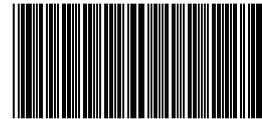




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Defence to Amended Statement of Claim

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Equity General
Registry	Supreme Court Sydney
Case number	2017/00378526

TITLE OF PROCEEDINGS

First Plaintiff	Akuratiya Kularathne
First Defendant	HONDA AUSTRALIA PTY LTD ABN 66004759611

FILING DETAILS

Filed for	HONDA AUSTRALIA PTY LTD, Defendant 1
Legal representative	Timothy John Webster
Legal representative reference	
Telephone	9513 2495
Your reference	7410492.00002

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Defence to Amended Statement of Claim (Defence to Further Amended Statement of Claim.pdf)

[attach.]

Form 7A (version 5)
UCPR 14.3

DEFENCE TO THE FURTHER AMENDED STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	General (Class Action)
Registry	Sydney
Case number	2017/00378526

TITLE OF PROCEEDINGS

Plaintiff	Akuratiya Kularathne
Defendant	Honda Australia Pty Ltd ABN 66 004 759 611

FILING DETAILS

Filed for	Honda Australia Pty Ltd ABN 66 004 759 611, Defendant
Filed in relation to	Plaintiff's claim
Legal representative	Tim Webster K&L Gates
Legal representative reference	7410492.00002
Contact name and telephone	Renée Krikorian, 02 9513 2495
Contact email	renee.krikorian@klgates.com

HEARING DETAILS

The proceeding is listed for a case conference at 9am on 19 September 2018.

COMMON QUESTIONS

In answer to the questions of law or fact alleged to be common to the claims of Group Members (as defined in the Further Amended Statement of Claim (**FASOC**), Honda Australia Pty Limited (**Honda Australia**):

- A. repeats paragraph 1 of the Defence below; and
- B. says that it is inappropriate to respond to the common questions having regard to the matters pleaded in paragraph 1 of the Defence.

PLEADINGS AND PARTICULARS

In answer to the FASOC, Honda Australia states as follows:

The Proceeding and the Parties

1. In answer to the allegations in paragraph 1 of the FASOC, Honda Australia:

- (a) [deleted];
- (b) says that the Plaintiff does not have an alleged claim in respect of, or arising out of, the same claim as that alleged by all Group Members; and
- (c) otherwise does not know and cannot admit the allegations in that paragraph.

2. In answer to the allegations in paragraph 2 of the FASOC, Honda Australia:

- (a) as to the allegations in sub-paragraph 2(a):
 - (i) [deleted];
 - (ii) admits that the Plaintiff purchased a Honda Insight model year (MY) 2011 in or about January 2017;
 - (iii) says that the Honda Insight MY 2011 had been the subject of two safety recalls by January 2017;

Particulars

- (1) Product Recall Australia 2015/14819 published on 15 July 2015
- (2) Product Recall Australia 2016/15496 published on 1 July 2016
- (iv) says that Honda Australia took steps to notify the Plaintiff of the safety recall of the Honda Insight MY 2011;

Particulars

- (1) Letter from Honda Australia to the Plaintiff dated 4 July 2017
- (2) Letter from Honda Australia to the Plaintiff dated 30 August 2017
- (3) Letter from Honda Australia to the Plaintiff dated 10 November 2017
- (4) Letter from Honda Australia to the Plaintiff dated 2 March 2018
- (5) SMS messages sent to the Plaintiff's phone number on 23 February 2018 and 15 March 2018
- (6) Honda Australia provided information about its voluntary recalls on its website: <https://www.honda.com.au/owners/services/recall-information.html>
- (v) says that the driver's airbag in the Plaintiff's First Vehicle has been replaced;
- (vi) says that the passenger's airbag in the Plaintiff's First Vehicle has been replaced; and

- (vii) otherwise does not know and cannot admit the allegations in the sub-paragraph.
- (b) admits the allegations in sub-paragraph 2(b);
- (c) does not know and cannot admit the allegations in sub-paragraph 2(c);
- (d) does not know and cannot admit the allegations in sub-paragraph 2(d);
- (e) does not know and cannot admit the allegations in sub-paragraph 2(e);
- (f) as to the allegations in sub-paragraph 2(f):
 - (i) [deleted];
 - (ii) admits that the Plaintiff purchased a Honda Insight MY 2012 in or about March 2017;
 - (iii) says that the Honda Insight MY 2012 had been the subject of three safety recalls by March 2017;

Particulars

- (1) Product Recall Australia 2015/14819 published on 15 July 2015
- (2) Product Recall Australia 2016/15197 published on 10 February 2016
- (3) Product Recall Australia 2017/15856 published on 23 January 2017
- (iv) says that Honda Australia took steps to notify the Plaintiff of the safety recall of the Honda Insight MY 2012;

Particulars

- (1) Letter from Honda Australia to the Plaintiff dated 5 July 2017
- (2) Letter from Honda Australia to the Plaintiff dated 15 August 2017
- (3) Letter from Honda Australia to the Plaintiff dated 10 November 2017
- (4) Letter from Honda Australia to the Plaintiff dated 2 March 2018
- (5) SMS messages sent to the Plaintiff's phone number on 23 February 2018 and 15 March 2018
- (6) Honda Australia provided information about its voluntary recalls on its website: <https://www.honda.com.au/owners/services/recall-information.html>

- (v) says that the driver's airbag in the Plaintiff's Second Vehicle has been replaced;
 - (vi) states that the Plaintiff did not take steps to have the passenger airbag replaced in the Plaintiff's Second Vehicle, prior to selling the Plaintiff's Second Vehicle on or about 16 May 2018;
 - (vii) says that the passenger's airbag in the Plaintiff's Second Vehicle has been replaced; and
 - (viii) otherwise does not know and cannot admit the allegations in the sub-paragraph.
- (g) admits the allegations in sub-paragraph 2(g);
 - (h) does not know and cannot admit the allegations in sub-paragraph 2(h);
 - (i) does not know and cannot admit the allegations in sub-paragraph 2(i);
 - (j) does not know and cannot admit the allegations in sub-paragraph 2(j);
 - (k) as to the allegations in sub-paragraph 2(k):
 - (i) [deleted];
 - (ii) admits that the Plaintiff purchased a Honda Legend MY 2007 in or about June 2017;
 - (iii) says that the Honda Legend MY 2007 had been the subject of two safety recalls by June 2017;

