

NOTICE OF FILING

Details of Filing

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File Title: MARIANNE HAVERKORT v QANTAS AIRWAYS LIMITED ACN 009 661 901
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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

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



Amended Defence

No. VID650 of 2023

Federal Court of Australia
District Registry: Victoria
Division: General

Marianne Haverkort

Applicant

Qantas Airways Limited (ACN 009 661 901)

Respondent

By way of defence to the Further Amended Statement of Claim (EASOC) filed by the applicant on 14 February 2024~~October 2023~~, the respondent (**Qantas**) says as follows:

A. THE PARTIES AND GROUP MEMBERS

1. As to paragraph 1, Qantas:

(a) admits that the applicant purports to bring the proceeding on her own behalf and on behalf of all Group Members;

(a1) says that the applicant's pleading in paragraph 1(a) is embarrassing because:

(i) the applicant has denied that the expression "for another passenger" is, or is only, intended to allege an agency relationship but has not pleaded or particularised what the expression is otherwise intended to convey;

(ii) the applicant contends that a person who did not pay for their ticket is a Group Member, notwithstanding the criterion for Group Membership that the person has suffered loss or damage and the applicant has not identified how such a person has suffered loss or damage, in circumstances where the person who paid for the ticket is also alleged to be a Group Member who has suffered loss and damage;

Filed on behalf of (name & role of party)	Qantas Airways Limited ACN 009 661 901, Respondent		
Prepared by (name of person/lawyer)	Paul Andrew Reidy		
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Particulars to (a1)

Correspondence from Qantas's solicitors, Johnson Winter Slattery, dated 15 January 2024 and 2 February 2024 and from the applicant's solicitors, Echo Law, dated 6 February 2024. Further, in a letter dated 13 February 2024 regarding opt out, the applicant's solicitors wrote that "the primary remedies sought in the proceeding are most relevant to the persons who paid for any relevant tickets" (para 4(a)), but as above the applicant contends that a person who did not pay for their ticket is a Group Member.

- (b) says, in respect of Qantas customers who purchased tickets using a travel agent or other intermediary for a Qantas flight that was scheduled to depart during the Relevant Period, but was cancelled by Qantas ~~due to the COVID-19 pandemic~~:
 - (i) those customers' rights and obligations included all rights and obligations provided for in their contracts with their travel agent or other intermediary;
 - (ii) Qantas does not know and cannot admit the full contents of the contracts between those customers and their travel agent or other intermediary;
 - (iii) any rights that those customers may have as against Qantas may be affected by, or subject to, the contracts between those customers and their travel agent or other intermediary;
 - (c) says, in respect of Qantas customers who purchased tickets in a foreign jurisdiction (i.e., not Australia) for a Qantas flight that was scheduled to depart during the Relevant Period but was cancelled by Qantas ~~due to the COVID-19 pandemic~~, those customers' rights and obligations may differ from the rights and obligations of a customer who purchased a ticket in Australia owing to different laws in the foreign jurisdiction.
2. As to paragraph 2, Qantas:
- (a) admits that more than 7 persons meet the description at paragraph 1(a) of the FASOC;
 - (b) repeats paragraph 1 above;
 - (c) otherwise denies the paragraph.
3. As to paragraph 3, Qantas:
- (a) admits subparagraph (a) and says further that:
 - (i) the ticket purchased by the applicant was issued in accordance with Qantas's Fare Rules and Conditions of Carriage;
 - (ii) pursuant to Qantas's Fare Rules and Conditions of Carriage, each of Qantas and its customers have rights and obligations and those rights and

obligations may vary depending on the fare type and operational circumstances from time to time;

- (iii) the COVID-19 pandemic caused an unprecedented and extraordinary disruption to Qantas's services and business and, in that context, Qantas introduced its COVID travel credits, among other measures;
- (iv) on 31 August 2023, Qantas announced the removal of the expiry date on COVID travel credits, with the effect that holders of COVID travel credits could request a refund at any time (including holders who would not otherwise have been entitled to a refund);

Particulars to (iv)

Qantas media release dated 31 August 2023 styled "Qantas Group removes expiry date on COVID credits".

- (v) in this proceeding, the principal relief sought by the applicant, for herself and on behalf of Group Members, is an order that Qantas provide a refund to the applicant and Group Members;
 - (vi) Qantas denies that, pursuant to the Conditions of Carriage, all customers had an entitlement to a refund;
 - (vii) in the applicant's particular case, however, she had the ability to make a refund request and has received a refund from Qantas, as pleaded below;
 - (viii) a number of Group Members have requested and received a refund from Qantas, while a number of other Group Members have not requested a refund from Qantas, and some Group Members have used their flight credits;
- (b) admits subparagraph (b);
 - (c) as to subparagraph (c):
 - (i) admits that the applicant did not receive a refund in or around April 2020;
 - (ii) says that the applicant was expressly reminded of her ability to make a refund request with respect to the credit issued;

Particulars to (ii)

Email from Qantas to the Applicant dated on or around 18 June 2020.

- (iii) says that the applicant did not request a refund before 26 June 2023;
- (iv) says that the applicant requested a refund on 26 June 2023 and, after receiving that request, Qantas attempted to process a refund onto the

credit card that the applicant had used to make her booking but, as the card had expired, the payment did not go through, the fact of which was confirmed following an investigation by Qantas;

- (v) says that, following that investigation Qantas, by its solicitors' letter dated 27 September 2023 to the applicant's solicitors, sought the applicant's preferred credit card or method of payment for processing of her refund and those details were subsequently provided to Qantas;
- (vi) says that on 10 October 2023, Qantas processed the applicant's refund to her current credit card, with payment received by the applicant's bank on 12 October 2023;
- (vii) says that, in the above circumstances, to the extent that the applicant suffered any loss (which is denied), that loss was not mitigated;
- (d) admits subparagraph (d);
- (e) as to subparagraph (e) and its particulars:
 - (i) admits that, on 26 June 2023, the applicant applied to Qantas for a refund of the cost of her cancelled flight;
 - (ii) admits that Qantas issued a media release on the same day styled "Qantas push for more customers to reunite with COVID credits";
 - (iii) says that, in the premises of paragraph (c)(ii), the timing of the applicant's request to Qantas for a refund need not have "followed" Qantas's media release that day and may have been made at any time and earlier;
 - (iv) repeats subparagraph (c) above.

B. QANTAS

4. Qantas admits paragraph 4.

5. Qantas admits paragraph 5 save that:

- (a) ~~[Not used]~~ in respect of the entities that make up the QantasLink Group:
 - (i) ~~the reference to "Eastern Australia Airlines Ltd" should be Eastern Australia Airlines Pty Ltd;~~
 - (ii) ~~the reference to "National Jet Systems" should be National Jet Systems Pty Ltd;~~
 - (iii) ~~the reference to "Sunstate Airlines Qld Ltd" should be Sunstate Airlines (Qld) Pty Ltd;~~

- (b) ~~[Not used]~~the reference to “Jetconnect Pty Ltd” should be Jetconnect Ltd, which is part of the Qantas Group;
- (c) the companies pleaded in paragraph 5 are not the only subsidiaries within the Qantas Group.

