

NOTICE OF FILING

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File Title: GEOFFREY FISHER & ANOR v ISUZU MOTORS LIMITED (JAPANESE PUBLIC COMPANY LIMITED BY SHARES)
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Amended Defence to Amended Statement of Claim

Federal Court of Australia
District Registry: New South Wales
Division: General

No. NSD 1109 of 2024

Geoffrey Fisher and another

Applicants

Isuzu Motors Limited (Japanese public company limited by shares)

Respondent

Filed pursuant to order 1 of the orders of Owens J dated 4 July 2025.

PART A: INTRODUCTION

1. In answer to paragraph 1 in part A of the Amended Statement of Claim filed on 10 June 2025 (Statement of Claim), the Respondent:
 - (a) says that the technical requirements of 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 (**UN Regulation 83**), are an alternative standard and deemed to be equivalent to the technical requirements in Australian Design Rule 79/04 — Emission Control for Light Vehicles 2011 (**ADR 79/04**);
 - (b) Appendix A to ADR 79/04 contains text which is substantially identical to the text of UN Regulation 83, but the operation of Appendix A is modified by regulation 5 of ADR 79/04; and
 - (c) otherwise denies the allegations in the paragraph.

Particulars

- Australian Design Rule 79/04 — Emission Control for Light Vehicles) 2011, Volume 1, section 6.

Filed on behalf of: The respondent

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2. In answer to paragraph 2 in part A of the Statement of Claim, the Respondent:

- (a) says that ADR 79/04 contains a number of test requirements for different kinds of reference fuels contained in Table A of Volume 2 of ADR 79/04, relevantly a 'Type I test' for diesel vehicles;
- (b) says that the 'Type 1' test specifies rules relating to test conditions, test equipment, the determination of vehicle road load, and the emissions test procedure;
- (c) says that emissions limits for various pollutants including 'oxides of nitrogen' (**NO_x**) are specified in Table 1 in paragraph 5.3.1.4. of the regulation;
- (d) says that ADR 79/04 deems the technical requirements of UN Regulation 83 to be equivalent to the technical requirements of ADR 79/04;
- (e) admits that NO_x can be harmful to humans and the environment, but says that in the absence of any specification of:
 - (i) the volume of NO_x;
 - (ii) the ratio of NO_x to other compounds in the atmosphere;
 - (iii) any condition suffered by the applicants or any other person, including any group member;
 - (iv) any adverse effects suffered by the applicants or any other person, including any group member;

the Respondent does not know and therefore cannot admit the allegations in this paragraph concerning the impact that NO_x, including as produced by diesel vehicles, may have on humans or the environment; and

- (f) otherwise denies the allegations in the paragraph.

3. The Respondent admits paragraph 3 in part A of the Statement of Claim, and:

- (a) repeats and relies on paragraph 2 in part A herein; and
- (b) says further that ADR 79/04 states: "... Such an element of design may not be considered a defeat device if:
 - (i) the need for the device is justified in terms of protecting the engine against damage or accident and for safe operation of the vehicle; or
 - (ii) the device does not function beyond the requirements of engine starting; or

(iii) conditions are substantially included in the Type I or Type VI test procedures."

Particulars

- paragraphs 2.16.1, 2.16.2 and 2.16.3 of Appendix A to ADR 79/04.
4. In answer to paragraph 4 in part A of the Statement of Claim, the Respondent:
- (a) admits that ADR 79/04 is a 'national road vehicles standard' within the meaning of the Road Vehicles Standards Act 2018 (Cth) (**RVSA**);
 - (b) says that prior to the commencement of the RVSA, ADR 79/04 was a 'vehicle standard' within the meaning of the Motor Vehicle Standards Act 1989 (Cth) (**MVSA**);
 - (c) admits that the RVSA (and previously the MVSA), together with the Motor Vehicle Standards regulations 1989 (Cth) (**MVSR**) and Road Vehicles Standards Rules 2019 (Cth) (**RVSR**) prohibit various actions in relation to vehicles that do not comply with national road vehicles standards (previously vehicle standards), such as importing or supplying such vehicles;
 - (d) says that the RVSA (and previously the MVSA) establish a system for persons to demonstrate compliance of vehicle types with applicable 'national road vehicle standards' or 'vehicle standards' and for the Minister to grant 'type approvals' to vehicles which have established compliance with the applicable 'national road vehicle standards' or 'vehicle standards';
 - (e) says that paragraph 4 in part A of the Statement of Claim does not identify which State and Territory regulations to which the Applicants refer and, to the extent that paragraph 4 is referable to the regulations referred to in paragraphs 10 to 20 of the Statement of Claim, the Respondent refers to paragraphs 10 to 20 of this Defence; and
 - (f) otherwise denies the allegations in the paragraph.
5. In answer to paragraph 5 in part A of the Statement of Claim, the Respondent:
- (a) admits that the Applicants make the allegations on their own behalf and on behalf of Group Members referred to in that paragraph; and
 - (b) otherwise denies the allegations in the paragraph.
6. In answer to paragraph 6 in part A of the Statement of Claim, the Respondent:
- (a) admits that by this proceeding, the Applicants by themselves and on behalf of Group Members seek damages and compensation from the Respondent for the reasons referred to in the paragraph; and

(b) otherwise denies the allegations in the paragraph.

7. The Respondent admits paragraph 7 in part A of the Statement of Claim but makes no admission as to the content of headings contained in the Statement of Claim and Schedule 3.

PART B: THE APPLICANTS AND THE GROUP MEMBERS

1. In answer to paragraph 1 of the Statement of Claim, the Respondent:

(a) admits that the Applicants bring the proceeding on their own behalf and seek to bring the proceeding as representative parties on behalf of persons described in paragraph 1 of the Claim, pursuant to Part IVA of the Federal Court of Australia Act 1976 (Cth) (**FCA Act**);

(b) does not know the identities of the persons described in paragraph 1 of the Statement of Claim;

(c) says that the Affected Vehicles contained one of three different engine variants, either:

(i) 3.0L 4JJ1 (**4JJ1**);

(ii) 3.0L 4JJ3 (**4JJ3**); or

(iii) 1.9L RZ4E (**RZ4E**);

(d) says further that in relation to the various models of D-MAX branded Affected Vehicles:

(i) 4JJ1 was used in all model types from MY 2017 to MY 2019;

(ii) 4JJ3 was used in all model types from MY 2020 to MY 2021;

(iii) from MY2022, a D-MAX branded Affected Vehicle contained either the 4JJ3 or RZ4E engine variant depending on the vehicle model type;

(e) says further that in relation to the MU-X branded Affected Vehicles:

(i) 4JJ1 was used in all model types from MY 2016.5 to MY 2020;

(ii) 4JJ3 was used in all model types from MY 2021 to MY 2023;

(iii) from MY 2024, an MU-X branded Affected Vehicle contained either the 4JJ3 or RZ4E engine variant depending on the vehicle model type; and

(f) otherwise does not know and therefore does not admit the allegations in the paragraph.

2. In answer to paragraph 2 of the Statement of Claim, the Respondent:

(aa) admits subparagraph (a);

- (a) repeats and relies on paragraphs 1 and 113 herein;
- (b) does not know the circumstances in which the First Applicant acquired the First Applicant's Affected Vehicle and therefore cannot admit sub-paragraph (b);
- (c) says that if the First Applicant acquired the First Applicant's Affected Vehicle for personal, domestic or household use or consumption or for use principally in the transport of goods on public roads, then the First Applicant acquired the First Applicant's Affected Vehicle as a consumer for the purposes of the ACL; and
- (d) otherwise does not know and therefore cannot admit the paragraph.

Particulars

- Australian Consumer Law, section 3.

3. In answer to paragraph 3 of the Statement of Claim, the Respondent:

(aa) admits subparagraph (a);

- (a) repeats and relies on paragraphs 1 and 113 herein;
- (b) does not know the circumstances in which the Second Applicant acquired the Second Applicant's Affected Vehicles and therefore cannot admit sub-paragraph (c);
- (c) says that if the Second Applicant acquired the Second Applicant's Affected Vehicles for personal, domestic or household use or consumption or for use principally in the transport of goods on public roads, then the Second Applicant acquired the Second Applicant's Affected Vehicle as a consumer for the purposes of the ACL; and
- (d) otherwise denies the allegations in the paragraph.

Particulars

- Australian Consumer Law, section 3.

4. The Respondent does not know and therefore cannot admit paragraph 4 of the Statement of Claim.

PART C: THE RESPONDENT

5. The Respondent admits paragraph 5 of the Statement of Claim.

6. The Respondent admits paragraph 6 of the Statement of Claim.

7. In answer to paragraph 7 of the Statement of Claim, the Respondent ~~admits~~ ~~denies~~ that it is and was at all material times a corporation carrying on business in Australia within the meaning of s 5 of the CCA and says the following in respect of the other allegations made in the paragraph:

(01). In answer to subparagraph 01, the Respondent:

- (i) admits the allegations in 7(01)(i) and (ii);
- (ii) in respect of 7(01)(iii):
 - A. admits that it worked to ensure its designs achieved regulatory compliance;
 - B. repeats and relies on paragraph 7(c) herein; and
 - C. otherwise denies the allegations in subparagraph 7(01)(iii).

(02). In answer to subparagraph (02), the Respondent:

- (i) repeats and relies on paragraph 7(i) and paragraph 9;
- (ii) admits that it permitted IMCT to manufacture the Affected Vehicles knowing that they would be sold into the Australian market; and
- (iii) otherwise denies the allegation in the subparagraph.

(03) In answer to subparagraph (03) the Respondent:

- (i) admits it knew that the Affected Vehicles were to be imported by IMIT into Australia;
 - (ii) says that it knew that Isuzu D-MAX and MU-X branded vehicles were also to be imported into countries other than Australia; and
 - (iii) otherwise denies the allegations in the subparagraph.
- (a) The Respondent denies the allegations in subparagraph (a). ~~denies that it carried on business in Australia on its own account by selling cars into the market;~~
 - (b) [not used] ~~repeats and relies on paragraphs 32 to 112 herein but otherwise does not know what is meant by "relevant representations in Australia";~~
- (b1) The Respondent admits the allegation in subparagraph (b1).
- (c) In answer to subparagraph (c), the Respondent:
- (i) says that it provided model vehicle test results evidencing compliance with ADR 79 as the relevant 'national standard' or 'national road vehicle standard' (as the case may

be), to Allied Automotive Consultancy Services Pty Ltd for the purpose of applying for approvals relevant to the Affected Vehicles;

(ii) admits that it is the vehicle type approval holder for the Affected vehicles in Australia; and

(iii) otherwise denies the allegation in the subparagraph.

