

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 5/11/2020 5:02:15 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	NSD1446/2019
File Title:	LYNELLE BOUCHERE v CAR FESTIVALS PTY LTD ABN 70 603 505 728 & ORS
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



*Sia Lagos*

Dated: 6/11/2020 8:38:19 AM AEDT

Registrar

### Important Information

As required by the Court's Rules, 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.

Form 19  
Rule 9.32



**Amended Originating application starting a representative proceeding**  
**under Part IVA of the Federal Court of Australia Act 1976**

No. 1446 of 2019

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Lynelle Bouchere**

Applicant

**Car Festivals Pty Ltd ACN 603 505 728** and others named in the schedule

First Respondent

To the Respondents

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:**

The Court ordered that the time for serving this application be abridged to

**Date:**

Signed by an officer acting with the authority  
of the District Registrar

Filed on behalf of (name & role of party) Lynelle Bouchere, the Applicant  
Prepared by (name of person/lawyer) Gregory Alexander Walsh  
Law firm (if applicable) Greg Walsh & Co Solicitors  
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**Address for service** PO Box 185  
(include state and postcode) Oatley NSW 2223

[Form approved 01/08/2011]



### Details of claim

On the grounds stated in the accompanying Statement of Claim or other document prescribed by the Rules, the Applicant claims:

1. An order for loss or damage pursuant to s 236 and/or s 237 of the *Australian Consumer Law*, Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* (ACL).
2. Further or in the alternative, an order for loss or damage pursuant to s 267 of the ACL.
3. Such further other orders as the Court thinks fit.

### Questions common to claims of group members

The questions of law or fact common to the claims of the group members are:

1. Whether the Respondents supplied, in trade or commerce, the Services (as defined in the Statement of Claim) to the Applicant and Group Members.
2. Whether the Respondents, in supplying the Services to the Applicant and Group Members:
  - (a) Failed to take any or adequate precautions for the safety of the Applicant and Group Members as spectators of the burnout competitions;
  - (b) Failed to take steps to construct a safe barrier between competitors and spectators to prevent inflammable materials dissipating over the spectators at the Spectator Mound;
  - (c) Failed to identify and direct to spectators a safe distance for spectators to observe the burnout competition without exposing spectators to a not insignificant risk of reasonably foreseeable injury;
  - (d) Exposed the Applicant and Group Members to a risk of injury which could have been avoided by reasonable care and skill;
  - (e) Failed to warn the Applicant and Group Members of the dangers to which she/they were exposed as consumers of the Services when standing on the designated Spectator Mound;
  - ~~(f) Failed to observe the Applicant and Group Members were in a position of peril in the circumstances;~~
  - (g) Failed to inspect the burnout pad area to ensure that rubber detritus did not accumulate;
  - (h) Failed to take steps to remove rubber detritus material from the burnout pad area in proximity to spectators;



- (i) ~~Failed to keep a proper look-out;~~
  - (j) Failed to have adequate and immediate emergency medical services available to deal with burns and fire-related injuries.
3. Whether the Respondents guaranteed the Services would be provided to the Applicant and Group Members with due care and skill under s 60 of the ACL.
  4. Whether the Respondents breached the guarantee of due care and skill.
  5. Whether the Respondents knew the purpose for which the Applicant and Group Members acquired the Services was for the safe enjoyment experience as spectators at a recreational motor vehicle event (**Event Purpose**).
  6. Whether the Respondents guaranteed the Services would be fit for the Event Purpose under s 61 of the ACL.
  7. Whether the supply of the Services by the Respondents created an unsafe situation.
  8. Whether the Respondents breached the guarantee as to fitness for the Event Purpose.
  9. Whether the Applicant and Group Members are entitled to recover from the Respondents:
    - (a) Compensation pursuant to s 267 of the ACL; and/or
    - (b) Loss or damage pursuant to s 236 and/or s 237 of the ACL.
  10. Whether the Respondents owed the Applicant and Group Members a duty of care as pleaded at paragraphs 38 and 39 of the Further Amended Statement of Claim.
  11. Whether the Respondents breached the duty of care as pleaded at paragraph 40 of the Further Amended Statement of Claim.

### **Representative action**

The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976*.

The group members to whom this proceeding relates are:

- (a) consumers (within the meaning of s 3 of the ACL) who purchased tickets from the Respondents to attend the Red CentreNATS event held between 1 and 3 September 2017 at the Inland Dragway Alice Springs (**Red CentreNATS**);
- (b) was a spectator of the burnout competitions at the Red Centre NATS on 3 September 2017; and



(c) suffered loss or damage as a result of the Incident (as defined in the Statement of Claim).

**Applicant's address**

The Applicant's address for service is:

Place: PO Box 185, Oatley 2223

Email: gaw@gregwalsh.com

The Applicant's address 21 Moulden Terrace NORTHERN TERRITORY NT 0830

**Service on the Respondent**

It is intended to serve this application on all Respondents.

Date: 5 November 2020

  
Signed by Greg Alexander Walsh  
Lawyer for the Applicant



**Schedule**

No. 1446 of 2019

Federal Court of Australia  
District Registry: New South Wales  
Division: General

**Respondents**

Second Respondent: Northern Territory Major Events Company Pty Ltd  
ACN 085 961 520

Third Respondent Summernats Pty Ltd  
ACN 139 042 961

Date: 5 November 2020