<u>Sedan</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>S350d</u>	<u>2013</u>	<u>Sedan</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>S350d</u>	<u>2014</u>	<u>Seda</u>	<u>6 cyl 3.0L Turbo Diesel</u>

<u>S350d</u>	<u>2015</u>	<u>Sedan</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>S350d</u>	<u>2016</u>	<u>Sedan</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>S350d</u>	<u>2017</u>	<u>Sedan</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>Viano CDI</u>	<u>2008</u>	<u>People Mover</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>Viano CDI</u>	<u>2009</u>	<u>People Mover</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>Viano CDI</u>	<u>2010</u>	<u>People Mover</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>Viano CDI</u>	<u>2010</u>	<u>People Mover</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>Vito 120/122 CDI</u>	<u>2008</u>	<u>Van</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>Vito 120/122 CDI</u>	<u>2009</u>	<u>Van</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>Vito 120/122 CDI</u>	<u>2010</u>	<u>Van</u>	<u>6 cyl 3.0L Turbo Diesel</u>
<u>Vito 120/122 CDI</u>	<u>2010</u>	<u>Van</u>	<u>6 cyl 3.0L Turbo Diesel</u>