(d) In answer to sub-paragraph (d):

(i) admits that it is the owner of the following Australian registered trade marks:

A. 1761155

B. 968440

C. 2181853

D. 2054395

E. 2088065

(the Relevant Trade Marks)

(ii) denies that it trades upon the Relevant Trade Marks in the course of carrying on business in Australia and says further that it:

A. admits it registered or caused to be registered the Relevant Trade Marks in Australia;

B. admits that it is the registered owner of the Relevant Trade Marks;

C. admits subparagraphs (iv), (v), and (ix) to the extent that they relate to the Relevant Trade Marks;

D. admits that at all relevant times, "trade mark" was defined in s 17 of the *Trade Marks Act 1995 (Cth)* as set out in subparagraph (d)(iii) of the Amended Statement of Claim;

E. admits paragraph (vi); and

(iii) otherwise denies the allegations in the subparagraph.

(e) in answer to sub-paragraph (e), the Respondent repeats and relies on paragraph 85 herein and otherwise does not know what is meant by "was assisted or involved in" and therefore cannot admit subparagraph (e);

- (f) The Respondent admits the allegation in subparagraph (f);
- (g) in answer to the allegation in subparagraph (g), the Respondent:
- (i) says that it was entitled to be paid and was in fact paid a royalty by IMCT for each Licenced Vehicle manufactured by IMCT, including the Affected Vehicles;
 - (ii) says that its entitlement to a royalty in respect of an Affected Vehicle did not depend on the vehicle being sold as a new vehicle in Australia; and
 - (iii) otherwise denies the allegations in the paragraph;

Particulars

- Technical Licence and Assistance Agreement, articles 1(xviii), 2.1, 4.1 and Attachment F.
- (h) In answer to subparagraph (h), the Respondent;
- (i) says that the allegation that "vehicles ... were customised for the needs of consumers in Australia" is vague and embarrassing;
 - (ii) denies that it developed or caused the Affected Vehicles to be developed exclusively for consumers in the Australian market;
 - (iii) admits that it developed vehicles other than the Affected Vehicles and parts for consumers in the Australian market; and
 - (iv) otherwise denies subparagraph (h).
- (i) says further that:
- (i) the Respondent did not supply the Affected Vehicles;
 - (ii) Isuzu Motors Company; (Thailand) Ltd (**IMCT**) manufactures the Affected Vehicles;
 - (iii) Isuzu Motors International Operations (Thailand) Company Limited (**IMIT**) was responsible for the marketing, supply and distribution of the Affected Vehicles globally;
 - (iv) IMIT engaged Isuzu Ute Australia Pty Ltd (**Australian Distributor** or '**IUA**') to establish and maintain a network of qualified retail sales and service outlets for the promotion, distribution, sale, service and parts operations of the Affected Vehicles in Australia;
 - (v) IUA is not a related body corporate of the Respondent; and
- (j) otherwise denies the allegations in the paragraph.

Particulars

- Technical License and Assistance Agreement between IML and IMCT dated 28 April 2021.
- Export Vehicle Distributorship Agreement between IMCT and IMIT dated 27 May 2024.
- Distributorship Agreement between IMIT and IUA dated 9 November 2024.

7A. In answer to paragraph 7A, the Respondent denies that the Respondent's business involved carrying out acts within Australia as a service provider to the Australian distributor and says further that: repeats and relies on paragraph 7 above, in that it admits that it is and was a corporation carrying on business in Australia within the meaning of s 5 of the CCA, and says further in respect of the other allegations made in paragraph 7A of the ASOC:

(a) in respect of each of the alleged "facts" in subparagraphs 7A(a) to (j) of the Statement of Claim:

- (i) says that the allegations in subparagraph (a),(f) and (h) are vague and embarrassing;
- (ii) admits subparagraphs (b), (c), (d), (e)(ii), (e)(iii), (g);
- (iii) in respect of subparagraph (e)(i):
 - A. repeats and relies on subparagraph (a)(i) herein; and
 - B. otherwise denies the subparagraph;
- (iv) in respect of subparagraph (i):
 - A. repeats and relies on paragraph 7 herein;
 - B. says that IMIT appointed the Australian Distributor and the Australian Distributor was the sole distributor (as wholesaler) of the Affected Vehicles to the Australian market during the Relevant Period; and
 - C. otherwise denies the subparagraph.
- (v) repeats and relies on 7(b1) and (c);
- (vi) otherwise denies the allegation in the subparagraphs.

7B. In answer to paragraph 7B, the Respondent repeats and relies on paragraph 7 above, in that it admits that it is and was a corporation carrying on business in Australia within the meaning of s 5 of the CCA, and says in respect of the other allegations made in paragraph 7B of the ASOC that:

- (a) it repeats and relies on paragraphs 7, 7A, 32, 45 and 86 herein;

(b) says that to the extent the Court finds the Respondent made the General Representation, the Federal Government Representation and the Australian Distributor Representation (which is denied), the Respondent admits they each were made in Australia; and

~~(c) repeats and relies on paragraph 7(g); and~~

(d) otherwise denies the allegations in the paragraph.

7C. In answer to paragraph 7C, the Respondent:

(a) in respect of subparagraph (a):

(i) repeats and refers to paragraph 9 herein;

(ii) otherwise denies subparagraph 7C(a);

(b) in respect of subparagraph (b):

(i) repeats and relies on subparagraph 7(i) herein; and

(ii) otherwise denies subparagraph 7C(b);

(c) in respect of subparagraph (c):

(i) says that the allegation that the importation into Australia of the Affected Vehicles was “an essential or key part” of the Respondent’s business is vague and embarrassing;

(ii) otherwise denies subparagraph 7C(c);

(d) admits subparagraph (d);

(e) in respect of subparagraph (e):

(i) admits that the Australian Distributor and its dealers made the Affected Vehicles available for sale in Australia;

(ii) says that the Australian Distributor sold only Isuzu-branded vehicles and sold those vehicles principally to dealers in each State and Territory;

(iii) says that the Australian Distributor sold a small number of Affected Vehicles to fleet customers;

(iv) admits that the Respondent knew of the matters referred to in (i) and (ii) above at all relevant times;

(v) otherwise denies the allegation in subparagraph (e);

- (f) does not know and therefore can not admit subparagraph (f);
- (g) does not know and therefore cannot admit subparagraph (g);
- (h) in respect of subparagraph (h) the Respondent:
 - (i) repeats and relies on subparagraph (g) above and paragraphs 32 & 85; and
 - (ii) otherwise admits the allegations in subparagraph (h).
- (i) in respect of subparagraph (i):
 - (i) repeats and relies on subparagraph 7 above;
 - (ii) says that IMIT engaged or nominated the Australian Distributor to establish and maintain a network of qualified retail sales and service outlets for the promotion, distribution, sale, service and parts operations of the Affected Vehicles in Australia; and
 - (iii) otherwise denies the allegation in subparagraph (i);
- (j) in respect of subparagraph (j):
 - (i) repeats and relies on paragraphs 32, 45 and 86 herein; and
 - (ii) otherwise denies the subparagraph;
- (k) in respect of subparagraph (k) the Respondent, admits that the Affected Vehicles were branded with one or more of the Relevant Trade Marks and the Respondent:
 - (i) in respect of subparagraph (k)(i):
 - A. repeats and refers to paragraph 7(d) and 7(e) herein;
 - B. otherwise denies the subparagraph.
 - (ii) admits the allegations in subparagraph (k)(ii), (iii) and (vii) in so far as they relate to the Relevant Trade Marks;
 - (iii) admits the allegation in subparagraph(k)(iv);
 - (iv) denies the allegations in subparagraphs(k)(v) and (vi); and
 - (v) otherwise denies the allegation in subparagraph (k).
- (l) in respect of subparagraph (l):

- (i) admits it was held out to the public, and permitted it to be held out, as the manufacturer of the Affected Vehicles by the Isuzu Ute Australia Pty Ltd (Australian Distributor or 'IUA') as alleged in subparagraph 9(b) below;
 - (ii) admits that it omitted to take any steps that would have prevented that holding out;
and
 - (iii) otherwise denies the subparagraph.
- (m) repeats and relies on paragraph 7(g) above.

8. In answer to paragraph 8 of the Statement of Claim, the Respondent:

- (a) admits that it is and was at all material times a person carrying on business in each State or Territory or otherwise connected with the jurisdiction of each State and Territory ~~denies the allegations in the paragraph;~~ and
- (b) repeats and relies on paragraphs 7, 7A, 7B and 7C herein.

9. In answer to paragraph 9 of the Statement of Claim, the Respondent:

- (a) repeats and relies on paragraph 7 herein;
- (b) admits it was held out to the public as the manufacturer of the Affected Vehicles by the Australian Distributor, and pursuant to s 7(1)(d) of the ACL is taken to be the manufacturer for the purposes of the ACL;
- (c) denies that it produced or assembled the Affected Vehicles; and
- (d) says that IMCT produced and assembled the Affected Vehicles.

PART D: AUSTRALIAN DESIGN REQUIREMENTS

D.1. Standards

10. In answer to paragraph 10 of the Statement of Claim, the Respondent:

- (a) admits that:
 - (i) from at least the start of the Relevant Period to 1 July 2021, ADR 79 was a 'national standard' pursuant to s 7 of the MVSA; and
 - (ii) from 1 July 2021 to at least the end of the Relevant Period, ADR 79 was a 'national road vehicle standard' pursuant to s 12 of the RVSA;

- (b) says that only ADR 79/04 applied to the type of Affected Vehicles each having a date of manufacture on or after 1 November 2016;
- (c) says further that:
- (i) the MVSA was in force from at least the commencement of the Relevant Period to 30 June 2021 (**MVSA Period**);
 - (ii) on 1 July 2021, the MVSA was repealed;
 - (iii) on 11 December 2018, consequential and transitional arrangements came into effect so as to facilitate the transition from the requirements of the MVSA to the requirements of the RVSA;
 - (iv) these consequential and transitional arrangements were in place during the period 11 December 2018 until 1 July 2023 (**Transitional Period**); and
 - (v) the provisions of the RVSA, came into effect from either the beginning of the Transitional Period or 1 July 2021 (**RVSA Period**), as the case may be; and
- (d) otherwise denies the allegations in the paragraph.
11. In answer to paragraph 11 of the Statement of Claim, the Respondent:
- (a) repeats and relies on paragraphs 10, 12 to 17 herein;
 - (b) says that the ADR 79 is an applicable vehicle standard under the laws of New South Wales, Western Australia, Victoria, Tasmania, South Australia, Queensland, the Australian Capital Territory, the Northern Territory; and
 - (c) otherwise denies the allegations in the paragraph.

