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Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 14/02/2024 10:21:39 AM AEDT
Date Accepted for Filing: 14/02/2024 10:30:40 AM AEDT
File Number: VID650/2023
File Title: MARIANNE HAVERKORT v QANTAS AIRWAYS LIMITED ACN 009 661 901
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



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Important Information

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Form 17
Rule 8.05(1)(a)

Further Amended Statement of Claim

Filed pursuant to r 16.51 of the *Federal Court Rules 2011 (Cth)*

No. VID 650 of 2023

Federal Court of Australia
District Registry: Victoria
Commercial and Corporations NPA
Regulator and Consumer Protection Sub-area

Marianne Haverkort

Applicant

Qantas Airways Limited ACN 009 661 901

Respondent

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A. THE PARTIES AND GROUP MEMBERS

1. The Applicant commences this proceeding in a representative capacity pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) on her own behalf and on behalf of all persons who:
 - (a) purchased for themselves, or for another passenger, or had purchased on their behalf, (whether by payment of money, use of frequent flyer points or otherwise) from the Respondent (**Qantas**) at least one domestic or international flight that was scheduled to depart between 1 January 2020 and 1 November 2022 (**Relevant Period**) but was cancelled by Qantas due to the COVID-19 pandemic; and
 - (b) have suffered loss or damage by reason of the conduct of Qantas and/or at whose expense Qantas was unjustly enriched, as pleaded in this statement of claim; and
 - (c) are not, and have not been at any time since 1 January 2019:
 - (i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**) of Qantas; or
 - (ii) a related body corporate (as defined by s 50 of the *Corporations Act*) of Qantas; or
 - (iii) an associated entity (as defined by s 50AAA of the *Corporations Act*) of Qantas; or
 - (iv) an officer of a close associate (as defined by s 9 of the *Corporations Act*) of Qantas; or
 - (v) a Justice, Registrar, District Registrar or Deputy District Registrar of the High Court of Australia or this Court; or
 - (vi) an officer or employee of, or other legal practitioner engaged by Echo Law in relation to this proceeding.

(Group Members).

2. As at the date of commencement of this proceeding, there are 7 or more Group Members.
3. The Applicant:
 - (a) In or around April 2020 purchased, using funds, a ticket to fly on 16 May 2020 from Darwin to Alice Springs and to return to Darwin on 22 May 2020 from Qantas.

- (b) In or around April 2020, had her flight cancelled by Qantas due to the COVID-19 pandemic.
- (c) Did not receive, for the cancelled flight, a refund of the funds paid to purchase the flight.
- (d) Was issued, without request, with a flight credit by Qantas.
- (e) On or around 26 June 2023, applied to Qantas for a refund of the cost of her cancelled flight.

Particulars

The Applicant applied to Qantas for a refund following the issue of a press release by Qantas titled “*Qantas Push for More Customers to Reunite with Covid Credits*” on or around 26 June 2023.

That press release noted that about 80 percent of customers with COVID-era flight credits “*still have the option of a refund*” and provided a phone number for customers to call if they wished to request a refund.

B. QANTAS

- 4. Qantas is and was during the Relevant Period:
 - (a) registered under the Corporations Act and capable of being sued;
 - (b) a person within the meaning of s 18 of the Australian Consumer Law (ACL) set out in Sch 2 to the *Competition and Consumer Act 2010* (Cth).
- 5. Qantas is and was during the Relevant Period the holding company of two sets of wholly owned subsidiary companies (within the meaning of s 46 of the Corporations Act) comprising:
 - (a) Eastern Australia Airlines Pty Ltd, National Jet Systems Pty Ltd, Network Aviation Pty Ltd and Sunstate Airlines (Qld) Pty Ltd (together, **QantasLink Group**); and
 - (b) Jetconnect Pty Ltd (**Jetconnect**).

Qantas and its subsidiaries are described as **Qantas Group**.

Particulars

The QantasLink Group operated flights to metropolitan and regional destinations across Australia. Jetconnect operated or assisted in operating Qantas flights across the Tasman.

C. QANTAS' AVIATION BUSINESS

6. During the Relevant Period, Qantas carried on an aviation business.
7. During the Relevant Period, as part of its aviation business, Qantas sold and operated domestic and international passenger flights under the Qantas brand.
8. During the Relevant Period, Qantas' passenger aviation business was organised into four divisions: Qantas Domestic (**Qantas Domestic**); Qantas International (**Qantas International**); the Jetstar Group (**Jetstar Group**); and Qantas Loyalty (**Qantas Loyalty**).
9. During the Relevant Period:
 - (a) Qantas sold and operated passenger flights domestically and internationally relevantly through Qantas Domestic and Qantas International (including through its subsidiary airlines comprising the QantasLink Group and Jetconnect);
 - (b) Qantas Loyalty operated consumer loyalty programs including a Frequent Flyer loyalty program (**Frequent Flyer Program**) whereby amongst other things members could accrue Qantas Frequent Flyer Points (**Qantas Points**) and utilise these points to purchase flights and other products.

Particulars

Customers could use Qantas Points to purchase a flight or contribute to the cost of a flight as a substitute for money pursuant to the "Points Plus Pay" program.

Qantas also sold "Classic Rewards" flights whereby rewards program members could purchase flights using Qantas Points whereupon the Qantas Points had a higher monetary value relative to the cost of the flight (as compared to "Points Plus Pay").

Further particulars may be provided after discovery.

D. CONTRACT BETWEEN EACH CUSTOMER AND QANTAS

10. During the Relevant Period, an agreement was entered into between Qantas and the Applicant, and agreements were entered into between Qantas and each Group Member, pursuant to which Qantas undertook to supply the Applicant or the Group Member (as the case may be) with one or more domestic or international flights (for the Group Member or one or more other passengers) (**Contract**).

10A. The parties to the Contract were:

- (a) where the person who purchased the ticket was the passenger – Qantas and that person;
- (b) where one person purchased the ticket for another person – Qantas and both persons.

10B. Qantas has contended (but the Applicant denies) that the only parties to the Contract were Qantas and the passenger (regardless of whether the ticket was purchased by the passenger or someone else).

Particulars

Qantas confirmed its position in a letter from its solicitors Johnson Winter and Slattery to Echo Law dated 15 January 2024.

10C. The Applicant denies Qantas’s contention, refers to and repeats paragraph 10A above, and says further that:

- (a) each allegation in the Further Amended Statement of Claim should be read as being made by Group Members who purchased the ticket and alternatively by Group Members who held the ticket;
- (b) all relevant contractual rights pleaded in the Further Amended Statement of Claim are held by the purchaser, alternatively the passenger, both of whom are Group Members. Specifically:
 - (i) the right to a refund pursuant to the Cancellation Clause is held by the purchaser, alternatively the passenger; and
 - (ii) the right to be offered to be rebooked or refunded pursuant to the Within Control Cancellation Clause is held by the purchaser, alternatively the passenger; and
- (c) the Applicant does not distinguish in the Further Amended Statement of Claim between purchaser and passenger Group Members on that basis.

Particulars

The Cancellation Clause is defined in sub-paragraph 12(f) below. The Within Control Cancellation Clause is defined in sub-paragraph 12(e) below.

11. Each Contract had express terms set out in:

- (a) the applicable Fare Rules (**Fare Rules**); and

- (b) the Conditions of Carriage (**Conditions of Carriage**).

Particulars

At all material times, domestic and international passenger flights sold by Qantas were categorised into different fare types. Each fare type had different rules (i.e. the Fare Rules) that applied where the passenger instigated a change to their flight or cancelled. The Fare Rules depended on the fare type and destination, and governed where the Applicant or the Group Member instigated a change to their flight or cancelled it. Examples include the Red e-deal; Flex; Saver, and Sale fares.

At all material times, the Conditions of Carriage applied to all flights sold by Qantas during the Relevant Period.

Further particulars may be provided after discovery.

12. From at least 8 December 2018 to 11 April 2020 there were express terms of the Conditions of Carriage as follows:

- (a) By Clause 1.1, “Definitions of Expressions Used”:
- (i) “*Event Beyond Our Control*” was defined as any unusual and unforeseen circumstance which Qantas could not control, and the consequences of which Qantas could not avoid.
 - (ii) “*Event Within Our Control*” was defined as engineering issues, Qantas IT system outages, delayed delivery of baggage to the carousel due to resourcing issues, late cleaning/loading of catering to the aircraft, crew/staffing issues or any other circumstance which Qantas could reasonably control.
 - (iii) “*Qantas*” was defined as the Respondent and its regional airlines operating in Australia under the QantasLink brand, and trans-Tasman flights or other flights operated by Jetconnect Limited, unless otherwise specified.
 - (iv) “*Significant Change*” was defined as a change that significantly impacted the passenger and their travel plans.
- (b) By Clause 2.1, “*Application of Conditions of Carriage*”, the Conditions of Carriage applied on flights or flight segments where “*Qantas*” or “*QF*” was shown as the carrier on the ticket.

- (c) By clause 2.2, “*Gratuitous or Reduced Fare Carriage*”, the Conditions of Carriage applied to Qantas Frequent Flyer Award travel and to gratuitous and reduced fare carriage except to the extent it was indicated otherwise.
- (d) By Clause 2.3, “*Basis of Carriage*”, the carriage of a passage on any flight by Qantas under the QF Airline Code was subject to the Conditions of Carriage without exception.
- (e) By Clause 9.1, “*Schedule Changes and Cancellations by us*”, where a passenger’s flight was cancelled due to “*Events Within Our Control*”, Qantas was to rebook the passenger on the next available flight or combination of flights to their booked destination at no additional cost, alternatively, at the passenger’s option, refund the applicable fare. Clause 9.1 as amended from time to time is described as the **Within Control Cancellation Clause**.
- (f) By Clause 9.2, “*Late or Cancelled Flights (Events Beyond our Control)*”, where a passenger’s flight was cancelled due to an “*Event Beyond Our Control*”, if Qantas was unable to rebook the passenger on services acceptable to them then Qantas would refund the fare. Clause 9.2 as amended from time to time is described as the **Cancellation Clause**.
- (g) By Clause 13.3, “*Who Gets The Refund and How is it Paid*”:
 - (i) any refund will be paid to the person who paid the ticket, unless that person has authorised Qantas to pay the refund to someone else; and
 - (ii) if the person who paid for the ticket is not the Passenger, Qantas will not provide a refund without the passenger’s written consent unless the passenger is under 18 or the fare rules provide otherwise or the Qantas Frequent Flyer terms and conditions apply.