Particulars

- (1) Product Recall Australia 2016/15198 published on 24 February 2016
- (2) Product Recall Australia 2016/15495 published on 1 July 2016
- (iv) states that Honda Australia took steps to notify the Plaintiff of the safety recall of the Honda Legend MY 2012;

Particulars

- (1) Letter from Honda Australia to the Plaintiff dated 16 November 2017
- (2) Letter from Honda Australia to the Plaintiff dated 2 March 2018
- (3) SMS messages sent to the Plaintiff's phone number on 23 February 2018, and 15 March 2018

- (4) Honda Australia provided information about its voluntary recalls on its website: <https://www.honda.com.au/owners/services/recall-information.html>
- (v) states that the Plaintiff did not take steps to have the driver's airbag replaced in the Plaintiff's Third Vehicle, prior to selling the Plaintiff's Third Vehicle on or about 11 May 2018;
- (vi) states that the Plaintiff did not take steps to have the passenger's airbag replaced in the Plaintiff's Third Vehicle, prior to selling the Plaintiff's Third Vehicle on or about 11 May 2018; and
- (vii) otherwise does not know and cannot admit the allegations in the sub-paragraph.
- (l) admits the allegations in sub-paragraph 2(l);
- (m) does not know and cannot admit the allegations in sub-paragraph 2(m);
- (n) does not know and cannot admit the allegations in sub-paragraph 2(n);
- (o) does not know and cannot admit the allegations in sub-paragraph 2(o);
- (o1) says that sub-paragraph 2(o1) contains no allegations against Honda Australia and does not plead to the allegations in the sub-paragraph;
- (o2) as to the allegations in sub-paragraph 2(o2), Honda Australia:
 - (i) repeats paragraphs 2(a), 2(f), 2(k), 8, 42, 42A and 42C of the Defence; and
 - (ii) otherwise does not know and cannot admit the allegations in the sub-paragraph;
- (o3) as to the allegations in sub-paragraph 2(o3), Honda Australia:
 - (i) repeats paragraphs 2(a), 2(f), 2(k) and 8 of the Defence; and
 - (ii) otherwise does not know and cannot admit the allegations in the sub-paragraph;
- (p) as to the allegations in sub-paragraph 2(p):
 - (i) repeats sub-paragraph 1(b) of the Defence; and
 - (ii) otherwise does not know and cannot admit the allegations in that sub-paragraph.

3. In answer to the allegations in paragraph 3 of the FASOC, Honda Australia repeats sub-paragraph 1(b) of the Defence and otherwise does not know and cannot admit the allegations in that paragraph.
4. In answer to the allegations in paragraph 4 of the FASOC, Honda Australia:
 - (a) admits the allegations in sub-paragraph 4(a);
 - (b) admits the allegations in sub-paragraph 4(b);
 - (c) as to the allegations in sub-paragraph 4(c):
 - (i) [deleted];
 - (ii) admits that Honda Australia is and was at all material times a wholly owned subsidiary of Honda Motor Co Limited;
 - (iii) admits the allegations in sub-paragraph 4(c)(i);
 - (iv) admits the allegations in sub-paragraph 4(c)(ii);
 - (v) as to the allegations in sub-paragraph 4(c)(iii):
 - (1) says that Honda Motor Co. Limited manufactured the following vehicles:
 - I. Honda Accord Euro MY 2003-2013;
 - II. Honda CRV MY 2002-2006;
 - III. Honda Civic MY 2001, 2004-2011;
 - IV. Honda Civic Hybrid MY 2004;
 - V. Honda Insight MY 2010-2013;
 - VI. Honda Jazz MY 2003-2005, 2012-2014;
 - VII. Honda Jazz Hybrid MY 2012;
 - VIII. Honda Legend MY 2007-2012; and
 - IX. Honda Odyssey MY 2004-2008.
 - (2) says that Honda Automobile (Thailand) Co. Limited manufactured the following vehicles:
 - I. Honda Accord MY 2001-2012;
 - II. Honda CRV MY 2007-2011;
 - III. Honda City MY 2009-2012;

- IV. Honda Civic MY 2002-2011;
- V. Honda Jazz MY 2006-2007, 2009-2013; and
- VI. Honda Jazz Hybrid MY 2012-2013.

- (3) says that Honda of America MFG, Inc. manufactured Honda MDX MY 2003, 2005-2006 (together, with the vehicles in sub-paragraphs 4(c)(v)(1) and (2), the **Honda Manufactured Vehicles**); and
- (4) otherwise denies the allegations in the sub-paragraph;
- (d) admits the allegations in sub-paragraph 4(d);
- (e) denies the allegations in sub-paragraph 4(e), and says that the majority of the Honda Manufactured Vehicles were imported by Honda Australia into Australia (**Honda Vehicles**).
- (f) denies the allegations in sub-paragraph 4(f), and says that by reason of the matters in sub-paragraphs 4(c), 4(d) and 4(e) of the Defence, Honda Australia manufactured the Honda Vehicles within the meaning of section 74A of the *Trade Practices Act 1974* (Cth) (**TPA**) or clause 7 of the Australian Consumer Law (**ACL**), being schedule 2 to the *Competition and Consumer Act 2010* (Cth) (**CCA**).
- (g) denies the allegations in sub-paragraph 4(g), and
 - (i) [deleted];
 - (ii) says that it supplied, other than by way of sale by auction, in the course of business, and in trade or commerce, the Honda Vehicles to other persons, who acquired the goods for re-supply; and
 - (iii) says that it supplied, other than by way of sale by auction, in the course of business, and in trade or commerce, 272 Honda Vehicles to consumers.