Particulars

As to (b):

NSW

- Road Transport (Vehicle Registration) Regulation 2017 (NSW), rr 59(a) Sch 2, cl 21 and 22.
- Road Transport (Vehicle Registration) Regulation 2007 (NSW) rr 51(a) Sch 2, cl 11 and 12.

VIC

- Road Safety (Vehicles) Regulations 2021 (Vic), Sch 1, cl 21 and 22.

- Road Safety (Vehicles) Interim Regulations 2020 (Vic), Sch 2, cl 16 and 17.
- Road Safety (Vehicles) Regulation 2009 (Vic), Sch 2, cl 19 and 20.

QLD

- Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 2021 (Qld), rr 6, sch 1 cl 21 and 22.
- Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 2010 (Qld), rr 4, sch 1 cl 7 and 8.

SA

- Road Traffic (Light Vehicle Standards) Rules 2018 (SA), rr 21 and 22.
- Road Traffic (Light Vehicle Standards) Rules 2013 (SA), rr 16, 19 and 20.

WA

- Road Traffic (Vehicles) Regulations 2014 (WA), rr 236 and 238.

ACT

- Road Transport (Vehicle Registration) Regulation 2000 (ACT), Sch 1, part 1.1.

NT

- Motor Vehicles (Standards) Regulations - Australian Vehicle Standards Rule 1989 (NT), r 27 and Schedule 6, rr 13, 19, 20 and 22.

TAS

- Vehicle and Traffic (Vehicle Standards) Regulations 2024 (Tas), rr 14 and 15.
- Vehicle and Traffic (Vehicle Standards) Regulations 2014 (Tas), rr 19 and 20.

D.2. Offence to use if non-compliant with standards

12. In answer to paragraph 12 of the Statement of Claim, the Respondent:

- (a) repeats and relies on paragraphs 10 and 11 herein;
- (b) says that during the Relevant Period:

- (i) under the law of New South Wales, it was an offence for a person to use a registrable vehicle on a road unless the vehicle complied with the applicable vehicle standards for the vehicle;
 - (ii) under the law of Victoria, it was an offence for a person to use or cause or permit to be used, on a highway a vehicle (whether or not registered) that does not comply with any standard for registration that is applicable to the vehicle;
 - (iii) under the law of Queensland,
 - A. prior to 1 September 2021, it was an offence for a person to drive or park, or permit someone else to drive or park, a vehicle on a road unless the vehicle is otherwise constructed and loaded to comply with the vehicle standards;
 - B. from 1 September 2021, it was an offence for a person to drive or park, or permit someone else to drive or park, a light vehicle that is defective on a road;
 - (iv) under the law of South Australia, it was a breach of a vehicle standards requirement for a person to drive on a road, a vehicle which does not comply with a requirement of the vehicle standards;
 - (v) under the law of the Australian Capital Territory, it was an offence for a driver or operator of a vehicle to contravene a provision of the vehicle standards;
 - (vi) under the law of Western Australia, it was an offence for a person to drive, use or permit a vehicle on a road unless the vehicle complied with the Vehicle Standards applying to the vehicle;
 - (vii) under the law of Tasmania, it was an offence for a person to use, cause or permit the use of, a vehicle or combination on a public street unless the vehicle or combination complies with each provision of the Vehicle Standards applying to the vehicle or combination;
 - (viii) under the law of the Northern Territory, it was prohibited for a person to drive, or cause or permit to be driven, on a road or in a public place a vehicle that does not comply with a requirement of the Australian Vehicle Standards Rules; and
- (c) otherwise denies the allegations in the paragraph.

Particulars

As to (b)(i):

- Road Transport (Vehicle Registration) Regulation 2017 (NSW), r 60.

- Road Transport (Vehicle Registration) Regulation 2007 (NSW), r 52(1).

As to (b)(ii):

- Road Safety (Vehicles) Regulations 2021 (Vic), r 294(1).
- Road Safety (Vehicles) Interim Regulations 2020 (Vic), r 253(1).
- Road Safety (Vehicles) Regulations 2009 (Vic), r 258(2).

As to (b)(iii)(A):

- Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2010 (Qld), r 5(1).

As to (b)(iii)(B):

- Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2021 (Qld), r 7 and r 8.

As to (b)(iv):

- (a) Road Traffic Act 1961 (SA), s 116(1), 117(1) and 118(1).

As to (b)(v):

- Road Transport (Vehicle Registration) Regulation 2000 (ACT), r 109(2).

As to (b)(vi):

- Road Traffic (Vehicles) Regulations 2014 (WA), r 232.

As to (b)(vii)

- Vehicles and Traffic (Vehicle Standards) Regulations 2024 (Tas), r 5.
- Vehicles and Traffic (Vehicle Standards) Regulations 2014 (Tas), r 4.

As to (b)(viii)

- Motor Vehicles (Standards) Regulations 2003 (NT), r 35.

D.3. Vehicle registration

13. In answer to paragraph 13 of the Statement of Claim, the Respondent:

- (a) says that during the Relevant Period, it was an offence:

- (i) under the laws of New South Wales and the Australian Capital Territory, to use an unregistered registrable vehicle on a road;
 - (ii) under the laws of Victoria, Queensland, the Northern Territory and Tasmania to use or permit to be used on a road an unregistered vehicle;
 - (iii) under the law of South Australia, to drive an unregistered motor vehicle, or cause an unregistered motor vehicle to stand, on a road;
 - (iv) under the law of Western Australia, to use a vehicle on any road for which there is not a valid vehicle licence granted or issued; and
- (b) otherwise denies the allegations in the paragraph.

Particulars

- Road Transport Act 2013 (NSW), s 68(1).
- Road Safety Act 1986 (Vic), s 7(1).
- Transport Operations (Road Use Management--Vehicle Registration) Regulation 2021 (Qld), r 10.
- Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010 (Qld), r 11.
- Motor Vehicles Act 1959 (SA), s 9.
- Road Traffic (Vehicles) Act 2012 (WA), s 4.
- Road Transport (Vehicle Registration) Act 1999 (ACT), s 18(1).
- Traffic Act 1987 (NT), s 33(1).
- Vehicle and Traffic Act 1999 (Tas), s 27(1).

14. In answer to paragraph 14 of the Statement of Claim, the Respondent:

- (a) repeats and relies on paragraph 11 herein;
- (b) says that during the Relevant Period:
 - (i) under the laws of New South Wales and the Australian Capital Territory, for a registrable vehicle to be eligible to be registered without conditions it was required to comply with the applicable vehicle standards for the vehicle;

- (ii) under the laws of Victoria, for a vehicle to be eligible to be registered without conditions:
- A. prior to 4 October 2020, it was required to comply with the provisions of the standards for registration that apply to the vehicle;
- B. from 4 October 2020, it was required to comply with standards for registration that apply to the vehicle;
- (iii) under the law of Queensland, for a vehicle to be eligible to be unconditionally registered it was required to conform with the requirements applying to the vehicle under each vehicle law;
- (iv) under the law of South Australia, the Registrar may refuse to register a vehicle if the vehicle does not comply with an Act or law that regulates the design, construction or maintenance of such a vehicle (being the applicable light vehicle standards);
- (v) under the law of Western Australia, for a vehicle to be licensed for unlimited use it is required to comply in every respect, with the standards and requirements set out in Parts 8, 10 and 11 of the Regulations that apply to that kind of motor vehicle;
- (vi) under the law of Northern Territory, the Registrar must register a vehicle if the requirements of Schedule 4 and the Standards are met;
- (vii) under the law of Tasmania, for a motor vehicle to be eligible for registration it must comply with the relevant vehicle standards; and
- (c) otherwise denies the allegations in the paragraph.

Particulars

- Road Transport (Vehicle Registration) Regulation 2017 (NSW), r 6(1).
- Road Transport (Vehicle Registration) Regulation 2007 (NSW), r 6(1).
- Road Transport (Vehicle Registration) Regulation 2000 (ACT), r 26(1).
- Road Safety (Vehicles) Regulations 2021 (Vic), rr 24 and 48.
- Road Safety (Vehicles) Interim Regulations 2020 (Vic), rr 14 and 31.
- Road Safety (Vehicles) Regulation 2009 (Vic), rr 14(1) and 29(1).
- Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021 (Qld) r 18.

- Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010 (Qld), r 9.
- Motor Vehicles Act 1959 (SA), s 24(3).
- Road Traffic (Vehicles) Regulations 2014 (WA), r 34.
- Road Traffic Act 1974 (WA), s 17(2).
- Motor Vehicles Act 1949 (NT), s 8.
- Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2021 (Tas), r 77.
- Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010 (Tas), r 52.

15. In answer to paragraph 15 of the Statement of Claim, the Respondent:

- (a) repeats and relies on paragraph 11 and 14 herein;
- (b) says that during the Relevant Period, an application for registration or renewal of registration would be either approved or refused in accordance with State and Territory Laws; and
- (c) otherwise denies the allegations in the paragraph.

Particulars

- Road Transport (Vehicle Registration) Regulation 2017 (NSW), rr 6(1), 12(1) and 36(6).
- Road Transport (Vehicle Registration) Regulation 2007 (NSW), rr 6(1), 12(1) and 30(7).
- Road Safety (Vehicles) Regulations 2021 (Vic), rr 24, 48(1) and 84(4).
- Road Safety (Vehicles) Interim Regulations 2020 (Vic), rr 14(1), 31(1), and 65(4).
- Road Safety (Vehicles) Regulation 2009 (Vic), rr 14(1), 29(1) and 69(4).
- Transport Operations (Road Use Management—Vehicle Registration) Regulation 2021 (Qld), rr 18(1), 23(1) and 34(2).
- Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010 (Qld), rr 17(1) and 43(11).
- Motor Vehicles Act 1959 (SA), s 24(3).
- Road Traffic (Vehicles) Act 2012 (WA), s 5(3)(a)(i).

