



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

No. S ECI 2020 02853

Case: S ECI 2020 02853

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BETWEEN

TRACY-ANN FULLER and another
(according to the attached Schedule)

Plaintiffs

and

ALLIANZ AUSTRALIA INSURANCE LIMITED (ACN 000 122 850) and another
(according to the attached Schedule)

Defendants

CONSOLIDATED STATEMENT OF CLAIM

(Filed pursuant to the Order of Justice Nichols made on 15 September 2021)

Date of Document: 27 September 2021
Filed on behalf of: The Plaintiffs

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INTRODUCTION

1. The First Defendant (**Allianz**) and Second Defendant (**Allianz Life**) are issuers of a range of insurance products throughout Australia. These proceedings concern four particular insurance products – known as “Add-On Insurance Products” – which were sold to purchasers of motor vehicles and motor cycles (**Vehicles**) at or around the same time as a customer’s purchase of their Vehicle.
2. The Add-On Insurance Products were primarily distributed on behalf of the Defendants by Vehicle dealerships (**Dealers**). Dealers were authorised representatives or agents of Allianz, which meant that they were subject to the same obligations as Allianz as the holder of an Australian Financial Services Licence and Allianz was responsible for their conduct in breach of those obligations.
3. The Add-On Insurance Products shared a common feature, being that they had low “Claims Loss Ratios” or Claims Loss Ratios which were significantly lower than other comparable consumer-oriented general insurance products. As an industry-accepted means of assessing the value of an insurance product, the low Claims Loss Ratios for the Add-On Insurance Products was a significant indicator that they were of no, or no material, financial value to customers.
4. Allianz sought to maximise the sale of the Add-On Insurance Products through a purposely-designed sales system which it trained its Dealers to deploy at the point of sale of a Vehicle (**Allianz Sales System**). That system comprised:
 - a. the payment of substantial commissions and incentives to Dealers which were intended to motivate Dealers to promote and sell the Add-On Insurance Products;
 - b. the training of Dealers in the most effective techniques for promoting and selling the Add-On Insurance Products; and
 - c. the provision of an electronic sales system for the recording of sales and commissions earned.
5. As a consequence of the Allianz Sales System, Dealers commonly engaged in a range of sales techniques designed to sell as many of the Add-On Insurance Products to as many customers as possible. Those tactics included emphasising the benefits of the products, omitting a range of information material to the decision to purchase the products and conveying the impression to customers that the products were valuable and/or necessary. Many Dealers also told customers that the acquisition of the Add-On Insurance Products was a condition of the grant of finance, or simply included the Add-

On Insurance Products in a customer's purchase without the customer knowing or requesting the products.

6. The Plaintiffs bring these proceedings on behalf of customers who acquired one or more of the Add-On Insurance Products since 1 June 2006, as pleaded more particularly at paragraphs 9 and 10 below.
7. Many of the claims brought by the Plaintiffs are common to all Group Members. Namely, the Plaintiffs allege that:
 - a. the Dealers' sale of Add-On Insurance Products was misleading or deceptive under sections 12DA, 12DB and 12DF of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and sections 1041H and 1041E of the *Corporations Act 2001* (Cth) (**Corporations Act**) by reason of their failure to disclose or adequately disclose a range of information material to the decision whether to purchase the products. The matters which Dealers did not disclose or adequately disclose are extensive and are identified at paragraph 78 below. That conduct was misleading because:
 - i. the Plaintiffs and Group Members had a reasonable expectation that those matters would be adequately disclosed having regard to Allianz's and the Dealers' obligations pleaded at paragraphs 22 to 29 with respect to the sale of financial products in an efficient, honest and fair manner, free from conflicts of interest and with balanced general advice as to the products' key features and as to alternative products; and
 - ii. Allianz and the Dealers represented to customers that there were no material matters which a reasonable person would expect to be disclosed which had not been adequately disclosed, further or alternatively that the products had material financial value.
 - b. Allianz's design and deployment of the Allianz Sales System amounted to unconscionable conduct in contravention of section 12DC of the ASIC Act and section 991A of the Corporations Act as pleaded at paragraphs 97 to 105. In broad summary, it was unconscionable because, among other things, it took advantage of:
 - i. customers' behavioural and psychological weaknesses at the point of sale;
 - ii. the asymmetry in customers' information about the products and the customers' inability to obtain independent advice about the products before purchasing them; and

iii. the customers' ignorance of the fact that they were making a decision at the point of sale about whether to acquire the products based on incomplete information.

