



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

No. S ECI 2023 00959

Case: S ECI 2023 00959  
Filed on: 22/12/2025 03:53 PM

**B E T W E E N**

Jane Victoria Moroney

Plaintiff

-and-

Kia Australia Pty Limited ABN 97 110 483 353

Defendant

**AMENDED STATEMENT OF CLAIM**

(Amended pursuant to the Orders of the Honourable Justice Nichols dated 19 December 2025)

---

Date of Document: ~~24 April 2023~~ 22 December 2025 Solicitors Code: 564  
Filed on behalf of: The Plaintiff  
Prepared by: Maurice Blackburn Lawyers Telephone: 03 9605 2892  
Level 21 380 La Trobe Street Ref: 3053077  
Melbourne, VIC 3000 Email: rkoo@mauriceblackburn.com.au

---

**A. PARTIES**

**A1. The Plaintiff and Group Members**

1. This proceeding is commenced as a group proceeding against Kia Australia Pty Limited (**Kia**) under Part 4A of the *Supreme Court Act 1986* (Vic) (the **SC Act**) by the Plaintiff on her own behalf and on behalf of other persons (**Group Members**) who:
  - (a) acquired in Australia by way of purchase, exchange, taking on lease or hire-purchase one or more of the following vehicles at any time prior to 16 May 2021 (in the case of vehicles described in paragraph 1(a)(i)-(ii) below), or any time prior to 19 January 2023 (in the case of vehicles described in paragraph 1(a)(iii) below), or at any time prior to 9 October 2024 (in the case of vehicles described in paragraph 1(a)(iv)-(xii)) (as applicable, the **Relevant Period**):
    - (i) a Kia Sportage (QL) model year 2016, 2017, 2018, 2019, 2020 or 2021 with a Vehicle Identification Number (**VIN**) recorded in the ~~Excel spreadsheet attached to a~~ recall notice for these vehicles published on 16 May 2021; or

- (ii) a Kia Stinger model year 2016, 2017, 2018 or 2019 with a VIN recorded in the ~~Excel spreadsheet attached to a recall notice for these vehicles published on 16 May 2021;~~~~or~~
- (iii) a Kia SLe Sportage model year 2014 or 2015 with a VIN recorded in the ~~Excel spreadsheet attached to a recall notice for the vehicles published on 19 January 2023;~~~~;~~
- (iv) a Kia Soul (AM) model year 2010, 2011, 2012 or 2013:
  - I. with a VIN recorded in the recall notice for these vehicles published on 9 October 2024; and
  - II. which was first supplied to a consumer after 1 January 2011;
- (v) a Kia Sorrento (XM) model year 2010, 2011, 2012, 2013 or 2014:
  - I. with a VIN recorded in the recall notice for these vehicles published on 9 October 2024; and
  - II. which was first supplied to a consumer after 1 January 2011;
- (vi) a Kia Cerato (TD) model year 2009, 2010, 2011, 2012 or 2013:
  - I. with a VIN recorded in the recall notice for these vehicles published on 9 October 2024; and
  - II. which was first supplied to a consumer after 1 January 2011;
- (vii) a Kia Sportage (SL) model year 2009, 2010, 2011, 2012 or 2013:
  - I. with a VIN recorded in the recall notice for these vehicles published on 9 October 2024; and
  - II. which was first supplied to a consumer after 1 January 2011;
- (viii) a Kia Optima (TF) model year 2010, 2011, 2012, 2013, 2014 or 2015:
  - I. with a VIN recorded in the recall notice for these vehicles published on 9 October 2024; and
  - II. which was first supplied to a consumer after 1 January 2011;
- (ix) a Kia Rio (UB) model year 2011, 2012, 2013, 2014, 2015 or 2016 with a VIN recorded in the recall notice for these vehicles published on 9 October 2024;
- (x) a Kia Sportage (SLe) model year 2013 or 2014 with a VIN recorded in the recall notice for these vehicles published on 9 October 2024;

- (xi) a Kia Rondo (UN) model year 2009, 2010, 2011, 2012 or 2013:
  - I. with a VIN recorded in the recall notice for these vehicles published on 9 October 2024; and
  - II. which was first supplied to a consumer after 1 January 2011; or
- (xii) a Kia Rondo (RP) model year 2012, 2013, 2014, 2015, 2016, 2017 or 2018 with a VIN recorded in the recall notice for these vehicles published on 9 October 2024,  
(together, **Affected Vehicles**)

#### Particulars

- i. Recall published on 16 May 2021 with recall number REC-001594.
  - ii. Recall published on 19 January 2023 with recall number REC-005597.
  - iii. Recall published on 9 October 2024 with recall number REC-006103.
  - iv. Recall published on 9 October 2024 with recall number REC-006104.
  - v. Recall published on 9 October 2024 with recall number REC-006105.
  - vi. Recall published on 9 October 2024 with recall number REC-006106.
  - vii. Recall published on 9 October 2024 with recall number REC-006107.
  - viii. Recall published on 9 October 2024 with recall number REC-006108.
  - ix. Recall published on 9 October 2024 with recall number REC-006109.
  - x. Recall published on 9 October 2024 with recall number REC-006110.
  - xi. Recall published on 9 October 2024 with recall number REC-006111.
- (b) either:
- (i) acquired the Affected Vehicle from Kia, a Kia dealership (**Dealer**) or another retailer (including a used car dealer) otherwise than:
    - I. by way of sale by auction; or
    - II. for the purpose of re-supply or using it up or transforming it in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land; or
  - (ii) acquired the Affected Vehicle otherwise than for the purpose of re-supply from a person who acquired the vehicle in the circumstances described in subparagraph 1(b)(i) above; and
- (c) are not a person described in s 33E(2) of the SC Act or a Justice or Chief Justice of the Supreme Court of Victoria or the High Court of Australia.