13. From 11 April 2020 to at least the end of the Relevant Period, the express terms of the Conditions of Carriage identified in paragraph 12 above remained the same save that the wording of the Within Control Cancellation Clause and Cancellation Clause at paragraphs 12(e) and (f) was altered to refer only to provide that where due to an “*Event Beyond Our Control*” Qantas making a “*Significant Change*” to a passenger’s flight, ~~that if Qantas was unable to rebook the passenger on services acceptable to them then Qantas would refund the fare.~~

14. During the Relevant Period, there were implied terms in each Contract as follows:

- (a) A term that Qantas would co-operate and to do all such things necessary to enable the passenger to have the benefit of the Contract; further or alternatively,
- (b) A term that Qantas would not hinder or prevent the fulfilment of the express promises made in the Contract to the passenger

(Implied Co-operation Terms).

Particulars

The terms were implied at law, or alternatively in fact, to give business efficacy to the Contract.

- 15. During the Relevant Period, there was an implied term in each Contract that Qantas would act in good faith and further or alternatively reasonably in the performance of the Contract **(Implied Good Faith Term).**

Particulars

The term was implied at law, or alternatively in fact, to give business efficacy to the Contract.

- 16. During the Relevant Period, there was an implied term in each Contract that obligations under that Contract would be performed within a reasonable time **(Implied Reasonable Time Term).**

Particulars

The term was implied at law, or alternatively in fact, to give business efficacy to the Contract.

E. THE COVID-19 PANDEMIC AND FLIGHT CANCELLATIONS

- 17. On 20 February 2020, the Qantas Group announced temporary reductions to flights across Asia in response to a drop in demand due to COVID-19, and a reduction in total domestic capacity by 2.3 percent for the second half of the financial year.

Particulars

Qantas Media Release dated 20 February 2020 titled “*Qantas and Jetstar cut flights in response to Coronavirus*”.

- 18. On 10 March 2020, the Qantas Group announced cuts to its international flying capacity by almost a quarter following the spread of COVID-19 into Europe and North America.

Particulars

Qantas Media Release dated 10 March 2020 titled “*Qantas Group Update on Coronavirus Response*”.

19. On 11 March 2020, the World Health Organisation declared COVID-19 a worldwide pandemic.

Particulars

WHO Director-General's opening remarks at a media briefing on COVID-19 on 11 March 2020.

20. On 13 March 2020, the Federal Government advised Australians to reconsider any planned international travel to any location in response to the spread of COVID-19.

Particulars

Joint Media Release by the Hon. Scott Morrison MP Prime Minister and the Hon. Greg Hunt MP Minister for Health dated 13 March 2020 titled “*Advice on Coronavirus*”.

21. On 17 March 2020, in response to COVID-19, the Qantas Group announced its group international capacity would be cut by around 90 percent and its domestic capacity would be cut by around 60 percent until at least the end of May 2020.

Particulars

Qantas Media Release dated 17 March 2020 titled “*Qantas Group Update on Coronavirus Response*”.

22. On 18 March 2020, the Federal Government announced that Australians should cancel any planned overseas travel due to COVID-19.

Particulars

Media Statement by the Hon. Scott Morrison MP Prime Minister dated 18 March 2020 titled “*Update on Coronavirus Measures*”.

23. On 19 March 2020, Australia closed its borders to all non-residents or citizens, taking effect on 20 March 2020, due to the global spread of COVID-19. Only Australian citizens, residents and immediate family members could travel to Australia (exemptions applied).

Particulars

Media Statement by the Hon. Scott Morrison MP Prime Minister; Senator the Hon. Marise Payne Minister for Foreign Affairs Minister for Women

and the Hon. Peter Dutton MP Minister for Home Affairs dated 19 March 2020 titled “*Border Restrictions*”.

24. On 19 March 2020, the Qantas Group announced that Qantas and Jetstar would suspend all regularly scheduled international flights from late March due to COVID-19.

Particulars

Qantas Media Release dated 19 March 2020 titled “*Qantas Group Outlines Customer and Employee Impact of Coronavirus-related Network Cuts*”.

- 24A. On 19 March 2020, Qantas sent an email to members of the Qantas Frequent Flyer Program relevantly stating that all Qantas international flights, and around 60 percent of domestic flights would be suspended from the end of March until at least the end of May 2020. Some additional services would be considered to assist with repatriation efforts.

Particulars

Qantas Email to Frequent Flyer Program members dated 19 March 2020 titled “*Important information and updates for Qantas flyers*”.

25. On 22 March 2020, the Federal Government announced that all non-essential travel within Australia should be avoided due to COVID-19.

Particulars

Media Statement by the Hon. Scott Morrison MP Prime Minister dated 22 March 2020 titled “*Update on Coronavirus Measures*”.

26. On 25 March 2020, the Federal Government announced a travel ban on Australians travelling overseas commencing on 25 March 2020 due to COVID-19 (exemptions were possible for some categories of traveller).

Particulars

Media Statement by the Hon. Scott Morrison MP Prime Minister dated 24 March 2020 titled “*Update on Coronavirus Measures*”.

See also *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Overseas Travel Ban Emergency Requirements) Determination 2020* (Cth).

27. In March 2020 and April 2020, many Australian States and Territories introduced border restrictions disincentivising or prohibiting domestic travel due to COVID-19. Passenger numbers on domestic flights within Australia plunged further in response.

28. On 16 April 2020, the Qantas Group announced they were working with the ~~f~~Federal ~~g~~Government to operate by 20 April 2020 a minimum domestic and regional network comprising 164 weekly domestic flights.

Particulars

Qantas Media Release dated 16 April 2020 titled “*Statement on Minimum Domestic Network*”.

29. During the remainder of 2020 and until at least early 2022, domestic travel within Australia continued to be limited by border restrictions as in effect in various forms throughout that period.
30. In November 2021, international travel began to resume on a limited basis to and from Australia.

F. QANTAS’ STATEMENTS ON COVID-19 AND FLIGHT CREDITS

15 March 2020 Press Release

31. On or around 15 March 2020, the Qantas Group issued a press release which was made publicly available on the Qantas website.
32. The 15 March 2020 press release contained the following statements:
- (a) Qantas customers had the option to cancel flights and receive a flight credit. The option applied to customers with new or existing bookings on domestic and international flights and was available until 31 March 2020 for travel until 31 May 2020.
 - (b) Qantas had introduced greater flexibility for customers wishing to change their travel plans, following increased travel restrictions around the world due to Coronavirus.
 - (c) The changes applied to all domestic and international flights for Qantas and the QantasLink Group.
 - (d) Customers with bookings on any domestic or international flight until 31 May 2020 who no longer wished to travel could cancel their flight and retain the value of the booking as a flight credit voucher. This needed to be processed by 31 March 2020.
 - (e) Flight credit vouchers could be used for travel on any domestic or international flights. Qantas would waive the change fee once customers were ready to rebook.

- (f) The flight credit for Qantas customers could be redeemed for travel up to 12 months from the date of the original booking.
 - (g) Customers who made a new domestic or international booking and later decided they no longer wished to travel could cancel their flight and retain the value of the booking as a Qantas flight credit. This applied to bookings made from 10 March 2020 until 31 March 2020 for travel before 31 May 2020.
 - (h) Under the heading “*advice for customers*” that customers should not call the contact centres. Due to high demand, Qantas was experiencing long call wait times.
 - (i) That to access the offer Qantas customers should visit Manage Booking on Qantas.com, select “*Cancel*” and then “*Voucher*”.
 - (j) If flights were booked through a third party agency or third party website that customers should contact the third party directly to make changes to their booking.
33. The 15 March 2020 press release also contained the following statements made on behalf of the Qantas Group by its Chief Customer Officer Stephanie Tully:
- (a) Following the introduction of increased travel restrictions from governments around the world, Qantas was introducing greater flexibility for customers booked on all domestic and international flights.
 - (b) Qantas understood that some customers would prefer not to travel at the moment.
 - (c) Qantas had removed standard change fees where they applied and were “*giving customers the option to cancel their flight and receive a travel voucher that can be used anywhere on our network at a later date.*”
34. The 15 March 2020 press release did not explain that:
- (a) customers had an entitlement to a refund pursuant to the Contract if Qantas cancelled their flight due to COVID-19; and
 - (b) customers had an entitlement to be rebooked at no additional cost or refunded if Qantas cancelled their flight due to “Events Within [Qantas’] Control”.

Particulars

As to 34(a), Pursuant to the Cancellation Clause where their flight had been cancelled or a “Significant Change” made to their flight due to an Event Beyond [Qantas’] Control. Refer to paragraph ~~12(e)~~ 12(f) herein.

As to 34(b), pursuant to the Within Control Cancellation Clause where their flight had been cancelled or a “Significant Change” made to their flight due to an Event Within [Qantas’] Control. Refer to paragraph 12(e) herein.

On or around 26 June 2023, Qantas issued a press release noting that about 80 percent of customers who had been issued with flight credits during the COVID-19 pandemic had the “option” of a refund. The Applicant refers to and repeats the particulars to paragraph 3(e) herein.

