



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

No. S ECI 2024 00234

Filed on: 04/11/2025 09:08 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

REPLY

Date of Document: 4 November 2025 Solicitors Code: 19741, Martin del Gallego

Filed on behalf of: Plaintiff

Prepared by

Piper Alderman

Ref: 442602

Level 23, 1 Farrer Place

Telephone: 02 9253 9999

Sydney NSW 2000

Email: MdelGallego@piperalderman.com.au

This pleading adopts the same definitions as the plaintiff's further amended statement of claim filed 16 May 2025 (**FASOC**).

1. The plaintiff joins issue with the defendants upon their defence filed on 25 July 2025 (**Defence**) to the FASOC, except insofar as:
 - a. that Defence consists of admissions (which are adopted); or
 - b. any allegation in the Defence is expressly admitted in this reply.
2. In this Reply, references to 'Group Members' are limited to those Group Members whose claims the defendants allege are barred by operation of ss 236(2), 237(3), 239(4) or 273 of the ACL, ss 74J(1), 74J(2)(a)(iii) and (vi) and 82(2) of the TPA or s

12(1) of the *Limitation Act 1981* (NT), s 5(1) of the *Limitation of Actions Act 1958* (Vic), s 14 of the *Limitation Act 1969* (NSW), s 10(1) of the *Limitations of Actions Act 1974* (Qld), s 4(1) of the *Limitation Act 1974* (Tas), s 13 of the *Limitation Act 2005* (WA), and/or s 11 of the *Limitation Act 1985* (ACT), s 10(3) of the *Limitations of Actions Act 1974* (Qld) and/or s 4(3) of the *Limitation Act 1974* (Tas), as applicable.

ACL, s 273 and cognate provisions: No awareness of defeat device

3. The plaintiff denies paragraphs 95, 96 and 98(a), (b), (c), and (d) of the Defence, and further says:
 - a. an action for damages under:
 - i. part 5-4 Division 2 of the Australian Consumer Law; and/or
 - ii. part V Division 2A of the TPA;

may be commenced at any time within 3 years after the day on which the plaintiff or Group Member first became aware, or ought reasonably to have become aware, that the guarantee to which the action relates has not been complied with, subject to, in respect causes of actions under the TPA, the operation of s 74J(3);
 - b. the plaintiff only became aware of a non-compliance with a statutory guarantee in around December 2023;
 - c. the earliest date upon which the Group Members have become or will become aware, or ought reasonably to have become aware, of a non-compliance with a statutory guarantee is:
 - i. on the date the Court:
 1. makes a finding of fact or mixed fact and law as to the existence of a Defeat Device in the Affected Vehicles;
 2. makes a declaration that the Affected Vehicles have a Defeat Device;
 - ii. in the alternative, the date of the first communication of the Court to the Group Members as to the existence and basis of the claim;

Particulars

As at the date of this pleading, no notice to Group Members, including any opt out notice, has yet been issued in the proceedings.

- iii. in the alternative, 22 January 2024, being the date the plaintiff commenced this proceeding; or
- iv. in the alternative, a date to be determined on a trial of individual issues; and
- d. in the circumstances pleaded in this paragraph, the proceeding in respect of the corresponding causes of action was not commenced outside the limitation period.

Limitations Representation

- 4. In answer to paragraph 97 of the Defence, and further and in the alternative in answer to paragraphs 95, 96 and 98(a), (b), (c), and (d) of the Defence, the plaintiff says that:
 - a. the first defendant engaged in the conduct pleaded in paragraph 29 of the FASOC;
 - b. until about 1 November 2019 the second defendant, and from about 1 November 2019 the third defendant, engaged in the conduct pleaded in subparagraphs (a) to (f) of paragraph 37 of the FASOC;
 - c. by reason of the matters set out in subparagraphs (a) and (b) above, and each of them, the defendants represented to Group Members 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, including Australian Design Rules 79 as described in paragraph 7 of the FASOC (the “**applicable vehicle standards**”), and further or in the alternative represented to the Group Members that:
 - i. it was lawful for the Affected Vehicles to be imported to, or supplied to the market in Australia;
 - ii. it was lawful for the Affected Vehicles to be used on the road in Australia;
 - iii. it was lawful for the Affected Vehicles to be registered in the States and Territories of Australia;