2. As at the date of the commencement of this proceeding, seven or more Group Members have claims against Kia.
3. Jane Moroney, the Plaintiff, acquired an Affected Vehicle, being a new MY18 Kia Sportage 2018 QL Wagon 5dr GT-Line SA 6sp 4x4 2.4i (the **Plaintiff's Affected Vehicle**) on 28 June 2018 otherwise than:
  - (a) by way of sale by auction; or
  - (b) for the purpose of re-supply or using it up or transforming it in the course of a process of production or manufacture or in the course of repairing or treating other goods or fixtures on land.

#### **Particulars**

- i. the Plaintiff purchased the Plaintiff's Affected Vehicle on 28 June 2018 through an agent in Silverwater, New South Wales, that facilitated the purchase of the vehicle from a licenced Kia motor vehicle dealer in Australia.
- ii. the Plaintiff paid \$49,578.00 to purchase the Plaintiff's Affected Vehicle.

#### **A2. The Defendant**

4. Kia is, and at all relevant times throughout the Relevant Period, was:
  - (a) a corporation incorporated in Australia;
  - (b) a trading corporation within the meaning of s 4(1) of the *Competition and Consumer Act 2010* (Cth) (**CCA**);
  - (c) until 30 March 2021, known as Kia Motors Australia Pty Ltd;
  - (d) a manufacturer of the Affected Vehicles within the meaning of s 7 of the *Australian Consumer Law* (**ACL**) (being Schedule 2 of the CCA) by reason that:
    - (i) Kia imported the Affected Vehicles into Australia without having manufactured them; and
    - (ii) at the time of the importation, the manufacturer of the Affected Vehicles did not have a place of business in Australia.
5. Kia at all relevant times throughout the Relevant Period:
  - (a) supplied the Affected Vehicles in Australia, including to Dealers;
  - (b) marketed, advertised and distributed the Affected Vehicles throughout Australia; and
  - (c) operated under the Kia brand.

#### **B. ANTI-LOCK BRAKING SYSTEMS**

## B.1 Components and function of an ABS

6. An anti-lock braking system (**ABS**) is a part of a motor vehicle's braking system that automatically controls the degree of slip, in the direction of rotation of the wheel, on one or more wheels of the vehicle during braking.
7. An ABS includes:
  - (a) wheel speed sensors mounted on the wheels of the vehicle that identify and transmit to the ABS Control Unit the conditions of rotation of the wheel or wheels or the dynamic conditions of the vehicle;
  - (b) an ABS Control Unit, which is the electronic component that evaluates the data transmitted by the wheel speed sensors and that transmits signals to the hydraulic modulator, and thereby performs the ABS control function (**ABS Module**); and
  - (c) a hydraulic modulator, which is a component designed to vary the braking force or forces applied to the wheel or wheels in accordance with the signal received from the ABS Module, and that comprises:
    - (i) an electric engine;
    - (ii) valves operated by solenoids that control the flow of brake fluid between the master cylinder and each wheel brake cylinder; and
    - (iii) a base to which brake hoses from the master cylinder and from wheel brake cylinders are connected.
8. When the driver of a vehicle equipped with an ABS applies force to the brake pedal:
  - (a) the master cylinder sends brake fluid to the hydraulic modulator;
  - (b) the hydraulic modulator sends the brake fluid to the wheel brake cylinders; and
  - (c) brake pressure is thereby applied to each wheel.
9. If during braking a wheel sensor detects a variation in wheel speed such that the vehicle is skidding or losing traction:
  - (a) the wheel sensor will send this information to the ABS Module;
  - (b) upon receiving this information, the ABS Module will send a signal to a solenoid in the hydraulic modulator;
  - (c) upon the solenoid receiving this signal, the solenoid will activate a valve in the hydraulic modulator that will temporarily and/or intermittently block the flow of brake fluid to the relevant wheel brake cylinder; and
  - (d) as a result, brake pressure applied to the relevant wheel is temporarily and/or intermittently released.

## B.2 Applicable standards

10. During the Relevant Period:

- (a) before 1 November 2015, all new models of Affected Vehicles first produced before that date and supplied before 1 November 2016 had to be equipped with either an ABS or a braking system that otherwise met the requirements of Annex 5 of *UNECE Regulation No. 13-H – Uniform Provisions Concerning the Approval of Passenger Cars with regard to Braking (UNECE Regulation 13-H)*;

### Particulars

- i. *Vehicle Standard (Australian Design Rule 31/02 – Brake Systems for Passenger Cars) 2009*, cl. 2.1; cl. 2.2; cl. 4.1.
- ii. UNECE Regulation 13-H, cl. 6; Annex 3, cl. 1.

- (b) from 1 November 2015 onwards, all new models of Affected Vehicles first produced on or after that date had to be equipped with an ABS; and

### Particulars

- i. *Vehicle Standard (Australian Design Rule 31/03 – Brake Systems for Passenger Cars) 2013*, cl. 2.1; cl. 4.1; cl. 4.2.
- ii. UNECE Regulation 13-H, cl. 6; Annex 3, cl. 1; Annex 9, Part B, cl. 1.
- iii. *Vehicle Standard (Australian Design Rule 31/04 – Brake Systems for Passenger Cars) 2017*, cl. 3.1; cl. 3.3; cl. 3.5.
- iv. *Vehicle Standard (Australian Design Rule 89/00 – Brake Assist Systems (BAS)) 2017*, cl. 3.1; cl. 5.1; cl. 6.2.
- v. *United Nations Regulation No. 139 – Uniform provisions concerning the approval of passenger cars with regard to Brake Assist Systems (BAS)*, cl. 5.1.

- (c) from 1 November 2016 onwards, all models of Affected Vehicles supplied in Australia had to be equipped with an ABS (together, the **Applicable Standards**).

### Particulars

- i. *Vehicle Standard (Australian Design Rule 31/03 – Brake Systems for Passenger Cars) 2013*, cl. 2.2; cl. 4.1; cl. 4.2.
- ii. UNECE Regulation 13-H, cl. 6; Annex 3, cl. 1; Annex 9, Part B, cl. 1.
- iii. *Vehicle Standard (Australian Design Rule 31/04 – Brake Systems for Passenger Cars) 2017*, cl. 3.1; cl. 3.3; cl. 3.5.