- Road Transport (Vehicle Registration) Regulation 2000 (ACT), rr 26(1), 32(1)(a) and 68(9)(a).
- Motor Vehicles Act 1949 (NT), ss 8 and 102(2)(c).
- Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2021(Tas), rr 82(2), 84(2) and 100(2)
- Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010 (Tas), rr 57(1), 59(2) and 68(2).

16. In answer to paragraph 16 of the Statement of Claim, the Respondent:

- (a) repeats and relies on paragraph 10, 11, 14 and 15 herein;
- (b) says that, at all material times, a vehicle's registration could only be suspended or cancelled in accordance with the procedures and on the bases set out in State and Territory laws; and
- (c) otherwise denies the allegations in the paragraph.

D.4. Inspection for compliance with standards and prohibition if not compliant

17. In answer to paragraph 17 of the Statement of Claim, the Respondent:

- (a) repeats and relies on paragraph 10 and 11 herein;
- (b) says that during the Relevant Period, in respect of New South Wales, the Australian Capital Territory and South Australia, state law gave authorised officers and police officers the power to inspect a motor vehicle to determine if it complied with the applicable vehicle standards, and on discovering that it did not, the power to:
 - (i) issue a warning or a defect notice;
 - (ii) impose conditions on the use of the vehicle; or
 - (iii) prohibit the use of the vehicle;
- (c) says that during the Relevant Period, in respect of Victoria and Queensland, state law gave authorised officers and police officers the power to inspect a motor vehicle that the officer believed on reasonable grounds was non-compliant, to determine if it complied with the applicable vehicle standards, and on discovering that it did not, the power to:
 - (i) issue a warning or a defect notice;
 - (ii) impose conditions on the use of the vehicle; or

- (iii) prohibit the use of the vehicle;
- (d) says that, at all material times, in respect of the Northern Territory, state law gave inspectors authorised officers or police officers the right to examine or inspect a vehicle for any purpose of the Motor Vehicles Act (NT), and on discovering that it did not, the power to issue a defect notice, which may:
 - (i) impose conditions on the use of the vehicle; or
 - (ii) prohibit the use of the vehicle,

until such time as the vehicle has been produced at a place specified in the defect notice for examination or inspection by a member of the Police Force or an inspector and is found to be no longer defective;
- (e) says that during the Relevant Period, in respect of Western Australia, state law gave police officers the power to:
 - (i) inspect a vehicle for mass, dimension or loading requirement compliance purposes, and on discovering that it did not, the power to issue a defect notice which may:
 - A. impose conditions on the use of the vehicle; or
 - B. prohibit the use of the vehicle,

until such time as the defect specified in the notice has been rectified; and
 - (ii) stop and inspect a vehicle if, in the police officer's opinion, the vehicle does not comply, and is not exempt from compliance, with the regulations or the Vehicle Standards, and on discovering that it did not, the power to issue a compliance notice which may:
 - A. impose conditions on the use of the vehicle; or
 - B. prohibit the use of the vehicle;
- (f) says that, at all material times, in respect of Tasmania, state law gave police officers and authorised officers the power to inspect a vehicle to determine if it complied with the applicable vehicle standards, and on discovering that it did not, the power to issue a warning or a defect notice; and
- (g) otherwise denies the allegations in the paragraph.

Particulars

- Road Transport Act 2013 (NSW), s 76(4).

- Road Traffic Act 1961 (SA), ss 40Q(2) and 145.
- Road Transport (Vehicle Registration) Act 1999 (ACT), s 25.
- Road Safety Act 1986 (Vic), ss 13(2) and 14.
- Transport Operations (Road Use Management) Act 1995 (Qld), s 34(2), s 36(1);
- Transport Operations (Road Use Management — Vehicle Standards and Safety) Regulation 2021 (Qld), rr 9 and 11.
- Transport Operations (Road Use Management — Vehicle Standards and Safety) Regulation 2010 (Qld), r 8.
- Motor Vehicles Act 1949 (NT), ss 128 and 128A.
- Road Traffic (Vehicles) Act 2012 (WA), s 71(1).
- Road Traffic (Vehicle Standards) Regulations 2002 (WA), r 61.
- Road Traffic (Administration) Act 2008 (WA), s 52(2).
- Vehicles and Traffic Act 1999 (Tas), s 49(1)(f).
- Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2021(Tas), r 117.
- Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010 (Tas), r 85.

D.5. Importation requires compliance with standards or exemption

18. In answer to paragraph 18 of the Statement of Claim, the Respondent:

- (a) repeats and relies on paragraph 10, 11, and 22 herein;
- (b) says that from the commencement of the Relevant Period and during the MVSA Period, the MVSA prohibited a person from supplying to the market a new vehicle that was nonstandard or does not have an identification plate declaring the status of a road vehicle in relation to the national standards (**Identification Plate**);
- (c) says that the Minister:
 - (i) must give written approval for an Identification Plate to be placed on vehicles of a particular type that comply with the 'national standards'; or

- (ii) may give written approval for an Identification Plate to be placed on vehicles of a particular type under procedures and arrangements provided for in s 10A(2) and (3) of the MVSA (either being an **MVSA Type Approval**);
- (d) says that during the MVSA Period, it caused applications seeking MVSA Type Approval to be made in accordance with the approved form and accompanied by material sufficient to establish the Affected Vehicle type's compliance with the national standards or relevant parts of the national standards in relation to which the application was made;

Particulars:

- the following approval numbers were granted pursuant to the MVSA:
 - Approval Number 43971 (D-Max).
 - Approval Number 50736 (D-Max), this approval number is a duplicate of approval number 51560, only 51560 was opted-in during the Transitional Period.
 - Approval Number 51560 (D-Max).
 - Approval Number 45452 (MU-X 2WD) and 45455 (MU-X 4WD).
 - Approval Number 51675 (MU-X 2WD) and 51676 (MU-X 4WD).
 - Approval Number 51342 (MU-X 2WD) and 51343 (MU-X 4WD) are duplicates of approval numbers 51675 and 51676 and were not opted-in during the Transitional Period.

(together, the **MVSA Period Type Approvals**).

- (e) says that during the MVSA Period, subject to ss 19 and 20 of the MVSA referred to below at 18(d), a person was prohibited from importing into Australia a road vehicle that was:
 - (i) nonstandard; or
 - (ii) did not have an Identification Plate;
- (f) says further that the MVSA allows a person to import a nonstandard road vehicle or a road vehicle that does not have an Identification Plate:
 - (i) with the written approval of the Minister, which may be approval subject to written conditions determined by the Minister;
 - (ii) where the vehicle is to be exported from Australia (with or without further work being done on it) without having been used in transport in Australia; or

- (iii) in prescribed circumstances.
- (g) says further that during the MVSA Period:
- (i) applications could be made to the Minister, or the Vehicle Standards Safety Branch (**VSSB**) as delegate for the Minister for approval, being an approval that states that the road vehicle complies with particular national standards (**Compliance Approval**);
 - (ii) the Minister, or the VSSB, could, by signed instrument, approve a road vehicle being an approval that states that the road vehicle complies with the particular national standards;
 - (iii) application for Compliance Approval was required to be in accordance with the approved form and accompanied by material sufficient to establish compliance with the national standards or relevant parts of the national standards in relation to which the application was made (**Compliance Material**);
 - (iv) Compliance Material could include evidence that the vehicle complied with:
 - A. the relevant particular national standards; or
 - B. any other technical requirement as identified in any relevant particular national standard;
 - (v) a Compliance Approval could be used to support an application for an Identification Plate;
 - (vi) upon grant of a Compliance Approval, the Minister, or the VSSB, was required to give approval for an Identification Plate to be placed on a vehicle if the new vehicle complied with the national standard;
 - (vii) an Identification Plate placed on a vehicle declares, among other things, the status of that vehicle in relation to the relevant national standards; and
- (h) otherwise denies the allegations in the paragraph.

Particulars

- Motor Vehicle Standards Act 1989 ss 5, 10, 10A(1) – (4), 14, 18, 19 and 20.
- Circular 0-1-2 (Guide to the Certification of New Vehicles – Type Approval)
- Circular 0-3-2 (Identification Plates and Approved Supply to the Market Vehicle Plates)
- Circular 0-3-4 (Certification Procedure for New Motor Vehicles)

19. In answer to paragraph 19 of the Statement of Claim, the Respondent:

- (a) repeats and relies on paragraphs 10, 11, and 22;
 - (b) says that during the Transitional Period:
 - (i) the provisions of the MVSA relating to the importation of new vehicles continued in force;
 - (ii) a MVSA Type Approval granted under ss 10A(1) or (2) of the MVSA in relation to vehicles of a particular type and in force immediately before 1 July 2021 were taken to continue in force during the Transitional Period and remained subject to the provisions of the MVSA;
 - (iii) if a person is the holder of an approval under subsection 10A(1) or (2) of the MVSA that is in force immediately before the Transitional Period and during the 6 month period following commencement of the Transitional Period provided to the Minister in approved written form:
 - A. acknowledgement of the conditions applying to road vehicle type approvals, as set out in the rules, and that breach of any of those conditions is an offence under the new law;
 - B. a signed declaration that the person satisfies the conditions applying to road vehicle type approvals, as set out in the rules, in respect of the type of vehicle covered by an approval mentioned in paragraph (a);
 - C. paid the relevant charges;
- then:
- D. the person is taken to have been granted a road vehicle type approval under the rules in respect of the type of vehicle covered by the old approval for the 5 year period beginning on the day that paragraph (b) is satisfied and the old approval ceases to be in force;
- (iv) where an MVSA Type Approval continues, or is taken to continue, in force, the provision of the vehicle that had Identification Plates placed on them in accordance with the MVSA, was in accordance with the MVSA Type Approval;
- (c) says further that during the Transitional Period, evidence that enabled the Minister to grant an MVSA Type Approval was taken to be sufficient to satisfy continued compliance with the relevant criteria for granting a Road Vehicle Type Approval under the RVSR unless:

- (i) the evidence was found to be false or misleading, or was found to omit any matter or thing without which the evidence was misleading (which is denied); or
 - (ii) the person sought a variation of the Road Vehicle Type Approval under the RVSR – in which case evidence that enabled the Minister to grant an old approval would not have been sufficient to meet the evidential requirements of the RVSR;
- (d) says further that certain of the MVSA Type Approvals were granted approval to be transitioned to a Road Vehicle Type Approval in accordance with the procedures set out herein;

Particulars:

- the following MVSA Type Approvals were transitioned to Road Vehicle Type Approvals:
 - MVSA Type Approval Number 51560 (D-Max) transitioned to VTA-051560;
 - MVSA Type Approval Numbers 51675 (MU-X 2WD) and 51676 (MU-X 4WD) transitioned to VTA-051675 (MU-X 2WD) and VTA-051676 (MU-X 4WD) respectively.