8. Certain claims arise only with respect to certain Group Members. Specifically:
- a. some Group Members contend that Allianz engaged in misleading or deceptive conduct by conveying to them that the acquisition of the Add-On Insurance Products was a pre-condition for the Dealer assisting them to arrange a loan to purchase the Vehicle (**Finance**) and the Finance was also used to purchase the Add-On Insurance Products; and
 - b. some Group Members contend that during the process of the sale of the Add-On Insurance Products, the Dealers breached their obligations in relation to the provision of personal advice in compliance with sections 961B and 961J of the Corporations Act, including by not informing some Group Members that the paperwork provided to them included the purchase of one or more Add-On Insurance Products, and that Allianz breached its obligation under section 961L to ensure that Dealers complied with sections 961B and 961J.
 - c. some or all Group Members acquired the Add-On Insurance Products while under a mistaken belief of the nature identified in paragraph 106 below and are therefore entitled to restitution of the premiums paid.

A. PARTIES AND GROUP MEMBERS

Group Members

9. This proceeding is commenced as a representative proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) by the Plaintiffs on their own behalf and, subject to paragraph 10 below, on behalf of all persons who:
- a. at any time during the period from 1 June 2006 to 27 September 2021 inclusive (the **Relevant Period**) purchased one or more of the add-on insurance products referred to in paragraph 16 of this Consolidated Statement of Claim (**Add-On Insurance Products**) at or around the time they purchased a Vehicle from a Dealer;
 - b. in conjunction with that purchase were issued or offered one or more Add-On Insurance Products by Allianz, or Allianz and Allianz Life or offered by Allianz on behalf of OnePath Life Limited A.C.N. 009 657 176 (**OnePath**);

- c. became liable to pay, or paid (directly or indirectly), a premium to either of Allianz or Allianz and Allianz Life for the Add-On Insurance Products;
- d. in the case of persons who purchased the Add-On Insurance Products prior to 7 July 2014 did not discover, and could not with reasonable diligence have discovered, any or all of the mistakes pleaded in paragraphs 106 and 107 below, prior to 7 July 2014;
- e. were not, and are not, any of the following:
 - i. a director, an officer, or a close associate (as defined in section 9 of the Corporations Act) of any of the Defendants; or
 - ii. a judge, Associate Judge or Judicial Registrar of the Supreme Court of Victoria;
- f. have suffered loss or damage by reason of the contravening conduct of the Defendants as pleaded in this Consolidated Statement of Claim; and
- g. were and are “consumers” within the meaning of section 12BC of the ASIC Act in their dealings with the Defendants,

(Group Members).

- 10. A person whose claim is governed by the law of the Northern Territory (**Northern Territory Claimant**) is a Group Member if:
 - a. sub-paragraphs 9.a-9.c and 9.f- 9.g above apply; and
 - b. in the case of Northern Territory Claimants who purchased Add-On Insurance Products prior to 7 July 2014 – the person did not discover, and could not with reasonable diligence have discovered, any or all of the mistakes pleaded in paragraphs 106 and 107 below, prior to 7 July 2017.
- 11. As at the date of the commencement of this proceeding, there are seven or more Group Members.

The Plaintiffs

- 12. The First Plaintiff (**Ms Fuller**):
 - a. is a natural person;

- b. was from at least June 2011 to December 2020 employed as a casual traffic controller by Work Force Australia Pty Ltd (ABN 76 618 403 080);
- c. was a member of Sunsuper Pty Ltd being a superannuation fund into which her employer was liable to pay and did pay the superannuation guarantee charge under the *Superannuation Guarantee (Administration) Act 1992* (Cth) (**SGA Payments**); and
- d. by reason of the matters pleaded in sub-paragraph 12.c above, has held total and permanent disability cover and death cover at all times since 2011; and
- e. was and is a 'consumer' within the meaning of section 12BC of the ASIC Act in her dealings with the Defendants.