- iv. *Vehicle Standard (Australian Design Rule 89/00 – Brake Assist Systems (BAS)) 2017, cl. 3.1; cl. 5.1; cl. 6.2.*
- v. *United Nations Regulation No. 139 – Uniform provisions concerning the approval of passenger cars with regard to Brake Assist Systems (BAS), cl. 5.1.*

- 11. In order to comply with the Applicable Standards, each Affected Vehicle was equipped with an ABS, which included an ABS Module located in the engine compartment of the vehicle.
- 12. The ABS Module in each Affected Vehicle contains an hydraulic electronic control unit (**HECU**) that is a printed circuit board that performs the control function within the ABS.
- 13. The HECU is constantly powered, even when the Affected Vehicle is switched off.

### **C. THE DEFECT IN THE AFFECTED VEHICLES AND ITS CONSEQUENCES**

- 14. Throughout the Relevant Period, each Affected Vehicle contained, or was part of a model line that contained, an ABS Module with a HECU that, by reason of its design or the design of its componentry, or alternatively the manner in which it was manufactured:
  - (a) was vulnerable to water, moisture and/or other fluid entering the ABS Module and making contact with the HECU;
  - (b) would, or alternatively had a propensity to, experience over time corrosion and/or oxidation of the HECU once water, moisture and/or other fluid came into contact with it; and
  - (c) contained a part or parts in its circuitry that would, or alternatively had a propensity to, short circuit while powered after experiencing corrosion and/or oxidation of the HECU when exposed to water, moisture and/or other fluid (the **Defect**).

#### **Particulars**

- i. Recall published on 16 May 2021 with recall number REC-001594.
- ii. Recall published on 19 January 2023 with a recall number REC-005597.
- iii. Recall published on 9 October 2024 with recall number REC-006103.
- iv. Recall published on 9 October 2024 with recall number REC-006104.
- v. Recall published on 9 October 2024 with recall number REC-006105.
- vi. Recall published on 9 October 2024 with recall number REC-006106.
- vii. Recall published on 9 October 2024 with recall number REC-006107.
- viii. Recall published on 9 October 2024 with recall number REC-006108.
- ix. Recall published on 9 October 2024 with recall number REC-006109.

- x. Recall published on 9 October 2024 with recall number REC-006110.
  - xi. Recall published on 9 October 2024 with recall number REC-006111.
  - xii. Further particulars may be provided after discovery and/or expert evidence.
15. By reason of the Defect, there was a risk that the ABS Module, and as a consequence the engine compartment of an Affected Vehicle, would catch fire if the ABS Module were exposed to water, moisture and/or other fluid.
16. The risk of fire existed both when an Affected Vehicle was turned on or turned off by reason of the matter described at paragraph 13 above.
17. Further, under reasonably expected operating conditions of Affected Vehicles in Australia, the ABS Module including the HECU would be, or was likely to be, exposed to water, moisture and/or other fluid from time to time.
18. During the Relevant Period, the Defect therefore had a propensity to cause Affected Vehicles to experience one or more of the following consequences under reasonably expected operating conditions:
- (a) engine compartment fire;
  - (b) an accident while being driven;
  - (c) serious injury or death to vehicle occupants, other road users and bystanders whether being driven or not; and/or
  - (d) damage to property (the **Defect Consequences**).
19. At the time that each Affected Vehicle was supplied:
- (a) it was fitted with an ABS Module containing the Defect; and
  - (b) by reason of the Defect, it had a propensity to experience one or more of the Defect Consequences.

#### **D. THE PLAINTIFF'S AFFECTED VEHICLE**

20. The Plaintiff's Affected Vehicle was supplied to the Plaintiff fitted with an ABS Module containing the Defect.

#### **E. REPRESENTATIONS CONCERNING THE AFFECTED VEHICLES**

##### **E.1 Representations regarding Affected Vehicles**

21. Throughout the Relevant Period, Kia made statements in printed brochures and online that conveyed the representation that the Affected Vehicles were, or were part of model lines that were, in their design, engineering and manufacturing:
- (a) of high quality;

- (b) safe;
- (c) fit for purpose as passenger vehicles in Australia;
- (d) suitable for use in all reasonably expected operating conditions in Australia; and/or
- (e) not defective (the **Representations**).

#### **Particulars**

- i. The Representations were express or implied.
- ii. The Plaintiff refers to brochures including Kia Sportage 2016 brochure and Kia Stinger 2018 brochure.
- iii. Statements made online concerning the Kia Sportage, Kia Stinger and Kia SLe Sportage were those published on Kia's website, [www.kia.com.au](http://www.kia.com.au), during the relevant period.
- iv. Further particulars may be provided after discovery.

22. The Representations were made to:

- (a) the Plaintiff and Group Members; and/or
- (b) the public.

23. The Representations were continuing representations.

24. Kia did not correct, qualify or relevantly disclaim the Representations during the Relevant Period.

25. Kia's conduct in making, and in failing to correct, qualify or relevantly disclaim, the Representations was conduct in trade or commerce.

#### **E.2 Representations about future matters**

26. Throughout the Relevant Period, Kia made statements in printed brochures and online that conveyed the representation that the Affected Vehicles would be, or were part of model lines that would be, in their design, engineering and manufacturing:

- (a) of high quality;
- (b) safe;
- (c) fit for purpose as passenger vehicles in Australia;
- (d) suitable for use in all reasonably expected operating conditions in Australia; and/or
- (e) not defective (the **Future Matters Representations**).

#### **Particulars**

- i. The Future Matters Representations were express or implied.

ii. The Plaintiff refers to and repeats the particulars at paragraph 21 above.