Particulars

- (1) 18 Honda Accord MY 2001-2006, 2008-2010
- (2) 38 Honda Euro MY 2003-2007, 2009-2012
- (3) 38 Honda Civic MY 2001-2003, 2005-2010
- (4) 89 Honda CRV MY 2002-2011
- (5) 4 Honda City MY 2009, 2012

- (6) 6 Honda Insight MY 2011-2012
- (7) 67 Honda Jazz MY 2003-2007, 2009-2013
- (8) 1 Honda Legend MY 2007
- (9) 3 Honda MDX MY 2003, 2006
- (10) 8 Honda Odyssey MY 2004, 2006, 2007

5. In answer to the allegations in paragraph 5 of the FASOC, Honda Australia:
- (a) repeats sub-paragraph 4(g) of the Defence;
 - (b) says that it supplied the Honda Vehicles in trade or commerce; and
 - (c) otherwise denies the allegations in the paragraph.
6. Honda Australia does not know and cannot admit the allegations in paragraph 6 of the FASOC.

The Vehicles

7. In answer to the allegations in paragraph 7 of the FASOC, Honda Australia:
- (a) as to the allegations in sub-paragraph 7(a), Honda Australia:
 - (i) says that the inflators in Takata Airbags (as that term is defined at paragraph 1(b)(ii) of the FASOC) in Honda Vehicles that have been, are, or are intended to be subject to a recall use non-dessicated phase-stabilised ammonium nitrate propellant (**Non-Dessicated PSAN-Based Propellant**);

Particulars

- (1) The existing recalls issued by Honda Australia are pleaded in sub-paragraphs 8(d) to 8(eeee) below
 - (2) The future recalls are pleaded at paragraphs 1(b)(ii)(II)(a)-1(b)(ii)(II)(m) of the FASOC
- (ii) says that Non-Dessicated PSAN-Based Propellant may physically degrade when exposed to long-term exposure to repeated high-temperature cycling in the presence of moisture;
 - (iii) says that such degradation is a long-term process;
 - (iv) says that such degradation may be caused by conditions of high temperature and high absolute humidity;

- (v) says that, in some cases, physical degradation of Non-Dessicated PSAN-Based Propellant causes ruptures of the inflators in Takata Airbags (as that term is defined at paragraph 1(b)(ii) of the FASOC);
 - (vi) says that, in some cases, ruptures may cause metal shrapnel to be propelled outwards;
 - (vii) says that, in some cases, physical degradation of Non-Dessicated PSAN-Based Propellant results in the expansion of internal pores between sections of propellant, which, during an airbag deployment, can result in elevated pressures that exceed the mechanical strength of the inflator housing, causing the airbag, in some cases, to deploy with excessive force;
 - (viii) says that the Honda Vehicles were initially fitted with at least one Takata Airbag;
 - (ix) says that Honda Australia issued product safety recalls as pleaded at paragraph 8 of the Defence; and
 - (x) otherwise denies the allegations in the sub-paragraph.
- (b) admits the allegations in sub-paragraph 7(b);
 - (c) does not know and cannot admit the allegations in sub-paragraph 7(c);
 - (d) does not know and cannot admit the allegations in sub-paragraph 7(d);
 - (e) does not know and cannot admit the allegations in sub-paragraph 7(e); and
 - (f) does not know and cannot admit the allegations in sub-paragraph 7(f).
8. As to the allegations in paragraph 8 of the FASOC, Honda Australia:
- (a) [deleted];
 - (b) says that the Honda Vehicles were initially fitted with at least one Takata Airbag (as that term is defined at paragraph 1(b)(ii) of the FASOC);
 - (c) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Honda Vehicles as pleaded in sub-paragraphs 8(d) to 8(eeee) below (together, **Voluntary Recall Notices**);
 - (d) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord MY 2001;

Particulars

- (3) Product Recall Australia Number 2009/10969 published on 7 August 2009
 - (4) Product Recall Australia Number 2011/12633 published on 7 June 2011
 - (5) Product Recall Australia Number 2015/14737 published on 2 June 2015
- (e) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord MY 2002;

Particulars

- (1) Product Recall Australia Number 2009/10969 published on 7 August 2009
 - (2) Product Recall Australia Number 2011/12633 published on 7 June 2011
 - (3) Product Recall Australia Number 2015/14737 published on 2 June 2015
- (f) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord MY 2003;

Particulars

- (1) Product Recall Australia Number 2013/13549 published on 26 June 2014
 - (2) Product Recall Australia Number 2016/15495 published on 1 July 2016
- (g) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord MY 2004;

Particulars

- (1) Product Recall Australia Number 2015/14737 published on 2 June 2015

- (2) Product Recall Australia Number 2016/15495 published on 1 July 2016

(h) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord MY 2005;

Particulars

- (1) Product Recall Australia Number 2015/14737 published on 2 June 2015
- (2) Product Recall Australia Number 2016/15495 published on 1 July 2016

(i) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord MY 2006;

Particulars

- (1) Product Recall Australia Number 2015/14737 published on 2 June 2015
- (2) Product Recall Australia Number 2016/15495 published on 1 July 2016

(j) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord MY 2007;

Particulars

- (1) Product Recall Australia Number 2015/14737 published on 2 June 2015
- (2) Product Recall Australia Number 2016/15495 published on 1 July 2016

(k) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord MY 2008;

Particulars

- (1) Product Recall Australia Number 2016/15494 published on 1 July 2016

- (l) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord MY 2009;

Particulars

- (1) Product Recall Australia Number 2016/15494 published on 1 July 2016

- (m) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord MY 2010;

Particulars

- (1) Product Recall Australia Number 2016/15494 published on 1 July 2016

- (n) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord MY 2011;

Particulars

- (1) Product Recall Australia Number 2016/15494 published on 1 July 2016

- (o) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord MY 2012;

Particulars

- (1) Product Recall Australia Number 2017/15859 published on 23 January 2017

- (p) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord Euro MY 2003;

Particulars

- (1) Product Recall Australia Number 2013/13549 published on 26 June 2014

- (q) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord Euro MY 2004;

