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### Details of Filing

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A handwritten signature in blue ink, reading "Warwick Soden".

Dated: 28/11/2016 11:58:32 AM AEDT

Registrar

### Important Information

As required by the Court's Rules, 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.

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Form 33  
Rule 16.32

## Defence

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

No. NSD1473/2015

**Steven Roe**

Applicant

**Skoda Auto a.s. and others**

Respondents

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## Introduction

1. In answer to the allegations in paragraph 1 of the Amended Statement of Claim dated 21 October 2016 (**Claim**), the Respondents say that they do not know and cannot admit that the proceedings have been validly commenced as representative proceedings pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth).
2. In answer to the allegations in paragraph 2, the Respondents:
  - (a) repeat and rely on paragraphs 28, 38, 45 and 45A herein;
  - (b) deny that the Applicant or Group Members acquired any interest in an affected Skoda diesel vehicle; and
  - (c) says that they do not know what "interest" or "type of interest" the Applicant or any Group Member is alleged to have acquired; and
  - (d) therefore cannot admit the allegations in paragraph 2.
3. In answer to the allegations in paragraph 3, the Respondents:
  - (a) repeat and rely on paragraph 1 herein;
  - (b) say that they do not know the number of Group Members; and
  - (c) therefore cannot admit the allegations in paragraph 3.
4. In answer to the allegations in paragraph 4:
  - (a) the First Respondent:
    - (i) repeats and relies on paragraphs 28, 38, 45 and 45A herein;
    - (ii) admits the allegations in subparagraphs (a), (c) and (o);
    - (iii) in answer to the allegations in subparagraph 4(b):
      - A. says that it does not and did not at any material time carry on business in Australia; and
      - B. denies that it is and was at all material times a foreign corporation within the meaning of s 4 of the *Trade Practices Act 1974* (Cth) (**TPA**);
    - (iv) in answer to the allegations in subparagraph 4(d):

- A. says that the First Respondent does not and did not at any material time carry on business in Australia;
  - B. denies that the First Respondent is and was at all material times a foreign corporation within the meaning of s 4 of the *Competition and Consumer Act* 2010 (Cth) (**CCA**);
- (v) in answer to the allegations in subparagraph 4(e):
- A. says that the First Respondent does not and did not at any material time carry on business in Australia;
  - B. denies that the First Respondent is and was at all material times a corporation within the meaning of s 5 of the *Motor Vehicle Standards Act* 1989 (Cth) (the **MVSA**);
- (vi) does not plead to deleted subparagraph 4(f);
- (vii) in answer to the allegations in subparagraph 4(g):
- A. admits that the First Respondent is and was at all material times a manufacturer, within the meaning of s 74A(3) of the TPA and s 7(1) of the Australian Consumer Law (**ACL**), of Skoda diesel vehicles;
  - B. otherwise denies the allegations in subparagraph 4(g);
- (viii) in answer to the allegations in subparagraph 4(h):
- A. admits that it supplied Skoda diesel vehicles to the Second Respondent; and
  - B. otherwise denies the allegations in subparagraph 4(h);
- (ix) denies the allegations in subparagraph 4(i) to 4(n):
- A. admits that the First Respondent caused its mark to be applied to Skoda diesel vehicles; and
  - B. otherwise denies the allegations in subparagraph 4(n).
- (x) says that, to its knowledge, the Applicant has not sought or obtained consent for the claims made in this proceeding in accordance with s 5(3) or (4) of the TPA or s 5(3) or (4) of the CCA; and

- (b) the Second and Third Respondents:

- (i) repeat and rely on paragraph 28, 38, 45 and 45A herein; and
- (ii) otherwise deny paragraph 4 insofar as it contains any allegations against them.

5. In answer to the allegations in paragraph 5:

(a) the Second Respondent:

- (i) repeats and relies on paragraphs 28, 38, 45 and 45A herein;
- (ii) admits the allegations in subparagraphs 5(a), (b), (c), (d), (e) and (k);
- (iii) in answer to the allegations in subparagraph 5(f):
  - A. says that it is and was a manufacturer of Skoda diesel vehicles supplied by it in Australia pursuant to s 74A(4) of the TPA and s 7(1)(e) of the ACL;
  - B. denies the allegations in subparagraph 5(f);
- (iv) in answer to the allegations in subparagraph 5(g):
  - A. says that it is and was a supplier of Skoda diesel vehicles to Authorised Skoda dealers, within the meaning of s 4 of the TPA and ss 4 and 4C of the CCA and s 2 of the ACL; and
  - B. denies the allegations in subparagraph 5(g);
- (v) denies the allegations in subparagraph 5(h);
- (vi) in answer to the allegations in subparagraph 5(i):
  - A. says that from time to time, it advertised and promoted, in certain ways, some Skoda diesel vehicles in Australia; and
  - B. denies the allegations in subparagraph 5(i);
- (vii) in answer to the allegations in subparagraph 5(j):
  - A. says that it imported new imported vehicles, including Skoda diesel vehicles; and
  - B. denies the allegations in subparagraph 5(j);
- (viii) in answer to the allegations in paragraph 5(l):

A. says that it was, from time to time, in the business of importing and marketing Skoda diesel vehicles; and

B. denies the allegations in subparagraph 5(l);

(b) the First and Third Respondents:

(i) repeat and rely on paragraph 28, 38, 45 and 45A herein; and

(ii) otherwise deny paragraph 5 insofar as it contains any allegations against them.

6. In answer to the allegations in paragraph 6:

(a) the Third Respondent:

(i) repeats and relies on paragraphs 38, 45 and 45A herein;

(ii) admits that it was a company incorporated pursuant to the laws of, and registered in, the Federal Republic of Germany and capable of being sued;

(iii) in answer to the allegations in subparagraph 6(b):

A. says that it does not and did not at any material time carry on business in Australia; and

B. denies that it is and was a foreign corporation within the meaning of s 4 of the TPA;

(iv) admits that it is and was a corporation within the meaning of s 4 of the CCA;

(v) in answer to the allegations in subparagraph 6(d):

A. says that it does not and did not at any material time carry on business in Australia; and

B. denies that it is and was a foreign corporation within the meaning of s 4 of the CCA;

(vi) in answer to the allegations in subparagraph 6(e):

A. admits that it does not and did not at any material time carry on business in Australia; and

B. otherwise denies that it is and was at all material times a corporation within the meaning of s 5 of the MVSA;

- (vii) in answer to the allegations in subparagraph 6(f):
    - A. repeats and relies on paragraphs 5 and 6 herein; and
    - B. denies the allegations in subparagraph 6(f).
  - (viii) denies the allegations in subparagraph 6(g); and
  - (ix) says that, to its knowledge, the Applicant has not sought or obtained consent for the claims made in this proceeding in accordance with s 5(3) or (4) of the TPA or s 5(3) or (4) of the CCA; and
  - (b) the First and Second Respondents deny paragraph 6 insofar as it contains any allegations against them.
7. In answer to the allegations in paragraph 7, the Respondents:
- (a) admit that they are and were, at all material times, "related" within the meaning of s 50 of the Corporations Act; and
  - (b) otherwise deny the allegations in paragraph 7.

**The compliance regime for vehicles**

8. In answer to the allegations in paragraph 8, the Respondents:
- (a) admit that, from 2008 to 2015, the MVSA prohibited a person from supplying to the market a new vehicle that was nonstandard or did not have an identification plate; and
  - (b) otherwise deny the allegations in paragraph 8.

**Particulars**

- MVSA, ss 5 and 14

9. In answer to the allegations in paragraph 9, the Respondents:
- (a) admit that, from 2008 to 2015, the MVSA prohibited a person from importing to the market a road vehicle that was nonstandard or did not have an identification plate; and
  - (b) otherwise deny the allegations in paragraph 9.

**Particulars**

- MVSA, s 18

10. In answer to the allegations in paragraph 10, the Respondents::

- (a) admit that from 2008 to 2015, the MVSA:
  - (i) required the importer of a road vehicle to do all things reasonable and necessary to ensure that when the vehicle was supplied to the market it still complied with national standards and still had an identification plate; and
  - (ii) prohibited the importer from modifying the vehicle in any way that meant it was nonstandard; and
- (b) otherwise deny the allegations in paragraph 10.

#### **Particulars**

- MVSA, s 17

10A. In answer to the allegations in paragraph 10A, the Respondents:

- (a) say that, from 2008 to 2015, 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**);
- (b) say that, from 2008 to 2015, 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;
- (c) say that, from 2008 to 2015, an 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**);
- (d) say that Compliance Material could include evidence that the vehicle complied with:
  - (i) the relevant particular national standards; or
  - (ii) any other technical requirement as identified in any relevant particular national standard;
- (e) say that, from 2008 to 2015, a Compliance Approval could be used to support an application for an Identification Plate Approval;



- (f) admit that, from 2008 to 2015, upon grant of a Compliance Approval, the Minister, or the VSSB, was required to give approval for an identification plate (**identification plate**) to be placed on a vehicle if the new vehicle complied with the national standards (**Identification Plate Approval**);
- (g) say that 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 deny the allegations in paragraph 10A.

**Particulars**

- MVSA, s 10
- 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)

10B. In answer to the allegations in paragraph 10B, the Respondents:

- (a) repeat and rely on paragraph 10A herein; and
- (b) deny the allegations in paragraph 10B.

10C. In answer to the allegations in paragraph 10C, the Respondents:

- (a) repeat and rely on paragraphs 10A, 10E, 38, 45 and 45A herein;
- (b) in answer to the allegations in subparagraph 10C(a), say that, between 2008 and 2015, an application for Compliance Approval was to be submitted through the Road Vehicle Certification System (**RVCS**) administered by the VSSB of the Commonwealth department currently known as the Commonwealth Department of Infrastructure and Regional Development (**DIRD**);
- (c) in answer to the allegations in subparagraph 10C(b), say that a licensee was required to register through RVCS in order to submit an application for Compliance Approval;
- (d) in answer to the allegations in subparagraph 10C(c), say that:
  - (i) a licensee was required to submit, as part of an application for Compliance Approval through RVCS, an approved form accompanied by any required Compliance Material;

- (ii) admit that Identification Plate Approval could be subject to written conditions determined by the Minister or the VSSB;
- (e) in answer to the allegations in subparagraph 10C(d), say that the First Respondent was registered as a licensee through RVCS; and
- (f) otherwise deny the allegations in paragraph 10C.

**Particulars**

- MVSA, ss 10 and 10A
- 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)

10D. In answer to the allegations in paragraph 10D, the Respondents:

- (a) admit that from 2008 to 2015, where Identification Plate Approval had been granted, but the Minister, or the VSSB, was satisfied that a person had failed to comply with a condition upon which Identification Plate Approval was granted, the Minister, or the VSSB, could cancel, suspend or vary the Identification Plate Approval; and
- (b) otherwise deny the allegations in paragraph 10D.

**Particulars**

- MVSA, s 11

10E. In answer to the allegations in paragraph 10E, the Respondents:

- (a) repeat and rely on paragraphs 38, 45 and 45A herein;
- (b) admit that, from time to time, approvals for Skoda diesel vehicles contained a condition that identification plates would not be placed on vehicles which did not comply with all of the Australian Design Rules as specified in Schedule 4 of those approvals; and
- (c) otherwise deny the allegations in paragraph 10E.

**Particulars**

- MVSA, s 10(4)
- Approvals No. 37896; 40264 and 43449

10F. In answer to the allegations in paragraph 10F, the Respondents:

- (a) repeat and rely on paragraphs 38, 45 and 45A herein;
- (b) admit that, from time to time, approvals for Skoda diesel vehicles contained a condition that the licensee should not, without the prior approval of the VSSB, affix an identification plate to a vehicle that was in any way different from the vehicle described in the final form of the application for Approval, including documents relating to that application; and
- (c) otherwise deny the allegations in paragraph 10F.

**Particulars**

- MVSA, s 10(4)
- Approvals No. 37896; 40264 and 43449

10G. In answer to the allegations in paragraph 10G, the Respondents:

- (a) repeat and rely on paragraphs 38, 45 and 45A herein;
- (b) admit that, from time to time, Identification Plate Approvals for Skoda diesel vehicles contained a condition that the licensee should ensure continuing compliance with such of the Australian Design Rules specified in Schedule 4 of those approvals, by detailed quality control and testing; and
- (c) otherwise deny the allegations in paragraph 10G.