27. The Future Matters Representations were made to:
- (a) the Plaintiff and Group Members; and/or
  - (b) the public.
28. The Future Matters Representations were representations with respect to future matters within the meaning of s 4 of the ACL.
29. The Future Matters Representations were continuing representations.
30. Kia did not correct, qualify or relevantly disclaim the Future Matters Representations during the Relevant Period.
31. Kia's conduct in making, and in failing to correct, qualify or relevantly disclaim, the Future Matters Representations was conduct in trade or commerce.

### **E.3 The omissions conduct**

32. Throughout the Relevant Period, Kia did not disclose to the public, the Plaintiff or Group Members that:
- (a) Affected Vehicles contained the Defect; or
  - (b) Affected Vehicles had a propensity to experience the Defect Consequences (the **Omissions Conduct**).
33. The Omissions Conduct was conduct in trade or commerce.

### **F. RECALL OF THE AFFECTED VEHICLES IN 2021 AND 2023**

34. On 16 May 2021, Kia issued a recall (REC-001594) in relation to 57,851 Kia Sportage model year 2016, 2017, 2018, 2019, 2020 or 2021 vehicles, and Stinger model year 2017, 2018 and 2019 vehicles, with a VIN recorded in Excel spreadsheets attached to the notice (the **Sportage and Stinger Recall Notice**).
35. The Sportage and Stinger Recall Notice was to the effect that:
- (a) the HECU in the ABS Module can short circuit if moisture enters the HECU; ~~and~~
  - (b) there is a risk of engine fire, even when the vehicle is turned off, which could increase the risk of injury or death to vehicle occupants or bystanders and/or damage to property; ~~and~~
  - (c) vehicles should be parked away from flammable structures or an enclosed area, such as a garage.

36. On 19 January 2023, Kia issued a recall (REC-005597) in relation to 12,050 Kia SLe Sportage model year 2014 or 2015 vehicles with a VIN recorded in an Excel spreadsheet attached to the notice (the **SLe Sportage Recall Notice**).
37. The SLe Sportage Recall Notice was to the effect that:
- (a) the HECU in the ABS Module can short circuit when the components are exposed to moisture;~~and~~
  - (b) there is a risk of engine fire, even when the vehicle is turned off, which could increase the risk of injury or death to vehicle occupants or bystanders and/or damage to property;~~and~~
  - (c) vehicles should be parked away from flammable structures or an enclosed area, such as a garage.

37A. On 9 October 2024, Kia issued recalls (REC-006103, REC-006104, REC-006105, REC-006106, REC-006107, REC-006108, REC-006109, REC-006110, REC-006111) in relation to:

- (a) 1,070 Kia Soul (AM) model year 2010, 2011, 2012 and 2013 vehicles with a VIN recorded in an Excel spreadsheet attached to the notice;
- (b) 12,990 Kia Sorento (XM) model year 2010, 2011, 2012, 2013 and 2014 vehicles with a VIN recorded in an Excel spreadsheet attached to the notice;
- (c) 18,832 Kia Cerato (TD) model year 2009, 2010, 2011, 2012 and 2013 vehicles with a VIN recorded in an Excel spreadsheet attached to the notice;
- (d) 12,685 Kia Sportage (SL) model year 2009, 2010, 2011, 2012 and 2013 vehicles with a VIN recorded in an Excel spreadsheet attached to the notice;
- (e) 7,086 Kia Optima (TF) model year 2010, 2011, 2012, 2013, 2014 and 2015 vehicles with a VIN recorded in an Excel spreadsheet attached to the notice;
- (f) 40,325 Kia Rio (UB) model year 2011, 2012, 2013, 2014, 2015 and 2016 vehicles with a VIN recorded in an Excel spreadsheet attached to the notice;
- (g) 5,858 Kia Sportage (SLe) model year 2013 and 2014 vehicles with a VIN recorded in an Excel spreadsheet attached to the notice;
- (h) 1,163 Kia Rondo (UN) model year 2009, 2010, 2011, 2012 and 2013 vehicles with a VIN recorded in an Excel spreadsheet attached to the notice;
- (i) 1,472 Kia Rondo (RP) model year 2012, 2013, 2014, 2015, 2016, 2017 and 2018 vehicles with a VIN recorded in an Excel spreadsheet attached to the notice,

(together, the **October 2024 Recall Notices**).

37B. The October 2024 Recall Notices were to the same effect as the Sportage and Stinger Recall Notice and the SLe Sportage Recall Notice referred to at paragraphs 35 and 37 above.

38. The Plaintiff's Affected Vehicle was included in the Sportage and Stinger Recall Notice.

**Particulars**

- i. The Plaintiff's Affected Vehicle's VIN is identified in the Excel spreadsheet attached to the Sportage and Stinger Recall Notice.

39. On 17 May 2021:

- (a) the Plaintiff's Affected Vehicle received a regular maintenance schedule service at Essendon Kia; and
- (b) the purported repair mentioned in the Sportage and Stinger Recall Notice was not performed on the Plaintiff's Affected Vehicle because parts were not available.

**Particulars**

- i. Essendon Kia service record for the Plaintiff's Affected Vehicle dated 17 May 2021.

40. Shortly after 17 May 2021, the Plaintiff received the Sportage and Stinger Recall Notice.

41. After receiving the Sportage and Stinger Recall Notice, and based on the information in that Notice, the Plaintiff:

- (a) parked the Plaintiff's Affected Vehicle, when at home, on the street away from her house and nearby buildings;
- (b) felt distress, disappointment and anxiety when driving and/or parking the Plaintiff's Affected Vehicle because of fear that it might catch fire; and
- (c) relied more heavily on the motor vehicle owned by the Plaintiff's husband.

42. On 30 June 2021, Essendon Kia performed the purported repair mentioned in the Sportage and Stinger Recall Notice on the Plaintiff's Affected Vehicle.

**Particulars**

- i. Essendon Kia service record for the Plaintiff's Affected Vehicle dated 30 June 2021.
- ii. Further particulars may be provided following discovery.

43. Since receiving the purported repair mentioned in the Sportage and Stinger Recall Notice, the Plaintiff:

- (a) has continued to feel disappointment and anxiety in relation to the Plaintiff's Affected Vehicle on account of the matters recorded in the Notice;
- (b) but otherwise ceased engaging in the steps pleaded in paragraph 41 above.