Particulars

- (1) Product Recall Australia Number 2014/14498 published on 23 December 2014
- (2) Product Recall Australia Number 2015/14703 published on 18 May 2015

- (r) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord Euro MY 2005;

Particulars

- (1) Product Recall Australia Number 2015/14703 published on 18 May 2015

- (s) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord Euro MY 2006;

Particulars

- (1) Product Recall Australia Number 2015/14703 published on 18 May 2015

- (t) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord Euro MY 2007;

Particulars

- (1) Product Recall Australia Number 2015/14703 published on 18 May 2015

- (u) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord Euro MY 2008;

Particulars

- (1) Product Recall Australia Number 2015/14703 published on 18 May 2015

- (v) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord Euro MY 2009;

Particulars

- (1) Product Recall Australia Number 2015/14703 published on 18 May 2015
- (2) Product Recall Australia Number 2016/15496 published on 1 July 2016

- (w) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord Euro MY 2010;

Particulars

- (1) Product Recall Australia Number 2016/15496 published on 1 July 2016

- (x) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord Euro MY 2011;

Particulars

- (1) Product Recall Australia Number 2016/15496 published on 1 July 2016

- (y) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord Euro MY 2012;

Particulars

- (1) Product Recall Australia Number 2017/15856 published on 23 January 2017

- (z) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Accord Euro MY 2013;

Particulars

- (1) Product Recall Australia Number 2018/16523 published on 24 January 2018

- (aa) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the CRV MY 2002;

Particulars

- (1) Product Recall Australia Number 2009/10969 published on 7 August 2009
- (2) Product Recall Australia Number 2013/13549 published on 26 June 2014
- (3) Product Recall Australia Number 2015/14703 published on 18 May 2015

- (bb) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the CRV MY 2003;

Particulars

- (1) Product Recall Australia Number 2013/13549 published on 26 June 2014

- (cc) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the CRV MY 2004;

Particulars

- (1) Product Recall Australia Number 2014/14498 published on 23 December 2014
- (2) Product Recall Australia Number 2015/14703 published on 18 May 2015

- (dd) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the CRV MY 2005;

Particulars

- (1) Product Recall Australia Number 2015/14703 published on 18 May 2015

- (ee) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the CRV MY 2006;

Particulars

- (1) Product Recall Australia Number 2015/14703 published on 18 May 2015

- (ff) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the CRV MY 2007;

Particulars

- (1) Product Recall Australia Number 2015/14702 published on 18 May 2015
- (2) Product Recall Australia Number 2015/14703 published on 18 May 2015
- (3) Product Recall Australia Number 2015/14819 published on 15 July 2015
- (4) Product Recall Australia 2016/15496 published on 1 July 2016

- (gg) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the CRV MY 2008;

Particulars

- (1) Product Recall Australia Number 2015/14703 published on 18 May 2015
- (2) Product Recall Australia Number 2015/14819 published on 15 July 2015

- (hh) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the CRV MY 2009;

Particulars

- (1) Product Recall Australia Number 2015/14703 published on 18 May 2015

- (2) Product Recall Australia Number 2015/14819 published on 15 July 2015
 - (3) Product Australia Recall Number 2016/15496 published on 1 July 2016
- (ii) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the CRV MY 2010;

Particulars

- (1) Product Recall Australia Number 2015/14819 published on 15 July 2015
 - (2) Product Australia Recall Number 2016/15496 published on 1 July 2016
- (jj) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the CRV MY 2011;

Particulars

- (1) Product Recall Australia Number 2015/14819 published on 15 July 2015
 - (2) Product Recall Australia Number 2016/15197 published on 10 February 2016
 - (3) Product Australia Recall Number 2016/15496 published on 1 July 2016
- (kk) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the City MY 2009;

Particulars

- (1) Product Recall Australia Number 2015/14703 published on 18 May 2015
- (2) Product Recall Australia Number 2015/14819 published on 15 July 2015
- (3) Product Australia Recall Number 2016/15496 published on 1 July 2016

- (ll) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the City MY 2010;

Particulars

- (1) Product Recall Australia Number 2015/14819 published on 15 July 2015
- (2) Product Australia Recall Number 2016/15496 published on 1 July 2016

- (mm) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the City MY 2011;

Particulars

- (1) Product Recall Australia Number 2015/14819 published on 15 July 2015
- (2) Product Australia Recall Number 2016/15496 published on 1 July 2016

- (nn) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the City MY 2012;

Particulars

- (1) Product Recall Australia Number 2015/14819 published on 15 July 2015
- (2) Product Recall Australia Number 2016/15197 published on 10 February 2016
- (3) Product recall Australia Number 2017/15856 published on 23 January 2017

- (oo) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Civic MY 2001;

Particulars

- (1) Product Recall Australia Number 2010/11785 published on 6 July 2010

(2) Product Recall Australia Number 2013/13549 published on 26 June 2014

(3) Product Recall Australia Number 2017/15860 published on 23 January 2017

(pp) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Civic MY 2002;

Particulars

(1) Product Recall Australia Number 2013/13549 published on 26 June 2014

(qq) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Civic MY 2003;

Particulars

(1) Product Recall Australia Number 2013/13549 published on 26 June 2014

(2) Product Recall Australia Number 2014/14498 published on 23 December 2014

(rr) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Civic Hybrid MY 2004;

Particulars

(1) Product Recall Australia Number 2015/14703 published 18 May 2015

(ss) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Civic MY 2005;

Particulars

(1) Product Recall Australia Number 2015/14703 published on 18 May 2015

- (tt) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Civic MY 2006;

Particulars

- (1) Product Recall Australia Number 2016/15198 published on 24 February 2016
- (2) Product Recall Australia Number 2016/15494 published on 1 July 2016

- (uu) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Civic MY 2007;

Particulars

- (1) Product Recall Australia Number 2016/15198 published on 24 February 2016
- (2) Product Recall Australia Number 2016/15494 published on 1 July 2016

- (vv) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Civic MY 2008;