C. QANTAS’S AVIATION BUSINESS

- 6. Qantas admits paragraph 6.
- 7. Qantas admits paragraph 7.
- 8. Qantas admits paragraph 8, save to clarify that:
 - (a) during the Relevant Period, the Qantas Group consisted of four operating segments comprising: Qantas Domestic, Qantas International, Jetstar Group, which conduct passenger flying businesses, and Qantas Loyalty;
 - (b) during the Relevant Period, the four operating segments worked together as an integrated portfolio;
 - (c) both during the Relevant Period, and in respect of Qantas’s operations during the Relevant Period, Qantas reported on its operations by reference to the four operating segments of Qantas Domestic, Qantas International, Jetstar Group and Qantas Loyalty.

Particulars

- 1. Qantas Annual Report 2020, p 17.
- 2. Qantas Annual Report 2021, p 21.
- 3. Qantas Annual Report 2022, p 19.
- 4. Qantas Annual Report 2023, p 17.
- 9. Qantas admits paragraph 9 save to clarify that:
 - (a) in respect of paragraph 9(a), Jetconnect did not operate as an airline during the Relevant Period;
 - (b) in respect of paragraph 9(b), Members of the Frequent Flyer Program could accrue Qantas Frequent Flyer Points (**QFF Points**) and redeem QFF Points for flights and other products.

D. CONTRACT BETWEEN EACH CUSTOMER AND QANTAS

- 10. As to paragraph 10, Qantas:
 - (1a) repeats paragraph 1(a1) above and its particulars;

- (a) admits that, during the Relevant Period, a contract was entered into between Qantas and each of its customers (including the applicant) pursuant to which Qantas undertook, without guaranteeing any particular flight, to supply its customers with one or more domestic or international flights, subject to the applicable terms and conditions of those contracts (including providing for the customer to be provided with alternative options at their election, including rights of re-accommodation, where flights are cancelled);
- (b) says that the applicable terms and conditions of those contracts included the Fare Rules for the customer's fare type and the Conditions of Carriage;
- (c) for Qantas customers who purchased tickets using a travel agent or other intermediary for a Qantas flight that was scheduled to depart during the Relevant Period, but was cancelled by Qantas ~~due to the COVID-19 pandemic~~:
 - (i) says that those customers' rights and obligations included rights and obligations provided for in their contracts with their travel agent or other intermediary;
 - (ii) repeats paragraph 1(b) above;
 - (iii) says that any rights that those customers may have as against Qantas may be affected by, or subject to, the contracts between those customers and their travel agent or other intermediary;
- (d) for Qantas customers who purchased tickets in a foreign jurisdiction (i.e., not Australia) for a Qantas flight that was scheduled to depart during the Relevant Period but was cancelled by Qantas ~~due to the COVID-19 pandemic~~:
 - (i) says that those customers' rights and obligations may differ from the rights and obligations of a customer who purchased a ticket in Australia owing to different laws in the foreign jurisdiction;
 - (ii) repeats paragraph 1(c) above;
 - (iii) says that any rights that those customers may have as against Qantas may be affected by, or subject to, the laws of the foreign jurisdiction where they purchased their tickets;
- (e) otherwise denies the paragraph.

10A. As to paragraph 10A, Qantas:

- (a) says that the counterparties to each Contract were Qantas and the relevant passenger;
- (b) says that the applicant's pleading in paragraph 10A(b) is embarrassing because:

- (i) Qantas has explained its contention pleaded in paragraph 10A(a) above and sought particulars from the applicant as to the basis for her contentions to the contrary, but the applicant has not sufficiently pleaded or particularised her contentions to the contrary;
- (ii) the applicant has denied that the expression “for another person” is, or is only, intended to allege an agency relationship but has not pleaded sufficiently what the expression is otherwise intended to convey;

Particulars to (b)

Correspondence from Qantas’s solicitors, Johnson Winter Slattery, dated 15 January 2024 and 2 February 2024 and from the applicant’s solicitors, Echo Law, dated 6 February 2024.

- (c) otherwise denies the paragraph.

10B. Qantas admits paragraph 10B.

10C. As to paragraph 10C, Qantas:

- (a) repeats paragraph 1(a1) above;
- (b) says that the applicant’s pleadings in paragraph 10C(a)-(c) are embarrassing because:
 - (i) the applicant has alleged that “each allegation” and “all relevant contractual rights” in the FASOC should be understood in a certain way, without particulars nor satisfactory explanation of those contentions in correspondence;
 - (ii) they give rise to multiple contingencies and permutations of pleading.

Particulars to (b)

Correspondence from Qantas’s solicitors, Johnson Winter Slattery, dated 2 February 2024 and from the applicant’s solicitors, Echo Law, dated 6 February 2024. In particular, the applicant has not explained how she can allege misleading or deceptive conduct on behalf of Group Members who would not have received or relied upon Qantas’s alleged representations, nor suffered loss as a result. “The task of the pleader is to allege the facts said to constitute a cause of action or causes of action supporting claims for relief” and “does not extend to planting a forest of forensic contingencies and waiting until final address or perhaps even an appeal hearing to map a path through it”: *Forrest v ASIC* (2012) 247 CLR 486 at 503 [27] per French CJ, Gummow, Hayne and Kiefel JJ. See similarly *Kadam v MiiResorts Group 1 Pty Ltd (No. 2)* [2016] FCA 1343 at [35] per Edelman J.

- (b) otherwise denies the paragraph.

11. As to ~~Qantas admits~~ paragraph 11, Qantas:

(a) repeats paragraphs 10 and 10A above; and

~~(a)(b)~~ otherwise admits the paragraph and will rely on the full terms and effect of the Fare Rules and Conditions of Carriage at trial.

12. As to paragraph 12, Qantas:

(a) as to subparagraph (a):

(i) says that “Event Beyond Our Control” was defined as weather events, air traffic control issues, industrial action by a third party, security issues or any other unusual and unforeseen circumstances which Qantas cannot control and the consequences of which Qantas could not have avoided;

(iA) says that “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 can reasonably control;

(ii) says that “Qantas” was defined as Qantas and its regional airlines operating in Australia under the QantasLink brand and trans-Tasman flights (or such other flights from time to time) operated by Jetconnect Ltd, unless otherwise specified, and the Conditions of Carriage did not apply to Jetstar services;

(iii) says that “Significant Change” was defined as a change that significantly impacted the passenger and the passenger’s travel plans;

(iv) otherwise denies the subparagraph;

(b) as to subparagraph (b):

(i) says that clause 2.1 provided that except as provided in clauses 2.4 (Overriding Law), 2.5 (Reading Down) and 2.8 (Charter Operations), the Conditions of Carriage applied to travel on Qantas’s flights or flight segments, where “Qantas” or its Airline Designator Code “QF” is shown as the Carrier on the passenger’s ticket, and in any case where Qantas has a legal liability to the passenger in relation to the passenger’s flight;

(ii) otherwise denies the subparagraph;

(c) as to subparagraph (c):

(i) says that clause 2.2 provided that the Conditions of Carriage applied to Qantas Frequent Flyer Award travel and to gratuitous and reduced fare

carriage, except to the extent that Qantas had told the passenger otherwise;

(ii) otherwise denies the subparagraph;

(d) as to subparagraph (d):

(i) says that clause 2.3 provided that the carriage of a passenger on any flight by Qantas under the QF Airline Designator Code was, without exception, subject to:

(A) the Conditions of Carriage;

(B) any applicable tariffs filed by Qantas with regulatory bodies;

(C) the Convention and any other applicable laws;

(D) any specific directions given to a passenger in writing or orally by Qantas's staff;

(E) the fare rules or Qantas Frequent Flyer Award redemption rules, as applicable;

(ii) otherwise denies the subparagraph;

(d1) as to subparagraph (e):

(i) says that prior to around 11 April 2020, clause 9.1 provided:

(a) Schedules Not Guaranteed

We will use our reasonable endeavours to operate in accordance with our published schedules. However, we do not guarantee the flight times and they do not form part of your contract of carriage with us.