13. The Second Plaintiff (**Mr Wilkinson**):

- a. is a natural person;
- b. was from at least 2014 to 2016 employed as a casual courier driver by Salway Transport Services Pty Ltd (ABN 59 091 005 944);
- c. was and is a member of Australian Super Pty Ltd, being a superannuation fund into which his employer was liable to pay and did pay SGA Payments; and
- d. by reason of the matters pleaded in sub-paragraph 13.c above, has held total and permanent disability cover and death cover at all times since 2007; and
- e. was and is a 'consumer' within the meaning of section 12BC of the ASIC Act in his dealings with the Defendants.

The Defendants

14. At all material times, Allianz:

- a. was a corporation and capable of being sued;
- b. was a person and a corporation within the meaning of the ASIC Act;
- c. carried on the business of insurance throughout Australia; and
- d. was the holder of an Australian Financial Services Licence (**AFSL**) (No 234708) (**Allianz AFSL**).

15. At all material times, Allianz Life:

- a. was a corporation and capable of being sued;
- b. was a person and a corporation within the meaning of the ASIC Act;
- c. was part of the same corporate group as Allianz;

- d. carried on the business of insurance throughout Australia;
- e. was the holder of an AFSL (No 296559) (**Allianz Life AFSL**); and
- f. acted as the insurer for the “Trauma and Death Cover” component of the Loan Insurance (**Trauma and Death Cover**) issued to certain Group Members.

B. THE ADD-ON INSURANCE PRODUCTS

16. At all material times the following Add-On Insurance Products were issued or offered:

- a. by Allianz and Allianz Life, Loan Protection Insurance (**Loan Insurance**) (also referred to as “repayment insurance” or “consumer credit insurance”), which was a consumer credit insurance product which purported to insure the consumer against circumstances where they might be unable to meet financial obligations associated with Finance obtained to purchase a Vehicle;

Particulars

1. *The terms and conditions upon which Loan Insurance was issued were set out in the relevant Product Disclosure Statements (PDS) and policy cover sheets.*
2. *Further particulars may be provided after discovery and evidence.*

- b. by Allianz:

- i. Motor Equity Insurance (also referred to as “guaranteed asset protection insurance”, “GAP insurance”, “shortfall insurance”, “purchase price insurance” or “value protect insurance”), which purported to insure the consumer against a potential shortfall in the amount they owed under a Finance contract for a Vehicle purchase and the amount of the comprehensive insurance payout on the Vehicle in the event that the Vehicle was written-off;

Particulars

1. *The terms and conditions upon which Motor Equity Insurance was issued were set out in the relevant PDS and policy cover sheets.*
2. *Further particulars may be provided after discovery and evidence.*

- ii. Extended Motor Warranty (**Extended Warranty**), which purported to cover the cost of repairs and replacement of parts of a Vehicle beyond the original manufacturer's warranty period or the standard warranty period for used cars; and

Particulars

1. *The terms and conditions upon which Extended Warranty was issued were set out in the relevant PDS and policy cover sheets.*
2. *Further particulars may be provided after discovery and evidence.*

- iii. Tyre and Rim Insurance, which purported to insure against the risk of accidental damage to the wheels or tyres of a Vehicle.

Particulars

1. *The terms and conditions upon which Tyre and Rim Insurance was issued were set out in the relevant PDS and policy cover sheets.*
2. *Further particulars may be provided after discovery and evidence.*

- iv. Trauma and Death Cover underwritten by OnePath for some Loan Insurance products.

17. Each of the Add-On Insurance Products was a financial product within the meaning of section 12BAA of the ASIC Act and sections 763A and 763C of the Corporations Act.
18. By reason of the matters pleaded in paragraphs 9.b, 9.c and 14 to 16, at all material times:
 - a. Allianz was, in trade or commerce, engaged in the supply of financial services to the Plaintiffs and the Group Members within the meaning of section 12BAB of the ASIC Act; and
 - b. Allianz provided a financial service within the meaning of sections 766A and 766C of the Corporations Act.

Claims Loss Ratio of Add-On Insurance Products

19. The “Claims Loss Ratio” (**Claims Loss Ratio**) of insurance products (including the Add-On Insurance Products), is accepted within the insurance industry as an indicator of the value, or potential value, of the product to the insured.