**Particulars**

- MVSA, s 10(4)
- Approvals No. 37896; 40264 and 43449

11. In answer to the allegations in paragraph 11, the Respondents:

- (a) admit that:
  - (i) at all material times
    - A. Vehicle Standard (Australian Design Rule 79/00 — Emission Control for Light Vehicles) 2005 (Cth) (**ADR 79/00**);
    - B. Vehicle Standard (Australian Design Rule 79/01 — Emission Control for Light Vehicles) 2005 (Cth) (**ADR 79/01**); and

C. Vehicle Standard (Australian Design Rule 79/02 — Emission Control for Light Vehicles) 2005 (Cth) (**ADR 79/02**),

- (ii) were national standards pursuant to s7 of the MVSA, and
- (iii) from 5 October 2011, *Vehicle Standard (Australian Design Rule 79/03 — Emission Control for Light Vehicles) 2011* (Cth) (**ADR 79/03**) was a national standard pursuant to s 7 of the MVSA;

**Particulars**

- MVSA, s 7

(b) say that ADR 79/00 applied:

- (i) from 1 January 2002 to new model diesel vehicles produced on or after 1 January 2002; and
- (ii) from 1 January 2003, to other diesel vehicles produced on or after 1 January 2003;

**Particulars**

- ADR 79/00, s 2.2

(c) say that ADR 79/00 specified that United Nations Economic Commission for Europe Regulation No. 83 (**UNECE Reg. 83**), incorporating all amendments up to and including the 04 Series of Amendments, (**UNECE Reg. 83 (04 Series)**) was an alternative standard for the purposes of ADR 79/00;

**Particulars**

- ADR 79/00, s 6

(d) say that ADR 79/01 applied:

- (i) from 1 January 2006, to new model diesel vehicles produced on or after 1 January 2006; and
- (ii) from 1 January 2007, to other diesel vehicles produced on or after 1 January 2007;

**Particulars**

- ADR 79/01, s 2.2

(e) say that ADR 79/01 specified that:

- (i) UNECE Reg. 83, Revision 3, incorporating the 05 series of Amendments and all amendments up to and including supplement 5, (**UNECE Reg. 83-Rev 3 (05 Series to Supp 5)**) was an alternative standard for the purposes of ADR 79/01;
- (ii) vehicles were required to comply with the B(2005) limit values as set out in paragraph 5.3.1.4 of UNECE Reg. 83-Rev 3 (05 Series to Supp 5);

**Particulars**

- ADR 79/01, s 6 and 5.3.1.4 of Appendix A

(f) say that ADR 79/02 applied:

- (i) from 1 July 2008, to new model diesel vehicles produced on or after 1 January 2008; and
- (ii) from 1 July 2010, to other diesel vehicles produced on or after 1 January 2010;

**Particulars**

- ADR 79/02, s 2.2

(g) say that ADR 79/02 specified that:

- (i) UNECE Reg. 83, Revision 3, incorporating the 05 series of Amendments (**UNECE Reg. 83-Rev 3 (05 Series)**), was an alternative standard for the purposes of ADR 79/02;
- (ii) vehicles were required to comply with the B(2005) limit values as set out in paragraph 5.3.1.4 of (UNECE Reg. 83-Rev 3 (05 Series));
- (iii) vehicles were required to satisfy the five year or 100,000 kilometre requirement as set out in paragraph 8.2 of (**UNECE Reg. 83-Rev 3 (05 Series)**);

**Particulars**

- ADR 79/02, s 6, 5.3.1.4 of Appendix A and 8.2 of Appendix A

(h) say that ADR 79/03 applied to new model diesel vehicles produced on or after 1 November 2013;

**Particulars**

- ADR 79/03, s 2.2
- (i) say that ADR 79/03 specified that UNECE Reg. 83, Revision 4, incorporating the 06 series of amendments, (**UNECE Reg. 83-Rev 4 (06 Series)**) was an alternative standard for the purposes of ADR 79/03;

**Particulars**

- ADR 79/03, s 6
- (j) say that, at all material times, compliance with the technical requirements of the relevant version of UNECE Reg. 83, as an alternative standard, (**Alternative Standard**) was deemed compliance for the purposes of each of ADR 79/00, ADR 79/01, ADR 79/02 and ADR 79/03 (together, **ADR 79**);

**Particulars**

- ADR 79/00, s 6
  - ADR 79/01, s 6
  - ADR 79/02 s 6
  - ADR 79/03, s 6
- (k) say that, from 26 January 2012, compliance with any Alternative Standard in force from time to time, was deemed compliance for the purposes of ADR 79; and

**Particulars**

- Vehicle Standard (Australian Design Rule - Harmonisation) 2012 (Cth), s 5
- (l) otherwise deny the allegations in paragraph 11.

12. In answer to the allegations in paragraph 12, the Respondents:

- (a) admit that, from 1 January 2008 to 31 December 2010, vehicle standards determined under s 7 of the MVSA, including Australian Design Rule 79, were prescribed consumer product safety standards for the purposes of section 65C(1) – (7) of the TPA;
- (b) deny that vehicle standards determined under s 7 of the MVSA, including Australian Design Rule 79, were prescribed consumer product safety standards for the purposes of section 65C(8) of the TPA at any material time;

- (c) admit that from 1 January 2011 to 31 December 2015, vehicle standards determined under s 7 of the MVSA, including Australian Design Rule 79, were safety standards for the purposes of section 106(1) – (6) of the ACL;
- (d) deny that vehicle standards determined under s 7 of the MVSA, including the Australian Design Rule 79, were a mandatory safety standard for the purposes of s 106(7) of the ACL at any material time; and
- (e) otherwise deny the allegations in paragraph 12.

**Particulars**

- MVSA, s 41

13. In answer to the allegations in paragraph 13, the Respondents:

- (a) repeat and rely on paragraphs 11, 38, 45 and 45A herein;
- (b) admit that ADR 79/00 and ADR 79/01 were applicable to all M1 and N1 category vehicles with a Gross Vehicle Mass of less than or equal to 3.5 tonnes;
- (c) admit that ADR 79/02 and ADR 79/03 were applicable to all M and N category vehicles with a Gross Vehicle Mass of less than or equal to 3.5 tonnes; and
- (d) otherwise deny the allegations in paragraph 13.

**Particulars**

- ADR 79/00, s 2.1
- ADR 79/01, s 2.1;
- ADR 79/02, s 2.1;
- ADR 79/03, s 2.1

14. In answer to the allegations in paragraph 14, the Respondents:

- (a) repeat and rely on paragraphs 11, 13, 45 and 45A herein; and
- (b) otherwise deny the allegations in paragraph 14.

15. In answer to the allegations in paragraph 15, the Respondents:

- (a) repeat and rely on paragraph 11 herein;

- (b) admit that ADR 79 and the Alternative Standard specified maximum permitted levels of exhaust emissions produced in a Type I test in accordance with the test procedure specified in ADR 79 and the Alternative Standard respectively (**Type I test**), including oxides of nitrogen (**NO<sub>x</sub>**), depending on the Gross Vehicle Mass of the vehicle, as set out in Schedule 2 herein;
- (c) say that all vehicles to which ADR 79 applied, including compression ignition powered vehicles, were required to undergo the Type I test;
- (d) say that the Type I test:
  - (i) is sometimes referred to as the New European Driving Cycle (**NEDC**) which when first developed in 1970 aimed to simulate the average exhaust emissions from a vehicle after a cold start;
  - (ii) required a vehicle to be placed on a chassis dynamometer equipped with a means of load and inertia simulation;
  - (iii) was a test with a specified length of 19 minutes and 40 seconds, made up of two parts:
    - A. part one comprised four elementary urban cycles of 15 phases each;
    - B. part two comprised one extra-urban cycle of 13 phases;
  - (iv) required a diluted proportional sample of exhaust gases and particulate pollutant emissions to be collected in one or more bags. This sample was analysed and the total volume of diluted exhaust was measured, including nitrogen oxide emissions and particulate pollutant emissions;
  - (v) was carried out using a procedure detailed in Annex 4 or 4a, as the case may be, to the Alternative Standard or Annex 4 or 4a, as the case may be, to Appendix A of ADR 79;
  - (vi) required that the method for analysis of exhaust gases and particulates was prescribed;
  - (vii) was repeated three times, unless the results of the first Type I test, or the first and second Type I tests, meant that the second and third Type I test, or third Type I test respectively, were not required;
  - (viii) required that the results of the Type I tests were to be multiplied by the appropriate deterioration or *K<sub>i</sub>* factors and the resulting masses of gaseous emissions and, in the



case of vehicles equipped with compression-ignition engines, the mass of particulates obtained in each Type I test, to be less than the limits specified in the relevant ADR 79 or Alternative Standard;

- (ix) notwithstanding subparagraph 15(c)(viii) herein, allowed one of the three Type I test results to exceed the limit prescribed, by no more than 10 per cent, where the average of the three Type I test results is below the prescribed limit;
- (e) rely on:
- (i) paragraph 5.3.1 and Annex 4 of Appendix A to ADR 79/00 and paragraph 5.3.1 and Annex 4 of UNECE Reg. 83 (04 Series) for certain vehicles produced prior to 1 January 2007;
  - (ii) paragraph 5.3.1 and Annex 4 of Appendix A to ADR 79/01 and paragraph 5.3.1 and Annex 4 of UNECE Reg. 83-Rev 3 (05 Series to Supp 5) for certain vehicles produced prior to 1 July 2010;
  - (iii) paragraph 5.3.1 and Annex 4 of Appendix A to ADR 79/02 and paragraph 5.3.1 and Annex 4 of UNECE Reg. 83-Rev 3 (05 Series) for certain vehicles produced between 1 July 2008 and 26 January 2012;
  - (iv) paragraph 5.3.1 and Annex 4 of Appendix A to ADR 79/02 and paragraph 5.3.1 and Annex 4 of UNECE Reg. 83-Rev 3 (05 Series) (or any later version of UNECE Reg. 83) for certain vehicles produced between 1 July 2008 and 26 January 2012;
  - (v) paragraph 5.3.1 and Annex 4a to Appendix A of ADR 79/03 and paragraph 5.3.1 and Annex 4a of UNECE Reg. 83-Rev 4 (06 Series) (or any later version of UNECE Reg. 83) for certain vehicles produced from 1 November 2013,
- for their full terms and effect; and
- (f) otherwise deny the allegations in paragraph 15.

#### **Particulars**

- ADR 79/00, 5.3.1 of Appendix A and Annex 4 to Appendix A
- ADR 79/01, 5.3.1 of Appendix A and Annex 4 to Appendix A
- ADR 79/02, 5.3.1 of Appendix A and Annex 4 to Appendix A
- ADR 79/03, 5.3.1 of Appendix A and Annex 4a to Appendix A
- UNECE Reg. 83 (04 Series), 5.3.1 and Annex 4
- UNECE Reg. 83-Rev 3 (05 Series to Supp 5), 5.3.1 and Annex 4
- UNECE Reg. 83-Rev 3 (05 Series), 5.3.1 and Annex 4

- UNECE Reg. 83-Rev 4 (06 Series), 5.3.1 and Annex 4a
- Vehicle Standard (Australian Design Rule - Harmonisation) 2012 (Cth), s 5

15A. In answer to the allegations in paragraph 15A, the Respondents:

- (a) repeat and rely on paragraph 15 herein; and
- (b) otherwise deny the allegations in paragraph 15A.

15B. In answer to the allegations in paragraph 15B, the Respondents:

- (a) repeat and rely on paragraph 15 herein; and
- (b) otherwise deny the allegations in paragraph 15B.

15C. In answer to the allegations in paragraph 15C, the Respondents:

- (a) repeat and rely on paragraph 15 herein; and
- (b) otherwise deny the allegations in paragraph 15C.

15D. In answer to the allegations in paragraph 15D, the Respondents:

- (a) repeat and rely on paragraph 15 herein; and
- (b) otherwise deny the allegations in paragraph 15D.

15E. In answer to the allegations in paragraph 15E, the Respondents:

- (a) repeat and rely on paragraphs 10A, 11 and 15 herein; and
- (b) say that, at all material times, in relation to ADR 79, Compliance Material could include evidence that the vehicle complied with ADR 79 or the Alternative Standard;
- (c) say that, at all material times, an UNECE approval number was sufficient evidence of compliance with the Alternative Standard; and
- (d) otherwise deny the allegations in paragraph 15E.

#### **Particulars**

- ADR 79/00, s 6;
- ADR 79/01, s 6;
- ADR 79/02, s 6;

- ADR 79/03, s 6;
- Circular 79/00-1-1 (Second Stage of Manufacture Emissions Evidence where there is an increase in GVM)

16. The Respondents do not plead to paragraph 16 which has been deleted.

17. The Respondents do not plead to paragraph 17 which has been deleted.

18. In answer to the allegations in paragraph 18, the Respondents:

- (a) repeat and rely on paragraphs 11 and 15 herein;
- (b) admit that paragraph 5.1.1 of Appendix A to ADR 79 and paragraph 5.1.1 of the Alternative Standard required that the components liable to affect the emission of pollutants be so designed, constructed and assembled as to enable the vehicle, in normal use, despite the vibration to which they may be subjected, to comply with the provisions of ADR 79 or the Alternative Standard;
- (c) say further that ADR 79 and the Alternative Standard provided that the technical measures taken by the manufacturer for the purposes of paragraph 5.1.1 of Appendix A to ADR 79 and paragraph 5.1.1 of the Alternative Standard, were required to be such as to ensure that in conformity with the provision of ADR 79 or the Alternative standard, exhaust gas emissions are effectively limited throughout the normal life of the vehicle and under normal conditions of use, and that for exhaust emissions, paragraphs 5.1.1 and 5.1.2 of Appendix A to ADR 79 and paragraphs 5.1.1 and 5.1.2 of the Alternative Standard are deemed to be met, if the provisions of paragraph 5.3.1.4 of Appendix A to ADR 79 or paragraph 5.1.3.4 of the Alternative Standard have been met;

#### **Particulars**

- ADR 79/00, 5.1.1 of Appendix A and 5.1.2 of Appendix A;
  - ADR 79/01, 5.1.1 of Appendix A and 5.1.2 of Appendix A;
  - ADR 79/02, 5.1.1 of Appendix A and 5.1.2 of Appendix A;
  - ADR 79/03, 5.1.1 of Appendix A and 5.1.2 of Appendix A;
  - UNECE Reg. 83 (04 Series), 5.1.1 and 5.1.2;
  - UNECE Reg. 83-Rev 3 (05 Series to Supp 5), 5.1.1 and 5.1.2;
  - UNECE Reg. 83-Rev 3 (05 Series), 5.1.1 and 5.1.2;
  - UNECE Reg. 83-Rev 4 (06 Series), 5.1.1 and 5.1.2
- (d) say that the Vienna Convention on the Law of Treaties (**VCLT**), acceded to by Australia on 13 June 1974 applies to UNECE Reg.83;

### Particulars

- United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331

(e) say that the interpretation of UNECE Reg. 83 is governed by Articles 31 and 32 of the VCLT; and

(f) otherwise deny the allegations in paragraph 18.

18A. In answer to the allegations in paragraph 18A, the Respondents:

(a) repeat and rely on paragraphs 11, 15 and 18 herein; and

(b) otherwise deny the allegations in paragraph 18A.

19. In answer to the allegations in paragraph 19, the Respondents:

(a) admit the allegations in paragraph 19; and

(b) rely on ADR 79 and the Alternative Standard for their full terms and effect;

(c) say further that:

(i) ADR 79 and the Alternative Standard 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;

(ii) 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 79/00, 2.16 of Appendix A and 5.1.2.1 of Appendix A;
- ADR 79/01, 2.16 of Appendix A and 5.1.2.1 of Appendix A;

- ADR 79/02, 2.16 of Appendix A and 5.1.2.1 of Appendix A;
- ADR 79/03, 2.16 of Appendix A and 5.1.2.1 of Appendix A;
- UNECE Reg. 83 (04 Series), 2.16 and 5.1.2.1;
- UNECE Reg. 83-Rev 3 (05 Series to Supp 5) , 2.16 and 5.1.2.1;
- UNECE Reg. 83-Rev 3 (05 Series), 2.16 and 5.1.2.1;
- UNECE Reg. 83-Rev 4 (06 Series), 2.16 and 5.1.2.1

19A. In answer to the allegations in paragraph 19A, the Respondents:

- (a) admit that diesel vehicles produce NOx;
- (b) say further that the production of NOx is not limited to diesel vehicles; and
- (c) say further that in the absence of any specification of the full range of "pollutant emissions" which are alleged to be produced by diesel vehicles, the Respondents do not know and cannot admit the allegations in paragraph 19A.