(b) Flight Changes

Before we accept your booking, we or our Authorised Agent will tell you the scheduled departure time of your flight and it will be shown on your Ticket. We may need to change the scheduled departure time of your flight after your Ticket has been issued. If you give us or our Authorised Agent contact information, we or they will use our reasonable endeavours to let you know about any changes. In any event, prior to your flight you should check to ensure your flight times have not changed. Except as otherwise provided in the Convention or any applicable laws, such as the Australian Consumer Law, we will not be liable to you for any losses that you may incur if you fail to do so.

(c) Significant Change

If, due to Events Within Our Control, after you buy your Ticket we make a Significant Change to the scheduled departure time of your flight or the flight is cancelled, we will:

- rebook you on the next available flight (or combination of flights) on our services to your booked destination at no additional cost to you
- alternatively, at your option, refund the applicable fare
- if you choose to continue travel and the change or cancellation occurs on the day of scheduled travel, resulting in your delay at the departure airport, provide you with meal or refreshment vouchers (or reimburse you for the reasonable costs of meals or refreshments if we do not provide vouchers)
- if your travel with us is delayed overnight and you have already commenced travel on your booking (i.e. you are at an 'away' port), use reasonable endeavours to assist you to find overnight accommodation or reimburse your reasonable accommodation costs if we have not provided accommodation.

You may also have rights to remedies under the Australian Consumer Law.

Unless provided for in these Conditions of Carriage, a Convention or any applicable law, such as the Australian Consumer Law, we will not be responsible for paying any costs or expenses you may incur as a result of the changed time or cancellation.

(d) Discontinued Route

If we cease to operate on a route and as a result we cancel a flight for which you have purchased a Ticket, we will:

- offer you a seat on the next available flight on our services for an alternative route to the same destination (if available) and where a connection was arranged by us, a seat on the next available connecting flight
- alternatively, at your option, refund the applicable fare.

You may also have rights to remedies under the Australian Consumer Law.

(ii) says that on and from around 11 April 2020, clause 9.1 provided:

(a) Schedules Not Guaranteed

We will use our reasonable endeavours to operate in accordance with our published schedules. However, we do not guarantee the flight times and they do not form part of your contract of carriage with us.

(b) Flight Changes

Before we accept your booking, we or our Authorised Agent will tell you the scheduled departure time of your flight and it will be shown on your Ticket. We may need to change the scheduled departure

time of your flight after your Ticket has been issued. If you give us or our Authorised Agent contact information, we or they will use our reasonable endeavours to let you know about any changes. In any event, prior to your flight you should check to ensure your flight times have not changed. You should check the flight departure and arrival information posted at the airport. Except as otherwise provided in the Convention or any applicable laws, such as the Australian Consumer Law, we will not be liable to you for any losses that you may incur if you fail to do so.

(c) Significant Change

If, due to Events Within Our Control, after you buy your Ticket we make a Significant Change to your flight we will:

- rebook you on the next available flight (or combination of flights) on our services to your booked destination at no additional cost to you
- alternatively, at your option, refund the applicable fare
- if you choose to continue travel and the Significant Change occurs on the day of scheduled travel, resulting in your delay at the departure airport, provide you with meal or refreshment vouchers (or reimburse you for the reasonable costs of meals or refreshments if we do not provide vouchers)
- if your travel with us is delayed overnight and you have already commenced travel on your booking (i.e. you are at an 'away' port), use reasonable endeavours to assist you to find overnight accommodation or reimburse your reasonable accommodation costs if we have not provided accommodation.

You may also have rights to remedies under the Australian Consumer Law.

Unless provided for in these Conditions of Carriage, a Convention or any applicable law, such as the Australian Consumer Law, we will not be responsible for paying any costs or expenses you may incur as a result of the Significant Change.

(d) Discontinued Route

If we cease to operate on a route and as a result we cancel a flight for which you have purchased a Ticket, we will:

- offer you a seat on the next available flight on our services for an alternative route to the same destination (if available) and where a connection was arranged by us, a seat on the next available connecting flight
- alternatively, at your option, refund the applicable fare.

You may also have rights to remedies under the Australian Consumer Law.

- (iii) says that clause 9.1 contemplated, in order for it to be engaged, an interaction or interactions between the passenger and Qantas where the passenger tells Qantas whether they accept the rebooked flight (or alternatively that they select/accept a different rebooked flight), or alternatively, which was at the passenger's option a refund of the applicable fare;
- (iv) otherwise denies the subparagraph;
- (e) as to subparagraph (f)(e):
- (i) says that prior to around 11 April 2020, clause 9.2 provided:
- Where your flight is delayed or cancelled as a result of an Event Beyond Our Control, whether you have checked in or not, we will:
- use reasonable endeavours to rebook you on the next available flight on our services at no additional cost to you
 - alternatively, if we are unable to rebook you on services acceptable to you, we will refund the applicable fare.
- You may also have rights to remedies under the Australian Consumer Law.
- We will not be responsible for paying any other costs or expenses you may incur as a result of the delay or cancellation, except as otherwise provided in these Conditions of Carriage or required by applicable laws, such as the Australian Consumer Law.
- (ii) says that on and from around 11 April 2020, clause 9.2 provided:
- Where we make a Significant Change to your flight due to an Event Beyond Our Control, whether you have checked in or not, we will:
- use reasonable endeavours to rebook you on the next available flight on our services at no additional cost to you
 - alternatively, if we are unable to rebook you on services acceptable to you, we will refund the applicable fare.
- You may also have rights to remedies under the Australian Consumer Law.
- We will not be responsible for paying any other costs or expenses you may incur as a result of the delay or cancellation, except as otherwise provided in these Conditions of Carriage or required by applicable laws, such as the Australian Consumer Law.
- (iii) says that clause 9.2 contemplated, in order for it to be engaged, an interaction or interactions between the passenger and Qantas where the passenger tells Qantas that Qantas has been unable to book the passenger on services acceptable to them;

(iv) otherwise denies the subparagraph;

(e1) as to subparagraph (g):

(i) says that, during the Relevant Period, clause 13.3 provided:

(a) Any refund will be paid to the person who paid for the Ticket, unless that person has authorised us in writing to pay the refund to someone else.

(b) We will pay the refund in the same way and in the same currency used to pay for the Ticket, unless the fare rules provide otherwise or we agree otherwise.

(c) If the person who paid for the Ticket is not the Passenger, we 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.