Particulars

The Claims Loss Ratio is the ratio of claim payments received by policyholders to the premiums paid. It represents the proportion of premium returned to the policyholders in the form of claim payments. Because it represents the primary measure of what policy holders receive back from the insurer compared with what they pay the insurer, it is a primary indicator of consumer value by allowing a comparison of the premiums paid compared with the benefits received.

20. A low Claims Loss Ratio is a significant indicator that the product has no, or no material financial value for the customer.
21. At all material times, the Claims Loss Ratio of the Add-On Insurance Products was:
- a. low; and/or
 - b. significantly lower, or in the alternative, lower, than the Claims Loss Ratio for other consumer-orientated general insurance products, including other Vehicle related insurance, such as comprehensive Vehicle insurance.

C. THE REGULATORY REGIME

Allianz’s AFSL obligations

22. At all material times, Allianz, as the holder of the Allianz AFSL was required to comply with the general obligations imposed upon financial services licensees by sections 912A and 961 of the Corporations Act.
23. In relation to the sale by Allianz of the Add-On Insurance Products, section 912A required Allianz to:
- a. do all things necessary to ensure that the financial services covered by the Allianz AFSL were provided efficiently, honestly and fairly;
 - b. have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by Allianz,

as licensee or by a representative of Allianz in the provision of the financial services as part of the financial services business of the licensee or the representative;

- c. take reasonable steps to ensure its representatives complied with the financial services laws; and
- d. ensure that its representatives were adequately trained to provide financial services (including by complying with section 912D) and were competent to provide financial services.

24. In relation to the sale by Allianz of the Add-On Insurance Products to Group Members, section 961 required Allianz to take reasonable steps to ensure that, if personal advice was provided by Dealers to clients, then the Dealers:

- a. acted in the best interests of the clients in relation to that advice in accordance with section 961B of the Corporations Act;
- b. only provided that advice to clients if it would be reasonable to conclude that the advice was appropriate to the client in accordance with section 961G of the Corporations Act;
- c. warned the clients if it was reasonably apparent to the Dealer that information relating to the objectives, financial situation and needs of the client on which the advice was based was incomplete or inaccurate in accordance with section 961H of the Corporations Act; and
- d. gave priority to the interests of the clients over any other interest in accordance with section 961J of the Corporations Act.

25. At all material times, Allianz, as licensee, and the Dealers, as authorised representatives or agents of Allianz, engaged in conduct that was intended to influence persons to acquire Add-On Insurance Products within the meaning of section 766B(1) of the Corporations Act.

Industry Codes of Practice

26. The Insurance Industry Codes of Practice (2006), (2010), (2012) and (2014) were binding on Allianz at all material times.

27. The Insurance Industry Codes are applicable industry codes within the meaning of section 51ACA of the *Competition and Consumer Act 2010* (Cth).

28. Allianz was required by the terms of the Insurance Industry Codes of Practice to:

- a. (with respect to all codes pleaded in paragraph 26):
 - i. require Dealers as authorised representatives to conduct their sales practices in an honest, fair and transparent manner;
 - ii. only permit Dealers as authorised representatives to perform functions that matched their expertise;
 - iii. train Dealers as authorised representatives to carry out their sales tasks and functions competently; and
 - iv. require Dealers as authorised representatives to inform the Plaintiffs and Group Members of the service they have been asked to provide and the identity of the insurer;
- b. (with respect to the 2006, 2010 and 2012 Codes):
 - i. train Dealers, as authorised representatives, on the principles of general insurance and any relevant consumer protection law, product knowledge and the requirements of the Insurance Industry Code of Conduct; and
 - ii. measure the effectiveness of training by monitoring the performance of the Dealers and requiring additional or remedial training to address any identified deficiencies;
- c. (with respect to the 2014 Code) provide Dealers as authorised representatives with, or require them to receive, appropriate education and training to provide their services competently and to deal with consumers professionally, including training on the Code, measure the effectiveness of training by monitoring the performance of authorised representatives' services and to correct any identified performance shortcoming.