(together, the **Transitional Period Approvals**)

- (e) says further that from 1 July 2021, if an MVSA Type Approval was taken to continue in force as pleaded in (d) and (e) above, then following the conclusion of the Transitional Period, the approval was subject to, amongst other things, the RVSA and RVSR;
- (f) says further that during the RVSA Period the RVSA permits a person to import a road vehicle where:
- (i) if at the time of importation:
 - A. the person is the holder of a vehicle type approval granted under the Road Vehicle Standards Rules 2019 (**RVSR**) (**Road Vehicle Type Approval**) or the person is authorised, in writing, by the holder of a Road Vehicle Type Approval to import the road vehicle; and
 - B. the Road Vehicle Type Approval is in force; and
 - C. the road vehicle is of a type to which the Road Vehicle Type Approval applies; or
 - (ii) if at the time of importation:
 - A. the person is the holder of an import approval; and
 - B. the import approval is in force; and

- C. the road vehicle is specified in the import approval; or
- (iii) if at the time of importation, a circumstance set out in the rules (which may include the RVSR) applies;
- (g) says that that the RVSR provides the Secretary may grant a Road Vehicle Type Approval to a person in respect of a type of vehicle if the Secretary is satisfied that the type of vehicle:
 - (i) complies with the applicable national road vehicle standards, as in force at the time the Secretary decides the application; or
 - (ii) substantially complies with the applicable national road vehicle standards, as in force at the time the Secretary decides the application; and
 - A. the type of vehicle's non-compliance with the applicable national road vehicle standards, as in force at the time the Secretary decides the application, is only in minor and inconsequential respects; or
 - B. the type of vehicle complies with the applicable national road vehicle standards, as in force at the time the Secretary decides the application, to an extent that makes it suitable for use on a public road in Australia; (a **Type Approval Pathway**) and
 - (iii) the requirements under section 19 of the RVSR are satisfied;
- (h) says that subject to the exceptions under s 24(3) of the RVSA, at all material times from 1 July 2021, the RVSA prohibited a person providing a road vehicle to another person in Australia if:
 - (i) the vehicle is provided for the first time in Australia; and
 - (ii) the vehicle is not on the RAV.
- (i) says that a vehicle may be entered on the RAV if it satisfies a Type Approval Pathway;
- (j) says that a person commits an offence under the RVSA if:
 - (i) a person enters information on the RAV that relates or purportedly relates to a vehicle and the person knows that the information is incorrect; or
 - (ii) a holder of a road vehicle type approval authorises another person in writing to enter information on the RAV and the approval holders knows that the information is incorrect; and
- (k) otherwise denies the allegations in the paragraph.

Particulars

- Road Vehicle Standards (Consequential and Transitional Provisions) Act 2018 (Cth), s 2, s 4, s 6, s 14; Sch 3: Item 1(1), Sch 1: Item 2, Sch 3: Item 4(3), Sch 3: item 14.
- Road Vehicle Standards Act 2018 (Cth), s 2 and s 22.
- Road Vehicle Standards Rules 2019 (Cth) r 19;
- Road Vehicle Standards Act 2018 (Cth), s 24 and ss 17(1) and (2).

D.6. Recall notice for non-compliant vehicles

20. In answer to paragraph 20 of the Statement of Claim, the Respondent:

- (a) says that from 1 July 2021, the Minister may by legislative instrument, issue a recall notice for road vehicles of a particular kind if:
- (i) a person in trade or commerce, supplies a vehicle of that kind; and
 - (ii) certain circumstances apply, that include:
 - A. where it appears to the Minister that the vehicle will or may cause injury to any person;
 - B. where it appears to the Minister that a reasonably foreseeable use (including a misuse) of the vehicle will or may cause injury to any person;
 - C. where it appears to the Minister that:
 - 1) the vehicle does not, or it is likely that it does not, comply with the applicable national road vehicle standards; and
 - 2) the non-compliance is of a substantive nature;
 - D. where:
 - 1) the supply of the vehicle was permitted on the basis that the vehicle complied, to a particular extent, with applicable standards made under s 7 of the MVSA; and
 - 2) it appears to the Minister the vehicle does not, or it is likely that it does not, comply to that extent with those standards as in force at the time an MVSA Type Approval was granted; and

- 3) it appears to the Minister that the non-compliance referred to in sub-paragraph 20(a)(ii)(D)(2) above is of a substantive nature; and
- (iii) it appears to the Minister that one or more suppliers of such vehicles have not taken satisfactory action to:
- A. prevent the vehicles from causing injury to any person; or
 - B. where certain circumstances apply, including those set out in sub-paragraphs 20(a)(ii)(C) and 20(a)(ii)(D) above, to rectify the non-compliance;
- (b) says that s 206 of the RVSR was in operation in a substantially similar form until at least the end of the Relevant Period; and
- (c) otherwise denies the allegations in the paragraph.

Particulars

- RVSR, s 206.

PART E: DEFEAT DEVICES

E.1. Standards apply to Affected Vehicles and are required for vehicles to be sold, used or registered

21. In answer to paragraph 21 of the Statement of Claim, the Respondent:

- (a) repeats and relies on paragraphs 10 and 11 herein;
- (b) admits that each of the Affected Vehicles was an M or N category vehicle with a gross vehicles mass less than or equal to 3.5 tonnes, within the meaning of section 2.1 of Australian Design Rule 79/04 and as defined in Vehicle Standard (Australian Design Rule – Definitions and Vehicle Categories) 2005;
- (c) says that:
 - (i) all D-MAX Affected Vehicles with a MY 2017 to MY 2024 were granted type approval based in part on compliance with ADR 79/04;
 - (ii) all MU-X Affected Vehicles with a MY 2016.5 to MY 2024 were granted type approval based in part on compliance with ADR 79/04; and
- (d) otherwise denies the allegations in the paragraph.

22. In answer to paragraph 22 of the Statement of Claim, the Respondent:

- (a) repeats and relies on part A paragraphs 1 to 2, and paragraphs 10 to 12, 18, 19, 21, and 45 herein; and
- (b) otherwise denies the allegations in the paragraph.

23. In answer to paragraph 23 of the Statement of Claim, the Respondent:

- (a) denies the allegations in the paragraph; and
- (b) repeats and relies on paragraphs 10 to 19, 21 and 22 herein.

24. In answer to paragraph 24 of the Statement of Claim, the Respondent:

- (a) denies the allegations in the paragraph; and
- (b) repeats and relies on paragraphs 10 to 19, 21 and 22 herein.

E.2. Defeat devices are prohibited

25. In answer to paragraph 25 of the Statement of Claim, the Respondent:

- (a) admits the allegation in paragraph 25; and
- (b) says further that ADR 79 and the Alternative Standard:
 - (i) define 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**);
 - (ii) provide that such an element of design may not be considered a Defeat Device if:
 - A. the need for the device is justified in terms of protecting the engine against damage or accident and for safe operation of the vehicle; or
 - B. the device does not function beyond the requirements of engine starting; or
 - C. conditions are substantially included in the Type I or Type VI procedures.

Particulars

- ADR 79/04, paragraphs 2.16.1, 2.16.2, 2.16.3 of Appendix A

26. In answer to paragraph 26 of the Statement of Claim, the Respondent:

- (a) denies the allegations in the paragraph; and
- (b) repeats and relies on paragraph 25 herein.

27. In answer to paragraph 27 of the Statement of Claim, the Respondent:

- (a) denies the allegations in the paragraph; and
- (b) repeats and relies on paragraph 25, 26 and 28 herein.

E.3. The Affected Vehicles contained defeat devices

28. The Respondent denies the allegations in paragraph 28 of the Statement of Claim and further says:

- (a) the Affected Vehicles' ECUs do not contain the element of design described as 'cycle detection' in the particulars to paragraph 28 of the Statement of Claim;
- (b) the Affected Vehicles' ECUs do not activate an Alternative Mode as described in the particulars in Schedule 1 Part P to the Statement of Claim;
- (c) the Affected Vehicles' ECUs do contain an element of design which adjusted the operation of the EGR dependent on ambient temperature and repeats paragraph 25; and
- (d) denies that those adjustments to the operation of the EGR described in 28(c) above constitute a Defeat Device and further says those adjustments are a justified means of protecting the engine against damage or accident and for safe operation of the vehicle.

Particulars

- ADR 79/04 paragraph 2.16.1 of Appendix A

29. In answer to paragraph 29 of the Statement of Claim, the Respondent:

- (a) repeats and relies on paragraph 28 herein;
- (b) says further that at low ambient temperatures:
 - (i) emissions of unburned hydrocarbons increase and will accumulate and damage the engine and / or components of the engine (in particular, the turbocharger, the after-treatment system including the diesel particulate filter (DPF) and the diesel oxidation catalyst (DOC), the EGR cooler, the EGR valve and the intake and exhaust valves of the cylinders);
 - (ii) the ECU adjusts the EGR valve to reduce EGR and improve the combustion efficiency in order to reduce the accumulation of total hydrocarbons and prevent resulting engine damage;

- (iii) the adjustments to the operation of the EGR function at low ambient temperatures are justified by the need to protect the engine and / or engine components from damage or accident and from any safety issue which may arise from the failure of the engine or one or more of its components;
- (c) says further that at high ambient temperatures:
- (i) EGR coolant may boil causing damage to the engine and engine components. For example, if EGR coolant boils, cavitation may occur and cause a crack on the EGR cooler, from which the EGR coolant will leak (and then begin to seep into the cylinders of the engine), impairing the ability to cool the cylinders. If this happens, the cylinders will overheat and the engine will break down;
 - (ii) the ECU adjusts the EGR valve to decrease the EGR and avoid boiling of the EGR coolant; and
 - (iii) the adjustments to the operation of EGR function at high temperatures is justified by the need to protect the engine and / or engine components from damage or accident and from any safety issue which may arise from the failure of the engine or one or more of its components; and
- (d) otherwise denies the allegations in the paragraph.