(ii) otherwise denies the subparagraph;

(f) says that, during the Relevant Period, the Conditions of Carriage also provided, subject to drafting changes from time to time:

(i) in clause 6.3, *inter alia*, that Qantas will extend the validity of a Ticket to enable a customer to travel on the next available flight in certain circumstances;

(ii) in clause 6.4, that Qantas will provide a credit for the non-refundable part of the fare for future travel on Qantas flights to certain customers where that customer is prevented from travelling due to "Events Beyond Your Control";

(iii) in clause 13.1, *inter alia*, that:

(A) a refund is payable if Qantas made a Significant Change to the scheduled flight time and Qantas was unable to book the passenger on an alternative flight which was acceptable to the passenger;

(B) in that circumstance and in the other circumstances listed in clause 13.1, Qantas would provide "a refund on request as set out in [clause] 13.2",

and Qantas says that, in order for clause 13.1 to be engaged, it contemplated, *inter alia*, an interaction or interactions between the passenger and Qantas where the passenger tells Qantas that Qantas has been unable to book the passenger on an alternative flight acceptable to them;

(iv) in clause 13.2:

Where a refund is payable in accordance with these Conditions of Carriage, unless otherwise specified in these Conditions of Carriage the refund will be equal to:

- the fare paid, if no part of the Ticket is used;
- alternatively, if part of the Ticket is used, the difference between the fare paid and the fare that would have been payable if booked for the travel taken,

including any taxes and carriers charges, less any applicable fees.

Depending on the fare type, where a Ticket is partly used, the unused part may have little or no refund value.

(v) in clause 13.5:

Unless an applicable law says otherwise, we may refuse to provide a refund if it is requested after the end of the Ticket validity.

(vi) in clause 16.1, that other than as specified in the Conditions of Carriage or applicable laws (such as the Australian Consumer Law), Qantas excluded all liability for any costs, expenses, losses or damages whatsoever that may arise in any way in connection with the carriage;

(vii) in clause 16.2, that if any damage was caused or contributed to by the passenger, Qantas's liability may be reduced in accordance with applicable laws;

(viii) in clause 16.5, that Qantas is not liable for any damage arising from Qantas's compliance with any laws or government regulations or the passenger's failure to comply with the same and that except as otherwise provided for in the Conditions of Carriage, Qantas's liability, if any, is limited to proven compensatory damages;

(ix) in clause 17.4, that unless the passenger's right to claim for damages had expired earlier as provided elsewhere in the Conditions of Carriage, a passenger would have no right to claim for damages if court proceedings were not brought within two years from the date of arrival at the passenger's destination, the date the aircraft should have arrived or the date on which the passenger's carriage stopped;

(g) will rely on the full terms and effect of the Conditions of Carriage at trial.

13. As to paragraph 13, Qantas:

(a) says, in respect of the Cancellation Clause pleaded in paragraph 12(e), that the text of this clause did not change between 11 April 2020 and the end of the Relevant Period;

- (b) repeats paragraphs 12(a) and (g) above;
- (c) otherwise admits the paragraph.

14. As to paragraph 14, Qantas:

- (a) admits that, subject to subparagraph (b) below, during the Relevant Period there were implied terms at law for contracts between Qantas and its passengers that each party agreed:
 - (i) to do all such things as are reasonably necessary to enable the other party to have the benefit of the contract;
 - (ii) not to hinder or prevent the fulfilment of the purpose of the express promises made in the contract;

Particulars

These implied terms were stated in, respectively, *Secured Income Real Estate (Aust) Ltd v St Martins Investments Pty Ltd* (1979) 144 CLR 597 at 607-608 per Mason J (Barwick CJ, Gibbs, Stephen and Aickin JJ agreeing at 599 and 615); and *Peters (WA) Ltd v Petersville Ltd* (2001) 205 CLR 126 at 142 [36] per Gleeson CJ, Gummow, Kirby and Hayne JJ.

- (b) says that the content and operation of the above implied terms were subject to, and could not apply so as to be inconsistent with, the express terms of the relevant contract, in particular here the Fare Rules, Qantas Frequent Flyer Program Terms and Conditions (as applicable) and the Conditions of Carriage;
- (c) otherwise denies the paragraph.

15. As to paragraph 15, Qantas:

- (a) says, in respect of the applicant's pleaded "Implied Good Faith Term", that there is no such term implied at law;

Particulars

Marmax Investments Pty Ltd v RPR Maintenance Pty Ltd (2015) 237 FCR 534 at 557 [122] per Middleton, Foster and Gleeson JJ.

- (b) says further, in respect of the applicant's pleaded "Implied Good Faith Term", that any such term implied in fact did not require anything more of Qantas than the implied terms of co-operation in paragraph 14 above;

Particulars

Marmax Investments Pty Ltd v RPR Maintenance Pty Ltd (2015) 237 FCR 534 at 563 [150] per Middleton, Foster and Gleeson JJ.

- (c) says that the content and operation of the applicant's pleaded "Implied Good Faith Term" were subject to, and could not apply so as to be inconsistent with, the

express terms of the relevant contract, in particular here the Fare Rules, Qantas Frequent Flyer Program Terms and Conditions (as applicable) and the Conditions of Carriage;

(d) otherwise denies the paragraph.

16. As to paragraph 16, Qantas:

(a) repeats paragraph 12(e) above;

(b) says that the time for performance of Qantas's obligations under the Conditions of Carriage, including clauses 9.1 and 9.2 of the Conditions of Carriage, may vary depending on the circumstances that prevail at the time of performance of those obligations;

(c) will rely on the full terms and effect of the Conditions of Carriage at trial;

(d) otherwise denies the paragraph.

E. THE COVID-19 PANDEMIC AND FLIGHT CANCELLATIONS

17. Qantas admits paragraph 17 and will rely on the full terms and effect of its 20 February 2020 media release at trial.

18. Qantas admits paragraph 18 and will rely on the full terms and effect of its 10 March 2020 media release at trial.

19. As to paragraph 19, Qantas:

(a) admits that, on 11 March 2020, the WHO Director-General said, *inter alia*:

(i) "In the past two weeks, the number of cases of COVID-19 outside China has increased 13-fold, and the number of affected countries has tripled";

(ii) "There are now more than 118,000 cases in 114 countries, and 4,291 people have lost their lives";

(iii) "We have therefore made the assessment that COVID-19 can be characterised as a pandemic";

(b) will rely on the full terms and effect of the WHO Director-General's opening remarks at the media briefing on COVID-19 dated 11 March 2020 at trial;

(c) otherwise does not know and cannot admit the paragraph.

20. Qantas admits paragraph 20.

21. Qantas admits paragraph 21.

22. Qantas admits paragraph 22.

- 23. Qantas admits paragraph 23.
- 24. Qantas admits paragraph 24.
- 24A. Qantas admits paragraph 24A and says that the email:
 - (a) was sent to Members of the Qantas Frequent Flyer Program and a version was also sent to some customers that were not Members of the Program, with upcoming booked travel;
 - (b) advised that customers should “Please standby and wait to hear from us before changing your booking. We’ll be contacting anyone whose flight has been impacted over the next week to let you know your options”.
- 25. Qantas admits paragraph 25.
- 26. Qantas admits paragraph 26.
- 27. As to paragraph 27, Qantas:
 - (a) admits that it announced on 16 April 2020: “While travel restrictions mean most passenger flights are not commercially viable at the moment, there remains a need for some essential travel – particularly given the distances between most Australian cities”;
 - (b) admits that the 16 April 2020 announcement stated that, “various quarantine restrictions apply across the States and Territories”;

Particulars to (a) and (b)

Qantas media release, “Statement on minimum domestic network”,
16 April 2020.

- (c) otherwise does not know and cannot admit the paragraph.
- 28. Qantas admits paragraph 28.
- 29. Qantas admits paragraph 29.
- 30. As to paragraph 30, Qantas:
 - (a) says that, owing to exemptions to COVID-related travel restrictions, international travel continued on an ad hoc basis and thus did not “resume” in November 2021 or at any other time;
 - (b) denies the paragraph.