Particulars

- (1) Product Recall Australia Number 2016/15198 published on 24 February 2016
- (2) Product Recall Australia Number 2016/15494 published on 1 July 2016

- (ww) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Civic MY 2009;

Particulars

- (1) Product Recall Australia Number 2016/15198 published on 24 February 2016
- (2) Product Recall Australia Number 2016/15494 published on 1 July 2016

- (xx) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Civic MY 2010;

Particulars

- (1) Product Recall Australia Number 2016/15198 published on 24 February 2016
- (2) Product Recall Australia Number 2016/15494 published on 1 July 2016

- (yy) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Civic MY 2011;

Particulars

- (1) Product Recall Australia Number 2016/15198 published on 24 February 2016
- (2) Product Recall Australia Number 2016/15494 published on 1 July 2016

- (zz) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Civic Hybrid MY 2004;

Particulars

- (1) Product Recall Australia Number 2014/14498 published on 23 December 2014

- (aaa) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Insight MY 2010;

Particulars

- (1) Product Recall Australia Number 2015/14819 published on 15 July 2015
- (2) Product Recall Australia Number 2016/15496 published on 1 July 2016

(bbb) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Insight MY 2011;

Particulars

- (1) Product Recall Australia Number 2015/14819 published on 15 July 2015
- (2) Product Recall Australia Number 2016/15496 published on 1 July 2016

(ccc) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Insight MY 2012;

Particulars

- (1) Product Recall Australia Number 2015/14819 published on 15 July 2015
- (2) Product Recall Australia Number 2016/15197 published on 10 February 2016
- (3) Product recall Australia Number 2017/15856 published on 23 January 2017

(ddd) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Insight MY 2013;

Particulars

- (1) Product Recall Australia Number 2016/15197 published on 10 February 2016
- (2) Product Recall Australia Number 2018/16523 published on 24 January 2018

(eee) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Jazz MY 2003;

Particulars

- (1) Product Recall Australia Number 2013/13549 published on 26 June 2014

- (fff) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Jazz MY 2004;

Particulars

- (1) Product Recall Australia Number 2014/14438 published on 14 November 2014
- (2) Product Recall Australia Number 2014/14498 published on 23 December 2014
- (3) Recall Australia Number 2015/14703 published on 18 May 2015

- (ggg) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Jazz MY 2005;

Particulars

- (1) Recall Australia Number 2015/14702 published on 18 May 2015
- (2) Recall Australia Number 2015/14703 published on 18 May 2015

- (hhh) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Jazz MY 2006;

Particulars

- (1) Recall Australia Number 2015/14702 published on 18 May 2015
- (2) Recall Australia Number 2015/14703 published on 18 May 2015
- (3) Recall Australia Number 2015/14819 published on 15 July 2015

- (iii) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Jazz MY 2007;

Particulars

- (1) Recall Australia Number 2015/14703 published on 18 May 2015
- (2) Recall Australia Number 2015/14819 published on 15 July 2015
- (3) Recall Australia Number 2016/15496 published on 1 July 2016

- (jii) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Jazz MY 2009;

Particulars

- (1) Recall Australia Number 2015/14703 published on 18 May 2015
- (2) Recall Australia Number 2015/14819 published on 15 July 2015
- (3) Recall Australia Number 2016/15496 published on 1 July 2016

- (kkk) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Jazz MY 2010;

Particulars

- (1) Recall Australia Number 2015/14819 published on 15 July 2015
- (2) Recall Australia Number 2016/15496 published on 1 July 2016

- (lll) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Jazz MY 2011;

Particulars

- (1) Recall Australia Number 2015/14819 published on 15 July 2015
- (2) Recall Australia Number 2016/15496 published on 1 July 2016

- (mmm) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Jazz MY 2012;

Particulars

- (1) Recall Australia Number 2015/14819 published on 15 July 2015
- (2) Recall Australia Number 2016/15197 published on 10 February 2016
- (3) Recall Australia Number 2017/15856 published on 23 January 2017

(nnn) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Jazz MY 2013;

Particulars

- (1) Recall Australia Number 2016/15197 published on 10 February 2016
- (2) Recall Australia Number 2018/16523 published on 24 January 2018

(ooo) says that Honda Australia has issued a product safety recall to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Jazz MY 2014;

Particulars

- (1) Recall Australia Number 2016/15197 published on 10 February 2016

(ppp) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Jazz Hybrid MY 2012;

Particulars

- (1) Recall Australia Number 2015/14819 published on 15 July 2015
- (2) Recall Australia Number 2016/15197 published on 10 February 2016
- (3) Recall Australia Number 2016/15198 published on 24 February 2016

(qqq) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Jazz Hybrid MY 2013;

Particulars

- (1) Recall Australia Number 2016/15197 published on 10 February 2016
- (2) Recall Australia Number 2018/16523 published on 24 January 2018

(rrr) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Legend MY 2007;

Particulars

(1) Recall Australia Number 2016/15198 published on 24 February 2016

(2) Recall Australia Number 2016/15495 published on 1 July 2016

(sss) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Legend MY 2008;

Particulars

(1) Recall Australia Number 2016/15198 published on 24 February 2016

(2) Recall Australia Number 2016/15495 published on 1 July 2016

(ttt) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Legend MY 2009;

Particulars

(1) Recall Australia Number 2016/15198 published on 24 February 2016

(2) Recall Australia Number 2016/15495 published on 1 July 2016

(uuu) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Legend MY 2010;

Particulars

(1) Recall Australia Number 2016/15198 published on 24 February 2016

(2) Recall Australia Number 2016/15495 published on 1 July 2016

(vvv) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Legend MY 2011;

Particulars

- (1) Recall Australia Number 2016/15198 published on 24 February 2016
- (2) Recall Australia Number 2016/15495 published on 1 July 2016

(www) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Legend MY 2012;

Particulars

- (1) Recall Australia Number 2016/15198 published on 24 February 2016
- (2) Recall Australia Number 2017/15857 published on 23 January 2017

(xxx) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the MDX MY 2003;

