

1. As to Paragraph 5 of the Statement of Claim:

- (a) the Cruise was booked on or about 7 March 2017;
- (b) the Cruise was booked by the Applicant attending with her husband Lee Jackson attending in person at Tripaway Cruise & Travel located in Tweed Heads Shopping Mall and discussing same with the travel agency representative, Chelsea;
- (c) the payment for the booking was made by the Applicant and her husband Lee Jackson of the sum of or about \$2,700 to Tripaway Cruise & Travel by cash; and
- (d) the relevant contracts entered into by the Applicant upon booking the cruise, included the P&O Terms and Conditions (of which the Applicant does not have a copy) and the P&O cruise ticket which is referenced in the attached Document Schedule and a copy of which will be provided herewith.

2. As to Paragraph 6 of the Statement of Claim:

- (a) the pleaded itinerary was advertised by P&O Cruises Australia;
- (b) the pleaded itinerary was advertised:-
 - (i) on the Respondent's website <https://www.pocruises.com.au/> ;
 - (ii) in a P&O brochure;
- (c) the pleaded itinerary was advertised in January – April 2017;
- (d) the Applicant does not have a copy of the website or P&O brochure.

3. As to Paragraph 9 (a) of the Statement of Claim, particulars of the "rights, benefits, facilities and privileges" alleged to have been what the Respondent promised to supply are the following:-

- (a) sea passage from Brisbane to Noumea, Lifou, Port Vila and return to Brisbane;
- (b) facilities to disembark and visit such foreign ports;
- (c) extensive facilities for relaxation including Oasis and the Lido pool deck;
- (d) extensive on-board entertainment, including comedy nights, an open air cinema to watch movies and original production live performance shows in the Marquee;
- (e) themed events for passengers including a high-end Gatsby night cocktail party and the P&O White party, the "biggest night on the ship";

- (f) extensive on-board activities including deck games, a deck for walking and viewing the sea (Promenade deck), rock climbing, a flying fox, a tennis court, a basketball court and the P&O Edge Adventure Park;
 - (g) a "Stress less" experience;
 - (h) an "Escape to a remote island or local hideaway";
 - (i) a "Dream holiday" which could be made an "event";
 - (j) the means of "floating away" her "troubles";
 - (k) the "fastest way to slow down";
 - (l) holiday enjoyment as soon as she took a 'step onboard – no stress',
4. As to Paragraphs 9(b), 10 and 11 of the Statement of Claim, the "Services" alleged to have been supplied by the Respondent to the Applicant and other group members was a holiday experience by way of an enjoyable and comfortable sea passage from Brisbane to Noumea, Lifou, Port Vila and return to Brisbane together with by all of the specified rights, benefits, facilities and privileges specified in paragraph 3 above.
5. As to Paragraph 12 of the Statement of Claim:
- (a) the advertisements are alleged to have been made:-
 - (i) on the Respondent's website at <https://www.pocruises.com.au/>;
 - (ii) in a P&O brochure;
 - (b) the pleaded representations or indications that are alleged to have been expressly made by way of the following statements that appeared on the website and in the brochure are that the Applicant's holiday would include:-
 - (i) a "Stress less"¹ experience;
 - (ii) an "Escape to a remote island or local hideaway"²;
 - (iii) a "Dream holiday" which could be made an "event"³;

¹https://www.pocruises.com.au/?gclid=EAIaIQobChMI17at7_m-1gIV1BFoCh10OQeNEAAYASAAEgITxuD_BwE&mkwid=snNrboWb0_182904972136_p%26o_e_c&mtid=29439mm27589&slid=&product_id=&cp1=38776583426&cp2=aud-338001650858:kwd-91582063.

² Ibid.

³ Ibid.

- (iv) the "floating away" of her "troubles"⁴;
 - (v) the "fastest way to slow down"⁵;
 - (vi) holiday enjoyment as soon as she took a 'step onboard – no stress'⁶;
and
 - (vii) extensive on-board entertainment⁷;
 - (viii) themed events for passengers⁸;
 - (ix) extensive on-board activities⁹; and
 - (x) extensive facilities for relaxation¹⁰.
- (c) the pleaded representations or indications are alleged to have been expressly made:-
- (i) to the Applicant at her home when she browsed the Respondent's website;
 - (ii) to the Applicant at Tripaway Cruise & Travel located in Tweed Heads Shopping Mall when she read the P&O brochure.
- (d) the pleaded representations or indications are alleged to have been impliedly made:-
- (i) to the Applicant at her home when she browsed the Respondent's website;
 - (ii) to the Applicant at Tripaway Cruise & Travel located in Tweed Heads Shopping Mall when she read the P&O brochure.
- (e) the implications from the pleaded representations are alleged to have arisen by reason of the graphic depiction of:-
- (i) enjoyable, pleasant and stress-free scenes and occasions; and
 - (ii) happy, active and relaxed people,
- on the website and in the brochure.
- (f) the pleaded representations or indications are alleged to be common to all group members.