F. QANTAS'S STATEMENTS ON COVID-19 AND FLIGHT CREDITS***15 March 2020 Press Release***

31. Qantas admits paragraph 31.
32. As to paragraph 32, Qantas:
 - (a) says that its 15 March 2020 press release used the expression "travel credit" rather than "flight credit";
 - (b) otherwise admits the paragraph;
 - (c) will rely on the full terms and effect of its 15 March 2020 press release at trial.
33. Qantas admits paragraph 33 and will rely on the full terms and effect of its 15 March 2020 press release at trial.
34. As to paragraph 34, Qantas:
 - (a) denies that, pursuant to the Conditions of Carriage, all customers had an entitlement to a refund;
 - (b) says instead that, pursuant to the Conditions of Carriage, each of Qantas and its customers had rights and obligations and customers had other options available to them where Qantas cancelled their flight ~~due to COVID-19~~ including (but without limitation) under clauses 9.1 and 9.2 of the Conditions of Carriage;
 - (c) repeats paragraphs ~~42~~ 10, 10A, 11, 12 and 13 above as to the identity of the parties to and content of the Conditions of Carriage, including (but without limitation) under clauses 9.1 and 9.2;
 - (d) says that Qantas introduced its COVID travel credits in the context of the COVID-19 pandemic, which caused an unprecedented and extraordinary disruption to Qantas's services and business;
 - (e) says that the changes outlined in the 15 March 2020 press release were introduced to provide certain customers with enhanced flexibility with respect to waived booking fees, among other things announced in that press release and following, for customers who no longer wished to travel on their flight as booked in the context of the COVID-19 pandemic;
 - (f) admits that its 15 March 2020 press release did not refer to an entitlement to a refund;
 - (g) otherwise denies the paragraph.

15 March 2020 online conversion system

35. As to paragraph 35, Qantas:
- (a) admits that, from on or around 15 March 2020, Qantas provided an online process on its website whereby passengers could convert their flight booking to a travel credit with the change fee waived;
 - (b) says that the online process with the change fee waived provided certain customers with enhanced flexibility if they no longer wished to travel on their flight as booked in the context of the COVID-19 pandemic pleaded in paragraph 34(d) above;
 - (c) otherwise does not know and cannot admit the paragraph.
36. As to paragraph 36, Qantas:
- (a) repeats paragraphs 34 and 35(b) above;
 - (b) otherwise denies the paragraph.

17 March 2020 email

37. Qantas admits paragraph 37.
38. Qantas admits paragraph 38 and will rely on the full terms and effect of its 17 March 2020 email at trial.
39. As to paragraph 39, Qantas:
- (a) admits that its 17 March 2020 email did not refer to an entitlement to a refund;
 - (b) repeats paragraphs 24A and 34 above;
 - (c) otherwise denies the paragraph.

17 March 2020 Press Release

40. Qantas admits paragraph 40.
41. Qantas admits paragraph 41 and will rely on the full terms and effect of its 17 March 2020 press release at trial.
42. As to paragraph 42, Qantas:
- (a) admits that its 17 March 2020 press release did not refer to an entitlement to a refund;
 - (b) repeats paragraphs 24A and 34 above;
 - (c) otherwise denies the paragraph.

19 March 2020 Press Release

43. Qantas admits paragraph 43.
44. Qantas admits paragraph 44 and will rely on the full terms and effect of its 19 March 2020 press release at trial.
45. As to paragraph 45, Qantas:
- (a) admits that its 19 March 2020 press release did not refer to an entitlement to a refund;
 - (b) repeats paragraphs 24A and 34 above;
 - (c) otherwise denies the paragraph.

26 March 2020 email

46. Qantas admits paragraph 46.
47. As to paragraph 47, Qantas:
- (a) repeats paragraphs 24A above and 60 below;
 - (b) otherwise admits paragraph 47 and will rely on the full terms and effect of its 26 March 2020 email at trial.
48. As to paragraph 48, Qantas:
- (a) admits that its 26 March 2020 email did not refer to an entitlement to a refund;
 - (b) repeats paragraphs 24A and 34 above;
 - (c) otherwise denies the paragraph.

26 March 2020 Facebook post

49. Qantas admits paragraph 49.
50. Qantas admits paragraph 50 and will rely on the full terms and effect of its 26 March 2020 Facebook post at trial.
51. As to paragraph 51, Qantas:
- (a) admits that its 26 March 2020 Facebook post did not refer to an entitlement to a refund;
 - (b) repeats paragraphs 24A and 34 above;
 - (c) otherwise denies the paragraph.

Flight Credit Email

52. Qantas admits paragraph 52 and will rely on the full terms and effect of the Flight Credit Email, as amended from time to time and communications in connection with the corresponding Flight Credit Email, at trial.
53. ~~As to paragraph 53, Qantas admits paragraph 53.~~
- (a) repeats paragraph 52 above;
- (b) otherwise admits the paragraph.
54. As to paragraph 54, Qantas:
- (a) repeats paragraph 34 above;
- (b) otherwise denies the paragraph.

Alleged communications with Contact Centre Representatives

- 54A. As to paragraph 54A, Qantas:
- (a) says that, by its solicitors' letter dated 10 October 2023, Qantas requested particulars from the applicant for this paragraph;
- (b) says that the applicant's solicitors sent a response dated 25 October 2023 in which the applicant, through her solicitors, alleged purported "non-exhaustive examples to the type of telephone calls relied on" in respect of two unidentified Group Members, but did not provide the associated booking information requested for those Group Members;

Particulars to (a) and (b)

Letters from JWS and Echo Law dated, respectively, 10 October 2023 and 25 October 2023.

- (c) says that the paragraph is and, following the parties' correspondence, remains inadequately particularised;
- (d) does not know and cannot admit the paragraph.

G. REPRESENTATIONS

55. As to paragraph 55, Qantas:
- (a) denies subparagraph (a);
- (b) denies subparagraph (b);
- (c) denies subparagraph (c);

- (d) denies subparagraph (d);
- (e) as to subparagraph (e):
 - (i) says that customers making changes to their booking, unless otherwise provided for in the Conditions of Carriage, were required to do so in accordance with the applicable Fare Rules;
 - (ii) repeats paragraph 34 above;
 - (iii) otherwise denies the subparagraph;
- (f) denies subparagraph (f);
- (g) repeats paragraph 34 above;
- (h) will rely on the full terms and effect of each of Qantas's communications upon which the applicant relies in paragraph 55 and its particulars at trial.

56. As to paragraph 56, Qantas:

- (a) admits that its media releases, emails and Facebook posts were made in trade or commerce;
- (b) denies that it made the Representations;
- (c) accordingly, denies that it made the Representations in trade or commerce.