19B. In answer to the allegations in paragraph 19B, the Respondents:

- (a) admit that the matters set out in paragraph 19B are recorded in the Regulation Impact Statement, being Attachment A to the Explanatory Statement for ADR 79/00 (**Regulation Impact Statement**); and
- (b) say that in the absence of any specification of:
  - (i) the volume of NOx;
  - (ii) the ratio of NOx to other components of the atmosphere; and
  - (iii) any condition suffered by the Applicant or any other person, including any Group Member,

the Respondents do not know and therefore cannot admit the allegations in paragraph 19B.

#### Particulars

- "Regulation Impact Statement (ADR79/00)", being Attachment A to the Explanatory Statement for *Vehicle Standard (Australian Design Rule 79/00 — Emission Control for Light Vehicles) 2005* issued by the authority of the Minister for Local Government, Territories and Roads (December 2005), p 31

19C. In answer to the allegations in paragraph 19C, the Respondents:

- (a) admit that the matters set out in paragraph 19C are recorded in the Regulation Impact Statement; and
- (b) say that in the absence of any specification of any adverse effects suffered by the Applicant or any other person, including any Group Member, the Respondents do not know and therefore cannot admit the allegations in paragraph 19C.

**Particulars**

- "Regulation Impact Statement (ADR79/00)", being Attachment A to the Explanatory Statement for *Vehicle Standard (Australian Design Rule 79/00 — Emission Control for Light Vehicles) 2005* issued by the authority of the Minister for Local Government, Territories and Roads (December 2005) pp 31-32, 146

19D. In answer to the allegations in paragraph 19D, the Respondents:

- (a) admit that the matters set out in paragraph 19D are recorded in the Regulation Impact Statement;
- (b) admit that motor vehicles are a contributor to NOx emissions; and
- (c) say that in the absence of any specification of the meaning of the terms "major contributor", "environment" or "urban areas", the Respondents do not know and therefore cannot admit the allegations in paragraph 19D.

**Particulars**

- "Regulation Impact Statement (ADR79/00)", being Attachment A to the Explanatory Statement for *Vehicle Standard (Australian Design Rule 79/00 — Emission Control for Light Vehicles) 2005* issued by the authority of the Minister for Local Government, Territories and Roads (December 2005), pp 30,37

19E. In answer to the allegations in paragraph 19E, the Respondents:

- (a) repeat and rely on paragraphs 19, 19A, 19B, 19C and 19D herein;
- (b) say that the alleged words commencing "...its diesel fuel elements..." and ending with "...air quality and human health..." are recorded in the Regulation Impact Statement;
- (c) say that the objective recorded in paragraph 19E is not the only objective of ADR 79;

- (d) rely on the terms of ADR 79/00, ADR 79/01, ADR 79/02 and ADR 79/03 for their full terms and effect; and
- (e) otherwise deny the allegations in paragraph 19E.

#### Particulars

- "Regulation Impact Statement (ADR79/00)", being Attachment A to the Explanatory Statement for *Vehicle Standard (Australian Design Rule 79/00 — Emission Control for Light Vehicles) 2005* issued by the authority of the Minister for Local Government, Territories and Roads (December 2005), p 9

19F. In answer to the allegations in paragraph 19F, the Respondents:

- (a) repeat and rely on paragraphs 15 and 19 herein;
- (b) say that the relevant standard for compliance with emission limits for vehicles is set out in ADR 79 or the Alternative Standard;
- (c) say that the Type I test (or NEDC) aimed to simulate conditions encountered in normal vehicle operation and use;
- (d) say that by necessity, the Type I test (or NEDC) was confined to a limited range of conditions that might reasonably be expected to be encountered by a road vehicle in normal vehicle operation and use;
- (e) say that if, which it is denied, a Skoda diesel vehicle contained an 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, then any such element of design is not a defeat device where the conditions which may reasonably be expected to be encountered by a road vehicle in normal vehicle operation and use, are substantially included in the Type I (or NEDC) test;
- (f) say that the Type I test (or NEDC) was designed such that emissions tests results could be reproduced and compared for a range of vehicles;
- (g) say that it is accepted that the Type I test (or NEDC) does not measure emissions produced in all driving conditions; and

- (h) otherwise deny the allegations in paragraph 19F.

**Particulars**

- ADR 79/00, s 6 and 5.3.1.4 of Appendix A;
- ADR 79/01, s 6 and 5.3.1.4 of Appendix A;
- ADR 79/02, s 6 and 5.3.1.4 of Appendix A;
- ADR 79/03, s 6 and 5.3.1.4 of Appendix A;
- UNECE Reg. 83 (04 Series), 5.3.1.4;
- UNECE Reg. 83-Rev 3 (05 Series to Supp 5), 5.3.1.4;
- UNECE Reg. 83-Rev 3 (05 Series), 5.3.1.4;
- UNECE Reg. 83-Rev 4 (06 Series), 5.3.1.4

19G. In answer to the allegations in paragraph 19G, the Respondents:

- (a) repeat and rely on paragraphs 15, 19 and 19F herein; and
- (b) otherwise deny the allegations in paragraph 19G.

19H. In answer to the allegations in paragraph 19H, the Respondents say that:

- (a) repeat and rely on paragraphs 15, 19 and 19F herein; and
- (b) otherwise deny the allegations in paragraph 19H.

19I. In answer to the allegations in paragraph 19I, the Respondents:

- (a) repeat and rely on paragraphs 15, 19 and 19F herein; and
- (b) otherwise deny the allegations in paragraph 19I.

19J. The Respondents deny the allegations in paragraph 19J.

19K. In answer to the allegations in paragraph 19K, the Respondents:

- (a) repeat and rely on paragraphs 15, 19 and 19F herein; and
- (b) otherwise deny the allegations in paragraph 19K.

20. In answer to the allegations in paragraph 20, the Respondents:

- (a) repeat and rely on paragraph 10A(g) herein;
- (b) admit that, at all material times:



- (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 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, it was an offence for a person to drive or park, or permit someone else to drive or park, a light vehicle on a road unless the vehicle is otherwise constructed and loaded to comply with the vehicle standards;
  - (iv) under the law of South Australia, it was a breach of a light vehicle standards requirement for a person to drive on a road, a light vehicle which does not comply with a requirement of the light vehicle standards;
  - (v) under the law of the Australian Capital Territory, it was an offence by a driver or operator of a vehicle for a light motor vehicle (being a registrable vehicle that is not a heavy vehicle) to contravene a provision of the light vehicle standards;
  - (vi) under the law of Western Australia, it was an offence for a person to drive a motor vehicle on a road unless the vehicle complied with the Vehicle Standards applying to the vehicle;
  - (vii) 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
  - (viii) under the law of Tasmania, it was an offence for a person to use, or 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, and
- (c) otherwise deny the allegations in paragraph 20.

#### **Particulars**

- Road Transport (Vehicle Registration) Regulation 2007 (NSW), Reg 52(1)
- Road Transport (Vehicle Registration) Regulation 1998 (NSW), Reg 57(1)
- Road Safety (Vehicles) Regulations 2009 (Vic), Reg 258(2)

- Road Safety (Vehicles) Regulations 1999 (Vic), Reg 819(3)
- Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 2010 (Qld), Reg 5
- Transport Operations (Road Use Management – Vehicle Standards and Safety Regulation 1999 (Qld), Reg 5(1)
- *Road Traffic Act 1961* (SA), s 111, 116(1), 117(1) and 118(1)
- Road Traffic (Vehicles) Regulations 2014 (WA), Reg 232
- Road Traffic (Vehicle Standards) Regulations 2002 (WA), Reg 8
- Road Transport (Vehicle Registration) Regulation 2000 (ACT), Reg 109(2)
- Motor Vehicles (Standards) Regulations (NT), Reg 35
- Vehicles and Traffic (Vehicle Standards) Regulations 2014 (Tas), Reg 4(1)(a)
- Vehicles and Traffic (Vehicle Standards) Regulation 2001 (Tas), Reg 4(1)(a)

21. In answer to the allegations in paragraph 21, the Respondents:

- (a) repeat and rely on paragraphs 11 and 13 herein;
- (b) say that:
  - (i) at all material times, each of ADR 79/00, ADR 79/01 and ADR 79/02 were:
    - A. an applicable vehicle standard under the laws of New South Wales, Western Australia, Victoria, Tasmania, the Northern Territory and Queensland; and
    - B. an applicable light vehicle standard under the laws of South Australia and the Australian Capital Territory, and
  - (ii) from 5 October 2011, ADR 79/03 was:
    - A. an applicable vehicle standard under the laws of New South Wales, Western Australia, Victoria, Tasmania, the Northern Territory and Queensland; and
    - B. an applicable light vehicle standard under the laws of South Australia and the Australian Capital Territory, and
- (c) otherwise deny the allegations in paragraph 21.

### Particulars

- Road Transport (Vehicle Registration) Regulation 2007 (NSW), Schedule 2, cl. 11 and 12
- Road Transport (Vehicle Registration) Regulation 1998 (NSW), Schedule 4, cl. 11 and 12
- Road Traffic (Vehicles) Regulations 2014 (WA), Reg 236 and 238
- Road Traffic (Vehicle Standards) Rules 2002 (WA) [Being Part 3 of the *Road Traffic Act 1974* (WA)] Rules 13 and 14
- Road Safety (Vehicles) Regulation 2009 (Vic), Schedule 2, cl. 19 and 20
- Road Safety (Vehicles) Regulations 1999 (Vic), Schedule 8, cl. 19 and 20
- Vehicles and Traffic (Vehicle Standards) Regulations 2014 (Tas), Reg 19 and 20
- Vehicles and Traffic (Vehicle Standards) Regulation 2001 (Tas), Reg 19 and 20
- Motor Vehicles (Standards) Regulations (NT) Reg 35
- Australian Vehicle Standards Rules (NT)
- Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 2010 (Qld), Schedule 1, cl. 7 and 8
- Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 1999 (Qld), Schedule 1, cl. 7 and 8
- Road Traffic (Light Vehicle Standards) Rules 2013 (SA), Reg 19 and 20
- Road Traffic (Light Vehicle Standards) Rules 1999 (SA), Reg 19 and 20
- Road Transport (Vehicle Registration) Regulation 2000 (ACT), Schedule 1, cl 1.15 and 1.16

22. In answer to the allegations in paragraph 22, the Respondents:

- (a) say that at all material times, 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; and
  - (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 deny the allegations in paragraph 22.

#### Particulars

- *Road Transport Act 2013 (NSW), s 68(1)*
- *Road Transport (Vehicle Registration) Act 1997 (NSW) s 18*
- *Road Transport (Vehicle Registration) Act 1999 (ACT), s 18(1)*
- *Road Safety Act 1986 (Vic), s 7(1)*
- Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010 (Qld), Reg 11
- Transport Operations (Road Use Management – Vehicle Registration) Regulation 1999 (Qld), Reg 10
- *Traffic Act (NT), s 33(1)*
- *Vehicle and Traffic Act 1999 (Tas), s 27(1)*
- *Motor Vehicles Act 1959 (SA), s 9*
- *Road Traffic (Vehicles) Act 2012 (WA), s 4*
- *Road Traffic Act 1974 (WA) s 15*

23. In answer to the allegations in paragraph 23, the Respondents:

- (a) repeat and rely on paragraph 10A(g);
- (b) say that at all material times:
  - (i) under the laws of New South Wales and the Australian Capital Territory, for a registrable vehicle to be eligible to be registered without conditions it was required to comply with the applicable vehicle standards for the vehicle;
  - (ii) under the law of Victoria, for a vehicle to be eligible to be registered without conditions it was required to comply with the provisions of the 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 a 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:
  - A. prior to 27 April 2015, it was required to conform, in every respect, to the requirements of the Vehicle Standards; and
  - B. from 27 April 2015, it was 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; and
- (vi) 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 deny the allegations in paragraph 23.

#### **Particulars**

- Road Transport (Vehicle Registration) Regulation 2007 (NSW), Reg 6(1)
- Road Transport (Vehicle Registration) Regulation 1998 (NSW), Reg 7(1)
- Road Transport (Vehicle Registration) Regulation 2000 (ACT), Reg 26(1)(a)
- Road Safety (Vehicles) Regulation 2009 (Vic), Reg 14
- Road Safety (Vehicles) Regulations 1999 (Vic) Reg 202
- Transport Operations (Road Use Management—Vehicle Registration) Regulation 2010 (Qld), Reg 9
- Transport Operations (Road Use Management—Vehicle Registration) Regulation 1999 (Qld), Reg 8
- *Motor Vehicles Act* 1959 (SA), Reg 24(3)
- Road Traffic (Vehicles) Regulations 2014 (WA), Reg 34
- Road Traffic (Licensing) Regulations 1975 (WA), Reg 9(2)
- Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010 (Tas), Reg 52(1)

- Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2000 (Tas), Reg 45(1)

24. In answer to the allegations in paragraph 24, the Respondents:

- (a) repeat and rely on paragraphs 10A(g) and 23;
- (b) say that, at all material times, an application for registration or renewal of registration would be either approved or refused in accordance with State and Territory laws; and
- (c) otherwise deny the allegations in paragraph 24.

25. In answer to paragraph 25, the Respondents:

- (a) repeat and rely on paragraph 10A(g); and
- (b) otherwise admit paragraph 25.

26. In answer to the allegations in paragraph 26, the Respondents:

- (a) admit the allegations in subparagraphs 26(a), (b)(i), (ii), (iv) and (v), (c), (d), (e), (f) and (g);
- (b) in answer to the allegations in subparagraph 26(b)(iii):
  - (i) admit that the matters alleged in subparagraph 26(b)(iii) applied from 9 November 2009; and
  - (ii) otherwise deny subparagraph 26(b)(iii); and
- (c) in answer to the allegations in subparagraph 26(b)(vi)
  - (i) admit that the matters alleged in subparagraph 26(b)(vi) applied from 9 November 2009; and
  - (ii) otherwise deny subparagraph 26(b)(vi).