## **G. FAILURE TO COMPLY WITH CONSUMER GUARANTEES**

44. The Affected Vehicles were goods of a kind ordinarily acquired for personal, domestic or household use or consumption.
45. The Plaintiff and each Group Member who purchased an Affected Vehicle in the circumstances described in paragraph 1(b)(i) above acquired their Affected Vehicle as a consumer within the meaning of s 3 of the ACL by reason of paragraphs 1(b)(i) or 3 above and:
- (a) that the price paid for the Affected Vehicle did not exceed \$40,000 (for vehicles acquired before 1 July 2021) or \$100,000 (for vehicles acquired from 1 July 2021); or
  - (b) paragraph 44 above.
46. When the Plaintiff's Affected Vehicle was supplied to the Plaintiff, and each Affected Vehicle was supplied to a Group Member in the circumstances described in paragraph 1(b)(i) above, the vehicle was supplied in trade or commerce.
47. By reason of paragraphs 45 and 46 above, there was a guarantee that each Affected Vehicle was of acceptable quality within the meaning of s 54 of the ACL when supplied either to the Plaintiff or Group Members in the circumstances described in paragraph 1(b)(i) above.

### **Particulars**

- i. The ACL applies as a law of the Commonwealth pursuant to s 131(1) of the CCA to supplies of Affected Vehicles by corporations.
- ii. Alternatively:
  - 1. the ACL applies as a law of New South Wales pursuant to s 28 of the *Fair Trading Act 1987* (NSW) to supplies of Affected Vehicles in New South Wales by persons who are not corporations;
  - 2. the ACL applies as a law of the Australia Capital Territory pursuant to s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT) to supplies of Affected Vehicles in the Australian Capital Territory by persons who are not corporations;
  - 3. the ACL applies as a law of the Northern Territory pursuant to s 27 of the *Consumer Affairs and Fair Trading Act* (NT) to supplies of Affected Vehicles in the Northern Territory by persons who are not corporations;
  - 4. the ACL applies as a law of Queensland pursuant to s 16 of the *Fair Trading Act 1989* (Qld) to supplies of Affected Vehicles in Queensland by persons who are not corporations;

5. the ACL applies as a law of South Australia pursuant to s 14 of the *Fair Trading Act 1987* (SA) to supplies of Affected Vehicles in South Australia by persons who are not corporations;
  6. the ACL applies as a law of Tasmania pursuant to s 6 of the *Australian Consumer Law (Tasmania) Act 2020* (Tas) to supplies of Affected Vehicles in Tasmania by persons who are not corporations;
  7. the ACL applies as a law of Victoria pursuant to s 8 of the *Australian Consumer Law and Fair Trading Act 2012* (Vic) to supplies of Affected Vehicles in Victoria by persons who are not corporations; and
  8. the ACL applies as a law of Western Australia pursuant to s 19 of the *Fair Trading Act 2010* (WA) to supplies of Affected Vehicles in Western Australia by persons who are not corporations.
48. By reason of paragraphs 14 to 19 above (and in the case of the Plaintiff's Affected Vehicle, also paragraph 20 above), the Affected Vehicles were not, at the time they were supplied, as:
- (a) fit for all purposes for which goods of that kind are commonly supplied;
  - (b) free from defects;
  - (c) safe; and
  - (d) durable;
- as a reasonable consumer fully acquainted with the state and condition of the Affected Vehicles (including the Defect) would regard as acceptable having regard to:
- (e) the nature of the Affected Vehicles;
  - (f) the price of the Affected Vehicles; and/or
  - (g) the representations pleaded at paragraphs 21 and 26 above.
49. By reason of the matters described in paragraph 48 above, individually and/or cumulatively, each Affected Vehicle, at the time it was supplied to the Plaintiff or a Group Member in the circumstances described in paragraph 1(b)(i) above:
- (a) was not of acceptable quality within the meaning of s 54 of the ACL; and
  - (b) did not comply with the guarantee of acceptable quality that applied to the vehicle under s 54 of the ACL.

**G1. Failure to comply with express warranties under s 59 of the ACL**

**50A. The Representations and/or the Future Matters Representations, individually and/or cumulatively, were assertions and/or representations given or made by Kia that:**

- (a) related to the quality, state, condition, performance or characteristics of the Affected Vehicles;
- (b) were given or made in connection with the supply of the Affected Vehicles or in connection with the promotion by any means of the supply or use of the Affected Vehicles; and
- (c) had the natural tendency to induce persons to acquire the Affected Vehicles; and
- (d) by reason of the preceding matters, were “express warranties” given or made by Kia within the meaning of s 2 of the ACL (**the Express Warranties**).

50B. In the premises, and by reason of the matters pleaded in paragraphs 4(d), 25, 31, 44, 45 and 46, there was a guarantee pursuant s 59 of the ACL that Kia would comply with the Express Warranties in relation to each Affected Vehicle when supplied either to the Plaintiff or Group Members in the circumstances described in paragraph 1(b)(i) above.

50C. The Express Warranties were to the effect that the Affected Vehicles were and/or would be, at the time they were supplied and throughout the Relevant Period:

- (a) of high quality;
- (b) safe;
- (c) fit for purpose as passenger vehicles in Australia;
- (d) suitable for use in all reasonably expected operating conditions in Australia; and/or
- (e) free from defects.

#### **Particulars**

- i. The Plaintiff refers to and repeats paragraphs 21 and 26 the particulars thereto above.

50D. In breach of the Express Warranties, by reason of paragraphs 14 to 19 above (and in the case of the Plaintiff’s Affected Vehicle, also paragraph 20 above), the Affected Vehicles were not, at the time they were supplied and throughout the Relevant Period:

- (a) of high quality;
- (b) safe;
- (c) fit for purpose as passenger vehicles in Australia;
- (d) suitable for use in all reasonably expected operating conditions in Australia; and/or
- (e) free from defects.