15 March 2020 Online Conversion System

35. From on or around 15 March 2020, Qantas provided a simple online process on its website whereby passengers could convert their flight booking to a flight credit (**Online Conversion System**).

Particulars

Passengers could convert their flight booking to a flight credit by navigating to the “Manage Booking” portal on the Qantas website, entering the details of their flight booking, and then accepting a prompt to convert their flight booking to a flight credit.

Further particulars may be provided following discovery.

36. Apart from a short period in March 2020, Qantas did not provide any process, under the Online Conversion System or otherwise, for:
- (a) informing passengers of their contractual entitlement to a refund for the cost of their flight if Qantas cancelled their flight due to the COVID-19 pandemic; or
 - (b) automatically processing refunds to passengers for flights that Qantas cancelled due to the COVID-19 pandemic; or
 - (c) enabling passengers to obtain the refund that they were contractually owed in respect of flights that Qantas cancelled due to the COVID-19 pandemic; or
 - (d) informing passengers of their entitlement to be rebooked at no additional cost or refunded if Qantas cancelled their flights due to “Events Within [Qantas’] Control”;
or

- (e) offering passengers to be rebooked at no additional cost or refunded in respect of flights Qantas cancelled due to “Events Within [Qantas’] Control”.

Particulars

The Applicant refers to and repeats the particulars to paragraph 34 herein.

On or around 22 March 2020 Qantas offered in its online system a “refund” button in the “view your booking” section of its website, however this option was removed shortly thereafter. Further particulars may be provided after discovery.

17 March 2020 Email

37. On 17 March 2020, Qantas sent an email to members of the Qantas Frequent Flyer Program.
38. The 17 March 2020 email contained the following statements:
- (a) Qantas understood that many of its customers’ travel plans had been impacted by the spread of COVID-19 and various government travel restrictions.
 - (b) Qantas also understood the importance of providing their customers with as much flexibility and assurance as possible.
 - (c) Qantas understood some people would prefer not to travel at the moment.
 - (d) Qantas was offering its customers the opportunity to cancel any new or existing international or domestic bookings for travel between 17 March 2020 and 31 May 2020 and keep the value of their ticket as a flight credit.
 - (e) Customers with existing bookings on any domestic or international flight until 31 May 2020, who no longer wished to travel, could cancel their flight and retain the value of the booking as a flight credit for travel within 12 months of the date that the original ticket was issued. This needed to be processed by 31 March 2020.
 - (f) Flight credits could be used for travel on any domestic or international flights. Qantas would waive the change fee, however the customer would need to cover any fare increase in their new booking.
 - (g) That Qantas Frequent Flyers who had used Qantas Points to book a flight on Qantas and no longer wished to travel would also have the change fees waived.
 - (h) Under the heading “*Cancel your booking for a full flight credit*”, provided instructions involving a passenger accepting terms and conditions to convert their booking to a flight credit by an online process on the Qantas website.

- (i) Noted that customers might also be able to cancel their booking and request a refund, however that they might be charged a cancellation fee, as per the fare rules.
 - (j) Noted that where flights were booked through a travel agency or third party that the customer should contact those companies directly to make changes to their booking.
 - (k) Instructed passengers not to call Qantas call centres unless the customer's travel was commencing within the next 72 hours.
39. The 17 March 2020 email did not explain that:
- (a) customers (including members of the Qantas Frequent Flyer Program) had an entitlement to a refund pursuant to the Contract if Qantas cancelled their flight due to COVID-19; and
 - (b) customers had an entitlement to be rebooked at no additional cost or refunded if Qantas cancelled their flight due to "Events Within [Qantas'] Control".

Particulars

The Applicant refers to and repeats the particulars to paragraph 34 herein.

17 March 2020 Press Release

40. On 17 March 2020 the Qantas Group issued a press release, which was made publicly available on the Qantas website.
41. The 17 March 2020 press release contained the following statements:
- (a) As a result of significant falls in travel demand due to Coronavirus and new government restrictions across multiple jurisdictions in recent days, Qantas would make significant cuts to its domestic and international flying schedules.
 - (b) To be phased in from the end of March 2020, International Group Capacity would be cut around 90 per cent until at least the end of May 2020 and Total Group Domestic Capacity would be cut by around 60 percent until at least the end of May 2020.
 - (c) The Group had issued a wide-ranging booking waiver for customers wanting to suspend their travel plans.
 - (d) Customers with existing bookings on any domestic or international flight until 31 May 2020 who no longer wished to travel could cancel their flight and retain the

value of the booking as a flight credit voucher. This needed to be processed by 31 March 2020.

- (e) Customers who made a new domestic or international booking and later decided they no longer wished to travel could cancel their flight and retain the value of the booking as a Qantas flight credit. This applied to bookings made from 10 March 2020 until 31 March 2020 for travel before 31 May 2020.
 - (f) Instructions to access the offer by visiting “*manage booking*” and selecting “*cancel*” then “*voucher*”.
 - (g) That where flights were booked through a travel agency or third party that the customer should contact those companies directly to make changes to their booking.
 - (h) That customers should not call contact centres as due to high demand there were long wait times.
42. The 17 March 2020 press release did not explain that:
- (a) customers had an entitlement to a refund pursuant to the Contract if Qantas cancelled their flight due to COVID-19; and
 - (b) customers had an entitlement to be rebooked at no additional cost or refunded if Qantas cancelled their flight due to “*Events Within [Qantas’] Control*”.

Particulars

The Applicant refers to and repeats the particulars to paragraph 34 herein.

19 March 2020 Press Release

43. On 19 March 2020 the Qantas Group issued a press release, which was made publicly available on the Qantas website.
44. The 19 March 2020 press release contained the following statements:
- (a) Qantas would suspend all regularly scheduled international flights from late March, following latest government travel advice, with some ongoing ad hoc services possible. There was a 60 per cent reduction to domestic flights.
 - (b) Customer contact centres were experiencing long wait times from people seeking to change their travel plans because of the Coronavirus. Customers should only call if they had travel within the next 48 hours.

- (c) That “[t]o avoid further inconvenience” Qantas was converting “all bookings on cancelled flights” to a flight credit, which could be used anywhere on the Qantas network. Affected customers would be contacted directly. Any customers travelling before the end of May who wished to change their booking were also eligible to receive a flight credit instead.
 - (d) That where flights were booked through a travel agency or third party that the customer should contact those companies directly to make changes to their booking.
45. The 19 March 2020 press release did not explain that:
- (a) customers had an entitlement to a refund pursuant to the Contract if Qantas cancelled their flight due to COVID-19; and
 - (b) customers had an entitlement to be rebooked at no additional cost or refunded if Qantas cancelled their flight due to “Events Within [Qantas’] Control”.

Particulars

The Applicant refers to and repeats the particulars to paragraph 34 herein.

26 March 2020 Email

46. On 26 March 2020, Qantas sent an email to members of its Frequent Flyer Program.
47. The 26 March 2020 email contained the following statements:
- (a) From 26 March 2020, that anyone holding a Qantas ticket for travel before 31 July 2020 could get a flight credit and retain the full value of their booking. The passenger had to do this by 30 April 2020.
 - (b) The flight credit was valid for booking and travel by 31 December 2021.
 - (c) If the passenger already had a flight credit, issued on or after 31 January 2020, this would also be automatically extended.
 - (d) No change fees applied when rebooking but the flight credit could only be used towards a fare of equal or higher value than the original fare purchased.
 - (e) Customer contact centres were under significant pressure and customers should only call if they had travel within the next 48 hours or alternatively, could wait until Qantas made the changes. If a customer’s flight was affected, that Qantas would be in touch.

- (f) That where flights were booked through a travel agency or third party that the customer should contact those companies directly to make changes to their booking.
48. The 26 March 2020 email did not explain that customers (including members of the Qantas Frequent Flyer Program):
- (a) had an entitlement to a refund pursuant to the Contract if Qantas cancelled their flight due to COVID-19; and
 - (b) customers had an entitlement to be rebooked at no additional cost or refunded if Qantas cancelled their flight due to “Events Within [Qantas’] Control”.

Particulars

The Applicant refers to and repeats the particulars to paragraph 34 herein.

26 March 2020 Facebook Post

49. On or around 26 March 2020, Qantas placed a post on Facebook, which was publicly available and was not subject to any viewer restrictions.
50. The 26 March 2020 Facebook post contained the following statements:
- (a) That Qantas was extending flight credits for travel until the end of 2021.
 - (b) That if a passenger was due to fly with Qantas before 31 July 2020, they had until 30 April 2020 to get a flight credit which meant they could retain the full value of their ticket to use on a new flight when they were ready to travel again. The flight credit would be valid for booking and travel by 31 December 2021.
51. The 26 March 2020 Facebook post did not explain that:
- (a) customers had an entitlement to a refund pursuant to the Contract if Qantas cancelled their flight due to COVID-19; and
 - (b) customers had an entitlement to be rebooked at no additional cost or refunded if Qantas cancelled their flight due to “Events Within [Qantas’] Control”.

Particulars

The Applicant refers to and repeats the particulars to paragraph 34 herein.