#### **Particulars**

- Road Safety (Vehicles) Regulation 2009 (VIC) Reg 114(l)

27. In answer to the allegations in paragraph 27, the Respondents:

- (a) admit paragraph 27 in respect of New South Wales, the Australian Capital Territory and South Australia;

- (b) say that, at all material times 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;
- (c) say 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;
- (d) say that, at all material times, 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;

- (e) say 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
- (f) otherwise deny the allegations in paragraph 27.

#### Particulars

- *Road Safety Act 1986* (Vic), ss 13(2) and 14;
- *Transport Operations (Road User Management) Act 1995* (Qld) ss 34(2) and 36(1)
- Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 2010 (Qld), Reg 8
- Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation 1999, (Qld) Reg 14
- *Motor Vehicles Act* (NT), ss 128 and 128A
- *Road Traffic (Administration) Act 2008* (WA), s 52(2)
- *Road Traffic (Vehicles) Act 2012* (WA), s 71
- Road Traffic (Vehicle Standards) Regulations 2002 (WA) Reg 61 and 62(1)
- *Vehicles and Traffic Act 1999* (Tas), s 49(1)(f)
- Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010 (Tas), Reg 85 and 87
- Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2000 (Tas), Reg 68 and 70

28. In answer to the allegations in paragraph 28, the Respondents:

- (a) say that:
  - (i) Skoda diesel vehicles contain software in the engine control unit (**ECU**); and
  - (ii) the vehicle's ECU controls the vehicle's emission control system,
- (b) deny that the EGR System forms part of the emissions control system;
- (c) deny the allegations in paragraph 28 and the defined term defeat device;
- (d) say further that:
  - (i) the ECU also controls the vehicle's combustion system;



- (ii) Skoda diesel vehicles contain an exhaust gas recirculation system (**EGR System**) and that the EGR System:
  - A. is comprised of hardware and controlled by the ECU;
  - B. operates to recirculate combustion gases exiting the engine chamber back into the engine chamber;
  - C. thereby operates to reduce the temperature in the combustion chamber within the engine;
  - D. contains a valve which governs how much combustion gas is recirculated into the combustion chamber and the position of that valve is continuously adjusted by the ECU on the basis of inputs from various sensors; and
  - E. thereby operates to prevent or impede the formation of oxides of nitrogen (**NOx**) in the combustion chamber;
- (iii) until the technical measures specified in paragraph 134 below are implemented, the EGR System operates in two modes:
  - A. the first mode of the EGR System (**mode 1**) operates if the vehicle is operated within the following parameters:
    - 1) the engine has a 'cold start', which requires engine, fuel and ambient temperatures to fall within identified ranges;
    - 2) the ambient pressure is more than approximately 890hPA;
    - 3) the pressure on the accelerator pedal does not exceed approximately 75% of the maximum pressure that could be applied (measured within 1 second of engine start); and
    - 4) the velocity of the vehicle remains within the distance-time corridor specified in Appendix A of ADR 79 and UNECE Reg. 83, as they applied from time to time,
  - B. if the parameters for mode 1 are not met, the EGR System operates in mode 2 (**mode 2**); and
  - C. mode 1 and mode 2 strike different balances in relation to the trade-off between NOx and particulate emissions.

29. In answer to the allegations in paragraph 29, the Respondents:

- (a) repeat and rely on paragraph 28 herein;
  - (b) say that, when operating in mode 2, the EGR System operated in such a manner that the degree of inhibition of NOx emission was reduced; and
  - (c) otherwise deny the allegations in paragraph 29.
30. In answer to the allegations in paragraph 30, the Respondents:
- (a) repeat and rely on paragraph 28 herein; and
  - (b) otherwise deny the allegations in paragraph 30.
31. In answer to the allegations in paragraph 31:
- (a) the First Respondent:
    - (i) repeats and relies on paragraph 28 herein; and
    - (ii) otherwise denies the allegations in paragraph 31; and
  - (b) the Second and Third Respondents:
    - (i) repeat and rely on paragraph 28 herein; and
    - (ii) otherwise deny paragraph 31 insofar as it contains any allegation against them.
32. In answer to the allegations in paragraph 32:
- (a) the First Respondent:
    - (i) repeats and relies on paragraph 28 herein; and
    - (ii) otherwise denies the allegations in paragraph 32; and
  - (b) the Second and Third Respondents:
    - (i) repeat and rely on paragraph 28 herein; and
    - (ii) otherwise deny paragraph 32 insofar as it contains any allegations against them.
33. In answer to the allegations in paragraph 33, the Respondents:
- (a) repeat and rely on paragraph 28; and
  - (b) otherwise deny the allegations in paragraph 33.

34. In answer to the allegations in paragraph 34, the Respondents:

- (a) repeat and rely on paragraph 28; and
- (b) otherwise deny the allegations in paragraph 34.

35. In answer to the allegations in paragraph 35, the Respondents:

- (a) repeat and rely on paragraph 28; and
- (b) otherwise deny the allegations in paragraph 35.

36. In answer to the allegations in paragraph 36, the Respondents:

- (a) repeat and rely on paragraph 28; and
- (b) otherwise deny the allegations in paragraph 36.

37. In answer to the allegations in paragraph 37, the Respondents:

- (a) repeat and rely on paragraph 28; and
- (b) otherwise deny the allegations in paragraph 37.

#### **Allegations in respect of the relevant vehicles**

38. In answer to the allegations in paragraph 38:

- (a) the First Respondent:
  - (i) repeats and relies on paragraphs 4(a)(vii), 28, 38, 45 and 45A herein;
  - (ii) admits that certain Skoda Octavia, Yeti and Superb vehicles were fitted with a four cylinder EA189 1.6L or 2.0L diesel engine (**Skoda diesel vehicles**); and
  - (iii) otherwise denies the allegations in paragraph 38; and
- (b) the Second and Third Respondents:
  - (i) repeat and rely on paragraphs 4(a)(viii), 28, 38, 45 and 45A herein; and
  - (ii) deny paragraph 38 insofar as it contains any allegations against them.

39. In answer to the allegations in paragraph 39:

- (a) the First Respondent:

- (i) repeats and relies on paragraphs 28, 38, 45 and 45A herein;
- (ii) says that the Applicant's causes of action under the TPA which involve an allegation of knowledge are not maintainable by reason that any conduct was engaged in outside of Australia; and
- (iii) says further that if, which is denied, Skoda diesel vehicles contained a defeat device as that term is used in paragraph 28 of the Claim then the Applicant's onus to establish the state of mind of the body corporate is to be determined in accordance with:
  - A. ss 139B(1) and (2) of the CCA in respect of claims which involve an element of knowledge under the CCA;
  - B. in respect of the balance of the pleaded allegations which allege knowledge of the body corporate as an element of the cause of action, whether a person who was the directing mind and will of the company had the requisite state of mind under common law;
- (iv) denies that it had knowledge of the matters alleged in the relevant sense; and
- (v) otherwise denies the allegations in paragraph 39; and
- (b) the Second and Third Respondents:
  - (i) repeat and rely on paragraphs 28, 38, 45 and 45A herein; and
  - (ii) deny the allegations in paragraph 39 insofar as it contains any allegations against them.

40. In answer to the allegations in paragraph 40:

- (a) the First Respondent:
  - (i) repeats and relies on paragraphs 28 and 34 to 39 herein; and
  - (ii) denies the allegations in paragraph 40; and
- (b) the Second and Third Respondents:
  - (i) repeat and rely on paragraphs 28 and 34 to 39 herein; and
  - (ii) otherwise deny the allegations in paragraph 40 insofar as it contains any allegations against them.

41. In answer to the allegations in paragraph 41:

(a) the Third Respondent:

- (i) repeats and relies on paragraphs 28, 38, 45 and 45A herein;
- (ii) says that the Applicant's causes of action under the TPA which involve an allegation of knowledge are not maintainable by reason that any conduct was engaged in outside of Australia;
- (iii) says further that if, which is denied, certain Skoda diesel vehicles contained a defeat device as that term is used in paragraph 28 of the Claim then the Applicant's onus to establish state of mind of the body corporate is to be determined in accordance with:
  - A. ss 139B(1) and (2) of the CCA in respect of claims which involve an element of knowledge under the CCA;
  - B. in respect of the balance of the pleaded allegations which allege knowledge of the body corporate as an element of the cause of action, whether a person who was the directing mind and will of the company had the requisite state of mind under common law;
- (iv) denies that it had knowledge of the matters alleged in the relevant sense; and
- (v) otherwise denies the allegations in paragraph 41; and

(b) the First and Second Respondents:

- (i) repeat and rely on paragraphs 28, 38, 45 and 45A herein; and
- (ii) deny paragraph 41 insofar as it contains any allegations against them.

42. In answer to the allegations in paragraph 42:

(a) the First Respondent:

- (i) repeats and relies on paragraphs 28 and 34 to 39 herein; and
- (ii) otherwise denies the allegations in paragraph 42; and

(b) the Second and Third Respondents:

- (i) repeat and rely on paragraphs 28 and 34 to 39 herein; and
- (ii) deny paragraph 42 insofar as it contains any allegations against them.

43. The Respondents do not plead to paragraph 43 which has been deleted.
44. The Respondents do not plead to paragraph 44 which has been deleted.
45. In answer to the allegations in paragraph 45, the Respondents:
- (a) repeat and rely on paragraphs 15, 18, 19, 19F, 28, 29, 38, 45 and 45A herein;
  - (b) do not know and therefore cannot admit that Skoda diesel vehicles, without mode 1 and mode 2, as different modes, would not have met the Type I test emissions limit; and
  - (c) deny the allegations in paragraph 45.
- 45A. In answer to the allegations in paragraph 45A, the Respondents:
- (a) repeat and rely on paragraphs 15, 18, 19A to 19K, 28, 29, 38, 45 and 45A herein;
  - (b) say further that ADR 79 and the Alternative Standard provided that the technical measures taken by the manufacturer for the purposes of paragraph 5.1.1 of Appendix A to ADR 79 and paragraph 5.1.1 of the Alternative Standard, were required to be such as to ensure that in conformity with the provision of ADR 79 or the Alternative standard, exhaust gas emissions are effectively limited throughout the normal life of the vehicle and under normal conditions of use, and that for exhaust emissions, paragraphs 5.1.1 and 5.1.2 of Appendix A to ADR 79 and paragraphs 5.1.1 and 5.1.2 of the Alternative Standard are deemed to be met, if the provisions of paragraph 5.3.1.4 of Appendix A to ADR 79 or paragraph 5.1.3.4 of the Alternative Standard have been met;
  - (c) deny that a "defeat device equivalent" is a concept known to law; and
  - (d) otherwise deny the allegations in paragraph 45A and the defined term defeat device equivalent.

#### **Particulars**

- ADR 79/00, 5.1.1 of Appendix A, 5.1.2 of Appendix A and 5.3.1.4 of Appendix A
- ADR 79/01, 5.1.1 of Appendix A, 5.1.2 of Appendix A and 5.3.1.4 of Appendix A
- ADR 79/02, 5.1.1 of Appendix A, 5.1.2 of Appendix A and 5.3.1.4 of Appendix A
- ADR 79/03, 5.1.1 of Appendix A, 5.1.2 of Appendix A and 5.3.1.4 of Appendix A
- UNECE Reg 83 (04 Series), 5.1.1, 5.1.2 and 5.3.1.4

- UNECE Reg 83-Rev 3 (05 Series to Supp 5), 5.1.1, 5.1.2 and 5.3.1.4
- UNECE Reg 83-Rev 3 (05 Series), 5.1.1, 5.1.2 and 5.3.1.4
- UNECE Reg 83-Rev 4 (06 Series), 5.1.1, 5.1.2 and 5.3.1.4

46. In answer to the allegations in paragraph 46:

(a) the First and Second Respondents:

- (i) repeat and rely on paragraphs 10A, 10C, 11 and 28 to 45A herein;
- (ii) say that, from time to time, Allied Automotive Compliance Services Pty Ltd (**AACS**), as representative for the First Respondent pursuant to contractual arrangements between AACS and the Second Respondent, sought and obtained approval from the Minister, or the VSSB, to place identification plates on Skoda diesel vehicles; and
- (iii) otherwise deny the allegations in paragraph 46; and

(b) the Third Respondent:

- (i) repeats and relies on paragraphs 10A, 10C and 11 herein; and
- (ii) denies paragraph 46 insofar as it contains any allegation against it.

47. In answer to the allegations in paragraph 47:

(a) the First and Second Respondents:

- (i) repeat and rely on paragraphs 10A, 11, 19, 19F, 28, 29, 38, 45 and 45A herein; and
- (ii) otherwise deny the allegations in paragraph 47; and

(b) the Third Respondent:

- (i) repeats and relies on paragraphs 10A, 11, 19, 19F, 28, 29, 38, 45 and 45A herein; and
- (ii) denies paragraph 47 insofar as it contains any allegation against it.