30. In answer to paragraph 30 of the Statement of Claim, the Respondent:

- (a) denies the allegations in the paragraph; and
- (b) repeats and relies on paragraphs 10 and 22 to 29 herein.

31. In answer to paragraph 31 of the Statement of Claim, the Respondent:

- (a) denies the allegations in the paragraph; and
- (b) repeats and relies on paragraphs 9, 10 and 22 to 29 herein.

PART F. MISLEADING, FALSE OR DECEPTIVE CONDUCT - DEFEAT DEVICES

F.1. General Representation

32. In answer to paragraph 32 of the Statement of Claim, the Respondent:

- (a) repeats and relies on paragraphs 7, 7A, 7C, 8, 9 and 45 herein;
- (b) denies that, during the Relevant Period, it imported, ~~or caused~~ the Affected Vehicles ~~to be imported,~~ into Australia;

- (c) says that it provided model vehicle test results evidencing compliance with ADR 79 as the relevant 'national standard' or 'national road vehicle standard' (as the case may be), to Allied Automotive Consultancy Services Pty Ltd for the purpose of:
 - (i) prior to 1 July 2021, filing applications for MVSA Type Approvals but denies that it affixed the Identification Plates to the Affected Vehicles which was the responsibility of IUA; and
 - (ii) between 1 July 2021 to 31 December 2021, filing the required documentation transitioning existing MVSA Type Approvals to 'new approvals' under the RVSA but denies that it entered information on the RAV which was the responsibility of IUA;
 - (d) admits that it authorised the entry of information on the RAV as the type approval holder;
 - (e) denies that it supplied the Affected Vehicles to the market in Australia;
 - (f) denies that it had any role in the promotion or advertisement of the Affected Vehicles in Australia; and
 - (g) otherwise denies the allegations in the paragraph.
33. In answer to paragraph 33 of the Statement of Claim, the Respondent:
- (a) repeats and relies on paragraphs 32 herein;
 - (b) otherwise denies the allegations in the paragraph.
34. The Respondent denies paragraph 34 of the Statement of Claim and further, and in the alternative, says for each of the Affected Vehicles:
- (a) s 10(1) and s 10A of the MVSA, and, after 1 July 2021, s 15 of the RVSA, required a person to affix an Identification Plate to it and/or enter the vehicle on the RAV before making the vehicle available for supply to the market;
 - (b) the Respondent had no right or choice to omit or modify, an Identification Plate, or to modify or omit the legally prescribed content of an Identification Plate affixed to an Affected Vehicle; and
 - (c) to the extent it engaged in conduct prescribed by or for the purpose of fulfilling the legal obligations described in (a) above, the Respondent did not thereby make any representation, and nor did it make a representation that each Affected Vehicle had been tested in accordance with, and had satisfied, the requirements of Australian law for importing and supplying motor vehicles.
35. In answer to paragraph 35 of the Statement of Claim, the Respondent:

- (a) denies the allegation in the paragraph; and
 - (b) repeats and relies on paragraphs 21 to 34 herein.
36. In answer to paragraph 36 of the Statement of Claim, the Respondent:
- (a) denies the allegations in the paragraph; and
 - (b) repeats and relies on paragraphs 32 to 35 herein.
37. In answer to paragraph 37 of the Statement of Claim, the Respondent:
- (a) denies the allegations in the paragraph; and
 - (b) repeats and relies on paragraphs 32 to 35 herein.
38. In answer to paragraph 38 of the Statement of Claim, the Respondent:
- (a) denies the allegations in the paragraph; and
 - (b) repeats and relies on paragraphs 32 to 35 herein.
39. The Respondent denies the allegations in paragraph 39 of the Statement of Claim.
40. In answer to paragraph 40 of the Statement of Claim, the Respondent:
- (a) denies the allegations in the paragraph; and
 - (b) repeats and relies on paragraphs 32 to 39 and 135 herein.
41. In answer to paragraph 41 of the Statement of Claim, the Respondent:
- (a) repeats and relies on paragraph 32 to 34 herein;
 - (b) admits that the Australian Distributor and its dealers made the Affected Vehicles available for sale in Australia; and
 - (c) otherwise denies the allegations in the paragraph.
42. The Respondent denies the allegations in paragraph 42 of the Statement of Claim.
43. The Respondent denies the allegations in paragraph 43 of the Statement of Claim.
44. The Respondent denies the allegations in paragraph 44 of the Statement of Claim.

F.2. Federal Government Representation

45. In answer to paragraph 45 of the Statement of Claim, the Respondent:

- (a) repeats and relies on paragraph 18, 19 and 32 herein;
 - (b) denies that it supplied the Affected Vehicles to the Australian market;
 - (c) admits that it caused information evidencing model vehicle compliance with ADR 79, to be submitted to the Federal Government for the purpose of obtaining and/or varying the MVSA Period Type Approvals and Transitional Period Approvals, from time to time;
 - (d) admits that as the holder of the Transitional Period Approvals it authorised the entry of the Affected Vehicles on the RAV; and
 - (e) otherwise denies the allegations in the paragraph.
46. In answer to paragraph 46 of the Statement of Claim, the Respondent:
- (a) repeats and relies on paragraph 45 herein;
 - (b) otherwise denies the allegations in the paragraph.
47. The Respondent denies paragraph 47 of the Statement of Claim and further and in the alternative says that for each of the Affected Vehicles:
- (a) after 1 July 2021, s 15 of the RVSA, required a person to enter the vehicle on the RAV before making the vehicle available for supply to the market;
 - (b) the Respondent had no right or choice to omit an entry on the RAV, or to modify or omit the legally prescribed content of a RAV entry for an Affected Vehicle; and
 - (c) to the extent it engaged in conduct prescribed by or for the purpose of fulfilling the legal obligations described in (a) above, the Respondent did not thereby make any representation, and nor did it make a representation that each Affected Vehicle had been tested in accordance with, and had satisfied, the requirements of Australian law for supplying motor vehicles.
48. The Respondent denies the allegations in paragraph 48 of the Statement of Claim.
49. The Respondent denies the allegations in paragraph 49 of the Statement of Claim.
50. The Respondent denies the allegations in paragraph 50 of the Statement of Claim.
51. The Respondent denies the allegations in paragraph 51 of the Statement of Claim.
52. The Respondent denies the allegations in paragraph 52 of the Statement of Claim.
53. In answer to paragraph 53 of the Statement of Claim, the Respondent:

- (a) denies the allegations in the paragraph; and
 - (b) Repeats and relies on paragraphs 18, 19, 32 and 45 herein.
54. In answer to paragraph 54 of the Statement of Claim, the Respondent:
- (a) admits in order for vehicles to be made available for sale in Australia, there must be approval granted in respect of the types of vehicles which include the Affected Vehicles; and
 - (b) otherwise denies the allegations in the paragraph.
55. The Respondent denies the allegations in paragraph 55 of the Statement of Claim.
56. The Respondent denies the allegations in paragraph 56 of the Statement of Claim.
57. The Respondent denies the allegations in paragraph 57 of the Statement of Claim.
58. In answer to paragraph 58 of the Statement of Claim, the Respondent:
- (a) denies the allegations in the paragraph; and
 - (b) repeats and relies on paragraph 45 and 59 herein.
59. In answer to paragraph 59 of the Statement of Claim, the Respondent:
- (a) repeats and relies on paragraphs 25 to 29, 45 herein;
 - (b) admits that it did not say to the Federal Government that the Affected Vehicles had a Defeat Device, and says any such statement would have been incorrect;
 - (c) admits that it did not say to the Federal Government that the Affected Vehicles were nonstandard vehicles in so far as ADR 79 is concerned, and says any such statement would have been incorrect;
 - (d) admits that it did not say to the Federal Government that the Affected Vehicles were not entitled to a Compliance Plate, and says any such statement would have been incorrect;
 - (e) admits that it did not say to the Federal Government that the Affected Vehicles were not vehicles of a type or types that were entitled to vehicle type approval, and says any such statement would have been incorrect;
 - (f) admits that it did not say to the Federal Government that the Affected Vehicles could not be entered onto the RAV by satisfaction of the requirements of the type approval pathway, and says any such statement would have been incorrect;

- (g) admits that it did not say to the Federal Government that the Affected Vehicles did not comply with ADR 79, and says any such statement would have been incorrect; and
 - (h) otherwise denies the allegations in the paragraph.
60. In answer to paragraph 60 of the Statement of Claim, the Respondent:
- (a) denies the allegations in the paragraph; and
 - (b) repeats and relies on paragraphs 59 herein.
61. In answer to paragraph 61 of the Statement of Claim, the Respondent:
- (a) denies the allegations in the paragraph; and
 - (b) repeats and relies upon paragraphs 45, 47, 58 and 59 herein.
62. In answer to paragraph 62 of the Statement of Claim, the Respondent:
- (a) denies the allegations in the paragraph; and
 - (b) repeats and relies on paragraphs 28, 30 and 59 herein.
63. In answer to paragraph 63 of the Statement of Claim, the Respondent:
- (a) admits that if an Affected Vehicle, the subject of a submission to the Federal Government had one or more of the qualities referred to in paragraph 59(a) to (f), then that would be material to the decision of the Federal Government to grant an approval;
 - (b) denies that the Affected Vehicles had any of the qualities pleaded in paragraph 59; and
 - (c) otherwise denies the allegations in the paragraph.
64. In answer to paragraph 64 of the Statement of Claim, the Respondent:
- (a) repeats and relies on paragraphs 58 to 63 herein;
 - (b) admits that it was under an obligation to make submissions to the Federal Government in the manner pleaded in (a) to (d) of the Statement of Claim; and
 - (c) otherwise denies the allegations in the paragraph.
65. In answer to paragraph 65 of the Statement of Claim, the Respondent:
- (a) admits that the existence of a Defeat Device in an Affected Vehicle would have been material to the decision of the Federal Government as to whether to grant an approval with respect to the type of that Affected Vehicle;