Flight Credit Email

52. At least some customers who had their flights converted to a flight credit either automatically, or through the Qantas website received an email from Qantas at around the time of the cancellation (**Flight Credit Email**).
53. The ~~email~~ Flight Credit Eemail contained the following statements or statements to the following effect:
- (a) Prior to a date on or around 31 May 2020:
- (i) “Your booking has been converted to a Flight Credit” and provided the flight credit value and validity.
 - (ii) Under “important information”, that if Qantas had cancelled the passenger’s flight, “for other options ~~including a refund~~, contact us.”
 - (iii) That flight credits could only be used towards a fare of equal or higher value than the original fare purchased, with an exception for certain bookings ~~made before 31 October 2020 for travel between 31 January 2020 and 31 March 2021~~ depending on their dates.
 - (iv) For flight credits not used before the expiry date, the flight credit value would be forfeited unless the original fare conditions permitted a refund and the passenger had made their refund request prior to that date.
 - ~~(v) If the original fare conditions permitted a refund, that the passenger must make this request prior to using the flight credit and before the expiry date. Once the passenger commenced using the flight credit, the fare conditions from the passenger’s original booking no longer applied.~~
 - (vi) That flight credits could only be used towards one-way or return bookings from the country in which the original ticket was issued, were non-transferable, and could only be redeemed at the Qantas website or ~~office~~ through its contact centre.
 - (vii) There were additional conditions for flight credits where Qantas had cancelled the flight including that name changes were not permitted and any applicable fare difference may be payable on flight credit redemption and no change fees applied.

- (viii) That passengers should not respond to the email-Flight Credit Email, and if they needed assistance should visit Qantas' online help or visit qantas.com.
- (b) The email-From on or around 1 June 2020, the content of the Flight Credit Email identified in paragraph 53 remained materially the same save that the email now contained the following statements or statements to the following effect:
 - (i) Under "important information", if Qantas had cancelled the passenger's flight, "for other options including a refund, contact us."
 - (ii) If the original fare conditions permitted a refund, that the passenger must make this request prior to using the flight credit and before the expiry date. Once the passenger commenced using the flight credit, the fare conditions from the passenger's original booking no longer applied.
 - (iii) That flight credits could only be redeemed at the Qantas website or its office.

54. At all relevant times, the Flight Credit Email did not explain that:

- (a) customers had an entitlement to a refund pursuant to the Contract if Qantas cancelled their flight due to COVID-19; and
- (b) customers had an entitlement to be rebooked at no additional cost or refunded if Qantas cancelled their flight due to "Events Within [Qantas'] Control".

Particulars

The Applicant refers to and repeats the particulars to paragraph 34 herein.

Communications with Contact Centre Representatives

54A. During telephone calls that took place during the Relevant Period, Qantas' contact centre representatives stated to certain of the Group Members that:

- (a) Qantas did not provide refunds, only flight credits; or
- (b) the Group Member was not entitled to a refund.

Particulars

The statements were made over the telephone to certain Group Members by Qantas contact centre representatives. Further particulars may be provided following discovery.

G. REPRESENTATIONS

55. During the Relevant Period, Qantas made the following representations to its customers (each a **Representation**, and collectively or individually, **Representations**):

- (a) From 15 March 2020, that there was no difference in the rights of customers who themselves cancelled their ticket for a flight credit, and customers for whom Qantas cancelled their flight [**No Rights Difference Representation**].

Particulars

The representation was partly express, partly implied and partly by silence.

To the extent the representation was express it was made in the statements pleaded at paragraphs 31 to 33; 37 to 38; 40 to 41; 43 to 44; 46 to 47; 49 to 50; and 52 to 53.

To the extent the representation was implied, it was implied by Qantas' failure to explain the rights of customers whose flights had been cancelled by Qantas, which included a refund by Qantas pursuant to the Cancellation Clause and Implied Reasonable Time Term or an offer of rebooking at no additional cost or refund pursuant to the Within Control Cancellation Clause; by the Online Conversion System; and by Qantas's unilateral issuing of a flight credit. Refer to paragraphs 34; 35 to 36; 39; 42; 45; 48; 51; and 54 and 64 herein.

The Representations and the circumstances as a whole gave rise to a reasonable expectation that:

- i. Qantas would explain to the customers that if their flight was cancelled by Qantas due to the COVID-19 pandemic, that the customers had a contractual entitlement to a refund; and
- ii. Qantas would provide the refund without further action being required on the part of the customer as per Qantas's contractual obligations;
- iii. Further or alternatively, Qantas would explain to the customers that if their flight was cancelled by Qantas due to an Event Within [Qantas'] control, that the customers had a contractual entitlement to be rebooked at no additional cost, or alternatively a refund; and
- iv. Qantas would offer to rebook or refund the customer as per Qantas' contractual obligations,

but Qantas did not provide the explanation nor the refund do any of those things.

- (b) From 15 March 2020, that it was in the best interest of customers to take steps to cancel and receive a flight credit [**Customer Should Cancel Representation**].

Particulars

The representation was partly express, partly implied and partly by silence.

To the extent the representation was express it was made in the statements pleaded at paragraphs 31 to 33; 37 to 38; 40 to 41; 43 to 44; 46 to 47; 49 to 50; and 52 to 53.

To the extent the representation was implied, it was implied by:

- i. The language used in the statements as to the beneficial nature of the flight credits. Refer to paragraphs 32(b); 33(a); 38(a) to 38(d); 38(f); 41(c); and 44(c) herein.
- ii. The lack of explanation of the rights of customers whose flights had been cancelled by Qantas, which included a refund by Qantas pursuant to the Cancellation Clause and Implied Reasonable Time Term or an offer to refund or rebook at no additional cost pursuant to the Within Control Cancellation Clause and Implied Reasonable Time Term. Refer to paragraphs 34; 35 to 36; 39; 42; 45; 48; 51 and 54 herein.
- iii. Allusion in the Representations to cancellation fees and uncertainty around refunds. Refer to paragraphs 38(i), 53(a)(ii), 53(b)(i), and 53(b)(ii) ~~and 53(e)~~ herein.
- iv. The Online Conversion System and Qantas's unilateral issuing of a flight credit. Refer to paragraphs 35 to 36 and 64 herein.

The Representations and the circumstances as a whole gave rise to a reasonable expectation that:

- i. Qantas would explain to the customers that if their flight was cancelled by Qantas due to the COVID-19 pandemic, that the customer had a contractual entitlement to a refund; and
- ii. Qantas would provide the refund without further action being required on the part of the customer as per Qantas's contractual obligations;
- iii. Further or alternatively, Qantas would explain to the customers that if their flight was cancelled by Qantas due to an Event Within [Qantas'] control, that the customers had a contractual entitlement to be rebooked at no additional cost, or alternatively a refund; and
- iv. Qantas would offer to rebook or refund the customer as per Qantas' contractual obligations,

but Qantas did not provide the explanation nor the refund do any of those things.

- (c) From 15 March 2020, that by making available and issuing flight credits to customers who held tickets on cancelled flights or who were unable to proceed with their travel, Qantas was acting in the best interests of customers and providing support over and above that which it was obliged to provide [**Customer Best Interests Representation**].

Particulars

Refer to the particulars to paragraph 55(b) herein.

- (d) From 15 March 2020 to at least 26 June 2023, that seeking flight credits via the online portal was the only realistic option or the best option for customers to recover the value of flights they had purchased that had been or may be cancelled due to COVID-19 or other reasons, or that the customers were no longer able to take [**Recovery of Value Representation**].

Particulars

The representation was partly express, partly implied and partly by silence.

To the extent the representation was express, it was made in the statements pleaded in the particulars to paragraph 55(a) to (c) herein.

Particularly relevant were statements that refunds were uncertain or that seeking a refund could attract a financial penalty. Refer to paragraphs 38(i); ~~53(b) and 53(e)~~ 53(a)(i), 53(a)(iv), 53(b)(i), and 53(b)(ii) herein.

To the extent the representation was implied, it was implied by the lack of explanation of the rights of customers whose flights had been cancelled by Qantas, which included a refund by Qantas pursuant to the Cancellation Clause and Implied Reasonable Time Term or an offer to refund or rebook at no additional cost pursuant to the Within Control Cancellation Clause and Implied Reasonable Time Term. Refer to paragraphs 34; 39; 42; 45; 48; 51 and 54 herein. It was also implied by the Online Conversion System and Qantas's unilateral issuing of a flight credit. Refer to paragraphs 35 to 36 and 64 herein.

The Representations and the circumstances as a whole gave rise to a reasonable expectation that:

- i. Qantas would explain to the customers that if their flight was cancelled by Qantas due to the COVID-19 pandemic, that the customer had a contractual entitlement to a refund; and

- ii. Qantas would provide the refund without further action being required on the part of the customer as per Qantas's contractual obligations;
- iii. Further or alternatively, Qantas would explain to the customers that if their flight was cancelled by Qantas due to an Event Within [Qantas'] control, that the customers had a contractual entitlement to be rebooked at no additional cost, or alternatively a refund; and
- iv. Qantas would offer to rebook or refund the customer as per Qantas' contractual obligations,

but Qantas did not provide the explanation nor the refund do any of those things.

- (e) From 15 March 2020 to at least 30 April 2020, that there was a time limit within which customers must convert their booking to a flight credit being offered by Qantas, otherwise the customer would lose the opportunity to recover value for the funds or Qantas Points that had been they had paid to Qantas for the their flight would be lost [**Time Pressure Representation**].

Particulars

Refer to paragraphs 32(a); 32(d); 32(g); 38(d); 38(e); 41(d); 41(e); 47(a); and 50(b) herein.

- (f) From 15 March 2020 to at least 26 June 2023, that Qantas had no obligation to give the customer a refund of the funds or Qantas Points which the customer had paid for the their flight if Qantas cancelled the flight due to COVID-19 or another reason [**No Refund Representation**].

Particulars

Refer to paragraphs 54A and 55(a) to (e) herein and the particulars thereto.

- 56. Each Representation was made in trade or commerce.
- 57. Each Representation was a continuing representation, and continued to be maintained by Qantas:
 - (a) in the case of the Representations pleaded in paragraphs 55(a)-(c), from the date on which it was made until the end of the Relevant Period;
 - (b) or in the case of the Representations pleaded in paragraphs 55(d) and 55(f), from the date on which it was made until at least 26 June 2023;

(c) or in the case of the Representation pleaded in paragraph 55(e) from the date on which it was made until at least 30 April 2020.