48. In answer to the allegations in paragraph 48:

(a) the First and Second Respondents:

- (i) repeat and rely on paragraphs 38, 45, 45A and 46 herein

- (ii) say that Patrick Autocare (**Patrick Autocare**) placed identification plates on Skoda diesel vehicles, in respect of which approval had been obtained from the Minister, or the VSSB, pursuant to contractual arrangements between Patrick Autocare and the Second Respondent; and
    - (iii) otherwise deny the allegations in paragraph 48; and
  - (b) the Third Respondent:
    - (i) repeats and relies on paragraphs 38, 45, 45A and 46 herein; and
    - (ii) denies paragraph 48 insofar as it contains any allegation against it.
49. In answer to the allegations in paragraph 49, the Respondents:
- (a) repeat and rely on paragraphs 20 to 29, 38, 45 to 45A herein;
  - (b) say further that:
    - (i) at all material times, the Minister must give written approval for identification plates to be placed on vehicles pursuant to s 10A of the MVSA;
    - (ii) the Minister gave written approval for identification plates to be placed on Skoda diesel vehicles;
    - (iii) an identification plate placed on a vehicle declared the status of that vehicle in relation to the relevant national standards;

#### **Particulars**

- MVSA, s 5
  - Approvals No. 37896; 40264 and 43449
- (iv) the identification plates placed on Skoda diesel vehicles declared the Skoda diesel vehicles complied with applicable vehicle standards;
- (v) the identification plates placed on Skoda diesel vehicles were acceptable evidence (and remain acceptable and accepted evidence) to state and territory authorities, for the purposes of registration, that the Skoda diesel vehicles complied with the applicable vehicle standards;



**Particulars**

- Road Transport (Vehicle Registration) Regulation 2007 (NSW), Reg 53
- Road Transport (Vehicle Registration) Regulation 1998 (NSW), Reg 58
- Road Safety (Vehicles) Regulations 2009 (Vic), s 15
- Road Safety (Vehicles) Regulations 1999 (Vic), s 203
- Road Transport (Vehicle Registration) Regulation 2000 (ACT), s 112
- Transport Operations (Road Use Management - Vehicle Registration) 2010 (Qld), s 10
- Transport Operations (Road Use Management - Vehicle Registration) Regulation 1999 (Qld), s 9
- Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010 (Tas), Reg 54
- Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2000 (Tas), Reg 57

- (vi) in the alternative to subparagraph 49(b)(v), even if (which is denied) any of the Skoda diesel vehicles bearing an identification plate did not comply with the applicable vehicle standards, those vehicles were still able to be conditionally registered by state and territory authorities because they had an identification plate;

**Particulars**

- Road Transport (Vehicle Registration) Regulation 2007 (NSW), Reg 54
- Road Transport (Vehicle Registration) Regulation 1998 (NSW), Reg 59
- Road Safety (Vehicles) Regulations 2009 (Vic), s 20
- Road Safety (Vehicles) Regulations 1999 (Vic), s 206
- Road Transport (Vehicle Registration) Regulation 2000 (ACT), s 113
- Transport Operations (Road Use Management - Vehicle Registration) 2010 (Qld), s 9
- Transport Operations (Road Use Management - Vehicle Registration) Regulation 1999 (Qld), s 10A
- Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010 (Tas), Reg 59

- Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2000 (Tas), Reg 62

- (vii) state and territory authorities registered Skoda diesel vehicles bearing an identification plate, including any Skoda diesel vehicles in which the Applicant or Group Members acquired an interest (which is not admitted);
- (viii) the registration of Skoda diesel vehicles was valid and effective unless and until suspended or cancelled by the relevant state or territory authorities;

#### **Particulars**

- Road Transport (Vehicle Registration) Regulation 2007 (NSW), Reg 41
- Road Safety (Vehicles) Regulations 2009 (Vic), Reg 114 and 117
- Road Safety (Vehicles) Regulations 1999 (Vic), Reg 245 and 246
- Road Transport (Vehicle Registration) Regulation 2000 (ACT), Reg 85
- Transport Operations (Road Use Management - Vehicle Registration) Regulation 2010 (Qld), Reg 52
- Transport Operations (Road Use Management - Vehicle Registration) Regulation 1999 (Qld), Reg 47
- Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2010 (Tas), Reg 33
- Vehicle and Traffic (Driver Licensing and Vehicle Registration) Regulations 2000 (Tas), Reg 36

- (ix) the Respondents are not aware of any occasion upon which the registration of any Skoda diesel vehicle has been refused, suspended or cancelled by a state or territory authority by reason of any of the matters alleged by the Applicant; and
- (x) the Applicant and Group Members, insofar as they acquired an interest in a Skoda diesel vehicle (which is not admitted), acquired an interest in a registered vehicle and which registration has not been refused, suspended or cancelled by any state or territory authority by reason of any of the matters alleged by the Applicant, and

- (c) otherwise deny the allegations in paragraph 49.

50. In answer to the allegations in paragraph 50, the Respondents:

- (a) repeat and rely on paragraphs 38, 45, 45A and 49 herein; and

- (b) otherwise deny the allegations in paragraph 50.

**Alleged claims under the TPA and ACL**

51. In answer to the allegations in paragraph 51, the Respondents:

- (a) say that the allegations in paragraph 51 do not identify the specific conduct that it is alleged was in trade or commerce; and
- (b) therefore do not know and cannot admit the allegations in paragraph 51.

52. In answer to the allegations in paragraph 52, the Respondents:

- (a) repeat and rely on paragraphs 38, 45 and 45A herein;
- (b) admit that Skoda manufactured Skoda diesel vehicles;
- (c) in answer to subparagraph 52(a), admit that Skoda diesel vehicles were "goods" within the meaning of s 4 of the TPA and s 2 of the ACL, because they were vehicles;
- (d) in answer to subparagraph 52(b), admit that Skoda diesel vehicles were "goods" within the meaning of s 74A(2)(a) of the TPA, because they were goods of a kind that were ordinarily acquired for personal, domestic or household use or consumption;
- (e) in answer to subparagraph 52(c), admit that Skoda diesel 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;
- (f) in answer to subparagraph 52(d), admit that Skoda diesel vehicles were "goods of a kind likely to be used by a consumer" as those words are used in s 65C of the TPA; and
- (g) otherwise deny the allegations in paragraph 52.

53. In answer to the allegations in paragraph 53, the Respondents:

- (a) repeat and rely on paragraphs 38, 45 and 45A herein;
- (b) do not know and therefore cannot admit the 'interests' or types of 'interests' that the Applicants or Group Members are alleged to have acquired;;
- (c) do not know and therefore cannot admit the amount or consideration paid by any of the Applicants or Group Members in respect of any interest acquired by them in any VW diesel vehicle;

(d) do not know and therefore cannot admit the purpose for which any Applicant or Group Member acquired an interest in a VW diesel vehicle; and

(e) otherwise deny the allegations in paragraph 53.

54. In answer to the allegations in paragraph 54, the Respondents:

(a) repeat and rely on paragraphs 38, 45, 45A and 53 herein; and

(b) otherwise deny the allegations in paragraph 54.

**Alleged misleading or deceptive conduct**

55. In answer to the allegations in paragraph 55:

(a) the First Respondent:

(i) repeats and relies on paragraphs 4, 38, 45, 45A and 48 herein; and

(ii) otherwise denies the allegations in paragraph 55; and

(b) the Second and Third Respondents:

(i) repeat and rely on paragraphs 4, 38, 45, 45A and 48 herein; and

(ii) deny paragraph 55 insofar as it contains any allegation against it.

56. In answer to the allegations in paragraph 56:

(a) the Second Respondent

(i) repeats and relies on paragraphs 5, 10A, 11, 38, 45, 45A and 48 herein;

(ii) admits that Patrick Autocare placed identification plates on Skoda diesel vehicles;

(iii) admits that by causing the placement of an identification plate on a Skoda diesel vehicle, it made a representation that the Skoda diesel vehicle, as manufactured, complied with the relevant national standards; and

(iv) otherwise denies the allegations in paragraph 56; and

(b) the First and Third Respondents:

(i) repeat and rely on paragraphs 5, 38, 45 and 45A herein; and

(ii) deny paragraph 56 insofar as it contains any allegation against them.

57. In answer to the allegations in paragraph 57, the Respondents:
  - (a) repeat and rely on paragraph 38, 45, 45A, 53 and 54 herein; and
  - (b) otherwise deny the allegations in paragraph 57.
58. In answer to the allegations in paragraph 58, the Respondents:
  - (a) repeat and rely on paragraphs 38, 45, 45A, 55 and 56 herein; and
  - (b) otherwise deny the allegations in paragraph 58.
59. In answer to the allegations in paragraph 59, the Respondents:
  - (a) repeat and rely on paragraphs 38, 45, 45A, 55, 56 and 58 herein; and
  - (b) otherwise deny the allegations in paragraph 59.
60. In answer to the allegations in paragraph 60, the Respondents:
  - (a) repeat and rely on paragraphs 38, 45, 45A, 55, 56 and 58 herein; and
  - (b) otherwise deny the allegations in paragraph 60.
61. In answer to the allegations in paragraph 61:
  - (a) the First and Second Respondents:
    - (i) repeat and rely on paragraphs 38, 45, 45A, 46 and 48 herein; and
    - (ii) otherwise deny the allegations in paragraph 61; and
  - (b) the Third Respondent:
    - (i) repeats and relies on paragraphs 38, 45, 45A, 46 and 48 herein; and
    - (ii) denies paragraph 61 insofar as it contains any allegation against it.
62. In answer to the allegations in paragraph 62, the Respondents:
  - (a) repeat and rely on paragraphs 38, 45, 45A and 61 herein; and
  - (b) otherwise deny the allegations in paragraph 62.
63. In answer to the allegations in paragraph 63, the Respondents:
  - (a) repeat and rely on paragraphs 38, 45, 45A and 61 herein; and

(b) otherwise deny the allegations in paragraph 63.

64. In answer to the allegations in paragraph 64, the Respondents:

(a) repeat and rely on paragraphs 38, 45, 45A, 56, 61 and 63 herein; and

(b) otherwise deny the allegations in paragraph 64.

64A. In answer to the allegations in paragraph 64A:

(a) the First and Second Respondents:

(i) repeat and rely on paragraphs 38, 45, 45A, 46, 48 and 56 herein; and

(ii) otherwise deny the allegations in paragraph 64A; and

(b) the Third Respondent:

(i) repeats and relies on paragraphs 38, 45, 45A, 46, 48 and 56 herein; and

(ii) denies paragraph 64A insofar as it contains any allegation against it

64B. In answer to the allegations in paragraph 64B, the Respondents:

(a) repeat and rely on paragraphs 38, 45, 45A and 64A herein; and

(b) otherwise deny the allegations in paragraph 64B.

64C. In answer to the allegations in paragraph 64C, the Respondents:

(a) repeat and rely on paragraphs 28, 29, 34, 35, 36, 37, 38, 45, 45A and 64A herein; and

(b) otherwise deny the allegations in paragraph 64C.

64D. In answer to the allegations in paragraph 64D, the Respondents:

(a) repeat and rely on paragraphs 64A and 64C herein; and

(b) otherwise deny the allegations in paragraph 64D.

65. In answer to the allegations in paragraph 65:

(a) the First and Second Respondents:

(i) repeat and rely on paragraph 38, 45, 45A, 46, 48 and 56 herein; and

(ii) otherwise deny the allegations in paragraph 65; and

- (b) the Third Respondent:
  - (i) repeats and relies on paragraph 38, 45, 45A, 46, 48 and 56 herein; and
  - (ii) denies paragraph 65 insofar as it contains any allegation against it .
- 66. In answer to the allegations in paragraph 66, the Respondents:
  - (a) repeat and rely on paragraphs 38, 45, 45A and 65 herein; and
  - (b) otherwise deny the allegations in paragraph 66.
- 67. In answer to the allegations in paragraph 67, the Respondents:
  - (a) repeat and rely on paragraphs 65 and 66 herein; and
  - (b) otherwise deny the allegations in paragraph 67.
- 68. In answer to the allegations in paragraph 68, the Respondents:
  - (a) repeat and rely on paragraphs 38, 45, 45A, 65 and 66 herein; and
  - (b) otherwise deny the allegations in paragraph 68.
- 69. In answer to the allegations in paragraph 69, the Respondents:
  - (a) repeat and rely on paragraphs 19, 19F, 28, 38, 45, 45A and 68 herein; and
  - (b) otherwise deny the allegations in paragraph 69.
- 70. In answer to the allegations in paragraph 70, the Respondents:
  - (a) repeat and rely on paragraphs 68 and 69 herein; and
  - (b) otherwise deny the allegations in paragraph 70.
- 71. In answer to the allegations in paragraph 71, the Respondents:
  - (a) repeat and rely on paragraphs 38, 45 and 45A herein;
  - (b) say that neither paragraph 55 nor paragraph 71 of the Claim alleges that the First Respondent promoted the supply of motor vehicles; and
  - (c) otherwise deny the allegations in paragraph 71.
- 72. In answer to the allegations in paragraph 72, the Respondents:

- (a) say that neither paragraph 61 nor paragraph 72 of the Claim alleges that the First Respondent promoted the supply of motor vehicles;
- (b) repeat and rely on paragraphs 19, 19F, 28, 38, 45 and 45A herein; and
- (c) otherwise deny the allegations in paragraph 72.

73. In answer to the allegations in paragraph 73, the Respondents:

- (a) repeat and rely on paragraphs 38, 45, 45A, 55 and 56 herein; and
- (b) otherwise deny the allegations in paragraph 73.

74. In answer to the allegations in paragraph 74, the Respondents:

- (a) repeat and rely on paragraphs 19, 19F, 28, 38, 45, 45A, 56 and 61 herein; and
- (b) otherwise deny the allegations in paragraph 74.

**Alleged unconscionable conduct**

75. In answer to the allegations in paragraph 75, the Respondents:

- (a) repeat and rely on paragraphs 4, 28 to 42 and 45 to 50 herein; and
- (b) otherwise deny the allegations in paragraph 75.

76. In answer to the allegations in paragraph 76, the Respondents:

- (a) repeat and rely on paragraphs 28, 34 to 38, 45, 45A and 75 herein; and
- (b) otherwise deny the allegations in paragraph 76.

77. In answer to the allegations in paragraph 77, the Respondents:

- (a) repeat and rely on paragraph 76 herein; and
- (b) otherwise deny the allegations in paragraph 77.

78. The Respondents do not plead to paragraph 78 which has been deleted.

79. The Respondents do not plead to paragraph 79 which has been deleted.

80. The Respondents do not plead to paragraph 80 which has been deleted.

81. In answer to the allegations in paragraph 81, the Respondents:



- (a) repeat and rely on paragraphs 6, 8 to 38, 41 to 42 and 45 to 50 herein; and
- (b) otherwise deny the allegations in paragraph 81.

82. In answer to the allegations in paragraph 82, the Respondents:

- (a) deny the allegations in subparagraph 82(a);
- (b) in answer to the allegation in subparagraph 82(b):
  - (i) repeat and rely on paragraphs 19, 19F, 28, 38, 45 and 45A herein;
  - (ii) say that the Skoda diesel vehicles did not contain a defeat device or alternatively a defeat device equivalent; and
  - (iii) otherwise deny the allegations in subparagraph 82(b);
- (c) deny the allegations in subparagraph 82(c);
- (d) in answer to the allegations in subparagraph 82(d):
  - (i) repeat and rely on paragraphs 28 and 34 to 37 herein; and
  - (ii) otherwise deny the allegations in subparagraph 82(d); and
- (e) deny the allegations in subparagraphs 82(e) to (i).