- (b) does not know what is meant by "if the Affected Vehicles were properly tested" and therefore cannot admit subparagraph (b);
 - (c) says that the Affected Vehicles were tested in accordance with the technical requirements of [ADR 79/04 UN Regulation 83](#);
 - (d) repeats and relies on paragraphs 25 to 27 herein; and
 - (e) otherwise denies the allegations in the paragraph.
66. In answer to paragraph 66 of the Statement of Claim, the Respondent:
- (a) repeats and relies on paragraphs 58 to 65 herein;
 - (b) denies that any of the Affected Vehicles had any of the characteristics or fell within the descriptors as alleged in paragraphs 59 (a) to (f) of the Statement of Claim;
 - (c) does not know and therefore cannot admit what the Federal Government would have done had it been told the matters set out in paragraphs 59(a) to (f) or any combination of them; and
 - (d) otherwise denies the allegations in the paragraph.
67. The Respondent denies the allegations contained in paragraph 67 of the Statement of Claim.
68. In answer to paragraph 68 of the Statement of Claim, the Respondent:
- (a) denies the allegation in the paragraph; and
 - (b) repeats and relies on paragraphs 58 and 59 herein.
69. The Respondent denies the allegations in paragraph 69 of the Statement of Claim.
70. In answer to paragraph 70 of the Statement of Claim, the Respondent:
- (a) repeats and relies on paragraphs 58 to 69 herein;
 - (b) admits that the Affected Vehicles required Federal Government approval in order to be made available for sale in Australia; and
 - (c) otherwise denies the allegations in the paragraph.
71. The Respondent denies the allegations in paragraph 71 of the Statement of Claim.
72. The Respondent denies the allegations in paragraph 72 of the Statement of Claim.
73. The Respondent denies the allegations in paragraph 73 of the Statement of Claim.

F.4. Federal Government — failure to correct or qualify Federal Government Representation

74. In answer to paragraph 74 of the Statement of Claim, the Respondent:
- (a) denies the allegations in the paragraph; and
 - (b) repeats and relies on paragraphs 58 to 65 herein.
75. In answer to paragraph 75 of the Statement of Claim, the Respondent:
- (a) repeats and relies on paragraphs 45 to 74 herein;
 - (b) does not know and therefore cannot admit what the Federal Government's expectation was in respect of the matters set out in 59(a) to (f) or any combination of them; and
 - (c) otherwise denies the allegations in the paragraph.
76. In answer to paragraph 76 of the Statement of Claim, the Respondent:
- (a) denies the allegations in the paragraph; and
 - (b) repeats and relies on paragraphs 58 to 75 herein.
77. The Respondent denies the allegations in paragraph 77 of the Statement of Claim.
78. In answer to paragraph 78 of the Statement of Claim, the Respondent:
- (a) denies the allegations in the paragraph; and
 - (b) repeats and relies on paragraphs 45 to 77 herein.
79. In answer to paragraph 79 of the Statement of Claim, the Respondent:
- (a) denies the allegations in the paragraph; and
 - (b) repeats and relies on paragraphs 74 to 78 herein.
80. In answer to paragraph 80 of the Statement of Claim, the Respondent:
- (a) admits that the Affected Vehicles required Federal Government approval in order to be made available for sale in Australia by the Australian Distributor; and
 - (b) otherwise denies the allegations in the paragraph.
81. The Respondent denies the allegations in paragraph 81 of the Statement of Claim.
82. The Respondent denies the allegations in paragraph 82 of the Statement of Claim.

83. The Respondent denies the allegations in paragraph 83 of the Statement of Claim.

F.5. Australian Distributor Representation

84. The Respondent admits paragraph 84 of the Statement of Claim.

85. In response to paragraph 85 of the Statement of Claim, the Respondent:

- (a) repeats and relies on paragraphs 7, 32 and 45 herein;
- (b) admits that it provided to the Australian Distributor the technical specifications, regulatory specifications for the Affected Vehicles;
- (c) ~~admits~~ says that it provided IMCT the Australian Distributor with the Identification Plates during the MVSA Period for the Affected Vehicles and says that IMCT put the Vehicle Identification Numbers on the Identification Plates and placed these within the Affected Vehicles, which were then supplied to IMIT who in turn supplied them the Affected Vehicles to the Australian Distributor; and
- (d) otherwise denies the allegations in the paragraph.

86. The Respondent denies the allegations in paragraph 86 of the Statement of Claim.

87. In answer to paragraph 87 of the Statement of Claim, the Respondent:

- (a) denies the allegations in the paragraph; and
- (b) repeats and relies paragraphs 25, 28 to 30 and 86 herein.

88. In answer to paragraph 88 of the Statement of Claim, the Respondent:

- (a) denies the allegations in the paragraph; and
- (b) repeats and relies on paragraphs 85 to 87 herein.

89. In answer to paragraph 89 of the Statement of Claim, the Respondent:

- (a) denies the allegations in the paragraph; and
- (b) repeats and relies on paragraphs 85 to 87 herein.

90. The Respondent denies the allegations in paragraph 90 of the Statement of Claim.

91. In answer to paragraph 91 of the Statement of Claim, the Respondent:

- (a) denies the allegations in the paragraph; and

(b) repeats and relies on paragraphs 86 to 90.

92. The Respondent denies the allegations in paragraph 92 of the Statement of Claim.

93. The Respondent denies the allegations in paragraph 93 of the Statement of Claim.

94. The Respondent denies the allegations in paragraph 94 of the Statement of Claim.

F.6. Australian Distributor Omission

95. In answer to paragraph 95 of the Statement of Claim, the Respondent:

(a) denies the allegations in the paragraph; and

(b) repeats and relies on paragraphs 85 and 86 herein.

96. In answer to paragraph 96 of the Statement of Claim, the Respondent:

(a) admits that it did not say to the Australian Distributor the matters in sub-paragraphs (a) to (d);

(b) says that those matters are incorrect and did not apply to any of the Affected Vehicles; and

(c) otherwise denies the allegations in the paragraph.

97. In answer to paragraph 97 of the Statement of Claim, the Respondent:

(a) repeats and relies on paragraphs 95 and 96 herein;

(b) does not know and therefore cannot admit that the Australian Distributor had a reasonable expectation in relation to the matters in subparagraphs 97(a) to (d); and

(c) otherwise denies the allegations in the paragraph.

98. In answer to paragraph 98 of the Statement of Claim, the Respondent: .

(a) repeats and relies on paragraphs 85, 86 and 96; and

(b) otherwise denies the allegations in the paragraph.

99. In answer to paragraph 99, the Respondent:

(a) repeats and relies on paragraph 96 herein;

(b) says that the matters in sub-paragraphs (a) to (d) of paragraph 96 of the Statement of Claim may have been material to the decision of the Australian Distributor to accept the vehicle as stock and to market, promote and sell (or otherwise dispose of an interest in) the vehicle but

does not know and therefore cannot admit what the Australian Distributor considered material; and

(c) otherwise denies the allegations in the paragraph.

100. In answer to paragraph 100 of the Statement of Claim, the Respondent:

(a) repeats and relies on paragraphs 28 to 30 and 96 herein;

(b) admits that it did not inform the Australian Distributor of any of the matters referred to in subparagraphs (a) to (d) of paragraph 96 but says those matters were, at all material times, incorrect and did not apply to any of the Affected Vehicles; and

(c) otherwise denies the allegations in the paragraph.

101. The Respondent denies the allegations in paragraph 101 of the Statement of Claim.

102. In answer to paragraph 102 of the Statement of Claim, the Respondent:

(a) denies the allegations in the paragraph; and

(b) repeats and relies on paragraphs 91 to 100 herein.

103. The Respondent denies the allegations in paragraph 103 of the Statement of Claim.

104. The Respondent denies the allegations in paragraph 104 of the Statement of Claim.

F.7. Australian Distributor — failure to correct or qualify the Australian Distributor Representation

105. In answer to paragraph 105 of the Statement of Claim, the Respondent:

(a) denies the allegations in the paragraph; and

(b) repeats and relies paragraphs 95 to 100 herein.

106. In answer to paragraph 106 of the Statement of Claim, the Respondent:

(a) denies the allegations in the paragraph; and

(b) repeats and relies on paragraphs 86 to 94 and 96 herein.

107. In answer to paragraph 107 of the Statement of Claim, the Respondent:

(a) denies the allegations in the paragraph; and

(b) repeats and relies on paragraph 85 to 94, 96 and 106 herein.

108. The Respondent denies the allegations in paragraph 108 of the Statement of Claim.

109. In answer to paragraph 109 of the Statement of Claim, the Respondent:

- (a) repeats and relies on paragraphs 85 to 108 herein;
- (b) does not know and therefore cannot admit to what the Australian Distributor would have done on the premises pleaded; and
- (c) otherwise denies the allegations in the paragraph.

110. The Respondent denies the allegations in paragraph 110 of the Statement of Claim.

111. The Respondent denies the allegations in paragraph 111 of the Statement of Claim.

112. The Respondent denies the allegations in paragraph 112 of the Statement of Claim.

PART G. ACCEPTABLE QUALITY – ISUZU DEFEAT DEVICES

113. In answer to paragraph 113 of the Statement of Claim, the Respondent does not know and cannot admit that all Affected Vehicles were supplied to consumers as defined in s 3(1) of the ACL.

114. In answer to paragraph 114 of the Statement of Claim, the Respondent:

- (a) repeats and relies on paragraph 113 herein; and
- (b) otherwise does not know the circumstances of acquisition of the Affected Vehicles by all Group Members and therefore cannot admit the allegations in the paragraph.

115. In answer to paragraph 115 of the Statement of Claim, the Respondent:

- (a) repeats and relies on paragraphs 113 and 114 herein;
- (b) admits that if the person to whom an Affected Vehicle was first supplied was a Consumer (which is not admitted), and if the supply was other than by way of auction, it was the subject of a statutory guarantee that the Affected Vehicle was of acceptable quality; and
- (c) otherwise does not know and therefore cannot admit the allegations in the paragraph.

116. In answer to paragraph 116 of the Statement of Claim, the Respondent:

- (a) denies the allegations in the paragraph; and
- (b) repeats and relies on paragraphs 28 to 31 herein.