58. To the extent that the Representations were as to future matters, the Applicant and Group Members rely on s 4 of the ACL.

H. USE OF FLIGHT CREDITS

59. The Applicant refers to and repeats paragraphs 35, 36 and 44(c) above.

60. During the Relevant Period, Qantas placed conditions on the use of flight credits, including:

- (a) expiry dates on the valid use of flight credits, after which the value of the flight credit would be forfeited;
- (b) restrictions on flights able to be purchased with flight credits, to fares of equal or higher value to the original fare purchased;
- (c) restrictions so that flight credits were unable to be transferred;
- (d) flight credits could only be used towards one-way or return bookings from the country in which the original ticket was issued;
- (e) name changes were not permitted; and
- (f) flight credits were only redeemable directly via the Qantas website or via contacting Qantas directly.

Particulars

Refer to paragraphs 32(f); 38(e); 47(b); 47(d); 50(b); ~~53(e); 53(d); 53(f); and 53(g)~~ 53(a)(iii); 53(a)(iv); 53(a)(vi); 53(a)(vii); and 53(b)(iii) herein.

Further particulars may be provided after discovery.

I. FLIGHT CREDIT REQUEST, PURPORTED NEW CONTRACT AND UNILATERAL CONVERSION

Flight Credit Request

61. In reliance on any one or more of the Representations at the time when they were made or when they were continuing, some of the Group Members (**Voucher Group Members**) took steps to request a flight credit with Qantas (**Flight Credit Request**).

Particulars

The Voucher Group Members identified themselves on the Qantas website through the Online Conversion System and requested a flight credit voucher in substitution for their entitlement to a refund under the Contract pursuant to the Cancellation Clause and/or the entitlement to rebook at no additional cost or a refund pursuant to the Within Control Cancellation Clause. Refer to paragraph 59 herein.

Further particulars will be provided following discovery.

62. The Flight Credit Request did not amount to a contract between Qantas and the relevant Group Member.

Particulars

The Voucher Group Members did not derive any benefit from the Purported New Contract. To the contrary, they purportedly surrendered their contractual entitlement to a monetary refund for a flight credit of lesser value. Refer to paragraph 60 herein and the particulars thereto.

Purported New Contract for Voucher Group Members

63. Alternatively, to the extent that it is held that the Flight Credit Request amounted to a contract between Qantas and the relevant Group Member (which is denied) (**Purported New Contract**), it was a term of the Purported New Contract that Qantas would provide a flight credit in lieu of the customer's entitlement to a refund pursuant to the Cancellation Clause and/or entitlement to a refund or rebooking at no cost pursuant to the Within Control Cancellation Clause (**Substitution Term**).

Particulars

Further particulars will be provided following discovery.

Unilateral Conversion for Remaining Group Members (Unilateral Conversion Group Members)

64. The Applicant and some of the Group Members other than the Voucher Group Members (**Unilateral Conversion Group Members**) were provided with a flight credit by Qantas without requesting it, in a unilateral act by Qantas.

Particulars

The Unilateral Conversion Group Members were informed they were given a flight credit(s) by email. Refer to paragraphs 44(c), 52 and 53 herein.

Further particulars may be provided following discovery.

J. ENTITLEMENT TO REFUND WITHIN A REASONABLE TIME PURSUANT TO THE CANCELLATION CLAUSE

65. The COVID-19 Pandemic constituted an “*Event Beyond our Control*” within the meaning of the Cancellation Clause.

Particulars

The COVID-19 Pandemic amounted to an “*Unusual and unforeseen circumstance which Qantas could not control, and the consequence of which Qantas could not avoid*”. Refer to paragraphs 17 to 30 herein.

66. A flight cancellation constituted a “*Significant Change*” within the meaning the Cancellation Clause (as amended) in the 11 April 2020 and 25 May 2022 iterations of the Conditions of Carriage.

Particulars

Refer to paragraphs 12 and 13 herein.

67. Refer to paragraphs 12 and 13 herein. By reason of the matters pleaded at paragraphs 10 to 16 and 65 to 66, at all relevant times:

- (a) The Applicant and Group Members had an entitlement pursuant to the Cancellation Clause to a refund by Qantas if Qantas cancelled their flights due to the COVID-19 Pandemic.
- (b) The obligation to provide the refund crystallised at the time that Qantas cancelled the flight.
- (c) Pursuant to the Cancellation Clause and the Implied Reasonable Time Term, the refund had to be provided within a reasonable time.
- (d) A reasonable time within the context of the Contract and the Cancellation Clause is two business days, or alternatively seven days, or alternatively such other period as found by the Court to be a reasonable time.

Particulars

The obligation to refund at the time the flight is cancelled stems from the language in the Cancellation Clause that Qantas “*will*” refund customers for flights that it cancels in the circumstances in the circumstances identified in that clause.

The obligation to refund within a reasonable time stems from the Implied Reasonable Time Term.

JA. ENTITLEMENT TO REFUND OR REBOOKING AT NO ADDITIONAL COST PURSUANT TO THE WITHIN CONTROL CANCELLATION CLAUSE

67A. Further or alternatively, during the Relevant Period, Qantas cancelled certain flights due to “Events Within Our [Qantas’] Control” as defined in the Contract.

Particulars

During the Relevant Period, Qantas cancelled flights for reasons within its control, including cancelling flights that it never intended to operate.

Refer to comments of counsel for Qantas at the multiplicity hearing in this proceeding on 18 December 2023 that there were cancellations arising from events within Qantas’ control and that it was “highly likely” that flight credits were issued in respect of those cancellations: Transcript of Proceedings (Federal Court of Australia, VID650/2023, Murphy J, 18 December 2023), 16.

Further particulars will be provided following discovery.

67B. Because of the matters pleaded at paragraphs 66 and 67A herein, at all relevant times:

- (a) certain Group Members had an entitlement to be rebooked on an alternative flight or combination of flights to their booked destination at no additional cost or alternatively, a refund;
- (b) Qantas had to offer to rebook the relevant Group Members at no additional cost or refund those Group Members;
- (c) the offer had to be made within a reasonable time; and
- (d) a reasonable time within the context of the Contract and the Within Control Cancellation Clause is two business days, or alternatively seven days, or alternatively such other period as found by the Court to be a reasonable time.

Particulars

The entitlement in sub-paragraph 67B(a) stems from the terms of the Within Control Cancellation Clause.

The obligation in sub-paragraph 67B(b) stems from the language of “we will” in the Within Control Cancellation Clause. The obligation in sub-paragraph 67B(c) stems from the Implied Reasonable Time Term.

K. QANTAS OFFERS OPTION TO REQUEST A REFUND TO A SUBSET OF CUSTOMERS AFTER CLASS ACTION ADVERTISED AND REMOVES EXPIRY

68. On or around 26 June 2023, shortly after Echo Law commenced advertising for this class action on its website, Qantas admitted that the “majority” of customers whose flights it had cancelled ~~due to the COVID-19 pandemic~~ had the “option” of requesting a refund.

Particulars

On or around 26 June 2023, Qantas issued a press release which contained the following statements:

- i. About \$2 billion worth of COVID credits were issued across the Qantas group with most generated when borders were shut in March 2020 causing mass flight cancellations.
- ii. About \$400 million in COVID credits remained for Qantas customers in Australia.
- iii. That the majority of Qantas customers with a COVID credit “still” had the option to request a refund and Qantas had “streamlined” the process to trigger that.
- iv. Quoted Markus Svensson, Qantas Group Chief Customer Officer, that the majority of COVID-19 credits could be converted into refunds but Qantas could not do so automatically as credit cards used for the purchase as far back as 2019 may have expired.
- v. Provided instructions on how to request a refund, including a telephone number to call.

The Applicant refers to and repeats the particulars to paragraph 3(e) herein.

- 68A. On or around 31 August 2023, shortly after this class action was commenced, Qantas removed the expiry date on flight credits issued for flight bookings up to and including 30 September 2021, with Qantas admitting that customers “with COVID credits” could request a cash refund “indefinitely”.

Particulars

On or around 31 August 2023, Qantas issued a press release titled “Qantas Group Removes Expiry Date On Covid Credits” which contained the following statements:

- i. That the Qantas Group would “remove the expiry date on COVID travel credits that were due to run out at the end of this year”.
- ii. That Qantas customers with COVID credits could request a cash refund “indefinitely”.
- iii. That “[d]ue to system limitations”, flight credits issued could not be converted into a travel booking after 31 December 2023, but could be “taken as a refund at any time”.
- iv. Provided instructions on how to request a refund, including a telephone number to call.
- v. Quoted Alan Joyce, then Chief Executive Officer of Qantas Airways Limited, that “the credit system was not as smooth as it should have been” and that customers had “lost faith in the process”.
- vi. That Qantas could not provide refunds automatically as bookings converted to COVID credits dated back to 2019 and “most” credit cards had expired.
- vii. That Qantas could not post cheques as this was an outmoded method and that Qantas did not hold postal addresses either at all or that were up to date for most customers.

68B. On or around 27 September 2023, Qantas sent a letter to the Applicant’s solicitors offering to refund the Applicant the purchase price of her cancelled flight, but not offering anything further including interest, restitutionary interest, or restitution of Qantas’ unjust enrichment.

L. FALSITY OF REPRESENTATIONS

69. By reason of the matters pleaded at paragraphs 65 to 68 herein, each of the Representations was false, misleading or deceptive, or likely to mislead or deceive at the time it was made.