83. In answer to the allegations in paragraph 83, the Respondents:

- (a) repeat and rely on paragraph 82 herein; and
- (b) otherwise deny the allegations in paragraph 83.

#### **Alleged breaches of statutory warranties**

84. In answer to the allegations in paragraph 84:

- (a) the First and Second Respondents:
  - (i) repeat and rely on subparagraphs 4(a)(vii) and (viii), 38, 45 and 45A herein; and
  - (ii) deny the allegations in paragraph 84;
- (b) the Third Respondent:
  - (i) repeats and relies on subparagraphs 4(a)(vii) and (viii), 38, 45 and 45A herein; and

- (ii) denies paragraph 84 insofar as it contains any allegation against it

85. In answer to the allegations in paragraph 85:

(a) the Second Respondent:

- (i) repeats and relies on subparagraphs 5(a)(iii) and 5(a)(iv), 38, 45 and 45A herein; and
- (ii) otherwise denies the allegations in paragraph 85;

(b) the First and Third Respondents:

- (i) repeat and rely on subparagraphs 5(a)(iii) and 5(a)(iv), 38, 45 and 45A herein; and
- (ii) deny paragraph 85 insofar as it contains any allegations against them.

86. In answer to the allegations in paragraph 86:

(a) the First Respondent:

- (i) repeats and relies on subparagraphs 4(a)(vii) and (viii), 38, 45 and 45A herein; and
- (ii) otherwise denies the allegations in paragraph 86;

(b) the Second Respondent:

- (i) repeats and relies on subparagraphs 5(a)(iii) and 5(a)(iv), 38, 45 and 45A herein; and
- (ii) otherwise denies the allegation in paragraph 86; and

(c) the Third Respondent:

- (i) repeats and relies on paragraphs 4, 5 and 6, 38, 45 and 45A herein; and
- (ii) otherwise denies the allegations in paragraph 86.

87. In answer to the allegations in paragraph 87, the Respondents:

- (a) repeat and rely on paragraphs 19, 19A to 19K, 28, 29, 38, 45, 45A, 49 and 50 herein; and
- (b) otherwise deny the allegations in paragraph 87.

88. In answer to the allegations in paragraph 88, the Respondents:

- (a) repeat and rely on paragraphs 19, 19A to 19K, 28, 29, 38, 45, 45A, 49 and 50 herein; and
- (b) otherwise deny the allegations in paragraph 88.

89. In answer to the allegations in paragraph 89, the Respondents:
  - (a) repeat and rely on paragraphs 38, 45, 45A and 96 to 137 herein; and
  - (b) otherwise deny the allegations in paragraph 89.
90. In answer to the allegations in paragraph 90, the Respondents:
  - (a) repeat and rely on paragraphs 38, 45, 45A, 84, 87 to 89 and 133 to 137 herein; and
  - (b) otherwise deny the allegations in paragraph 90.
91. In answer to the allegations in paragraph 91, the Respondents:
  - (a) repeat and rely on paragraphs 38, 45, 45A, 85, 87 to 89 and 133 to 137 herein; and
  - (b) otherwise deny the allegations in paragraph 91.
92. In answer to the allegations in paragraph 92, the Respondents:
  - (a) say that, if (which is not admitted) Skoda diesel vehicles were supplied to consumers, in trade or commerce, the Respondents admit there was statutory guarantee that the Skoda diesel vehicles were of acceptable quality, as specified in s 54 of the ACL;
  - (b) repeat and rely on paragraphs 38, 45, 45A and 86 herein; and
  - (c) otherwise deny the allegations in paragraph 92.
93. In answer to the allegations in paragraph 93, the Respondents:
  - (a) repeat and rely on paragraphs 19, 19A to 19K, 28, 29, 38, 45, 45A, 49, 50 and 92 herein; and
  - (b) otherwise deny the allegations in paragraph 93.
94. In answer to the allegations in paragraph 94, the Respondents:
  - (a) repeat and rely on paragraphs 19, 19A to 19K, 28, 29, 38, 45, 45A, 49, 50 and 92 herein; and
  - (b) otherwise deny the allegations in paragraph 94.
95. In answer to the allegations in paragraph 95, the Respondents:
  - (a) repeat and rely on paragraphs 38, 45, 45A, 53 and 54 herein; and

- (b) otherwise deny the allegations in paragraph 95.
96. In answer to the allegations in paragraph 96, the Respondents:
- (a) repeat and rely on paragraphs 38, 45, 45A, 92 and 133 to 137 herein; and
  - (b) otherwise deny the allegations in paragraph 96.
97. In answer to the allegations in paragraph 97, the Respondents:
- (a) repeat and rely on paragraphs 38, 45, 45A, 92 and 133 to 137 herein; and
  - (b) otherwise deny the allegations in paragraph 97.
98. In answer to the allegations in paragraph 98:
- (a) the First and Second Respondents:
    - (i) repeat and rely on paragraphs 10A, 10C, 11, 38, 45, 45A, 46, 48 and 49 herein; and
    - (ii) otherwise deny the allegations in paragraph 98, and
  - (b) the Third Respondent:
    - (i) repeats and relies on paragraphs 10A, 10C, 11, 38, 45, 45A, 46, 48, 49 and 56 herein; and
    - (ii) denies paragraph 98 insofar as it contains any allegation against it.
99. In answer to the allegations in paragraph 99, the Respondents:
- (a) repeat and rely on paragraphs 10A, 11, 38, 45, 45A and 98 herein; and
  - (b) otherwise deny the allegations in paragraph 99.
100. In answer to the allegations in paragraph 100, the Respondents:
- (a) repeat and rely on paragraphs 53, 54 and 133 to 137 herein; and
  - (b) otherwise deny the allegations in paragraph 100.
101. In answer to the allegations in paragraph 101, the Respondents:
- (a) repeat and rely on paragraphs 38, 45, 45A, 84, 85, 98 to 100 and 133 to 137 herein; and
  - (b) otherwise deny the allegations in paragraph 101.

102. In answer to the allegations in paragraph 102, the Respondents:

- (a) repeat and rely on paragraphs 38, 45, 45A, 56 and 86 herein; and
- (b) otherwise deny the allegations in paragraph 102.

103. In answer to the allegations in paragraph 103:

- (a) the First and Second Respondents:
  - (i) repeat and rely on paragraphs 10A, 11, 38, 45, 45A and 56 herein; and
  - (ii) otherwise deny the allegations in paragraph 103; and
- (b) the Third Respondent denies paragraph 103 insofar as it contains any allegation against it.

104. In answer to the allegations in paragraph 104, the Respondents:

- (a) repeat and rely on paragraphs 10A, 11, 38, 45, 45A and 103 herein; and
- (b) otherwise deny the allegations in paragraph 104.

105. In answer to the allegations in paragraph 105, the Respondents:

- (a) repeat and rely on paragraphs 38, 45, 45A, 53 and 54 herein; and
- (b) otherwise deny the allegations in paragraph 105.

106. In answer to the allegations in paragraph 106, the Respondents:

- (a) repeat and rely on paragraphs 38, 45, 45A, 105 and 133 to 137 herein; and
- (b) otherwise deny the allegations in paragraph 106.

**Alleged supply of vehicles that did not comply with Australian safety standards**

107. In answer in to the allegations in paragraph 107, the Respondents:

- (a) repeat and rely on paragraphs 4, 5, 12, 28, 38, 45, 45A and 52 herein; and
- (b) otherwise deny the allegations in paragraph 107.

108. In answer to the allegations in paragraph 108, the Respondents:

- (a) repeat and rely on paragraphs 53, 54, 107 and 133 to 137 herein;

- (b) deny that s 65C(8) can have any application to the Applicant and Group Members by reason of the matters pleaded in paragraph 12 herein;
- (c) deny that s 106(7) of the ACL can have any application to the Applicant and Group Members by reason of the matters pleaded in paragraph 12 herein; and
- (d) otherwise deny the allegations in paragraph 108.

**Alleged claim of deceit**

109. The Respondents do not plead to paragraph 109 which has been deleted.

110. The Respondents do not plead to paragraph 110 which has been deleted.

111. The Respondents do not plead to paragraph 111 which has been deleted.

112. In answer to the allegations in paragraph 112:

- (a) the First and Second Respondents:
  - (i) repeat and rely on paragraphs 38, 45 and 45A herein;
  - (ii) say that the Second Respondent at all material times supplied Skoda vehicles (including Skoda diesel vehicles) to authorised dealers in Australia;
  - (iii) say that the Second Respondent was the only entity authorised by the First Respondent to do so; and
  - (iv) otherwise deny the allegations in paragraph 112; and
- (b) the Third Respondent denies paragraph 112 insofar as it contains any allegation against it.

113. In answer to the allegations in paragraph 113:

- (a) the First Respondent:
  - (i) repeats and relies on paragraphs 38, 45 and 45A herein;
  - (ii) repeats and relies on the Second Respondent's denial in paragraph 56 herein;
  - (iii) otherwise denies the allegations in paragraph 113; and
- (b) the Second and Third Respondents deny paragraph 113 insofar as it contains any allegations against them

114. In answer to the allegations in paragraph 114:

(a) the First Respondent:

- (i) repeats and relies on paragraphs 38 to 40, 45, 45A, 55 and 56 herein;
- (ii) says that it was aware that:
  - A. an identification plate was placed on Skoda diesel vehicles sold in Australia; and
  - B. some Australian customers might take notice of an identification plate in the course of acquiring a Skoda diesel vehicle; and
- (iii) otherwise denies the allegations in paragraph 114; and

(b) the Second and Third Respondents deny paragraph 114 insofar as it contains any allegations against them.

115. In answer to the allegations in paragraph 115, the Respondents:

- (a) repeat and rely on paragraphs 38, 45, 45A, 133 to 137 herein; and
- (b) otherwise deny the allegations in paragraph 115.

116. In answer to the allegations in paragraph 116, the Respondents:

- (a) repeat and rely on paragraphs 112 to 115 and 133 to 137 herein; and
- (b) otherwise deny the allegations in paragraph 116.

117. In answer to the allegations in paragraph 117:

(a) the First Respondent:

- (i) repeats and relies on paragraphs 38 to 40, 45, 45A and 55 to 56 herein;
- (ii) says that it was aware that:
  - A. an identification plate was placed on Skoda diesel vehicles sold in Australia; and
  - B. some Australian customers might take notice of an identification plate in the course of acquiring a Skoda diesel vehicle; and
- (iii) otherwise denies the allegations in paragraph 117; and

- (b) the Second and Third Respondents deny paragraph 117 insofar as it contains any allegations against them.

118. In answer to the allegations in paragraph 118, the Respondents:

- (a) repeat and rely on paragraphs 38, 45, 45A and 55 to 57 herein; and
- (b) otherwise deny the allegations in paragraph 118.

119. In answer to the allegations in paragraph 119, the Respondents:

- (a) repeat and rely on paragraphs 38, 45, 45A and 133 to 137 herein; and
- (b) otherwise deny the allegations in paragraph 119.

120. In answer to the allegations in paragraph 120,

- (a) the Third Respondent:
  - (i) repeats and relies on paragraphs 38, 45, 45A and 55 herein;
  - (ii) repeats and relies on the Second Respondent's denial in paragraph 56 herein;
  - (iii) otherwise denies the allegations in paragraph 120; and
- (b) the First and Second Respondents deny paragraph 120 insofar as it contains any allegations against them.

121. In answer to the allegations in paragraph 121:

- (a) the Third Respondent:
  - (i) repeats and relies on paragraphs 38, 45, 45A and 55 herein;
  - (ii) repeats and relies on the Second Respondent's denial in paragraph 56 herein;
  - (iii) repeats and relies on paragraphs 45 to 45A herein;
  - (iv) otherwise denies the allegations in paragraph 121; and
- (b) the First and Second Respondents deny paragraph 121 insofar as it contains any allegations against them.

122. In answer to the allegations in paragraph 122, the Respondents:

- (a) repeat and rely on paragraphs 38, 45, 45A and 133 to 137 herein; and



- (b) otherwise deny the allegations in paragraph 122.

123. In answer to the allegations in paragraph 123, the Respondents:

- (a) repeat and rely on paragraphs 120 to 122 and 133 to 137 herein; and
- (b) otherwise deny the allegations in paragraph 123.

**Alleged equitable misrepresentation**

123A. In answer to the allegations in paragraph 123A:

- (a) the Second Respondent:
  - (i) repeats and relies paragraphs 38, 45, 45A, 55 and 56 herein;
  - (ii) says that it was aware that:
    - A. an identification plate was placed on Skoda diesel vehicles sold in Australia; and
    - B. some Australian customers might take notice of an identification plate in the course of acquiring a Skoda diesel vehicle; and
  - (iii) otherwise denies the allegations in paragraph 123A; and
- (b) the First and Third Respondents deny paragraph 123A insofar as it contains any allegations against them.

123B. In answer to the allegations in paragraph 123B, the Respondents:

- (a) repeat and rely on paragraphs 38, 45, 45A and 55 to 57 herein;
- (b) otherwise deny the allegations in paragraph 123B.

123C. In answer to the allegations in paragraph 123C, the Respondents:

- (a) repeat and rely on paragraphs 15, 18, 19, 19F, 28, 29, 38, 45, 45A, 55, 56 and 58 herein; and
- (b) otherwise deny the allegations in paragraph 123C.

123D. In answer to the allegations in paragraph 123D, the Respondents:

- (a) repeat and rely on paragraphs 123A to 123C and 133 to 137 herein; and

- (b) otherwise deny the allegations in paragraph 123D.

123E. In answer to the allegations in paragraph 123E:

- (a) the First and Second Respondents:
  - (i) repeat and rely on paragraphs 38, 45 and 45A herein;
  - (ii) say that the Second Respondent at all material times supplied Skoda vehicles (including the Skoda diesel vehicles) to authorised dealers in Australia;
  - (iii) say that the Second Respondent was the only entity authorised by the First Respondent to do so; and
  - (iv) otherwise deny the allegations in paragraph 123E;
- (b) the Third Respondent denies paragraph 123E insofar as it contains any allegation against it.