50E. By reason of the matters pleaded at paragraph 50D above, the guarantee pleaded in paragraph 50B was not complied with, in relation to each Affected Vehicle, at the time it was

supplied to the Plaintiff or a Group Member in the circumstances described in paragraph 1(b)(i) above.

#### **H. MISLEADING OR DECEPTIVE CONDUCT**

50. By reason of paragraphs 14 to 19 above (and in the case of the Plaintiff's Affected Vehicle, paragraph 20 above also), Affected Vehicles were not, at the time they were supplied and throughout the Relevant Period:

- (a) of good quality;
- (b) safe;
- (c) fit for purpose as passenger vehicles in Australia;
- (d) suitable for use in all reasonably expected operating conditions in Australia; and/or
- (e) not defective.

#### **H1. Misleading or deceptive conduct under s 18 of the ACL**

51. By reason of paragraph 50 above:

- (a) the Representations, individually and/or cumulatively, were misleading or deceptive or likely to mislead or deceive;
- (b) the Future Matters Representations, individually and/or cumulatively, were misleading or deceptive or likely to mislead or deceive; and/or
- (c) the failure to correct, qualify or relevantly disclaim during the Relevant Period the Representations and/or the Future Matters Representations, individually and/or cumulatively, was misleading or deceptive or likely to mislead or deceive.

52. Further or alternatively:

- (a) Kia did not have reasonable grounds for making the Future Matters Representations throughout the Relevant Period; and

#### **Particulars**

- i. The Plaintiff refers to and repeats paragraphs 14 to 19.
- ii. Further particulars may be provided after discovery.

- (b) the Future Matters Representations are therefore taken to have been misleading by operation of s 4(1) of the ACL.

53. Further:

- (a) because a reasonable consumer would not have regarded an Affected Vehicle containing the Defect as being of acceptable quality, there existed a reasonable

expectation throughout the Relevant Period that Kia would inform consumers of the Defect before they purchased Affected Vehicles; and

- (b) by reason of this expectation and paragraph 50 above, the Omissions Conduct during the Relevant Period was misleading or deceptive or likely to mislead or deceive.

54. By reason of the matters pleaded in paragraphs 21 to 33, 50, 51, 52 and/or 53 above, Kia engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, in contravention of s 18 of the ACL.

## **H2. False or misleading representations under s 29 of the ACL**

55. Each time Kia made the Representations and/or the Future Matters Representations, individually and/or cumulatively, those representations:

- (a) were made in connection with the supply or possible supply of Affected Vehicles or in connection with the promotion by any means of the supply or use of Affected Vehicles;
- (b) constituted a representation that Affected Vehicles are of a particular standard, quality, grade and/or composition within the meaning of s 29(1)(a) of the ACL that was false or misleading by reason of paragraphs 50 and/or 52 above; and
- (c) constituted a representation that Affected Vehicles have certain performance characteristics and/or uses within the meaning of s 29(1)(g) of the ACL that was false or misleading by reason of paragraph 50 and/or 52 above.

56. By reason of paragraphs 21 to 23, 25 to 29, 31, 50 and 55 above, Kia contravened s 29(1) of the ACL each time it made, individually and/or cumulatively, the Representations or the Future Matters Representations.

## **H3. Conduct liable to mislead the public under s 33 of the ACL**

57. By reason of paragraphs 21 to 33, 50, 51, 52 and/or 53 above:

- (a) the making of the Representations and/or Future Matters Representations, individually and/or cumulatively;
- (b) the failure to correct, qualify or relevantly disclaim the Representations and/or the Future Matters Representations, individually and/or cumulatively, during the Relevant Period; and/or
- (c) the Omissions Conduct;

was conduct by Kia that was liable to mislead the public as to the nature, characteristics and/or the suitability for purpose of Affected Vehicles in contravention of s 33 of the ACL.

## I. CAUSATION

58. In relation to each Affected Vehicle, because of the failure to comply with the guarantee of acceptable quality as pleaded in paragraph 49 and/or the failure to comply with the guarantee as to express warranties in s 59 of the ACL pleaded in paragraph 50E above, there was:

- (a) a resulting reduction in the value of that Affected Vehicle; and/or
- (b) reasonably foreseeable loss or damage suffered by the Plaintiff or Group Members (as applicable) who acquired the Affected Vehicle.

### Particulars

- i. There was a reduction in value of each Affected Vehicle at the time of supply (in the circumstances described at paragraph 1(b)(i) above) because the vehicle was worth less than it would have been worth had the guarantee of acceptable quality been complied with, and the Plaintiff or Group Members (as applicable) who acquired that vehicle overpaid for it as a result.
- ii. As to reasonably foreseeable loss or damage suffered by the Plaintiff and Group Members (as applicable) who acquired the Affected Vehicle:
  - 1. the Plaintiff and Group Members paid more GST and stamp duty than they would have paid had the guarantee of acceptable quality been complied with and they had not overpaid for the vehicle;
  - 2. the Plaintiff and at least some Group Members, who financed some or all of their purchase, paid more financing costs (such as interest) than they would have paid had the guarantee of acceptable quality been complied with and they had not overpaid for the vehicle;
  - 3. at least some Group Members incurred expenses (such as taxi fares or other transportation expenses) because they were required to take their Affected Vehicle to a Dealer in response to the Sportage and Stinger Recall Notice ~~and~~, the SLe Sportage Recall Notice and the October 2024 Recall Notices were without their vehicle for a period of time;
  - 4. at least some Group Members were not able to work while their Affected Vehicle was at a Dealer in response to the Sportage and Stinger Recall Notice ~~and~~, the SLe Sportage Recall Notice and the October 2024 Recall Notices therefore causing them to lose income;

5. at least some Group Members suffered damage to property and further damage to the Affected Vehicle as a result of engine compartment fires caused by the Defect;
6. the Plaintiff and at least some Group Members suffered loss of amenity, vexation, distress and disappointment.

iii. Further particulars may be provided after expert evidence.