Particulars

The No Refund Representation and the No Rights Difference Representation were false at the time that they were made because (i) the Applicant and Group Members had an entitlement to a refund within a reasonable time by Qantas if Qantas cancelled their flights due to the COVID-19 Pandemic pursuant to the Cancellation Clause and the Implied Reasonable Time Term and/or (ii) the Applicant and Group Members had an entitlement to be rebooked at no additional cost or refunded if Qantas cancelled their flights due to Events Within [Qantas’] Control pursuant to the Within Control Cancellation Clause and the Implied Reasonable Time Term.

The Customer Should Cancel Representation and the Customer Best Interests Representation were false for the same reason. A rebooking at no additional cost, or monetary refund or refund of Qantas Points was more valuable than a flight credit.

The Recovery of Value Representation and Time Pressure Representations were false at the time that they were made because (i) the Applicant and Group Members had an entitlement to a refund by Qantas if Qantas cancelled their flights due to the COVID-19 pandemic pursuant to the Cancellation Clause and the Implied Reasonable Time Term and/or (ii) the Applicant and Group Members had an entitlement to be rebooked at no additional cost or refunded if Qantas cancelled their flights due to Events Within [Qantas'] Control pursuant to the Within Control Cancellation Clause and the Implied Reasonable Time Term.

M. CLAIMS BY THE VOUCHER GROUP MEMBERS

Rescission of the Purported New Contract for Misrepresentation

70. Alternatively to the extent that the Court finds there was a Purported New Contract (which is denied), the Voucher Group Members were induced by the Representations to agree to the Purported New Contract.

Particulars

The Voucher Group Members relied on the Representations to enter into the Purported New Contract. The Representations were false, misleading or deceptive, or likely to mislead or deceive: refer to paragraphs 65 to ~~67~~69 herein.

Further particulars may be provided following discovery.

71. The Voucher Group Members have elected, alternatively hereby elect, to rescind the Purported New Contract.

Substitution Term an Unfair Contract Term

72. Further or alternatively, the Substitution Term was a term contained within a consumer contract which was a standard form contract, for the purposes of s 23 of the ACL.
73. The Substitution Term is unfair within the meaning of ss 23 and 24 of the ACL, and void, as it:
- (a) would cause a significant imbalance in the parties' rights and obligations arising under the Contract;
 - (b) was not reasonably necessary to protect the legitimate interests of Qantas;
 - (c) would cause detriment to the customer if it were to be applied or relied on.

Particulars

The Substitution Term amongst other things had the effect of permitting Qantas to avoid its obligation to provide a refund under the Cancellation Clause and/or a refund or rebooking at no cost under the Within Control Cancellation Clause.

A flight credit is not equivalent to rebooking at no cost, a monetary refund or refund of Qantas Points. Amongst other things, a flight credit could only be used on another Qantas flight within a limited time frame. Further, Qantas subsequently further limited use of flight credits to flights of an equivalent or greater value than the original flight purchased. Refer to paragraph 60 herein and the particulars thereto. There was no guarantee that a flight credit could be used to purchase an equivalent flight at no additional cost.

The Substitution Term was not transparent, or expressed in reasonably plain language or presented clearly as to its effect.

Further particulars may be provided after discovery.

N. CLAIMS BY APPLICANT AND GROUP MEMBERS

Misleading or Deceptive Conduct

74. By making the Representations, in the circumstances pleaded in paragraphs 65 to 68 herein, Qantas engaged in conduct in trade or commerce which was misleading or deceptive or likely to mislead or deceive, in contravention of s 18 of the ACL.
75. Further or alternatively, during the Relevant Period Qantas engaged in conduct that misled customers into thinking that they:
- (a) had no entitlement to a refund of the funds or Qantas Points which the customer had paid for their flight if Qantas cancelled the flight due to COVID-19, and/or that Qantas was not obliged to give them a refund within a reasonable time;
 - (b) further or alternatively, had no entitlement to a rebooking at no additional cost or refund, and/or that Qantas was not obliged to offer to rebook or refund them if Qantas cancelled the flight due to an “Event Within [Qantas’] Control”.

Particulars

The conduct was partly express, partly implied and partly by silence. Refer to paragraphs 55 to 57 and 59 to 60 herein. Further particulars may be provided following discovery.

76. In reliance on the Representations, further or alternatively the conduct pleaded in paragraph 70, the Applicant and Group Members failed to pursue or were delayed in pursuing their contractual entitlements to a refund.

Particulars

The Voucher Group agreed to the Purported New Contract.

No Group Member sought an order for specific performance in order that Qantas perform its obligation to refund the cost of their flights pursuant to the Cancellation Clause; or refund or rebook the Group Member at no additional cost pursuant to the Within Control Cancellation Clause.

77. By reason of Qantas' contravention of s 18 of the ACL, the Applicant and Group Members have suffered, and continue to suffer, loss and damage.

Particulars

The losses include:

- i. For the Applicant and the Group Members who purchased their flight (or a flight for one or more other passengers) by payment of money – the amounts that were paid.
- ii. For the Applicant and the Group Members who purchased their flight (or a flight for one or more other passengers) by payment of money – to the extent that they received a flight credit which has been used, the difference between a refund of the amounts that were paid and the value of the flight credit (if any).
- iii. For those Group Members who purchased their flight (or a flight for one or more other passengers) by using Qantas Points – the Qantas Points or alternatively their value.
- iv. For those Group Members who purchased their flight (or a flight for one or more other passengers) by using Qantas Points – to the extent that they received a flight credit which has been used, the difference between a refund of the Qantas Points that were used and the value of the flight credit (if any).
- v. For those Group Members who had their flights cancelled due to an Event Within [Qantas'] Control, loss of the opportunity to secure carriage on their flight at the original price.
- vi. Damages for the loss of use of money in accordance with the principles in *Hungerfords v Walker* (1989) 171 CLR 125.
- vii. Statutory interest pursuant to s51A of the *Federal Court of Australia Act 1976* (Cth) on the monetary sums in (i) from the date of the contravention.

Further and better particulars of loss and damage will be supplied before trial.

Contractual Obligation to Refund

78. Further or alternatively, under the Cancellation Clause:
- (a) Qantas is liable to refund the Applicant or the Group Members for the cost of the ~~their~~ flight(s) that Qantas had cancelled due to the COVID-19 pandemic;
 - (b) for the Applicant and those Group Members that purchased the flight by payment of money – Qantas is liable to refund that amount as a debt due and payable;
 - (c) for those Group Members that purchased the flight by using Qantas Points – Qantas is liable to reinstate the Qantas Points or alternatively refund the value of the Qantas Points.

Breaches of Contract

79. Further or alternatively, in breach of the Cancellation Clause, Qantas has failed to refund the Applicant or the Group Members for the cost of the ~~their~~ flight(s) that Qantas had cancelled due to the COVID-19 pandemic.

Particulars

Qantas ought to have, in accordance with the Cancellation Clause and the Implied Reasonable Time Term, refunded the Applicant and Group Members within a reasonable time of the time it cancelled their flight(s).

Refer to paragraphs 65 to 68 herein.

- 79A. Further or alternatively, in breach of the Cancellation Clause, Qantas unilaterally provided flight credits to the Unilateral Conversion Group Members without their request.

Particulars

Refer to paragraph 64 herein.

- 79B. Further or alternatively, in breach of the Within Control Cancellation Clause, Qantas:

- (a) failed to offer to:
 - (i) rebook the relevant Group Members on the next available flight or combination of flights to their booked destination at no additional cost; or
 - (ii) at their option, refund the applicable fare;
- (b) failed to offer to rebook or refund within a reasonable time; and

- (c) issued those Group Members with flights credits in lieu of their contractual entitlement to be rebooked at no additional cost or refunded pursuant to the Within Control Cancellation Clause.

Particulars

The Applicant refers to and repeats paragraphs 67A and 67B herein, and the particulars thereto.

80. Further or alternatively, in breach of the Implied Co-operation Terms in the Contract, Qantas:

- (a) In the case of cancellations due to COVID-19:
- (i) Mislead or sought to mislead the Applicant and Group Members as to their entitlement to a refund under the Contract; and
 - (ii) Failed to refund the Applicant and Group Members the funds or Qantas Points paid for their flight(s) in accordance with the Contract;

Particulars

Refer to paragraphs 55 and 65 to 68 herein.

- (b) In the case of cancellations due to Events Within [Qantas'] Control:
- (i) Misled or sought to mislead the relevant Group Members as to their entitlement to a refund or to be rebooked at no additional cost under the Contract; and
 - (ii) Failed to offer to rebook those Group Members at no additional cost or refund those Group Members, within a reasonable time, or at all.

Particulars

The Applicant refers to and repeats 67A, 67B and 79A herein, and the particulars thereto.

81. Further or alternatively, in breach of the Implied Good Faith Term in the Contract, Qantas failed to act in good faith with respect to the rights of its passengers the Applicant and Group Members to obtain a refund or a refund or rebooking within a reasonable time period.

Particulars

Refer to paragraphs 55 and 65 to ~~68~~69 herein.

82. By reason of the breaches of Contract identified above, the Applicant and Group Members have suffered, and continue to suffer, loss and damage.

Particulars

Refer to particulars to paragraph 77 herein.

Repudiation by Anticipatory Breach

83. Further or alternatively, by the conduct described at paragraphs 55 and 68 herein, Qantas demonstrated its intention:

- (a) not to perform its obligations under the Cancellation Clause and the Implied Reasonable Time Term; and
- (b) not to perform its obligations under the Within Control Cancellation Clause and the Implied Reasonable Time Term.

Particulars

By its conduct described at paragraph 55 herein, Qantas demonstrated that (i) it did not intend to provide a refund within a reasonable time of cancellation in accordance with the Cancellation Clause and the Implied Reasonable Time Term and/or (ii) it did not intend to refund or rebook Group Members in accordance with the Within Control Cancellation Clause and the Implied Reasonable Time Term.