6. As to Paragraph 14 of the Statement of Claim:

- (a) the particulars sought in respect of sub-paragraph A(i) are those set out in paragraph 5 above in relation to paragraph 12 of the Statement of Claim.

⁴ <https://www.pocruises.com.au/ships>

⁵ <https://www.pocruises.com.au/holiday-types/sea-breaks>

⁶ Ibid.

⁷ <https://www.pocruises.com.au/experiences/at-sea/entertainment>

⁸ <https://www.pocruises.com.au/>

⁹ <https://www.pocruises.com.au/experiences/at-sea/play>

¹⁰ <https://www.pocruises.com.au/ships/pacific-aria>

(b) in respect of sub-paragraph A(ii):-

- (i) the Respondent "held itself out as supplying recreation services" by reason of the express and implied representations particularised in respect of paragraph 12 of the Statement of Claim in paragraph 5 above;
- (ii) the recreation services it is alleged that the respondent held itself out as supplying are those of relaxation, enjoyment, entertainment, ship-board pleasure and ship-board passage to "top" South Pacific destinations; and
- (iii) the Purpose and nature of the transaction have already sufficiently particularised above or in the Statement of Claim and further particulars are neither necessary nor desirable.

7. As to Paragraph 15 of the Statement of Claim:

(a) the particulars sought in respect of sub-paragraph A(i) are those set out in paragraph 5 above in relation to paragraph 12 of the Statement of Claim.

(b) in respect of sub-paragraph A(ii):-

- (i) the Respondent "held itself out as supplying recreation services" by reason of the express and implied representations particularised in respect of paragraph 12 of the Statement of Claim in paragraph 5 above;
- (ii) the recreation services it is alleged that the respondent held itself out as supplying are those of relaxation, enjoyment, entertainment, ship-board pleasure and ship-board passage to "top" South Pacific destinations; and
- (iii) the Result and nature of the transaction have already sufficiently particularised above or in the Statement of Claim and further particulars are neither necessary nor desirable.

8. As to Paragraph 33 of the Statement of Claim such documents containing the information pleaded are referenced in the attached Document Schedule and copies will be provided herewith.

9. As to Paragraph 34 of the Statement of Claim such documents containing warnings published on the "DFA" [sic] internet site are referenced in the attached Document Schedule and copies will be provided herewith.

10. As to Paragraph 37 of the Statement of Claim such notification(s) relating to the upgrade of Cyclone Donna to category 4 are referenced in the attached Document Schedule and copies will be provided herewith.

11. As to Paragraph 38 (a) of the Statement of Claim:

(a) it is alleged that the activities and facilities referred to in (b) below were not open onboard the Ship and that some of the following on-board entertainment was not provided in that:-

- (i) comedy events;

- (ii) live performance shows in the Marquee;
- (iii) cinema; and
- (iv) themed events,

they did not proceed on days and times that the Applicant is presently unable to specify. If such allegation is denied by the Respondent when pleaded to, the Applicant will consider providing further particulars at that time;

(b) the activities and facilities that were not open onboard the Ship were when it was at sea on the following days:

	<i>6 May</i>	<i>7 May</i>	<i>8 May</i>	<i>9 May</i>	<i>10 May</i>	<i>11 May</i>
Oasis pool	x	x	x	x	x	x
Oasis sun lounges	x	x	x	x	x	x
P&O Edge Adventure Park	x	x	x	x	x	x
Lido pool	x	x	x	x	x	x
Lido hot tubs	x	x	x	x	x	x
Lido deck (partial)	x	x	x	x	x	x
Tennis court	x	x	x	x	x	x
Basketball court	x	x	x	x	x	x
Flying fox	x	x	x	x	x	x
Rock climbing climb	x	x	x	x	x	x
Golf putting	x	x	x	x	x	x
Table tennis	x	x	x	x	x	x
Quoits	x	x	x	x	x	x
Promenade deck	x	x	x	x	x	x

12. As to Paragraph 38 (b) of the Statement of Claim "it was difficult to move around" in that:-

(a) the following spaces were closed and could not be traversed or accessed

from 6 May:

- (i) Promenade (walking) deck;
- (ii) Deck 12 external areas;
- (iii) Oasis.