57. Qantas denies paragraph 57.

58. Qantas does not plead to paragraph 58 as it contains no allegation against Qantas.

H. USE OF FLIGHT CREDITS

59. Qantas does not plead to paragraph 59 as it contains no allegation against Qantas.

60. As to paragraph 60, Qantas:

- (a) repeats paragraph 34 above;
- (b) admits that, from time to time and in light of the COVID-19 pandemic, Qantas updated the conditions (such as the kinds of conditions pleaded in paragraph 60 of the EASOC) for certain flight credits, including from time to time by updating the conditions for certain flight credits previously issued to customers;
- (c) admits that the updates from time to time in (b) above included conditions of the kind pleaded in paragraph 60(c) and (f) of the EASOC;
- (d) says that the conditions on the use of a flight credit, and updates to those conditions, depended on a range of individual booking attributes;

Particulars to (d)

The conditions that applied to the use of a customer's credit at a given time, which was subject to change in Qantas's discretion (as frequently occurred in the circumstances of the COVID-19 pandemic and following) may have depended on a range of individual booking attributes, including:

- i. the booking method;
 - ii. date of original booking;
 - iii. credit creation date;
 - iv. whether the credit was requested by the customer or following a cancellation by Qantas;
 - v. whether the credit was stored as Flight Credit, Qantas Pass, Qantas TravelPass or Qantas Credit.
- (e) says that on 31 August 2023, Qantas announced the removal of the expiry date on COVID travel credits (irrespective of whether the COVID credit was stored as a Flight Credit, Qantas Pass, Qantas TravelPass or Qantas Credit), with the effect that holders of COVID travel credits could request a refund at any time (including holders who would not otherwise have been entitled to a refund);

Particulars to (e)

Qantas media release dated 31 August 2023 styled "Qantas Group removes expiry date on COVID credits".

- (f) otherwise denies the paragraph.

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

Flight credit request

61. As to paragraph 61, Qantas:
- (a) admits that during the Relevant Period some customers requested flight credits;
 - (b) otherwise denies the paragraph.
62. As to paragraph 62, Qantas:
- (a) says that interactions between Qantas and its customers in relation to flight credits represented Qantas providing certain customers with enhanced flexibility with respect to waived booking fees, among other things, for customers who no longer wished to travel on their flight as booked (including in the context of the COVID-19 pandemic) and repeats paragraph 34(d) above;
 - (b) says that the applicant's pleading and particulars in paragraph 62 are embarrassing because a contract is alleged not to have existed for want of benefit

but the applicant's particulars acknowledge some "value" being received by certain Group Members;

- (c) otherwise denies the paragraph.

Purported new contract for Voucher Group Members

63. As to paragraph 63, Qantas:

- (a) repeats paragraphs 34 and 62 above;
- (b) otherwise denies the paragraph.

Unilateral conversion for remaining group members

64. As to paragraph 64, Qantas:

- (a) admits that the applicant was provided with a flight credit on or around 7 April 2020;
- (b) admits that during the Relevant Period, other customers of Qantas were issued flight credits in respect of cancelled flights, whether:
 - (i) at the customer's request;
 - (ii) at the request of someone on behalf of the customer; or
 - (iii) by Qantas without the customer, or someone on behalf of the customer, requesting a credit;
- (c) repeats paragraph 1(b) above in relation to customers who had a travel agent or other intermediary;
- (d) repeats paragraph 3(c) above in relation to the applicant's credit and refund;
- (e) repeats paragraph 62(a) above in relation to Qantas's interactions with its customers in relation to flight credits generally;
- (f) otherwise does not know and cannot admit the paragraph.

J. ALLEGED ENTITLEMENT TO REFUND WITHIN A REASONABLE TIME

65. As to paragraph 65, Qantas:

- (a) admits that the COVID-19 pandemic constituted an "Event Beyond Our Control" for the purposes of the Conditions of Carriage;
- (b) denies that the "Cancellation Clause" was as pleaded by the applicant and repeats paragraph 12(e) above.

66. As to paragraph 66, Qantas:
- (a) repeats paragraph 65 above;
 - (b) otherwise denies the paragraph.
67. As to paragraph 67, Qantas:
- (a) as to subparagraph (a):
 - (i) denies that the “Cancellation Clause”, to the extent that it applied to some customers, was as pleaded by the applicant and repeats paragraph 12(e) above;
 - (ii) repeats paragraph 34 above;
 - (iii) otherwise denies the subparagraph;
 - (b) denies subparagraph (b);
 - (c) as to subparagraph (c):
 - (i) denies that the “Cancellation Clause” was as pleaded by the applicant and repeats paragraph 12(e) above;
 - (ii) denies the “Implied Reasonable Time Term” and repeats paragraphs 12 and 16 above;
 - (iii) otherwise denies the subparagraph;
 - (d) as to subparagraph (d):
 - (i) denies that there is any contractual or evidentiary basis for the times pleaded of two business days or, alternatively, seven days;
 - (ii) repeats paragraph 16 above;
 - (iii) says that the context of the COVID-19 pandemic was relevant to any assessment of the timing for payment of the any refund and, in that regard, repeats paragraph 34(d) above;
 - (iv) otherwise denies the subparagraph;
 - (e) otherwise denies the paragraph.

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

67A. As to paragraph 67A, Qantas:

- (a) repeats paragraphs 10A above;

(b) otherwise admits the paragraph.

67B. As to paragraph 67B, Qantas:

(a) repeats paragraphs 12, 14, 15, 16 and 34 above;

(b) otherwise denies the paragraph.

K. QANTAS OFFERS OPTION TO REQUEST A REFUND AND REMOVES EXPIRY

68. As to paragraph 68, Qantas:

(a) admits that on 26 June 2023, Qantas issued a media release styled “Qantas push for more customers to reunite with COVID credits”;

(b) admits that its 26 June 2023 media release contained a statement: “Refunds still an option for most customers”;

(c) will rely on the full terms and effect of the 26 June 2023 media release at trial;

(d) repeats paragraph 34 above;

(e) otherwise denies the paragraph.

68A. As to paragraph 68A, Qantas:

(a) admits that on 31 August 2023, Qantas announced the removal of the expiry date on COVID travel credits that were due to expire on 31 December 2023 by its 31 August 2023 Media Release;

Particulars

Qantas media release dated 31 August 2023 styled “Qantas Group removes expiry date on COVID credits”.

(b) will rely on the full terms and effect of its 31 August 2023 Media Release at trial;

(c) otherwise denies the paragraph.

68B. As to paragraph 68B, Qantas:

(a) repeats paragraph 3(c) above;

(b) admits that on 27 September 2023, by its solicitors’ letter, Qantas sought the applicant’s alternative credit card for processing of her refund;

(c) admits that Qantas did not offer to pay the applicant anything other than her refund which Qantas has paid;

(d) denies that Qantas was or is obliged to pay the applicant anything other than her refund which Qantas has paid;

- (e) will rely on the full terms and effect of its 27 September 2023 solicitors' letter at trial;
- (f) otherwise denies the paragraph.

L. ALLEGED FALSITY OF REPRESENTATIONS

69. Qantas denies paragraph 69.

M. CLAIMS BY THE VOUCHER GROUP MEMBERS

Purported rescission of the Purported New Contract for misrepresentation

70. Qantas denies paragraph 70.
71. Qantas denies paragraph 71.

Substitution Term allegedly an unfair contract term

72. As to paragraph 72, Qantas:
- (a) denies that the Substitution Term was as pleaded and repeats paragraph 63 above;
 - (b) otherwise denies the paragraph.
73. As to paragraph 73, Qantas:
- (a) denies that the Substitution Term was as pleaded and repeats paragraph 63 above;
 - (b) otherwise denies the paragraph.

N. CLAIMS BY APPLICANT AND GROUP MEMBERS

Misleading or deceptive conduct

74. As to paragraph 74, Qantas:
- (a) admits that its media releases, emails and Facebook posts were made in trade or commerce;
 - (b) otherwise denies the paragraph.
75. Qantas denies paragraph 75 and says further that the pleading is embarrassing in respect of alleged Group Members to whom the alleged Representations were not made and who, accordingly, could not have relied on those alleged Representations.