123F. In answer to the allegations in paragraph 123F:

- (a) the First Respondent:
  - (i) repeats and relies on paragraphs 38, 45, 45A, 55 and 56 herein;
  - (ii) otherwise denies the allegations in paragraph 123F; and
- (b) the Second and Third Respondents deny paragraph 123F insofar as it contains any allegations against them.

123G. In answer to the allegations in paragraph 123G:

- (a) the First Respondent:
  - (i) repeats and relies on paragraphs 38, 39 to 40, 45, 45A, 55 and 56 herein;
  - (ii) says that it was aware that:
    - A. an identification plate was placed on Skoda diesel vehicles sold in Australia; and
    - B. some Australian customers might take notice of an identification plate in the course of acquiring a Skoda diesel vehicle; and
  - (iii) otherwise denies the allegations in paragraph 123G; and

- (b) the Second and Third Respondents deny paragraph 123G insofar as it contains any allegations against them.

123H. In answer to the allegations in paragraph 123H, the Respondents:

- (a) repeat and rely on paragraphs 38, 45, 45A, 55 to 57 herein; and
- (b) otherwise deny the allegations in paragraph 123H.

123I. In answer to the allegations in paragraph 123I, the Respondents:

- (a) repeat and rely on paragraphs 15, 18, 19, 19F, 28, 29, 38, 45, 45A, 55, 56 and 58 herein; and
- (b) otherwise deny the allegations in paragraph 123I.

123J. In answer to the allegations in paragraph 123J, the Respondents:

- (a) repeat and rely on paragraphs 123E to 123H and 133 to 137 herein; and
- (b) otherwise deny the allegations in paragraph 123J.

123K. In answer to the allegations in paragraph 123K:

- (a) the First Respondent:
  - (i) repeats and relies on paragraphs 38, 45, 45A, 53 to 56 herein;
  - (ii) says that it was aware that:
    - A. an identification plate was placed on Skoda diesel vehicles sold in Australia; and
    - B. some Australian customers might take notice of an identification plate in the course of acquiring a Skoda diesel vehicle; and
  - (iii) otherwise denies the allegations in paragraph 123K; and
- (b) the Second and Third Respondents deny paragraph 123K insofar as it contains any allegations against them.

123L. In answer to the allegations in paragraph 123L:

- (a) the First Respondent:
  - (i) repeats and relies on paragraphs 38, 39, 40, 45, 45A 53 to 56 herein; and

- (ii) otherwise denies the allegations in paragraph 123L; and
- (b) the Second and Third Respondents deny paragraph 123L insofar as it contains any allegations against them.

123M. In answer to the allegations in paragraph 123M, the Respondents:

- (a) repeat and rely on paragraphs 38, 45, 45A, 53 to 57 herein; and
- (b) otherwise deny the allegations in paragraph 123M.

123N. In answer to the allegations in paragraph 123N, the Respondents:

- (a) repeat and rely on paragraphs 15, 18, 19, 19F, 28, 29, 38 45, 45A and 58 herein; and
- (b) otherwise deny the allegations in paragraph 123N.

123O. In answer to the allegations in paragraph 123O, the Respondents:

- (a) repeat and rely on paragraphs 123J to 123L and 133 to 137 herein; and
- (b) otherwise deny the allegations in paragraph 123O.

123P. In answer to the allegations in paragraph 123P:

- (a) the First and Second Respondents:
  - (i) repeat and rely on paragraphs 38, 45, 45A, 56, 61 and 64A herein;
  - (ii) otherwise deny the allegations in paragraph 123P; and
- (b) the Third Respondent denies paragraph 123P insofar as it contains any allegation against it.

123Q. In answer to the allegations in paragraph 123Q, the Respondents:

- (a) repeat and rely on paragraphs 38, 45, 45A, 61 and 62 herein;
- (b) say that the Commonwealth granted approval to each model of Skoda diesel vehicles under the MVSA;
- (c) say that the Commonwealth granted approval for an identification plate to be fitted to each model of Skoda diesel vehicles; and
- (d) otherwise deny the allegations in paragraph 123Q.

123R. In answer to the allegations in paragraph 123R, the Respondents:

- (a) repeat and rely on paragraphs 15, 18, 19, 19F, 28, 29, 38, 45, 45A and 63 herein; and
- (b) otherwise deny the allegations in paragraph 123R.

123S. In answer to the allegations in paragraph 123S:

- (a) the First Respondent denies the allegations in paragraph 123S; and
- (b) the Second and Third Respondents deny paragraph 123S insofar as it contains any allegation against them.

123T. In answer to the allegations in paragraph 123T, the Respondents:

- (a) repeat and rely on paragraphs 38, 45, 45A, 64A and 64B herein;
- (b) say that the Commonwealth granted approval to each model of Skoda diesel vehicles under the MVSA;
- (c) say that the Commonwealth granted approval for an identification plate to be fitted to each model of Skoda diesel vehicles; and
- (d) otherwise deny the allegations in paragraph 123T.

123U. In answer to the allegations in paragraph 123U, the Respondents:

- (a) repeat and rely on paragraphs 15, 18, 19, 19F, 28, 29, 38, 45, 45A and 64C herein; and
- (b) otherwise deny the allegations in paragraph 123U.

123V. In answer to the allegations in paragraph 123V:

- (a) the First Respondent denies the allegations in paragraph 123V; and
- (b) the Second and Third Respondents deny paragraph 123V insofar as it contains any allegation against them.

123W. In answer to the allegations in paragraph 123W:

- (a) the Second Respondent:
  - (i) repeats and relies on its responses at paragraphs 123P to 123V and 133 to 137 herein; and
  - (ii) otherwise denies the allegations in paragraph 123W; and

- (b) the First and Third Respondents deny paragraph 123W insofar as it contains any allegation against them.

123X. In answer to the allegations in paragraph 123X:

- (a) the First Respondent:
  - (i) repeats and relies on paragraphs 123P to 123V and 133 to 137 herein; and
  - (ii) otherwise denies the allegations in paragraph 123X; and
- (b) the Second and Third Respondents deny paragraph 123X insofar as it contains any allegation against them.

**Alleged accessorial liability**

124. In answer to the allegations in paragraph 124:

- (a) the First and Second Respondents:
  - (i) say that the First Respondent manufactured vehicles for sale, including the Skoda diesel vehicles;
  - (ii) says that AACS as representative of the First Respondent pursuant to contractual arrangements between AACS and the Second Respondent sought and obtained approval to fix identification plates to the Skoda diesel vehicles;
  - (iii) repeat and rely on paragraphs 38, 45, 45A and 48 herein;
  - (iv) say that Patrick Autocare placed identification plates on Skoda diesel vehicles; and
  - (v) otherwise denies the allegations in paragraph 124;
- (b) the Third Respondent denies paragraph 124 insofar as it contains any allegation against it.

125. In answer to the allegations in paragraph 125:

- (a) the First Respondent:
  - (i) repeats and relies on paragraphs 38, 45, 45A and 124 herein;
  - (ii) was aware that the Second Respondent would supply vehicles including the Skoda diesel vehicles to authorised dealers who would in turn sell the vehicles, including to Australian consumers;

- (iii) otherwise denies the allegations in paragraph 125; and
  - (b) the Second and Third Respondents deny paragraph 125 insofar as it contains any allegations against them.
126. In answer to the allegations in paragraph 126:
- (a) the First Respondent repeats and relies on its responses in paragraphs 124 and 125 herein;
  - (b) the Second Respondent repeats and relies on its responses at paragraphs 55, 56, 58, 60, 61, 63, 64, 68-70, 73, 74 and 107 herein; and
  - (c) the Respondents otherwise deny the allegations in paragraph 126.
127. The Respondents do not plead to paragraph 127 which has been deleted.
128. The Respondents do not plead to paragraph 128 which has been deleted.
129. The Respondents do not plead to paragraph 129 which has been deleted.
130. In answer to the allegations in paragraph 130:
- (a) the Third Respondent:
    - (i) repeats and relies on paragraphs 19, 28, 38, 41, 45 and 45A herein;
    - (ii) admits that it supplied the EA189 engine to the First Respondent; and
    - (iii) otherwise denies paragraph 130; and
  - (b) the First and Second Respondents repeat and rely on paragraphs 19, 28, 38, 39, 45 and 45A herein and deny paragraph 130 insofar as it contains any allegations against them.
131. In answer to the allegations in paragraph 131:
- (a) the Third Respondent:
    - (i) repeats and relies on paragraphs 38, 45, 45A and 130 herein;
    - (ii) says that it was aware that the Second Respondent would supply vehicles including the Skoda diesel vehicles to authorised dealers who would in turn sell the vehicles, including to Australian consumers;
    - (iii) otherwise denies the allegations in paragraph 131; and
  - (b) the First and Second Respondents deny paragraph 131 insofar as it contains any allegations against them.

132. In answer to the allegations in paragraph 132:

- (a) the Third Respondent repeats and relies on its responses to paragraphs 130 and 131 herein;
- (b) the Second Respondent repeats and relies on its responses to paragraphs 56, 58, 60, 61, 63, 64, 68-70, 73, 74 and 108 herein;
- (c) the First Respondent repeats and relies on its responses to paragraphs 55, 58, 59, 61, 63, 64, 65-67, 71, 72, 76, 77 and 107 herein; and
- (d) the Respondents deny the allegations in paragraph 132.

**Alleged loss or damage suffered by the Applicant and Group Members**

133. In answer to the allegations in paragraph 133, the Respondents:

- (a) repeat and rely on their responses to paragraphs 10A to 15E, 18 to 19, 20 to 29, 38, 45, 45A, 46 to 50, 87 to 108, 112 to 123X, 124 to 126, 130 to 132 and 150 to 153; and
- (b) deny the allegations in paragraph 133.

134. In answer to the allegations in paragraph 134, the Respondents:

- (a) repeat and rely on paragraphs 8, 38, 45, 45A and 133 herein;
- (b) deny paragraph 134; and
- (c) say that they do not know what "interest" or "type of interest" the Applicant or any Group Member is alleged to have acquired;
- (d) say further that:
  - (i) the Applicant and Group Members, insofar as they acquired an interest in a Skoda diesel vehicle and have not disposed of that interest, obtained the benefit and use of that Skoda diesel vehicle from the time the interest was acquired, and continue to have the benefit and use of that vehicle;
  - (ii) the Applicant and Group Members, insofar as they acquired an interest in a Skoda diesel vehicle and disposed of that interest after 3 October 2015, obtained the benefit and use of that Skoda diesel vehicle from the time the interest was acquired until the date on which that person disposed of the interest;
  - (iii) the 'benefit and use' referred to in subparagraphs 134(d)(i) and (ii) herein includes the benefit and use of a vehicle which was and is in fact registered, or was and is capable



of being registered, in Australia and capable of being used on public roads in Australia without restriction and that benefit and use had (and continues to have) value and is relevant to the calculation of any loss;

- (iv) in the absence of acquiring an interest in a Skoda diesel vehicle, the Applicant and each Group Member who acquired an interest in a Skoda diesel vehicle would have had to pay valuable consideration for an interest in a different vehicle, or further or alternatively, paid valuable consideration for the benefit and use of a different vehicle;
- (v) the Applicant and Group Members, insofar as they acquired an interest in a Skoda diesel vehicle, may dispose of, or have disposed of, their interests for value;
- (vi) any diminution in the value of the interest (if any) acquired by the Applicant or Group Member in such a Skoda diesel vehicle by reason that the vehicle was not able to be registered in Australia and/or used on public roads (which is denied) was not actually suffered or alternatively was *de minimis* because such Skoda diesel vehicles were able, as a matter of fact, to be registered in Australia and used on public roads and were so registered and used on public roads;
- (vii) further to subparagraph 134(d)(vi) herein, any diminution in the value of the interest (if any) acquired by the Applicant or Group Member in such a Skoda diesel vehicle by reason that the vehicle was not able to be registered in Australia and/or used on public roads (which is denied) has not and will not be incurred by reason that any such issues will be wholly remedied by the implementation of technical measures which have been developed by the Third Respondent pursuant to a protocol approved by the Kraftfahrt-Bundesamt (**KBA**) and which measures, in respect of certain clusters of Skoda diesel vehicles, have been or are in the process of being approved by the Vehicle Certification Authority (**VCA**); and which measures, in respect of certain clusters of Skoda diesel vehicles, DIRD has confirmed, and may confirm in respect of clusters to be submitted to DIRD, can be made available;

#### **Particulars of Technical Measures**

- Second Further Amended Technical Exposition of the EGR System, SCR System, oxides of nitrogen emissions and remedial measures dated 16 September 2016 at paragraphs [155] to [188].

#### **Particulars of Approval of Technical Measures**

- KBA Protocol for the 2.0L Engine dated 21 October 2016 and KBA Protocol for the 1.6L Engine dated 16 November 2016

- Letters from KBA re approval of technical measures dated 4 April 2016, 28 April 2016, 2 May 2016, 19 May 2016, 27 May 2016, 1 June 2016, 20 June 2016, 11 July 2016, 21 July 2016, 10 August 2016 and 5 September 2016.
- Letters from VCA re approval of technical measures dated 10 June 2016 and 30 June 2016.

(viii) further to paragraph (vii), to the extent that the Applicant or Group Members establish any loss or damage, any failure by the Applicant or Group Member to obtain, or any prevention by the Applicant or any Group Member of the implementation of, the technical measures pleaded in paragraph 134 herein to any Skoda diesel vehicle in which that person has an interest, constitutes failure to mitigate loss.

135. In answer to the allegations in paragraph 135, the Respondents:

- (a) repeat and rely on paragraphs 38, 45, 45A, 133 and 134 herein; and
- (b) otherwise deny the allegations in paragraph 135.

136. In answer to the allegations in paragraph 136, the Respondents:

- (a) repeat and rely on paragraphs 38, 45, 45A, 133 to 135 herein;
- (b) admit that from in or about September 2015, there has been adverse publicity about some Skoda diesel vehicles;
- (c) deny there has been a revelation that "affected Skoda diesel vehicles contain a defeat device";
- (d) otherwise deny the allegations in paragraph 136;
- (e) if, which is denied, Skoda diesel vehicles contained a defeat device as that term is pleaded in paragraph 28 of the Claim, deny that the Applicant and Group Members who acquired an interest in a Skoda diesel vehicle (which is not admitted) suffered loss or damage in the form of a diminution in the value of their interest by reason of what the Claim refers to as 'the revelation' that they 'contain a defeat device'; and
- (f) if the Applicant and Group Members have suffered loss or damage as alleged (which is denied), say that the implementation of the technical measures pleaded in paragraph 134 herein will remedy any such loss or damage.