Particulars

- (1) Recall Australia Number 2013/13549 published on 26 June 2014
- (2) Recall Australia Number 2015/14737 published on 2 June 2015

(yyy) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the MDX MY 2005;

Particulars

- (1) Recall Australia Number 2015/14737 published on 2 June 2015
- (2) Recall Australia Number 2016/15495 published on 1 July 2016

(zzz) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the MDX MY 2006;

Particulars

- (1) Recall Australia Number 2015/14737 published on 2 June 2015
- (2) Recall Australia Number 2016/15495 published on 1 July 2016

(aaaa) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Odyssey MY 2004;

Particulars

- (1) Recall Australia Number 2016/15495 published on 1 July 2016

(bbbb) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Odyssey MY 2005;

Particulars

- (1) Recall Australia Number 2016/15495 published on 1 July 2016

(cccc) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Odyssey MY 2006;

Particulars

- (1) Recall Australia Number 2016/15495 published on 1 July 2016

(dddd) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Odyssey MY 2007;

Particulars

- (1) Recall Australia Number 2016/15495 published on 1 July 2016

(eeee) says that Honda Australia has issued product safety recalls to the Department of Infrastructure and Regional Development pursuant to clause 128 of the ACL in respect of the Odyssey MY 2008;

Particulars

- (1) Recall Australia Number 2016/15495 published on 1 July 2016

(ffff) says that, as at March 2018, the majority of Honda Vehicles have been fitted with a replacement airbag that does not contain Non-Dessicated PSAN-Based Propellant;

(gggg) says that Honda Australia has taken actions to notify owners of the Honda Vehicles of the Voluntary Recall Notices and to replace the Takata Airbags in the Honda Vehicles; and

Particulars

- (1) Honda Australia has conducted a public awareness campaign in respect of Takata Airbags used in Honda Vehicles, such as providing information about its voluntary recalls on its website (<https://www.honda.com.au/owners/services/recall-information.html>) since May 2015
- (2) Honda Australia has provided information about the voluntary recalls through social media
- (3) Honda Australia has approached State and Territory Registration Authorities to provide contact details for individuals who own a Honda Vehicle with a Takata Airbag
- (4) Honda Australia has sought the assistance of governments in Tasmania and the Northern Territory to prevent re-registration of Honda Vehicles that have not had their Takata Airbag replaced
- (5) Honda Australia has sought the assistance of third parties such as carsales.com.au, toll road operators (including Eastlink), auction houses to supply contact details for individuals who own a Honda Vehicle with a Takata Airbag
- (6) As at March 2018, Honda Australia has made calls, and sent letters, emails and SMS messages about the Voluntary Recall Notices to the address registered in respect of vehicle identification numbers of the Honda Vehicles including as follows:
 - a. five or more letters have been sent in respect of over 96% of vehicle identification numbers;
 - b. four or more letters have been sent in respect of over 98% of vehicle identification numbers;

c. three or more letters have been sent in respect of over 99% of vehicle identification numbers.

(7) Honda Australia conducted all Voluntary Recalls in accordance with the Federal Chamber of Automotive Industries Code of Practice for the Conduct of an Automotive Safety Recall.

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

9. [Deleted]

10. In answer to the allegations in paragraph 10 of the FASOC, Honda Australia:

- (a) admits the allegations in sub-paragraph 10(a) of the FASOC;
- (b) admits the allegations in sub-paragraph 10(b) of the FASOC;
- (c) denies the allegations in sub-paragraph 10(c) and repeats paragraph 7 of the Defence; and
- (d) admits the allegations in sub-paragraph 10(d) of the FASOC.

11. Honda Australia denies the allegations in paragraph 11 of the FASOC and repeats paragraph 8 of the Defence and relies on the Voluntary Recall Notices in the particulars sub-joined to those paragraphs for their full force and effect.

11A. Honda Australia admits the allegations in paragraph 11A of the FASOC, and repeats paragraph 8 of the Defence.

12. Honda Australia denies the allegations in paragraph 12 of the FASOC, and:

- (a) repeats paragraph 8 of the Defence;
- (b) says that it marketed, distributed and promoted the Honda Vehicles within Australia at various times during the Relevant Period;
- (c) denies that it marketed, distributed and promoted a Honda Vehicle after that Honda Vehicle had been subject to a Voluntary Recall Notice;
- (d) denies that it held out a Honda Vehicle as being safe to drive after that Honda Vehicle had been subject to a Voluntary Recall Notice;
- (e) denies that it held out a Honda Vehicle as being safe for passengers after that Honda Vehicle had been subject to a Voluntary Recall Notice;
- (f) denies that it did not take any or any adequate steps to:
 - (i) warn members of the public that the Honda Vehicles were not safe to drive;

- (ii) prevent the Honda Vehicles from being driven;
- (iii) ensure that the Honda Vehicles were not sold as second-hand vehicles;
and
- (iv) warn members of the public that the Honda Vehicles were not safe for passengers.

- 13. [Deleted]
- 14. [Deleted]
- 15. [Deleted]
- 16. [Deleted]
- 17. [Deleted]
- 18. [Deleted]
- 19. [Deleted]
- 20. [Deleted]
- 21. [Deleted]
- 22. [Deleted]

Failure to Supply Goods of Merchantable Quality – TPA s 74D

- 23. Honda Australia denies the allegations in paragraph 23 of the FASOC, and repeats paragraphs 7, 8, 10, 11 and 12 of the Defence.
- 24. Honda Australia denies the allegations in paragraph 24 of the FASOC, and repeats paragraph 23 of the Defence.
- 25. Honda Australia denies the allegations in paragraph 25 of the FASOC and repeats paragraphs 23, 24 and 55 of the Defence.
- 26. [Deleted]
- 27. [Deleted]
- 28. [Deleted]
- 29. [Deleted]

Failure to Supply Goods of Acceptable Quality – ACL s 54

- 30. Honda Australia denies the allegations in paragraph 30 of the FASOC, and
 - (a) repeats paragraphs 3, 4(g), and 5 of the Defence; and

- (b) says that there is a guarantee that the Honda Vehicles supplied on or after 1 January 2011 are of acceptable quality pursuant to clause 54(1) of the *ACL* (**Honda Acceptable Quality Guarantee**).
31. Honda Australia denies the allegations in paragraph 31 of the FASOC and repeats paragraphs 7, 8, 10, 11 and 12 of the Defence.
32. Honda Australia denies the allegations in paragraph 32 of the FASOC, and repeats paragraph 31 of the Defence.
33. Honda Australia denies the allegations in paragraph 33 of the FASOC and:
- (a) repeats paragraph 32 and 56 of the Defence; and
- (b) relies on clause 271(2) of the *ACL*.