84. By the conduct described at paragraphs 55 and 68 herein, Qantas evidenced an intention no longer to be bound by the Contract and repudiated the Contract.
85. The Applicant and the Group Members have accepted the repudiation by Qantas of the Contract by issuing this proceeding.
86. The Applicant and Group Members have suffered, and continue to suffer, loss and damage caused by:
- (a) Qantas' breach of the Cancellation Clause and the Implied Reasonable Time Term; and/or
 - (b) Qantas' breach of the Within Control Cancellation Clause and Implied Reasonable Time Term.

Particulars

The Applicant and Group Members refer to and repeat the particulars to paragraph 77 herein.

Restitution for Failure of Consideration

87. Further or alternatively, the Applicant and Group Members paid funds or Qantas Points to Qantas to purchase one or more domestic or international flights in accordance with the Contract.
88. The Applicant and Group Members paid the funds or the Qantas Points on the basis that Qantas would:
- (a) provide carriage on the flight or flights purchased, in accordance with the terms of the Contract; or
 - (b) refund the payments or Qantas Points in accordance with the Cancellation Clause and the Implied Reasonable Time Term; or
 - (c) refund the payments or offer to rebook in accordance with the Within Control Cancellation Clause and the Implied Reasonable Time Term.
89. Qantas has failed:
- (a) either to provide carriage on the flights purchased;
 - (b) or to refund the Applicant and Group Members the funds or Qantas Points paid in accordance with the Cancellation Clause and the Implied Reasonable Time Term;
 - (c) or to refund or rebook Group Members at no additional cost in accordance with the Within Control Cancellation Clause and the Implied Reasonable Time Term.

Particulars

As to (b), Qantas ought to have refunded the payments or Qantas Points within a reasonable time of the time it cancelled the flights purchased by the Applicant and Group Members due to COVID-19. Refer to paragraphs 65 to 68 herein.

As to (c), Qantas ought to have offered to refund or rebook the Group Members within a reasonable time of the time it cancelled the flights purchased by the relevant Group Members due to Events Within [Qantas'] Control. Refer to paragraphs 67A to 67B herein.

90. In the circumstances pleaded in paragraphs 87 to 89 herein, there has been a failure of consideration for the payment of the funds or Qantas Points.

90A. From 1 January 2020 to 30 September 2021 the Qantas Group (on behalf of Qantas Domestic, Qantas International and the Jetstar Group) issued around \$2 billion in flight credits. As to those credits:

- (a) On or around December 2022, around \$800 million in unused flight credits continued to be held by the Qantas Group.
- (b) On or around August 2023, around \$570 million in unused flight credits continued to be held by the Qantas Group including approximately:
 - (i) \$365 million in flight credits held in relation to Qantas Domestic and Qantas International customers in Australia; and
 - (ii) \$115 million in flight credits held in relation to Qantas Group customers overseas.

Particulars

The \$2 billion figure and the figure in sub-paragraph 90A(a) were recorded in a press release by Qantas dated 16 March 2023 titled “Qantas and Jetstar Customers Given More Time to Use Covid Credits”. The figures in sub-paragraph 90A(b) were provided by Qantas to the Australian Broadcasting Corporation on or around 31 August 2023.

91. As a consequence of the failure of consideration, Qantas has been unjustly enriched by the funds or Qantas Points paid, and it is liable to make restitution.

Particulars

Qantas is liable to make restitution:

- i. For the Applicant and those Group Members who purchased their flight by payment of money – of the amounts that were paid.
- ii. For those Group Members who purchased their flight by using Qantas Points – of the Qantas Points or alternatively their value.
- iii. For those Group Members who were entitled to be rebooked at no additional cost and purchased tickets using credits at greater cost than the original fare – the difference between the original purchase price and subsequent ticket price.
- iv. Qantas is also liable to make restitution of its enrichment by use of the funds in (i) since the date the funds were paid to purchase the flights, or alternatively since the date of the cancellation of the flights. Further or alternatively Qantas is liable to pay restitutionary interest.

- v. Alternatively, Qantas is liable to pay statutory interest on the funds in (i) pursuant to s 51A of the *Federal Court of Australia Act 1976* (Cth).

Further and better particulars of Qantas' enrichment will be supplied before trial.

Breach of Consumer Guarantee as to due care and skill

91A. Further or alternatively, at all material times:

- (a) Qantas supplied, in trade or commerce, services to Group Members within the meaning of s 2 of the ACL; and
- (b) Group Members were consumers within the meaning of s 3 of the ACL.

Particulars

The relevant services were (i) the provision of a flight or flights to or at the request of the purchaser in accordance with the terms of the Contract (ii) failing which the offer of rebooking at no additional cost or the provision of a refund within a reasonable time (for cancellations due to Events Within [Qantas'] Control) or the provision of a refund within a reasonable time (for COVID based cancellations) in accordance with the terms of the Contract.

91B. At all material times, Qantas was required to provide its services (being the provision of the flight or flights, alternatively rebooking or refunding in accordance with the Contract) to Group Members with due care and skill (s 60 of the ACL).

91C. Qantas failed to provide the services with due care and skill.

Particulars

Qantas did not (i) offer to rebook at no additional cost or refund Group Members within a reasonable time in accordance with the Contract in the case of cancellations for Events Within [Qantas'] Control; or (ii) refund the Applicant and Group Members within a reasonable time in accordance with the Contract for COVID based cancellations.

The flight credits provided to Group Members did not, in any realistic sense, enable the Group Members to be rebooked on the next available flight at no additional cost, nor did they constitute the monetary refund provided for in the Contract.

The Applicant refers to and repeats paragraphs 79 to 82 above.

91D. By reason of the matters pleaded at paragraphs 91A to 91C herein, and the particulars thereto:

- (a) Qantas has failed to comply with its guarantee that its services would be rendered with due care and skill contrary to s 60 of the ACL; and
- (b) the failure is a “major failure” within the meaning of s 268(1)(a) of the ACL.

91E. By reason of Qantas’ contravention of s 60 of the ACL, the Applicant and Group Members have suffered, and continue to suffer, loss and damage.

Particulars

The Applicant and Group Members refer to and repeat the particulars to paragraph 77 herein.

91F. The loss and damage was reasonably foreseeable by Qantas such that Qantas is liable to compensate the Group Members pursuant to s 267(4) of the ACL.

Particulars

It was reasonably foreseeable that if a flight, offer of rebooking or refund or refund was not provided with due care and skill in accordance with the Contract then the Applicant and Group Members would suffer loss and damage of the type referred to in the particulars to paragraph 77.

Breach of Consumer Guarantee as to reasonable time for supply

91G. Further or alternatively, at all material times:

- (a) Qantas supplied, in trade or commerce, services to Group Members within the meaning of s 2 of the ACL; and
- (b) Group Members were consumers within the meaning of s 3 of the ACL.

Particulars

The relevant services were the offer (in the case of a failure to provide a flight or flights to or at the request of the purchaser in accordance with the terms of the Contract) of rebooking at no additional cost or the provision of a refund within a reasonable time (for cancellations due to Events Within [Qantas’] Control) or the provision of a refund within a reasonable time (for COVID based cancellations) in accordance with the terms of the Contract.

91H. At all material times, Qantas was required to provide its services (being the rebooking or refunding in accordance with the Contract) to Group Members within a reasonable time after the failure to provide the flight or flights (s 62 of the ACL).

91I. Qantas failed to provide the services with due care and skill.

Particulars

Qantas did not offer to rebook at no additional cost or refund Group Members within a reasonable time in accordance with the Contract after the failure to provide the flight or flights.

The Applicant refers to and repeats paragraphs 79 to 82 above.

91J. By reason of the matters pleaded at paragraphs 91G to 91I herein, and the particulars thereto:

- (a) Qantas has failed to comply with its guarantee that its services would be supplied within a reasonable time contrary to s 62 of the ACL;
- (b) the failure is a “major failure” within the meaning of s 268(1)(a) of the ACL; and
- (c) the failure did not occur only because of an act, default or omission of, or a representation made by, any person other than Qantas or its agent or employee, or a cause independent of human control that occurred after the services were supplied.

91K. By reason of Qantas’ contravention of s 62 of the ACL, the Applicant and Group Members have suffered, and continue to suffer, loss and damage.

Particulars

The Applicant and Group Members refer to and repeat the particulars to paragraph 77 herein.

91L. The loss and damage was reasonably foreseeable by Qantas such that Qantas is liable to compensate the Group Members pursuant to s 267(4) of the ACL.

Particulars

It was reasonably foreseeable that if a flight, offer of rebooking or refund or refund was not provided within a reasonable time then the Applicant and Group Members would suffer loss and damage of the type referred to in the particulars to paragraph 77.

Unconscionable Conduct

92. Further or alternatively, during the Relevant Period Qantas knew, or ought to have known, that:

- (a) the Applicant and Group Members were entitled to a refund within a reasonable time under the Contract if and when Qantas cancelled their flights due to the COVID-19 pandemic; and

- (b) the Applicant and Group Members were entitled to be offered to be rebooked at no additional cost or refunded within a reasonable time if and when Qantas cancelled their flights due to “Events Within Qantas’ Control”; and
- (c) Qantas had cancelled, intended to cancel, or was likely to cancel the flights of Applicant and Group Members due to the COVID-19 Pandemic or another reason.

Particulars

Qantas’ knowledge of the entitlements of the Applicant and Group Members under the Contract can be inferred from the existence of the express terms of the Conditions of Carriage.

Qantas’ knowledge of likely flight cancellations can be inferred by the spread of COVID-19 in early March and announcements of travel restrictions by Federal and State Governments. Refer to paragraphs 17 to 30 herein.

Further particulars may be provided after discovery.

