



IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT
GROUP PROCEEDINGS LIST

Case: S ECF 2023 02581
No. S ECF 2023 02581
Filed on: 06/06/2025 05:15 PM

B E T W E E N

TRACEY LEIGH HEPI AND ERU MARTIN HEPI

Plaintiffs

-and-

TOYOTA FINANCE AUSTRALIA LIMITED (ACN 002 435 181)

Defendant

AMENDED REPLY

Date of Document:	¹⁴ 6 June 2024 ⁴⁵	Solicitors Code:	11747
Filed on behalf of:	The Plaintiffs	DX:	N/A
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To the Defendant's amended defence of ³¹~~31~~²³ May 2024⁴⁵, the Plaintiffs join issue with each and every allegation made therein, and further, —

1. As to paragraph 1, say that:

(a) with respect to claims of misleading or deceptive conduct, unconscionable conduct, unfair conduct, and unjust transactions, any applicable limitation period which may have expired may be extended by a Court or were postponed (as the case may be) pursuant to:

i. s 38 of the Limitation Act 2005 (WA);

ii. ss 33 and 34 of the Limitation Act 1985 (ACT);

iii. ss 42 - 44 of the Limitation Act 1981 (NT);

(a)(b) with respect to claims of unjust transactions at sub-paragraph (b)(iii)(A), to the extent those claims do not exist in relation to any Car Loan entered into prior to 1 April 2010 because the Credit Code did not commence until 1 April 2010, equivalent claims existed under ss 70-71 of Appendix to the *Consumer Credit (Queensland) Act 1994* (Qld) (**Uniform Consumer Credit Code**), as implemented by:

- i. s 5 of the *Consumer Credit (Western Australia) Act 1996* (WA);
- ii. s 4 of the *Consumer Credit (Northern Territory) Act 1995* (NT);
- iii. s 4 of the *Consumer Credit (Queensland) Act 1994* (Qld);
- iv. s 5 of the *Consumer Credit (New South Wales) Act 1995* (NSW);
- v. s 4 of the *Consumer Credit Act 1995* (ACT);
- vi. s 5 of the *Consumer Credit (Victoria) Act 1995* (Vic);
- vii. s 5 of the *Consumer Credit (Tasmania) Act 1996* (Tas);
- viii. s 5 of the *Consumer Credit (South Australia) Act 1995* (SA);

which claims are claims to which the Credit Code applies, because of s 3(2) of Sch 1 of the *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Cth);

(b)(c) with respect to claims of ~~unilateral mistakes~~ monies had and received referred to at paragraph 1(b)(v) of the Amended Defence, any limitation period which may have expired may be extended by a court or were postponed (as the case may be) pursuant to:

- i. s 38 of the *Limitation Act 2005* (WA);
- ii. ss 42-44 of the *Limitation Act 1981* (NT);
- iii. s 38 of the *Limitation of Actions Act 1974* (Qld);
- iv. ss 55 and 56 of the *Limitation Act 1969* (NSW);
- v. ss 33 and 34 of the *Limitation Act 1985* (ACT);

vi. s 27 of the *Limitation of Actions Act 1958* (Vic);

vii. s 32 of the *Limitation Act 1974* (Tas);

viii. s 48 of the *Limitation of Actions Act 1936* (SA);

(d) with respect to claims of unilateral mistake referred to at sub-paragraph (b)(vi) of the Amended Defence, any limitation period which may have expired may be extended by a court or were postponed (as the case may be) pursuant to:

i. ss 38 of the *Limitation Act 2005* (WA);

ii. ss 7, and 42-44 of the *Limitation Act 1981* (NT);

iii. s 38 of the *Limitation of Actions Act 1974* (Qld);

iv. ss 55 and 56 of the *Limitation Act 1969* (NSW);

v. ss 33 and 34 of the *Limitation Act 1985* (ACT);

vi. s 27 of the *Limitation of Actions Act 1958* (Vic);

vii. s 32 of the *Limitation Act 1974* (Tas);

viii. s 48 of the *Limitation of Actions Act 1936* (SA);

ix. equivalent rules of equity.

~~2. As to paragraph 95, the equitable defence of laches is a defence available only for equitable claims, and not available as a defence to a claim for monies had and received.~~

2. As to paragraph 27(c)(i), any applicable limitation period which may have expired was postponed pursuant to s 42 and, or alternatively, s 43 of the *Limitation Act 1981* (NT) or may be postponed pursuant to s 44 of that Act.

3. As to paragraph 31(b)(ii), the plaintiffs refer to and repeat paragraph 1(a).

4. As to paragraph 43(b), the plaintiffs refer to and repeat paragraph 1(a).

5. As to paragraph 48(b)(ii), any applicable limitation period which may have expired was postponed pursuant to s 42 and, or alternatively, s 43 of the *Limitation Act 1981* (NT), or may be postponed pursuant to s 44 of that Act.

6. As to paragraph 55(b), the plaintiffs refer to and repeat paragraph 1(c).

7. As to paragraph 56, the plaintiffs refer to and repeat paragraph 1(c).

8. As to paragraph 57(c), the plaintiffs refer to and repeat paragraph 1(d).

Dated: 14 June 2024

P W Collinson

~~M W Guo~~

E Dias



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Andrew Paull

Lawyer for the Plaintiffs