59. But for Kia having:

- (a) engaged in any or all of the misleading or deceptive conduct pleaded at paragraph 54 above;
- (b) made any or all of the false or misleading representations pleaded at paragraph 56 above; and/or
- (c) engaged in any or all of the conduct liable to mislead the public pleaded at paragraph 57 above;

the Plaintiff would not have acquired the Plaintiff's Affected Vehicle and Group Members either:

- (d) would not have acquired their Affected Vehicle(s); or
- (e) alternatively, would have paid a lower price for their Affected Vehicle than the price they in fact paid.

#### **Particulars**

- i. But for the misleading conduct alleged, the Affected Vehicle(s) would not have been offered for sale, or alternatively, if they were offered for sale, would not have been acquired by the Plaintiff or Group Members.
- ii. Insofar as the Affected Vehicle(s) still would have been offered for sale, or Group Members still would have acquired the Affected Vehicle(s), the Affected Vehicle(s) would have been sold at a lower price than was actually paid, because the price would have reflected the reduction in value of the Affected Vehicle(s) resulting from the Defect.

#### **J. LOSS OR DAMAGE SUFFERED BY THE PLAINTIFF AND GROUP MEMBERS**

60. The Plaintiff and Group Members have suffered loss or damage because of the failure to comply with the guarantee of acceptable quality pleaded in paragraph 49 and/or the failure to comply with the guarantee as to express warranties in s 59 of the ACL pleaded in paragraph 50E above, by reason of the matters pleaded in paragraphs 41 and 58 above.

#### **Particulars**

- i. The Plaintiff suffered the following loss or damage:
  1. Reduction in value of the Plaintiff's Affected Vehicle resulting from the failure to comply with the guarantee of acceptable quality below the lower of:
    - a. the price paid for the Plaintiff's Affected Vehicle; and
    - b. the average retail price of the Plaintiff's Affected Vehicle as at 18 June 2018.
  2. Excess GST and stamp duty paid in connection with acquiring the Plaintiff's Affected Vehicle at a price which did not account for the reduction in value of that vehicle as described in 1 above.
  3. Excess financing costs paid in connection with acquiring the Plaintiff's Affected Vehicle at a price which did not account for the reduction in value of that vehicle as described in 1 above.
  4. Loss of amenity, vexation, distress and disappointment since shortly after 17 May 2021.
- ii. Insofar as Group Members are concerned:
  1. Each Group Member suffered a reduction in value of their Affected Vehicle resulting from the failure to comply with the guarantee of acceptable quality below the lower of:
    - a. the price paid by the consumer for the Affected Vehicle; and
    - b. the average retail price of the Affected Vehicle as at the time of supply to the consumer.
  2. Each Group Member suffered excess GST and stamp duty paid in connection with acquiring their Affected Vehicle at a price which did not account for the reduction in value of that vehicle as described in 1 above.
  3. Some or all Group Members suffered excess financing costs paid in connection with acquiring their Affected Vehicle at a price which did not account for the reduction in value of that vehicle as described in 1 above.
  4. Some or all Group Members incurred expenses (such as taxi fares or other transportation expenses) in connection with being required to take their Affected Vehicle to a Dealer in response to the Sportage

and Stinger Recall Notice ~~and~~ the SLe Sportage Recall Notice and the October 2024 Recall Notices.

5. Some or all Group Members suffered lost income during the period when their Affected Vehicle was required to be taken to a Dealer in response to the Sportage and Stinger Recall Notice ~~and~~ the SLe Sportage Recall Notice and the October 2024 Recall Notices.
  6. Some Group Members suffered damage to property (including real and personal property) as a result of engine compartment fires caused by the Defect.
  7. Some Group Members suffered loss of amenity, vexation, distress and disappointment.
  8. Further particulars of the extent of Group Member's loss and damage may be provided following discovery and expert evidence and prior to the trial.
61. The Plaintiff is an affected person within the meaning of s 271(1), s 271(5) and s 272(1) of the ACL, because she acquired the Plaintiff's Affected Vehicle as a consumer.
62. Each Group Member is an affected person within the meaning of s 271(1), s 271(5) and s 272(1) of the ACL, because each Group Member acquired their Affected Vehicle:
- (a) as a consumer; or
  - (b) from a person who acquired the vehicle as a consumer, but other than for the purpose of re-supply.
63. The Plaintiff and Group Members have suffered loss or damage because of Kia's contraventions of ss 18, 29 and/or 33 of the ACL pleaded in paragraphs 54, 56 and 57 above.

### **Particulars**

- i. The Plaintiff suffered the following loss or damage:
  1. The difference between the price paid for the Plaintiff's Affected Vehicle and the true value of the vehicle as at 28 June 2018.
  2. Excess GST or stamp duty paid in connection with the overpayment on the Plaintiff's Affected Vehicle above the true value of the vehicle described in 1 above.
  3. Excess financing costs paid in connection with the overpayment on the Plaintiff's Affected Vehicle above the true value of the vehicle described in 1 above.

4. Loss of amenity, vexation, distress and disappointment from shortly after 17 May 2021.
- ii. Insofar as Group Members are concerned:
1. Each Group Member suffered a loss equal to the difference between the price they paid for their Affected Vehicle and its true value at the time of supply.
  2. Each Group Member suffered excess GST and stamp duty paid in connection with the overpayment on their Affected Vehicle above the true value of the vehicle described in 1 above.
  3. Some or all Group Members suffered excess financing costs paid in connection with the overpayment on their Affected Vehicle above the true value of the vehicle described in 1 above.
  4. Some or all Group Members who otherwise would not have acquired their Affected Vehicle had they been informed of the Defect incurred expenses (such as taxi fares or other transportation expenses) in connection with being required to take their Affected Vehicle to a Dealer in response to the Sportage and Stinger Recall Notice ~~and~~, the SLe Sportage Recall Notice and the October 2024 Recall Notices.
  5. Some or all Group Members who otherwise would not have acquired their Affected Vehicle had they been informed of the Defect suffered lost income during the period when their Affected Vehicle was required to be taken to a Dealer in response to the Sportage and Stinger Recall Notice ~~and~~, the SLe Sportage Recall Notice and the October 2024 Recall Notices.
  6. Some Group Members suffered damage to property as a result of engine compartment fires caused by the Defect.
  7. Some Group Members suffered loss of amenity, vexation, distress and disappointment.
  8. Further particulars of the extent of Group Member's loss and damage may be provided following discovery and expert evidence and prior to the trial.