(b) the following spaces were impaired:

- (i) Lido deck was very slippery from water and high winds on 6 May and 7 May (until the Ship arrived in Noumea); and then again after departure from Noumea on 8 May until early 12 May.
- (ii) Interior corridors on the Promenade deck after departure from Noumea on 9 and 10 May by reason of:-
 - A. sea water ingress;
 - B. doors in those corridors being closed to restrict such ingress
- (iii) The Dome on deck 12 by reason of water coming in thru light fixtures on 8, 9 and 10 May.

(c) the Applicant was denied the convenience of a prompt elevator service between decks due to several elevators being closed on 10 May and 11 May; and

(d) the continual rocking and swaying of the Ship and crashing of waves into both its sides impeded walking on 6 May and 7 May (until the Ship arrived in Noumea); and then again after departure from Noumea on 8 May until early 11 May.

13. As to Paragraph 38 (c) of the Statement of Claim "the environment was unpleasant" for the periods specified in paragraphs 11 and 12 above.

15. As to Paragraph 44 of the Statement of Claim:-

- a. furniture moved frequently from the time of the Ship's departure from Noumea on 8 May until early 11 May;
- b. the ship listed on the evening of 8 May at about 7:00pm;
- c. water ingressed into corridors on and into some cabins 9 and 10 May.

16. As to Paragraph 45 of the Statement of Claim it is alleged that all group members had the experience pleaded in paragraph 44 in that the Applicant does not know of passengers who did not.

17. As to Paragraph 46 of the Statement of Claim:-

- a. the matters alleged in paragraph 44 occurred on 6 May and 7 May (until the Ship arrived in Noumea); and then again after departure from Noumea on 8 May until early 11 May;
- b. the facilities that are alleged to have been closed are particularised in paragraph 11 above;

- c. some scheduled live shows in the Marquee are alleged to have been cancelled.

18. As to Paragraph 49 of the Statement of Claim:-

- a. the "rights, benefits, facilities and privileges" and the Services to be provided by the Respondent were those particularised in paragraphs 3 and 4 above;
- b. the benefits are alleged to have been marketed by the means specified in paragraph 5 above;
- c. the content of such marketing is alleged to be that specified in paragraph 6 above;
- d. the phrase "the area into which the Ship proposed to travel" is intended to refer to New Caledonia, Vanuatu and their environs;
- e. the material facts relied upon to support the allegations that the matters in paragraph 49 were reasonably foreseeable are those specified in paragraphs 50 and 51 of the Statement of Claim and further particulars thereof is neither necessary nor desirable.

19. The request in relation to paragraph 51 of the Statement of Claim seeks evidence upon which the Applicant proposes to rely, it is not a proper request for particulars.

20. The "alternate route" referred to paragraph 52 (b) and 54 (e) of the Statement of Claim that could have avoided or limited the impact of Cyclone Donna upon the Ship is alleged to have been one to the North from Brisbane rather than Northeast to New Caledonia.

21. The request in relation to paragraphs 54 (a) and 54 (b) of the Statement of Claim seeks evidence upon which the Applicant proposes to rely and is not a proper request for particulars.

22. As to Paragraph 54 (f) of the Statement of Claim, particulars of the manner in which Cyclone Donna impacted the Cruise are set out in paragraphs 11 – 16 above. To the extent that this request seeks evidence upon which the Applicant proposes to rely, it is not a proper request for particulars.

23. As to Paragraph 58 of the Statement of Claim, the nature of the loss sustained by the Applicant is comprised by the following:

- a. damages for disappointment, frustration, distress and vexation to be assessed;
- b. the cost to the Applicant of the ruined holiday comprised by:-
 - (i) the sum paid by the Applicant to the Respondent;
 - (ii) the cost of the Applicant's return travel from her residence at Banora Point in New South Wales to Brisbane;
 - (iii) expenses incurred in relation to long-term parking of the Applicant's vehicle during the period of the Cruise; and
 - (iv) expenses incurred on the Cruise,

full particulars of which will be provided.