- iv. the Affected Vehicles were not liable to be recalled due to non-compliance with the applicable vehicle standards;
 - v. if any of the Affected Vehicles were inspected by a person authorised by law to carry out such an inspection, the use of the Affected Vehicles was not liable to be prohibited on the basis that the vehicles were non-compliant with the applicable vehicle standards; and
 - vi. the Affected Vehicles were not liable to have their registration suspended or cancelled due to non-compliance with the applicable vehicle standards;
- d. by reason of the matters referred to in paragraphs 25 to 27A of the FASOC (that each Affected Vehicle contained the Mercedes Defeat Devices and therefore did not comply with Australian Design Rule 79) and by reason of the consequences thereof pleaded in paragraphs 9 to 17 of the FASOC, the representations pleaded in subparagraph (c) above, and each of them, were false;
- e. by their conduct pleaded in subparagraphs (a) to (c) above, the defendants made the following representations to the plaintiff and Group Members, intending the plaintiff and Group Members to act upon each representation, namely that:
- i. the plaintiff and the Group Members had no cause of action arising from the existence of the Mercedes Defeat Devices in any of the Affected Vehicles; and
 - ii. in consequence of (i), no limitation period applied to such a cause of action,
- (the **Limitation Representation**);
- f. the Limitation Representation was false because the causes of action pleaded in the FASOC, and each of them, arose from the existence of the Mercedes Defeat Devices in the Affected Vehicles (as is pleaded at paragraphs 25 to 27A of the FASOC);
- g. as a consequence of the conduct pleaded in subparagraphs (a) to (c) above and the Limitation Representation, the plaintiff and Group Members did not commence these proceedings before 22 January 2024; and

- h. if the defendants are permitted to resile or depart from the Limitation Representation then, if and to the extent that any of their claims are time-barred, the plaintiff and Group Members will suffer detriment.

Particulars

The detriment is that each did not commence proceedings before such a time as a limitation defence is asserted by the defendants. The detriment would only be suffered if the defendants are permitted to rely upon, and succeeded in, its limitation defence.

Limitation Representation by Silence or Inaction

- 5. Further and in the alternative, in answer to paragraphs 95, 96, 97 and 98 of the Defence, the plaintiff says that:
 - a. in the premises of subparagraphs 4(a) to (c) above, at no time did the defendants inform the plaintiff or Group Members 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;
 - iii. the Affected Vehicles could not be registered in the States and Territories of Australia;
 - iv. the Affected Vehicles were liable to be recalled due to non-compliance with the applicable vehicle standards;
 - v. if the Affected Vehicles were inspected by a person authorised by law to carry out such an inspection, the use of the Affected Vehicles was liable to be prohibited on the basis that the vehicles were non-compliant with the applicable vehicle standards; and
 - vi. the Affected Vehicles were liable to have their registration suspended or cancelled due to non-compliance with the applicable vehicle standards;
 - b. the plaintiff and Group Members had a reasonable expectation that the defendants would disclose to them if the Affected Vehicles had any of the qualities referred to in subparagraph (a) above.

- c. if the plaintiff and Group Members had known that:
 - i. the Affected Vehicles made available to the Australian market contained the Mercedes Defeat Devices (as is pleaded at paragraphs 25 to 27A of the FASOC); and
 - ii. therefore that those vehicles had the qualities referred to in subparagraph (a) above,

that knowledge would have been material to the decision of the plaintiff and Group Members to acquire the Affected Vehicles;
- d. until about 1 November 2019 the second defendant, and from about 1 November 2019 the third defendant, knew, or alternatively, ought to have known, that the Affected Vehicles had the qualities referred to in subparagraph (a) above, and yet did not inform the plaintiff or Group Members of the same;
- e. the matters set out in subparagraphs (b) to (d) above, and each of them, created a duty upon the second and further the third defendant to inform the plaintiff and Group Members of the matters in subparagraph (a) above, and by reason of silence or inaction, the second and further the third defendant made the following representations to the plaintiff and Group Members, intending the plaintiff and Group Members to act upon each representation, namely that:
 - i. the plaintiff and the Group Members had no cause of action arising from the existence of the Mercedes Defeat Devices in any of the Affected Vehicles; and
 - ii. in consequence of (i), no limitation period applied to such a cause of action,