**K. RELIEF CLAIMED**

64. The Plaintiff claims in her own right, and on behalf of Group Members, the following relief:

- (a) damages pursuant to s 236(1) of the ACL for the loss or damage suffered because of Kia's contraventions of ss 18, 29 and/or 33 of the ACL by the Plaintiff, and by Group Members who acquired their Affected Vehicle within six years of the day on which this proceeding was commenced;
- (b) damages pursuant to ss 271 and 272 of the ACL for the reduction in value of the Plaintiff's Affected Vehicle and each Group Member's Affected Vehicle resulting from the failure to comply with the guarantee of acceptable quality in s 54 of the ACL and/or the failure to comply with the guarantee as to express warranties in s 59 of the ACL, and the reasonably foreseeable loss or damage that she and Group Members suffered because of that failure;
- (c) an award or awards of damages for Group Members:
  - (i) pursuant to s 33Z(1)(e) of the SC Act, being damages consisting of specified amounts or amounts worked out in such manner as the Court specifies for the reduction in value of all Affected Vehicles at the time of supply (or the difference between the price paid for all Affected Vehicles and their true value at the time of supply) and such reasonably foreseeable loss or damage suffered by Group Members that is amenable to determination on a common basis; or
  - (ii) in the alternative, pursuant to s 33Z(1)(f) of the SC Act, being an award of damages in an aggregate amount for the reduction in value of all Affected Vehicles at the time of supply (or the difference between the price paid for all Affected Vehicles and their true value at the time of supply) and such reasonably foreseeable loss or damage suffered by Group Members that is amenable to determination on a common basis;
- (d) interest;
- (e) costs;
- (f) a group costs order pursuant to s 33ZDA(1) of the SC Act; and
- (g) such other order as the Court thinks fit.

## **L. COMMON QUESTIONS**

65. The questions of law or fact common to the claims of Group Members are:

- (a) Whether Affected Vehicles were equipped with, or were part of model lines equipped with, an ABS Module containing the Defect.
- (b) Whether Affected Vehicles equipped with an ABS Module containing the Defect had a propensity to experience one or more of the Defect Consequences during the Relevant Period.

- (c) Whether Kia made the Representations and/or Future Matters Representations during the Relevant Period.
- (d) Whether Kia failed to correct, qualify or relevantly disclaim the Representations and/or Future Matters Representations during the Relevant Period.
- (e) Whether Kia engaged in the Omissions Conduct during the Relevant Period.
- (f) Whether the Affected Vehicles failed to comply with the guarantee of acceptable quality within the meaning of s 54 of the ACL at the time they were supplied.
- (fa) Whether there was non-compliance with the guarantee as to Express Warranties under s 59 of the ACL in relation to the Affected Vehicles?
- (g) Whether the Representations and/or failure to correct, qualify or relevantly disclaim the Representations, individually and/or cumulatively, were misleading or deceptive conduct in contravention of s 18 of the ACL, or conduct liable to mislead the public in contravention of s 33 of the ACL.
- (h) Whether Kia lacked reasonable grounds for making the Future Matters Representations.
- (i) Whether the Future Matters Representations and/or failure to correct, qualify or relevantly disclaim the Future Matters Representations, individually and/or cumulatively, were misleading or deceptive conduct in contravention of s 18 of the ACL, or conduct liable to mislead the public in contravention of s 33 of the ACL.
- (j) Whether the Representations and/or Future Matters Representations, individually and/or cumulatively, were false or misleading representations in contravention of s 29 of the ACL.
- (k) Whether the Omissions Conduct was misleading or deceptive conduct in contravention of s 18 of the ACL, or conduct liable to mislead the public in contravention of s 33 of the ACL.
- (l) Whether there was a reduction in value of Affected Vehicles resulting from the failure to comply with the guarantee of acceptable quality, and if so, how much.
- (m) Whether Group Members suffered reasonably foreseeable loss or damage in the nature of excess GST and stamp duty because of the failure of Affected Vehicles to comply with the guarantee of acceptable quality, and if so, how much.
- (n) Whether Group Members are entitled to recover damages pursuant to ss 271 and 272 of the ACL for the amounts determined in (l) or (m).
- (o) Whether Kia's conduct or representations in contravention of ss 18, 29 and/or 33 of the ACL caused Group Members to suffer loss or damage in the nature of an overpayment

for their Affected Vehicle, and excess GST and stamp referable to that overpayment, and if so, how much.

- (p) Whether Group Members are entitled to recover damages pursuant to s 236 of the ACL for the amounts determined in (o).
- (q) In respect of any damages pursuant to ss 236, 271 and/or 272 of the ACL to which Group Members are entitled, whether there should be:
  - (i) an award of damages for Group Members pursuant to s 33Z(1)(e) of the SC Act; or
  - (ii) an award of damages in an aggregate amount pursuant to s 33Z(1)(f) of the SC Act.
- (r) If it is appropriate to award damages pursuant to either s 33Z(1)(e) or s 33Z(1)(f) of the SC Act, the appropriate form of the relief and the appropriate quantum of damages to be awarded.
- (s) Whether Group Members are entitled to recover interest on any damages amounts awarded, and if so, how much.

DATED: ~~24 April 2023~~ 22 December 2025

W A D EDWARDS SCKC

P J STRICKLAND

R SINGLETON

*Maurice Blackburn Lawyers*

**Maurice Blackburn Lawyers**  
Solicitors for the Plaintiff