Particulars

- (1) Honda repeats paragraphs 7 of the Defence
- (2) Takata Corporation and TK Holdings, Inc (together, **Takata**) designed and manufactured the airbags used in the Honda Vehicles.
34. [Deleted]
35. [Deleted]
36. [Deleted]
37. [Deleted]
38. [Deleted]
39. [Deleted]
40. [Deleted]
41. [Deleted]

Misleading or Deceptive Conduct

42. Honda Australia denies the allegations in paragraph 42 of the FASOC and repeats paragraphs 4(f), 4(g), 7, 8, 10, 11 and 12 of the Defence.
- 42A. Honda Australia denies the allegations in paragraph 42A of the FASOC and repeats paragraphs 4(f), 4(g), 7, 8, 10, 11 and 12 of the Defence.
- 42B. Honda Australia denies the allegations in paragraph 42B of the FASOC and repeats paragraph 42A of the Defence.

- 42C. Honda Australia denies the allegations in paragraph 42C of the FASOC and repeats paragraph 7, 8 and 12 of the Defence.
43. In answer to the allegations in paragraph 43 of the FASOC, Honda Australia:
- (a) repeats paragraphs 42, 42A and 42C of the Defence;
 - (b) says that the conduct in paragraphs 4(e), 4(g) and 12 of the Defence was in trade or commerce within the meaning of section 52 of the *TPA* or clause 18 of the *ACL*; and
 - (c) otherwise denies the allegations in paragraph 43 of the FASOC.
44. Honda Australia denies the allegations in paragraph 44 of the FASOC and repeats paragraphs 42 and 43 of the Defence.
45. In answer to the allegations in paragraph 45 of the FASOC, Honda Australia:
- (a) repeats paragraphs 42, 42A and 42C of the Defence; and
 - (b) otherwise does not know and cannot admit the allegations in the paragraph.
46. Honda Australia denies the allegations in paragraph 46 of the FASOC and repeats paragraphs 2, 3, and 42 to 45 of the Defence.
47. Honda Australia denies the allegations in paragraph 47 of the FASOC, and repeats paragraphs 42 to 46, 53, 54 and 57 of the Defence.

Unconscionable Conduct

48. Honda Australia denies the allegations in paragraph 48 of the FASOC, and:
- (a) repeats paragraphs 7(a)(i), 8 and 10(c) of the Defence; and
 - (b) says that it became aware of the following matters in respect of each Honda Vehicle on or immediately prior to issuing the Voluntary Recall Notice for that Honda Vehicle as pleaded at sub-paragraphs 8(d) to 8(eeee) of the Defence:
 - (i) the airbag inflator could rupture if the airbag deployed;
 - (ii) in some cases, fragments from the airbag inflator module could tear the airbag;

Particulars

- (1) Letter from Honda Motor to Honda Australia dated 30 July 2009
- (2) Letter from Honda Motor to Honda Australia dated 9 February 2010
- (3) Letter from Honda Motor to Honda Australia dated 29 June 2010

- (4) Letter from Honda Motor to Honda Australia dated 28 April 2011
 - (5) Letter from Honda Motor to Honda Australia dated 11 April 2013
 - (6) Letter from Honda Motor to Honda Australia dated 25 June 2014
 - (7) Letter from Honda Motor to Honda Australia dated 13 November 2014
 - (8) Letter from Honda Motor to Honda Australia dated 19 December 2014
 - (9) Letter from Honda Motor to Honda Australia dated 9 March 2015
 - (10) Letters from Honda Motor to Honda Australia dated 14 May 2015
 - (11) Letter from Honda Motor to Honda Australia dated 28 May 2015
 - (12) Letter from Honda Motor to Honda Australia dated 9 July 2015
 - (13) Letters from Honda Motor to Honda Australia dated 4 February 2016
 - (14) Letter from Honda Motor to Honda Australia dated 9 June 2016
 - (15) Letters from Honda Motor to Honda Australia dated 19 January 2017
 - (16) Letter from Honda Motor to Honda Australia dated 10 January 2018
- (iii) says that it became aware of the matters in paragraph 7(a)(i)-(vi) of the Defence in or around May 2016; and

Particulars

Expert Report of Harold R Blomquist prepared at the request of NHTSA

- (iv) says it became aware of the matters in paragraph 7(a)(vii) of the Defence in or around July 2016.

Particulars

Expert Report of Exponent, Inc titled "*Investigation of Takata Inflator Ruptures*"

49. Honda Australia denies the allegations in paragraph 49 of the FASOC and repeats paragraphs 4(f), 4(g), 7(a)(i), 7(b)-(f), 8, 10(b), 10(c), 11, 12 and 48 of the Defence.

- 49A. Honda Australia denies the allegations in paragraph 49A of the FASOC and repeats paragraph 49 of the Defence.
50. Honda Australia denies the allegations in paragraph 50 of the FASOC and repeats paragraphs 2, 3 and 48-49A of the Defence.
51. Honda Australia denies the allegations in paragraph 51 of the FASOC, and repeats paragraphs 48 to 50 and 58 of the Defence.

Mitigation

52. In further answer to the allegations pleaded in the whole of the FASOC, if the Plaintiff and any Group Member suffered loss or damage (which is denied), the Plaintiff and that Group Member is not entitled to claim for any loss or damage which is attributable to a failure to take all reasonable steps to mitigate or minimize that loss or damage.