76. As to paragraph 76, Qantas:
- (a) repeats paragraphs 34 and 75 above;
 - (b) denies the paragraph.

77. Qantas denies paragraph 77.

Alleged contractual obligation to refund

78. As to paragraph 78, Qantas:
- (a) repeats paragraph 34 above;
 - (b) stands ready, willing and able to fulfil, and continues to work to fulfil, its obligations in accordance with the Conditions of Carriage;
 - (c) admits that where, in accordance with the Conditions of Carriage, a customer is unable to be booked on services acceptable to the customer following a cancellation and requests to receive a refund, then Qantas will pay that refund to the customer in accordance with the Conditions of Carriage;
 - (d) otherwise denies the paragraph.

Alleged breaches of contract

79. As to paragraph 79, Qantas:
- (a) repeats paragraph 78 above;
 - (b) denies the paragraph.

79A. As to paragraph 79A, Qantas:

- (a) repeats paragraph 64 above;
- (b) otherwise denies the paragraph.

79B. As to paragraph 79B, Qantas:

- (a) repeats paragraph 67B above;
- (b) otherwise denies the paragraph.

80. Qantas denies paragraph 80.
81. Qantas denies paragraph 81.
82. Qantas denies paragraph 82.

Alleged repudiation by anticipatory breach

83. Qantas denies paragraph 83.

84. Qantas denies paragraph 84.
85. As to paragraph 85, Qantas:
- (a) denies that there was, or is, a repudiation by Qantas for the applicant and Group Members to accept;
 - (b) repeats paragraphs 10 and 10A above;
 - ~~(b)~~(c) as to the applicant's position, repeats paragraph 3(c) above;
 - ~~(e)~~(d) denies that Group Members commenced this proceeding, or that they accepted any repudiation of a contract by issuing this proceeding;
 - ~~(e)~~(e) otherwise does not plead to paragraph 85 as it otherwise contains no allegation against Qantas.
86. Qantas denies paragraph 86.

Alleged restitution for failure of consideration

87. As to paragraph 87, Qantas:
- (a) repeats paragraph 10 above;
 - (b) denies the paragraph to the extent that the "Group Members" referred to in the paragraph allegedly include passengers whose flight was paid for by another person who was not acting as agent for the passenger;
 - (c) otherwise does not know and cannot admit the paragraph.
88. As to paragraph 88, Qantas:
- (a) as to subparagraph (a):
 - (i) repeats paragraph 87 above;
 - (ii) otherwise does not know and cannot admit the subparagraph;
 - (b) denies subparagraph (b);
 - (c) denies subparagraph (c);
 - (d) repeats paragraph 87(b) above.
89. As to paragraph 89, Qantas:
- (a) says that the applicant has been refunded;
 - (b) repeats paragraphs 3(c), 12, and 16, 34 and 68A above;
 - (c) denies the paragraph.

90. As to paragraph 90, Qantas:

- (a) says that the applicant has been refunded;
- (b) repeats paragraphs 3(c), 12, ~~and~~ 34 and 68A above;
- (c) says that, by its solicitors' letters dated 10 and 17 October 2023, Qantas requested particulars of the paragraph, and requested, in particular, confirmation from the applicant whether the failure of consideration is alleged to be a total failure of consideration or a partial failure of consideration and, if the latter, what part of the consideration had not failed;
- (d) says that the applicant's solicitors sent a response dated 25 October 2023 in which the applicant, through her solicitors, alleged that the failure of consideration was "total, or alternatively partial", because the applicant alleges that insofar as Qantas has not provided a refund to a customer there is a total failure of consideration or, alternatively, to the extent the Court finds that a Group Member received part of the consideration there was a partial failure;

Particulars to (c) and (d)

Letters from JWS and Echo Law dated, respectively, 10 and 17 October 2023 and 25 October 2023.

- (e) says that the plea does not disclose a cause of action as the applicant and Group Members cannot make a claim in restitution for a failure of consideration that is not a total failure of consideration or, if a partial failure of consideration, that is not in respect of a severable component of the consideration;

Particulars to (e)

Baltic Shipping Co v Dillon (1993) 176 CLR 344 at 350-351 per Mason CJ, 367 per Brennan J, 378-379 per Deane and Dawson JJ, 383 per Toohey J, 386 per Gaudron J and 388-389 per McHugh J; and *Roxborough v Rothmans of Pall Mall Australia Ltd* (2001) 208 CLR 516 at 526-527 [17]-[19] per Gleeson CJ, Gaudron and Hayne JJ, 557-558 [105]-[109] per Gummow J and 588-589 [198]-[199] per Callinan J.

- (f) says further that there is no offer from the applicant or Group Members of which Qantas is aware of counter-restitution if (which Qantas denies) there was a partial failure of consideration;
- (g) otherwise denies the paragraph.

90A. As to paragraph 90A, Qantas:

- (a) admits that, as a result of COVID period lockdowns and border closures, a COVID period high of \$2 billion in COVID travel credits was accrued across millions of

bookings for Qantas Group airlines and customers based both in Australia and overseas (including Jetstar);

- (b) admits that, as at 25 September 2023, the total COVID travel credit balance had reduced by almost 75 per cent from a COVID period high of \$2 billion to \$541 million (which includes Jetstar COVID Vouchers which are not subject to this proceeding), which figure continues to fall at the time of this Amended Defence and was on or around 31 December 2023 \$468 million and, excluding Jetstar, \$338 million~~20 October 2023 \$520 million~~;
- (c) says that it has taken a number of steps to remind customers to use their COVID travel credits;
- (d) otherwise denies the paragraph.

91. Qantas denies paragraph 91.

Alleged breach of consumer guarantee

91A. As to paragraph 91A, Qantas:

- (a) admits that it supplied services in trade or commerce during the Relevant Period;
- (b) repeats paragraph 1 above regarding the definition of "Group Member";
- (c) otherwise does not know and cannot admit the paragraph.

91B. As to paragraph 91B, Qantas:

- (a) repeats paragraph 91A above;
- (b) admits that when supplying services to customers who were consumers in trade or commerce, there is a guarantee that the services will be rendered with due care and skill, as per s 60 of the ACL;
- (c) says that Qantas's provision of services is subject to Fare Rules and Conditions of Carriage pursuant to which each of Qantas and its customers have rights and obligations and those rights and obligations may vary depending on the fare type and operational circumstances from time to time;
- (d) repeats paragraphs 10, 10A and 12 above as to the contracts between Qantas and its passengers;
- (e) says that the COVID-19 pandemic caused an unprecedented and extraordinary disruption to Qantas's services and business and, in that context, Qantas introduced its COVID travel credits, among other measures;

(f) denies that all interactions between Qantas and its customers constituted a provision, by Qantas, of “services” for the purposes of s 60 of the ACL;

(g) otherwise denies the paragraph.

91C. Qantas denies paragraph 91C.

91D. Qantas denies paragraph 91D and says further that the pleading is embarrassing because the applicant has not particularised, and has failed in the parties’ solicitors’ correspondence to explain, why the alleged failure is a “major failure” within the meaning of s 268(1)(a) of the ACL.