93. Notwithstanding the matters pleaded in paragraph 92 herein, Qantas made the Representations, which were false, misleading or deceptive or likely to mislead or deceive.
94. Qantas was in a stronger bargaining position than the Applicant and the Group Members with respect to the cancellation of flights and the consequences of cancellation (see s 22(1)(a) of the ACL).
95. Issuing flight credits resulted or will result in a cost saving for Qantas, compared with the offer of refunds or rebooking at no additional cost within a reasonable time of cancellation, or provision of refunds within a reasonable time of cancellation, in accordance with the Contract.

Particulars

Particulars may be provided after discovery.

96. As a result of the conduct engaged in by Qantas with respect to the cancellation of flights and the consequences of cancellation, the Applicant and Group Members were required to comply with conditions, and urged to accept flight credits in substitution for their rights to refunds, that were not reasonably necessary for the protection of the legitimate interests of Qantas (see s 22(1)(b) of the ACL).

Particulars

Particulars may be provided after discovery.

97. The Applicant and Group Members were not able to ascertain, in the context of the Representations and the Online Conversion System, that they had a contractual right to a refund pursuant to the Cancellation Clause, or an offer for rebooking at no additional cost or refund pursuant to the Within Control Cancellation Clause, and that Qantas was required to provide a refund the same within a reasonable time of cancellation of their flights, and the communications from Qantas did not inform them about these matters (see s 22(1)(c) of the ACL).
98. Unfair tactics were used by Qantas to:
- (a) seek to persuade the Applicant and Group Members to accept flight credits in lieu of their contractual entitlements to a refund; and
 - (b) avoid performing its contractual obligations to provide a refund within a reasonable time of cancellation of the flights purchased by the Applicant and Group Members due to COVID-19,
- (see s 22(1)(d) of the ACL).

Particulars

Qantas's conduct was designed expressly or impliedly to achieve these aims. Amongst other things, Qantas presented the flight credits as equal to or superior in value to a refund of money or Qantas Points, even though they were clearly of a lesser value.

Further particulars may be provided after discovery.

98A. Restrictions placed on the use of flight credits meant that certain Group Members were:

- (a) unable to use the flight credit at all;

Particulars

- i. Flight credits were non-transferrable. For example, one Group Member purchased flights cancelled in 2021 for themselves, their husband and their two children and was issued flight credits for each passenger. The Group Member subsequently used travel credits issued in their name, but in August 2023 still held travel credits in their children's names as travel credits are non-transferrable and the children are too young to fly alone.
- ii. Certain flight credits were only able to be used to purchase flights of an equal or higher value than the original fare purchased. Certain Group Members found that because they were unable to use only part of the credit, they were unable to find a flight that suited their purposes.

iii. Certain Group Members were unlikely to be able to use flight credits due to their life circumstances. For example, one Group Member is now 92 years old and no longer able to fly. Another Group Member had two babies in the period after their flight was cancelled and is unlikely to travel in the near future.

Further particulars, including in relation to one or more sample Group Members, may be provided prior to the initial trial.

(b) forced to purchase a more expensive flight than the original flight purchased;

Particulars

Certain Group Members were only offered more expensive flights when trying to book flights with flight credits. For example, one Group Member looking to book a flight with a flight credit found that this was approximately \$70 more expensive than if booking the same flight using money. Further particulars, including in relation to one or more sample Group Members, may be provided prior to the initial trial.

(c) not fully refunded for the original cost of the ~~their~~ flight; or

Particulars

Certain Group Members were only offered flight credits for part of the value of their flight booked. For example, one Group Member was issued a flight credit that did not include the cost of the seat upgrade they had purchased. Further particulars, including in relation to one or more sample Group Members, may be provided prior to the initial trial.

(d) purchased flights that they would not otherwise have purchased in order to utilise the credit prior to its expiry.

Particulars

Certain Group Members booked a trip that they otherwise would not have taken from concern they would otherwise lose the value of the flight credit. Further particulars, including in relation to one or more sample Group Members, may be provided prior to the initial trial.

98B. During the Relevant Period, Qantas directed Group Members seeking to obtain a refund instead of a credit to call its contact centre. However, the contact centre had excessive wait times making it difficult to reach a Qantas employee during the Relevant Period.

Particulars

Customers seeking to contact Qantas for a refund were directed to call the Qantas contact centre. Some Group Members:

i. attempting to call the contact centre faced prolonged wait times to speak with a Qantas contact centre representative. For example,

one Group Member was placed on hold for approximately ten hours;

- ii. were required to make multiple calls in order to speak with a Qantas contact centre representative due to the prolonged wait times and lines cutting out. For example, one Group Member made multiple calls to the contact centre over an approximate 11-month period in an attempt to speak with a Qantas contact centre representative to request a refund; and
- iii. upon getting through to the Qantas contact centre some Group Members were told they would receive a refund, but no refund was processed so that they were required to call the Qantas contact centre again. For example, one Group Member lodged a request for a refund on multiple and separate occasions before a refund was actioned. Another Group Member was told they would receive a refund but was instead issued a new flight credit.

Further particulars, including in relation to one or more sample Group Members, may be provided prior to the initial trial.

99. Qantas unreasonably failed to disclose to the Applicant and Group Members:

- (a) until 26 June 2023 (and then only after this class action was advertised) that:
 - (i) they had a contractual entitlement to a refund; and
 - (ii) that the refund had to be paid within a reasonable time;
- (b) until 30 October 2023 (and then only after the ACCC issued claims against it) that where Qantas cancelled flights due to Events Within [Qantas'] Control customers had an entitlement to be rebooked or refunded;
- (c) has not disclosed that:
 - (i) ~~the contractual entitlement to a refund~~ contractual entitlements may be affected by acceptance of the flight credits;
 - (ii) that the flight credit was less valuable than a refund or being rebooked at no cost, including because there were restrictions imposed on how the flight credit could be used; and
 - (iii) that Qantas imposed or intended to impose further restrictions on the flight credits to limit their use to flights of equivalent or greater value,

(see s 22(1)(i) of the ACL).

100. The Contract was a standard form contract, and Qantas was not willing to negotiate its terms and conditions (see s 22(1)(j)(i) of the ACL).

101. By its conduct pleaded in paragraphs 55 to 57; 59 to 60; 78 to 82; and 83 to 84 herein, Qantas breached the terms of the Contract (see s 22(1)(j)(iii) of the ACL).
102. By its conduct pleaded in paragraphs 17 to 21; 24 to 24A; 28; 31 to 57; 59 to 60; 64; 69; 74 to 75; 77 to 84; 89; ~~91~~ 90; 92 to 101 herein, Qantas failed to act in good faith (see s 22(1)(l) of the ACL).
103. The Qantas Group Code of Conduct and Ethics required Qantas during the Relevant Period:
- (a) to act with honesty and integrity, upholding ethical standards (clause 2.1(d));
 - (b) to comply with the law, which means observing the letter and spirit of the law as well as managing the business of the Qantas Group so that it and its employees are recognised as a good corporate citizens at all times in the way they conduct business (clause 3.2);
 - (c) to conduct business with customers with the highest level of ethics and integrity, in accordance with the Qantas Group beliefs and values (clause 3.5); and
 - (d) to comply with competition and consumer laws, which aim to promote competitive markets and protect consumers (clauses 3.51-3.59).

Particulars

The Qantas Group Code of Conduct and Ethics was updated in June 2022, however the terms pleaded remained materially the same.

104. By its conduct pleaded in paragraphs 17 to 21; 24 to 24A; 28; 31 to 57; 59 to 60; 64; 69; 74 to 75; 77 to 84; 89; ~~91~~ 90; 92 to 101 herein, Qantas breached the Qantas Group Code of Conduct and Ethics.
105. During the Relevant Period Qantas knew, or ought to have known, about the matters alleged in paragraphs 92 to 104 herein.

Particulars

Qantas had received complaints from customers about flight cancellations, and at least by 19 June 2020 Qantas was aware that the ACCC was conducting an investigation into its flight cancellation policy.

Further Particulars may be provided after discovery.

106. By engaging in all or any or any combination of the conduct alleged in paragraphs 17 to 21; 24 to 24A; 28; 31 to 57; 59 to 60; 64; 69; 74 to 75; 77 to 84; 89; ~~91~~ 90; 92 to 101 herein, Qantas engaged in conduct, in trade or commerce and in connection with the supply, or

possible supply, of services, which was, in all the circumstances, unconscionable, in contravention of s 21(1) of the ACL.

107. Further or alternatively, by engaging in all or any or any combination of the conduct alleged in paragraphs 17 to 21; 24 ~~to 24A~~; 28; 31 to 57; 59 to 60; 64; 69; 74 to 75; 77 to 84; 89; 94-90; 92 to 101 herein, Qantas engaged in a system of conduct or pattern of behaviour (within the meaning of s 21(4) of the ACL) which was, in all the circumstances, unconscionable, in contravention of 21(1) of the ACL.
108. By reason of Qantas' contravention of s 21(1) of the ACL, the Applicant and Group Members have suffered, and continue to suffer, loss and damage.

Particulars

The Applicant and Group Members refer to and repeat the particulars to paragraph 77 herein.

O. RELIEF CLAIMED

109. The Applicant and Group Members claim the relief set out in the originating application.

DATED: ~~18 August 2023~~ ~~2 October 2023~~ 14 February 2024



Signed by Andrew Paull
Lawyer for the Applicant

This pleading was prepared by Ella Delany of Counsel and settled by Oren Bigos of His Majesty's Counsel.

CERTIFICATE OF LAWYER

I, Andrew Paull, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~18 August 2023~~ ~~2 October 2023~~ 14 February 2024

A handwritten signature in black ink, appearing to read 'A. Paull', written in a cursive style.

Signed by Andrew Paull
Lawyer for the Applicant