137. In answer to the allegations in paragraph 137, the Respondents:

- (a) repeat and rely on paragraphs 133 to 136 herein;
- (b) otherwise deny the allegations in paragraph 137;
- (c) say further that if, which is denied, Skoda diesel vehicles do not comply with ADR 79, any expense or inconvenience suffered by the Applicant or any Group Member who retains an interest in such a Skoda diesel vehicle will be negligible, by reason of:
  - (i) the particulars subjoined herein; and
  - (ii) the matters pleaded and particularised in paragraph 134(d)(vii) herein.

#### **Particulars**

Skoda diesel vehicle customers will, upon the implementation of the update, receive the following:

- a) the technical measures implemented at no cost;
- b) a one year Volkswagen/SKODA Roadside Assistance package (in addition to any existing package a customer may have); and
- c) a courtesy car or other mobility service while a customer's vehicle is being updated.

138. In answer to the allegations in paragraph 138, the Respondents:

- (a) repeat and rely on paragraphs 59, 60, 71, 73, 77, 80 and 83 herein;
- (b) repeat and rely on paragraphs 133 to 137 herein; and
- (c) otherwise deny the allegations in paragraph 138.

139. In answer to the allegations in paragraph 139, the Respondents:

- (a) repeat and rely on paragraphs 38, 45 and 45A herein;
- (b) repeat and rely on paragraphs 64 and 64D herein;
- (c) repeat and rely on paragraphs 72, 74, 77, 80 and 83 herein;
- (d) repeat and rely on paragraphs 133 to 137 herein; and
- (e) otherwise deny the allegations in paragraph 139.

140. In answer to the allegations in paragraph 140, the Respondents:

- (a) repeat and rely on paragraphs 66 and 69 herein;

- (b) repeat and rely on paragraphs 67 and 70 herein;
- (c) repeat and rely on paragraphs 133 to 137 herein; and
- (d) otherwise deny the allegations in paragraph 140.

141. In answer to the allegations in paragraph 141, the Respondents:

- (a) repeat and rely on paragraphs 89 to 91 herein; and
- (b) otherwise deny the allegations paragraph 141.

142. In answer to the allegations in paragraph 142, the Respondents:

- (a) repeat and rely on paragraphs 96 and 97 herein;
- (b) repeat and rely on paragraphs 133 to 137 herein; and
- (c) otherwise deny the allegations in paragraph 142.

143. In answer to the allegations in paragraph 143, the Respondents:

- (a) repeat and rely on paragraphs 100 and 101 herein; and
- (b) otherwise deny the allegations in paragraph 143.

144. In answer to the allegations in paragraph 144, the Respondents:

- (a) repeat and rely on paragraph 106 herein;
- (b) repeat and rely on paragraphs 133 to 137 herein; and
- (c) otherwise deny the allegations in paragraph 144.

145. In answer to the allegations in paragraph 145, the Respondents:

- (a) repeat and rely on paragraphs 107 and 108 herein;
- (b) repeat and rely on paragraphs 133 to 137 herein; and
- (c) otherwise deny the allegations in paragraph 145.

146. In answer to the allegations in paragraph 146, the Respondents:

- (a) repeat and rely on paragraphs 115 to 116, 119 and 122 to 123 herein; and
- (b) otherwise deny the allegations in paragraph 146.

147. In answer to the allegations in paragraph 147, the Respondents:

- (a) repeat and rely on paragraphs 124 to 132 herein;
- (b) repeat and rely on paragraphs 133 to 137 herein; and
- (c) otherwise deny the allegations in paragraph 147.

148. In answer to the allegations in paragraph 148, the Respondents:

- (a) repeat and rely on paragraphs 109 to 123 herein;
- (b) repeat and rely on paragraphs 133 to 137 herein;
- (c) repeat and rely on paragraphs 123 to 125 and 130 herein; and
- (d) otherwise deny the allegations in paragraph 148.

149. In answer to the allegations in paragraph 149, the Respondents:

- (a) repeat and rely on paragraphs 38, 45 and 45A herein;
- (b) deny the Applicant or any Group Member is entitled to the relief claimed or at all;
- (c) in further answer to subparagraph 149(a):
  - (i) repeat and rely on paragraphs 133 to 147 herein;
  - (ii) say that even if the Applicant or Group Members have suffered loss or damage by reason of a contravention of the TPA or ACL pleaded in the Claim (which is denied), denies that an order that the Respondents refund money or property received as consideration for the acquisition of any interest in Skoda diesel vehicles is a compensation order within the meaning of s 237 of the ACL; and
  - (iii) say that even if the Applicant or Group Members have suffered loss or damage by reason of a contravention of the TPA or ACL pleaded in the Claim (which is denied), denies that the discretion pursuant to s 87 of the TPA and s 243 of the ACL is sufficiently wide to permit such an order against anyone other than the person who received the money; and
- (d) in further answer to subparagraph 149(b), repeat and rely on paragraphs 133 to 147 herein;
- (e) in further answer to subparagraph 149(c), repeat and rely on paragraph 148 herein and deny that exemplary damages are available in respect of any contravention of the TPA or ACL or for equitable misrepresentation;

- (f) in further answer to paragraph subparagraph 149(d):
  - (i) deny that an order for an accounting for profit is available in respect of any contravention of the TPA or ACL;
  - (ii) deny that an order for an accounting for profit is available in respect of the tort of deceit;
  - (iii) repeat and rely on paragraphs 133 to 147 herein; and
  - (iv) deny that, even if the Applicant in his own right or on behalf of Group Members (or any of them) establishes that the Respondents (or any of them) engaged in equitable misrepresentation (which is denied), the remedy of an account of profits is available or would be appropriate.

#### **Other matters**

150. Further or alternatively, pending receipt of further particulars of the Group Members' claims, the Respondents say that if any Group Member suffered loss or damage as alleged in the Claim (which is denied) as a result of any of the alleged conduct of the Respondents in paragraphs 59-60, 64, 64D, 67, 70-74, 77, 83, 107-108, 126 and 132-140(which is denied):

- (a) where the alleged loss was first suffered by any Group Member by no later than 22 November 2009 and accordingly, the Group Member's alleged cause or causes of action accrued on or before that date;
- (b) by reason of s 82(2) of the TPA or s 236(2) of the ACL, no action can be brought after 6 years from the date when the cause of action accrued; and
- (c) in the premises of the matters pleaded in sub-paragraphs 150(a) and (b) herein, any Group Member's claims arising from the allegations in paragraphs 59-60, 64, 64D, 67, 70-74, 77, 83, 107-108, 126 and 132-140 are barred by s 82(2) of the TPA or s 236(2) of the ACL as the case may be.

151. Further or alternatively, pending receipt of further particulars of the Group Members' claims, the Respondents say that if any Group Member suffered loss or damage as alleged in the Claim (which is denied) as a result of any of the alleged conduct of the Respondents in paragraphs 112 to 123, 141, and 146 to 148 (which is denied):

- (a) where the alleged loss was first suffered by any Group Member by no later than 22 November 2009 and accordingly, the Group Member's alleged cause or causes of action accrued on or before that date;

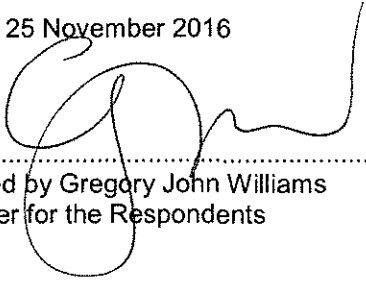
- (b) by reason of s 35(c) of the *Limitation of Actions Act 1936 (SA)* or s 13(1) of the *Limitation Act 2005 (WA)*, no action can be brought after 6 years from the date when the cause of action accrued; and
  - (c) in the premises of the matters pleaded in sub-paragraphs 151(a) and (b) herein, any Group Member's claims arising from the allegations in paragraphs 112 to 123 and 141, 146 to 148 are barred by reason of s 35(c) of the *Limitation of Actions Act 1936 (SA)* or s 13(1) of the *Limitation Act 2005 (WA)* as the case may be.
152. Further or alternatively, pending receipt of further particulars of the Group Members' claims, the Respondents say that if any Group Member suffered loss or damage as alleged in the Claim (which is denied) as a result of any of the alleged conduct of the Respondents in paragraphs 123A to 123X (which is denied):
- (a) where the alleged loss was first suffered by any Group Member by no later than 22 November 2009 (or 22 November 2012 in the case of a cause of action arising in the Northern Territory) and accordingly, the Group Member's alleged cause or causes of action accrued on or before that date;
  - (b) by reason of s 11 of the *Limitation Act 1985 (ACT)*, s 14 of the *Limitation Act 1969 (NSW)*, s 10 of the *Limitation of Actions Act 1974 (Qld)*, s 35 of the *Limitation of Actions Act 1936 (SA)*, s 4 of the *Limitation Act 1974 (Tas)*, s 5 of the *Limitation of Actions Act 1958 (Vic)*, s 13 of the *Limitation Act 2005 (NT)* and s 12 of the *Limitation Act 1944 (NT)*, no action can be brought after 6 years from the date when the cause of action accrued (or after 3 years in the case of a cause of action in the Northern Territory); and
  - (c) in the premises of the matters pleaded in sub-paragraphs 152(a) and (b) above, any Group Member's claims arising from the allegations in paragraphs 123A to 123X of the Claim are barred by reason of s 11 of the *Limitation Act 1985 (ACT)*, s 14 of the *Limitation Act 1969 (NSW)*, s 10 of the *Limitation of Actions Act 1974 (Qld)*, s 35 of the *Limitation of Actions Act 1936 (SA)*, s 4 of the *Limitation Act 1974 (Tas)*, s 5 of the *Limitation of Actions Act 1958 (Vic)*, s 13 of the *Limitation Act 2005 (NT)* and s 12 of the *Limitation Act 1944 (NT)* as the case may be.
153. Further or alternatively, in answer to the whole of the Applicant's claim, the Respondents:
- (a) say that the Applicant was required by Practice Note GPN-CA to draw his claim so that his personal claim could be used as the vehicle for determining the common questions in the action;

#### Particulars

- Practice Note GPN-CA, paragraph 3.2

- (b) say that the allegations in the Claim do not adequately identify the claims of the Applicant in a manner that allows his claim to be used as the vehicle for determining the common questions in the action or permits his personal claim to be adequately identified and determined; and
- (c) say that in the premises, the Applicant's claim is likely to cause prejudice, embarrassment or delay in the proceeding.

Date: 25 November 2016



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

This pleading was prepared by Gregory Williams, Lawyer for the Respondents, and settled by Ruth Higgins, Imtiaz Ahmed and Fiona Roughley of Counsel.

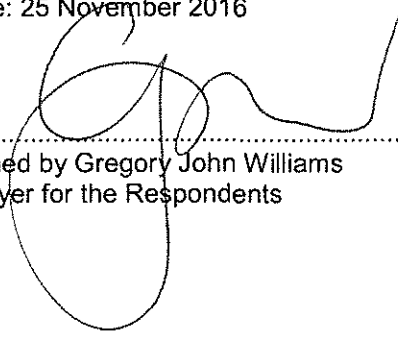


**Certificate of lawyer**

I, Gregory John Williams, certify to the Court that, in relation to the defence filed on behalf of the Respondents, 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: 25 November 2016



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

## **Schedule 1**

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

No. NSD1473/2015

**Volkswagen Group Australia Pty Ltd**  
Second Respondent

**Volkswagen AG**  
Third Respondent

## Schedule 2

		<b>Euro 2</b>			<b>Euro 4</b>						<b>Euro 5</b>					
		<b>UNECE Reg 83 (04 Series)</b>			<b>UNECE Reg 83-Rev 3 (05 Series to Supp 5)</b>			<b>UNECE Reg 83-Rev 3 (05 Series)</b>			<b>UNECE Reg 83-Rev 4 (06 Series)</b>					
		<b>ADR 79/00</b>			<b>ADR 79/01</b>			<b>ADR 79/02</b>			<b>ADR 79/03</b>			<b>ADR 79/04</b>		
<i>Start Date (New Model Diesel)</i>		<b>1-Jan-02</b>			<b>1-Jan-06</b>			<b>1-Jul-08</b>			<b>1-Nov-13</b>			<b>1-Nov-16</b>		
<i>Start Date (Other Diesel)</i>		<b>1-Jan-03</b>			<b>2-Jan-07</b>			<b>1-Jul-10</b>			<b>n/a</b>			<b>1-Nov-16</b>		
	<b>Reference Weight (GVW) (kg)</b>	<b>NOx (g/km)</b>	<b>NOx + HC (g/km)</b>	<b>Particulates (g/km)</b>	<b>NOx (g/km)</b>	<b>NOx + HC (g/km)</b>	<b>Particulates (g/km)</b>	<b>NOx (g/km)</b>	<b>NOx + HC (g/km)</b>	<b>Particulates (g/km)</b>	<b>NOx (g/km)</b>	<b>NOx + HC (g/km)</b>	<b>Particulates (g/km)</b>	<b>NOx (g/km)</b>	<b>NOx + HC (g/km)</b>	<b>Particulates (g/km)</b>
<b>Category M1 Vehicles</b>	≤ 3,500	n/a	0.7	0.08	0.25	0.3	0.025	0.25	0.3	0.025	0.18	0.23	0.045	0.18	0.23	0.045
<b>Category N1-I Vehicles</b>	≤ 1,250	n/a	0.7	0.08	0.25	0.3	0.025	0.25	0.3	0.025	0.18	0.23	0.045	0.18	0.23	0.045
<b>Category N1-II Vehicles</b>	1,250 - 1,700	n/a	1.0	0.12	0.33	0.39	0.04	0.33	0.39	0.04	0.235	0.295	0.045	0.235	0.295	0.045
<b>Category N1-III Vehicles</b>	> 1,700	n/a	1.2	0.17	0.39	0.46	0.06	0.39	0.46	0.06	0.28	0.35	0.045	0.28	0.35	0.045