Particulars

Correspondence from Qantas’s solicitors, Johnson Winter Slattery, dated 15 January 2024 and 2 February 2024 and from the applicant’s solicitors, Echo Law, dated 6 February 2024.

91E. Qantas denies paragraph 91E.

91F. Qantas denies paragraph 91F.

Alleged breach of consumer guarantee as to reasonable time for supply

91G. As to paragraph 91G, Qantas:

(a) admits that it supplied services in trade or commerce during the Relevant Period;

(b) repeats paragraph 1 above regarding the definition of “Group Member”;

(c) otherwise does not know and cannot admit the paragraph.

91H. As to paragraph 91H, Qantas:

(a) repeats paragraphs 91B and 91G above;

(b) admits that when supplying services to customers who were consumers in trade or commerce and the time within which the services are to be supplied is not fixed by the contract or is not to be determined in a manner agreed to by the customer and Qantas, then there is a guarantee that the services will be supplied within a reasonable time, as per s 62 of the ACL;

(c) otherwise denies the paragraph.

91I. Qantas denies paragraph 91I.

91J. Qantas denies paragraph 91J and says further that the pleading is embarrassing because the applicant has not particularised, and has failed in the parties’ solicitors’ correspondence to explain, why the alleged failure is a “major failure” within the meaning of s 268(1)(a) of the ACL.

Particulars

Correspondence from Qantas's solicitors, Johnson Winter Slattery, dated 15 January 2024 and 2 February 2024 and from the applicant's solicitors, Echo Law, dated 6 February 2024.

91K. Qantas denies paragraph 91K.

91L. Qantas denies paragraph 91L.

Alleged unconscionable conduct

92. As to paragraph 92, Qantas:

- (a) as to subparagraphs (a) and (b):
 - (i) repeats paragraphs 12 and 34 above;
 - (ii) otherwise denies the subparagraphs;
- (b) as to subparagraph (c)(b):
 - (i) admits that during the Relevant Period, Qantas cancelled flights ~~due to the COVID-19 pandemic~~;
 - (ii) repeats paragraph 34 above;
 - (iii) otherwise denies the subparagraph;
- (c) otherwise denies the paragraph.

93. As to paragraph 93, Qantas:

- (a) denies that it made the Representations;
- (b) otherwise denies the paragraph.

94. As to paragraph 94, Qantas:

- (a) says that the Fare Rules and Conditions of Carriage provided alternative options to which ~~customer~~consumers are entitled in respect of a flight cancelled by Qantas flight, which varied depending on the reason for a flight being cancelled, and provided options for customers to cancel their own booking when their flight had not been cancelled by Qantas;
- ~~(a)(b)~~ repeats paragraphs 10 and 34 above;
- ~~(b)(c)~~ having regard to the matters at (a)-(b) above, denies that Qantas was in a stronger bargaining position with respect to cancellation of flights in the proceeding.

95. As to paragraph 95, Qantas:

- (a) repeats paragraph 34 above;

- (b) denies that under the Conditions of Carriage there is a proper comparison as between the cost of flight credits and the cost of a refund;
 - (c) otherwise denies the paragraph.
96. As to paragraph 96, Qantas:
- (a) says that the:
 - (i) Fare Rules;
 - (ii) Conditions of Carriage;
 - (iii) COVID travel credits, which Qantas introduced in the context of the COVID-19 pandemic, which caused an unprecedented and extraordinary disruption to Qantas's services and business and repeats paragraph 34(d) above,

were reasonably necessary in the circumstances for the protection of the legitimate interests of Qantas (and which also had the effect of protecting the interests of Qantas's -customers);
 - (b) otherwise denies the paragraph.
97. As to paragraph 97, Qantas:
- (a) denies that the applicant or Group Members were unable to ascertain their rights and obligations, including pursuant to the Fare Rules or Conditions of Carriage;
 - (b) denies that its communications failed to inform the applicant or Group Members of rights or obligations in the circumstances;
 - (c) otherwise denies the paragraph.
98. Qantas denies paragraph 98.
- 98A. As to paragraph 98A, Qantas:
- (a) says that, by its solicitors' letter dated 10 October 2023, Qantas requested particulars from the applicant for this paragraph;
 - (b) says that the applicant's solicitors sent a response dated 25 October 2023 in which the applicant, through her solicitors, alleged purported "non-exhaustive examples" in respect of several unidentified Group Members, but did not provide the associated booking information requested for those Group Members;

Particulars to (a) and (b)

Letters from JWS and Echo Law dated, respectively, 10 October 2023
and 25 October 2023.

- (c) says that the paragraph is and, following the parties' correspondence, remains, inadequately particularised;
- (d) does not know and cannot admit the paragraph.

98B. As to paragraph 98B, Qantas:

- (a) says that, by its solicitors' letter dated 10 October 2023, Qantas requested particulars from the applicant of this paragraph;
- (b) says that the applicant's solicitors sent a response dated 25 October 2023 in which the applicant, through her solicitors, alleged purported "non-exhaustive examples" in respect of several unidentified Group Members, but did not provide the associated booking information requested for those Group Members;

Particulars to (a) and (b)

Letters from JWS and Echo Law dated, respectively, 10 October 2023 and 25 October 2023.

- (~~c~~) says that the paragraph is and, following the parties' correspondence, remains inadequately particularised;
- (~~d~~e) does not know and cannot admit the paragraph.

99. As to paragraph 99, Qantas:

- (a) denies the facts alleged in subparagraphs (a)-(c) of paragraph 99 of the FASOC (formerly subparagraphs (a)-(e), the changes to which were not marked up in the FASOC, cf. FCR 16.59);
- (b) denies that it ought to have disclosed those alleged facts to the applicant or Group Members;
- (c) otherwise denies the paragraph.

100. As to paragraph 100, Qantas:

- (a) admits that its Fare Rules and Conditions of Carriage were standard form contracts not for negotiation;
- (b) ~~otherwise~~, to the extent that the applicant or a Group Member contends that their contract with Qantas involves other terms or conditions, does not know and cannot admit the paragraph;
- (~~b~~)(c) otherwise denies the paragraph.

101. Qantas denies paragraph 101.


102. Qantas denies paragraph 102.

- 103. Qantas admits paragraph 103 and will rely on the full terms and effect of the Qantas Group Code of Conduct and Ethics at trial.
- 104. Qantas denies paragraph 104.
- 105. Qantas denies paragraph 105.
- 106. Qantas denies paragraph 106.
- 107. Qantas denies paragraph 107.
- 108. Qantas denies paragraph 108.

O. RELIEF CLAIMED

- 109. As to paragraph 109, Qantas:
 - (a) admits that the applicant and Group Members claim the relief set out in the originating application;
 - (b) denies that the applicant and Group Members are entitled to that relief, or to any other relief.

Date: ~~24 November 2023~~ 27 February 2024


Signed by Paul Andrew Reidy
Lawyer for the Respondent

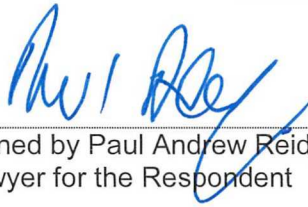
This pleading was prepared by R. C. A. Higgins SC, R. G. Craig KC, R. A. Yezerski SC, J. C. Conde, D. Habashy and C. Mintz.

Certificate of lawyer

I, Paul Andrew Reidy, certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

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

Date: ~~24 November 2023~~ 27 February 2024



Signed by Paul Andrew Reidy
Lawyer for the Respondent