117. The Respondent denies the allegations in paragraph 117 of the Statement of Claim.

118. The Respondent denies the allegations in paragraph 118 of the Statement of Claim.

119. In answer to paragraph 119 of the Statement of Claim, the Respondent:

- (a) denies the allegations in the paragraph; and
- (b) further or alternatively says that Group Members who sell or otherwise cease to own their Affected Vehicles prior to judgment have no legal right to recover damages under s 272 of the ACL on either of the bases pleaded in subparagraph 119(a) of the Statement of Claim.

PART H. EXPRESS WARRANTY - ISUZU DEFEAT DEVICES

120. In answer to paragraph 120 of the Statement of Claim, the Respondent:

- (a) repeats and relies on paragraphs 5 to 9 and 113 to 119 herein; and
- (b) otherwise does not know the circumstances of acquisition of the Affected Vehicles by all Group Members and therefore cannot admit the allegations in the paragraph.

121. In answer to paragraph 121 of the Statement of Claim, the Respondent:

- (a) denies the allegations in the paragraph; and
- (b) repeats and relies on paragraph 32 herein.

122. In answer to paragraph 122 of the Statement of Claim, the Respondent:

- (a) repeats and relies on paragraphs 22, 120 and 121 herein;
- (b) admits that sales brochures were produced by the Australian Distributor relating to the Affected Vehicles and from time to time made the representations particularised in the Statement of Claim;
- (c) says that it does not know the circumstances in which the suppliers sold the Affected Vehicles to the Group Members and therefore cannot admit whether the suppliers gave the Express Warranty or to which (if any) of the Group Members the Express Warranty was given; and
- (d) otherwise denies the allegations in the paragraph.

123. In answer to paragraph 123 of the Statement of Claim, the Respondent:

- (a) repeats and relies on paragraphs 120 to 122 herein;
- (b) admits that to the extent a supplier gave or made the Express Warranty it was a representation about the performance or characteristics of the Affected Vehicles; and

(c) otherwise denies the allegations in the paragraph.

124. In answer to paragraph 124 of the Statement of Claim, the Respondent:

(a) repeats and relies on paragraphs 120 to 123 herein; and

(b) otherwise does not know and cannot admit the allegations in the paragraph.

125. The Respondent denies the allegations in paragraph 125 of the Statement of Claim.

126. In answer to paragraph 126 of the Statement of Claim, the Respondent:

(a) says that, to the extent that a supplier gave or made the Express Warranty, it was given or made in relation to goods within the meaning of s 2 of the ACL; and

(b) otherwise denies the allegations in the paragraph.

127. In answer to paragraph 127 of the Statement of Claim, the Respondent:

(a) denies the allegations in the paragraph; and

(b) repeats and relies on paragraphs 9, 113, 114 and 120 to 126 herein.

128. The Respondent denies the allegations in paragraph 128 of the Statement of Claim.

129. The Respondent denies the allegations in paragraph 129 of the Statement of Claim.

130. In answer to paragraph 130 of the Statement of Claim, the Respondent:

(a) denies the allegations in the paragraph; and

(b) further or alternatively says that Group Members who sell or otherwise cease to own their Affected Vehicles prior to judgment have no legal right to recover damages under ss 271 and 272 of the ACL on either of the bases pleaded in subparagraph 130(a) of the Statement of Claim.

PART I. CONTRAVENTION OF A SAFETY STANDARD - ISUZU DEFEAT DEVICES

131. In answer to paragraph 131 of the Statement of Claim, the Respondent:

(a) admits that from 1 January 2011 and throughout the Relevant Period, vehicle standards determined under s 7 of the MVSA or s 12 of the RVSA, including ADR 79, were safety standards for the purposes of s 106(1) – (6) of the ACL;

(b) denies that from 1 January 2011 and throughout the Relevant Period, vehicle standards determined under s 7 of the MVSA or s 12 of the RVSA, including the ADR 79, were

mandatory safety standards for the purposes of s 106(7) of the ACL during the Relevant Period; and

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

Particulars

- MVSA s 7, s 41;
- RVSA s 12, s 77.

132. In answer to paragraph 132 of the Statement of Claim, the Respondent:

- (a) denies the allegations in the paragraph; and
- (b) repeats and relies on paragraphs 10, 22 to 30 and 131 herein.

133. In answer to paragraph 133 of the Statement of Claim, the Respondent admits that the Affected Vehicles were "consumer goods" within the meaning of s 2 of the ACL because they were goods of a kind likely to be used for personal, domestic or household use or consumption.

134. The Respondent denies the allegations in paragraph 134 of the Statement of Claim.

135. The Respondent denies the allegations in paragraph 135 of the Statement of Claim.

136. In answer to paragraph 136 of the Statement of Claim, the Respondent:

- (a) denies the allegations in the paragraph;
- (b) further or alternatively says that:
- (i) the Consumer Vehicles acquired by the Group Members are and were at all material times registered without relevant restriction and have been used by the Group Members for their intended purpose;
- (ii) it is not alleged in the Statement of Claim that such registration has been or will be cancelled on account of any of the matters pleaded; and
- (c) further or alternatively, says that:
- (i) the Applicants and Group Members, insofar as they acquired an interest in a Consumer Vehicle and have not disposed of that interest, have obtained the use of the Consumer Vehicle from the time that interest was acquired, continue to have the use of that vehicle, and may dispose of it for value in the future;

- (ii) the Applicants and Group Members, insofar as they acquired an interest in a Consumer Vehicle and have already disposed of that interest for value, obtained both the use of the Consumer Vehicle from the time the interest was acquired until its disposal and the valuable consideration received upon its disposal; and
- (iii) in the absence of acquiring an interest in a Consumer Vehicle, the Applicants and each Group Member who acquired an interest in a Consumer Vehicle would have paid valuable consideration for an interest in or for use of a different vehicle.

PART J. UNCONSCIONABLE CONDUCT

137. In answer to paragraph 137 of the Statement of Claim, the Respondent:

- (a) repeats and relies on paragraphs 28, 30, 31, 32, 33, 35, 40, 45, 46, 48, 53, 59, 60, 62 to 66, 75, 76, 78, 81, 85, 86, 87, 92, 96, 97, 100, 102, 106, 107 and 109 herein;
- (b) says that subparagraphs 137(i) and (j) of the Statement of Claim is imprecise and embarrassing;
- (c) says that the required tests for the Affected Vehicles were carried out using the prescribed procedure detailed in Annex 4a to the Alternative Standard, equivalent to Annex 4a to Appendix A of ADR 79; and
- (d) otherwise denies the allegations in the paragraph.

138. The Respondent denies the allegations in paragraph 138 of the Statement of Claim.

139. The Respondent denies paragraph 139 of the Statement of Claim.

140. In answer to paragraph 140 of the Statement of Claim, the Respondent:

- (a) repeats and relies on paragraph 137 herein;
- (b) denies the allegations in the paragraph;
- (c) further or alternatively says that:
 - (i) the Affected Vehicles acquired by the Group Members are and were at all material times registered without relevant restriction and have been used by the Group Members for their intended purpose; and
 - (ii) it is not alleged in the Statement of Claim that such registration has been or will be cancelled on account of any of the matters pleaded;
- (d) further or alternatively, says that:

- (i) the Applicants and Group Members, insofar as they acquired an interest in an Affected Vehicle and have not disposed of that interest, have obtained the use of the Affected Vehicle from the time that interest was acquired, continue to have the use of that vehicle, and may dispose of it for value in the future; and
- (ii) the Applicants and Group Members, insofar as they acquired an interest in an Affected Vehicle and have already disposed of that interest for value, obtained both the use of the Affected Vehicle from the time the interest was acquired until its disposal and the valuable consideration received upon its disposal; and
- (e) in the absence of acquiring an interest in an Affected Vehicle, the Applicants and each Group Member who acquired an interest in an Affected Vehicle would have paid valuable consideration for an interest in or for use of a different vehicle.

141. The Respondent denies the allegations in paragraph 141 of the Statement of Claim.

PART K. GENERAL MATTERS

142. In answer to paragraph 142 of the Statement of Claim, the Respondent:

- (a) denies the allegations in the paragraph; and
- (b) further denies that exemplary damages are available in respect of any contravention of the ACL.

143. Further or alternatively, subject to the provision of further particulars of the Group Members' claims, the Respondent says that if any Group Member claims loss or damage under s 236 or s 237 of the ACL as alleged in paragraphs 44, 57, 73, 83, 94, 104, 112, 136 and 141 (which is denied):

- (a) where the alleged loss was first suffered by any Group Member by no later than 14 August 2018 and accordingly, the Group Member's alleged cause or causes of action accrued on or before that date;
- (b) by reason of s 236(2) and / or 237(3) of the ACL, no action can be brought after 6 years from the date when the cause of action accrued; and
- (c) In the premises of the matters pleaded in subparagraphs 143(a) and (b) herein, any Group Members' claims arising from the allegations in paragraphs 44, 57, 73, 83, 94, 104, 112, 136 and 141 (which is denied) are barred by s 236(2) and / or 237(3).

144. Further or alternatively, subject to the provision of further particulars of the Group Members' claims, the Respondent says that if any Group Member claims loss or damage under s 271 or s 272 of the ACL as alleged in paragraphs 118 and 130 (which is denied):

- (a) where the alleged loss was first suffered by any Group Member by no later than 14 August 2021 and accordingly, the Group Member's alleged cause or causes of action accrued on or before that date;
- (b) by reason of s 273 of the ACL, no action can be brought after 3 years from the date when the cause of action accrued; and
- (c) In the premises of the matters pleaded in subparagraphs 144(a) and (b) herein, any Group Members' claims arising from the allegations in paragraphs 118 and 130 (which is denied) are barred by s 273.

Date: ~~11 July 2025~~ 9 March 2026



.....
Signed by Gregory John Williams
Lawyer for the respondent

This pleading was prepared by Gregory John Williams, Lawyer for the respondent and settled by Emma Bathurst of counsel.

Certificate of lawyer

I Gregory John Williams certify to the Court that, in relation to the defence filed on behalf of the respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: ~~11 July 2025~~ 9 March 2026



.....
Signed by Gregory John Williams
Lawyer for the respondent