Particulars

- (1) Honda repeats paragraphs 2(a), 2(f) and 2(k) of the Defence in respect of the Plaintiff
- (2) Further particulars will be provided upon receipt of the Group Members' claims

Proportionate Liability

53. In further answer to the claims alleged in the FASOC against Honda Australia for contravention of section 52 of the *TPA* and clause 18 of the *ACL* (**Apportionable Claims**), Honda says that if it is liable to the Plaintiff and the Group Members (which is denied), then, for the purpose of this Defence only:
- (a) the Apportionable Claims are each an "*apportionable claim*" within the meaning of section 87CB(1) of the *TPA* and section 87CB(1) of the *CCA*;

Particulars

- (1) Takata designed and manufactured the airbags used in the Honda Vehicles.
 - (2) Takata were responsible for the representations alleged in paragraph 12 of the FASOC, and thereby, in the circumstances alleged in paragraphs 42 to 43 of the FASOC.
- (b) Takata are and were at all relevant times each a "*concurrent wrongdoer*" within the meaning of section 87CB(3) of the *TPA* and section 87CB(3) of the *CCA*;

Particulars

- (1) Honda Australia repeats the particulars subjoined to paragraph 53(a) above
- (c) Honda Australia's liability (if any, which is denied) to the Plaintiff and the Group Members is, by that reason, limited by section 87CD of the *TPA* and section 87CD of the *CCA* to an amount reflecting that proportion of the loss or damage claimed that the Court considers is just having regard to the extent of Honda Australia's responsibility for that damage or loss.

Contributory Negligence

54. In further or alternative answer to the allegations pleaded in paragraphs 42 to 47 of the FASOC, Honda Australia:
- (a) says that the Plaintiff and the Group Members, by relying on representations pleaded in paragraph 42 of the FASOC despite the matters pleaded at paragraphs 8, 11 and 12 of the Defence, caused or contributed to any loss or damage they have suffered (which is denied) for the purposes of *TPA* section 82(1B) or *CCA* section 137B; and

Particulars

- (1) Honda Australia repeats paragraphs 2(a), 2(f) and 2(k) of the Defence in respect of the Plaintiff
- (2) Further particulars will be provided upon receipt of the Group Members' claims
- (b) says that in the premises of sub-paragraph 54(a) above, Honda Australia's liability (if any, which is denied) to the Plaintiff and the Group Members will, by that reason, not include that proportion of the loss or damage in relation to which they are contributorily negligent.

Limitation Periods

55. In further answer to the allegations pleaded in paragraphs 23 to 25 of the FASOC, Honda Australia says that some or all of the Group Members' causes of action will be time-barred by reason of the limitation periods prescribed by the *TPA*, including sections 74J(1) and 74J(3).

Particulars

Particulars will be provided upon receipt of the Group Members' claims

56. In further answer to the allegations pleaded in paragraphs 30 to 33 of the FASOC, Honda Australia says that some or all of the Group Members' causes of action will be time-barred by reason of the limitation periods prescribed by the *ACL*, including clause 273.

Particulars

Particulars will be provided upon receipt of the Group Members' claims

57. In further answer to the allegations pleaded in paragraphs 42 to 47 of the FASOC, Honda Australia says that some or all of the Group Members' causes of action will be time-barred by reason of the limitation periods prescribed by the:
- (a) *TPA*, including sections 82(2) and 87(1CA); and
 - (b) *ACL*, including clause 236(2) and 237(3).

Particulars

Particulars will be provided upon receipt of the Group Members' claims

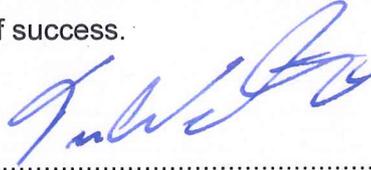
58. In further answer to the allegations pleaded in paragraphs 48 to 51 of the FASOC, Honda Australia says that some or all of the Group Members' causes of action will be time-barred by reason of the limitation periods prescribed by the:
- (a) *TPA*, including sections 82(2) and 87(1CA); and
 - (b) *ACL*, including clause 236(2) and 237(3).

Particulars

Particulars will be provided upon receipt of the Group Members' claims

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the defence to the claim for damages in these proceedings has reasonable prospects of success.



Signature

Capacity

Date of signature

.....
Timothy John Webster, Solicitor on record for the Defendant

14 September 2018

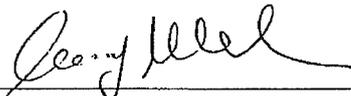
AFFIDAVIT VERIFYING

Name Carolyn McMahon
 Address 95 Sharps Road, Tullamarine, VIC, 3043
 Occupation Director
 Date 14 September 2018

I affirm:

1. I am a director of the Defendant and am authorised to make this affidavit on its behalf.
2. I believe that the allegations of fact contained in the defence are true.
3. I believe that the allegations of fact that are denied in the defence are untrue.
4. After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the defence are true.

AFFIRMED at Tullamarine, Victoria

Signature of deponent 

Name of witness Claire Marie Humphries

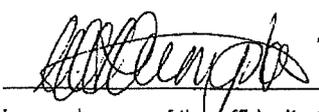
Address of witness 95 Sharps Road
Tullamarine VIC 3043

Capacity of witness Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 I saw the face of the deponent.
- 2 I have confirmed the deponent's identity using the following identification document:

Victorian Driver's Licence no .045065422
 Identification document relied on (may be original or certified copy)

Signature of witness 

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

FURTHER DETAILS ABOUT FILING PARTY**Filing party**

Name	Honda Australia Pty Limited ABN 66 004759 611
Address	95 Sharps Road Tullamarine VIC 3043

Legal representative for filing party

Name	Tim Webster
Practising certificate number	23401
Firm	K&L Gates
Contact solicitor	Renée Krikorian
Address	31/1 O'Connell Street Sydney NSW 2000
DX address	DX 170 Sydney
Telephone	02 9513 2495
Fax	02 9513 2399
Email	renee.krikorian@klgates.com
Electronic service address	renee.krikorian@klgates.com