(Limitation Representation by Silence or Inaction);
- f. the Limitation Representation by Silence or Inaction was false because the causes of action pleaded in the FASOC, and each of them, arose from the existence of the Mercedes Defeat Devices in the Affected Vehicles (as is pleaded at paragraphs 25 to 27A of the FASOC);
- g. as a consequence of the conduct pleaded subparagraph (a) above and the Limitation Representation by Silence or Inaction, the plaintiff and Group Members did not commence these proceedings in or before 22 January 2024; and

- h. if the second or third defendant is permitted to resile or depart from the Limitation Representation by Silence or Inaction then, if and to the extent that any of their claims are time-barred, the plaintiff and Group Members will suffer detriment.

Particulars

Repeat particulars subjoined to paragraph 4(h) above.

Estoppel by representation

- 6. In the premises of paragraphs 4 and 5 above, in answer to paragraphs 95, 96, 97 and 98 of the Defence, the plaintiff says that:
 - a. the second and further the third defendant is estopped (by reason of estoppel by representation) from denying the truth of the Limitation Representation or the Limitation Representation by Silence or Inaction in this proceeding; and
 - b. the second and further the third defendant is estopped (by reason of estoppel by representation) from relying upon the pleaded limitations defences.

Promissory estoppel

- 7. In further and alternative answer to paragraphs 95, 96, 97 and 98 of the Defence, the plaintiff says that:
 - a. in the premises of paragraph 5(a) above and on the premise that each Group Member acquired at least one Affected Vehicle (as is set out in paragraphs 1 and 3 of the FASOC), at all material times, the plaintiff and Group Members assumed a state of affairs, being that:
 - i. the plaintiff and the Group Members had no cause of action arising from the existence of a Defeat Device in any of the Affected Vehicles; and

Particulars

- 1. The assumption of the plaintiff was held until the date pleaded in subparagraph 3(b) above.
- 2. For the plaintiff, the material times are from the date the plaintiff acquired an Affected Vehicle until the date pleaded in subparagraph 3(b) above.
- 3. The assumption of the Group Members is either to be inferred from the matters in subparagraph (a) of this

paragraph, or alternatively is to be determined at the trials of individual issues of Group Members.

4. For the Group Members, the material times are from the date each Group Member purchased an Affected Vehicle until the date pleaded in paragraph 3(c) above.

- ii. in consequence of subparagraph (a)(i), that no limitation period applied to such a cause of action,

(Limitation Assumption);

- b. the defendants:
 - i. induced or encouraged the plaintiff and Group Members to make the Limitation Assumption by their conduct pleaded in paragraph 5(a) above; or
 - ii. failed to disclaim the Limitation Assumption, knowing or intending the plaintiff and Group Members would rely on the Limitation Assumption;
- c. as a consequence of the conduct pleaded in subparagraph (b) above and the Limitation Assumption, the plaintiff and Group Members did not commence these proceedings before 22 January 2024;
- d. if the defendants are permitted to resile or depart from the Limitation Assumption then, if and to the extent that any of their claims are time-barred, the plaintiff and Group Members will suffer detriment.

Particulars

Repeat particulars subjoined to paragraph 4(h) above.

- e. in the circumstances pleaded in the paragraph above, the defendants are estopped (by promissory estoppel) from denying the truth of the Limitation Assumption in these proceedings; and
- f. in the circumstances above, the defendants are estopped (by promissory estoppel) from relying upon the pleaded limitations defence.

Date: 4 November 2025

A handwritten signature in blue ink, consisting of a stylized 'M' followed by a horizontal stroke.

Signed by Martin del Gallego
Lawyer of the Plaintiff