29. In the premises of paragraphs 22 to 28, in marketing and selling the Add-On Insurance Products to prospective purchasers, including the Plaintiffs and Group Members, Allianz was required to:

- a. ensure that the Dealers as authorised representatives were adequately trained and that the effectiveness of such training was monitored;
- b. ensure that systems existed for regulating any conflict of interest that existed between the Dealers and the Plaintiffs and Group Members;
- c. provide fair and balanced general advice to the Plaintiffs and Group Members of the features of the Add-On Insurance Products including general advice as to:

- i. the key features of Add-On Insurance Products (including their advantages and disadvantages); and
- ii. general alternatives to acquiring Add-On Insurance Products.

D. THE ALLIANZ SALES SYSTEM

30. From a date known to Allianz but not known to the Plaintiffs, Allianz designed, implemented and operated a system for the sale of Add-On Insurance Products, being the Allianz Sales System, which comprised at least the following elements:
- a. the sale of the Add-On Insurance Products to prospective purchasers (which included the Plaintiffs and the Group Members) by Dealers on behalf of Allianz (as pleaded in paragraphs 31 to 33);
 - b. a structure for the payment of substantial commissions and incentives designed to motivate and incentivise the Dealers to promote and sell Allianz's Add-On Insurance Products (as pleaded in paragraphs 34 to 37);
 - c. the provision of instruction, direction and training to the Dealers regarding the most effective techniques for promoting and selling the Add-On Insurance Products (as pleaded in paragraph 40); and
 - d. the provision of an electronic sales system to record sales made and commissions earned (as pleaded in paragraph 41),

Dealers as authorised representatives of Allianz

31. From a date known to Allianz but not known to the Plaintiffs, each type of Add-On Insurance Product was sold through Dealers.
32. Each of the Add-On Insurance Products were sold by Dealers as:
- a. authorised representatives of Allianz within the meaning of sections 761A and 916A(1) of the Corporations Act; and/or
 - b. as agents of Allianz.
33. Allianz acted as agent for Allianz Life and/or OnePath in respect of the issuing of Trauma and Death Cover portion of the Loan Insurance Add-On Insurance Product to the Plaintiffs and certain Group Members.

Commissions and Incentives

34. From a date known to Allianz but not known to the Plaintiffs, each Dealer was compensated by one or both of the Defendants for their role in promoting and selling the Add-On Insurance Products. This was done through the payment of commissions, with different rates of commission attaching to the different Add-On Insurance Products (**Product Commissions**).
35. From a date known to Allianz but not known to the Plaintiffs, each Dealer was paid by one or both of the Defendants additional commissions to the Product Commissions through an incentive scheme for the sale of certain volumes of Add-On Insurance Products (**Volume Commissions**).
36. At all material times, the Dealers earned very thin margins on the Vehicles they sold and therefore the income generated by the Product Commissions and Volume Commissions represented a significant source of profits for the Dealers.
37. At all material times the commission arrangements pleaded at paragraphs 34 to 35 above were put in place by Allianz in order to incentivise Dealers to sell as many of the Add-On Insurance Products as possible.
38. Because the commission arrangements pleaded at paragraphs 34 to 35 above incentivised Dealers to sell as many Add-On Insurance Products as possible, those arrangements:
 - a. provided an incentive for Dealers to:
 - i. sell Add-On Insurance Products to consumers irrespective of whether they were suitable for a consumer's needs; and
 - ii. emphasise the advantages of the Add-On Insurance Products rather than providing fair and balanced information to prospective purchasers about the advantages and disadvantages of the Add-On Insurance Products as well as other alternative products that were available;
 - b. thereby created a conflict of interest or potential conflict of interest between:
 - i. the financial interest of the Dealers in selling as many of the Add-On Insurance Products to consumers as possible in order to earn substantial commissions and
 - ii. the interests of prospective purchasers in obtaining all material information about the Add-On Insurance Products and in only acquiring products that were suitable for them and value for money.

39. In the premises of paragraphs 34 to 38 above, the commission arrangements made it likely that Dealers would engage in sales techniques designed to persuade prospective purchasers to purchase the Add-On Insurance Products including by:
- a. emphasising to prospective purchasers the benefits of the Add-On Insurance Products rather than providing a fair and balanced explanation of the advantages and disadvantages of the Add-On Insurance Products;
 - b. conveying to prospective purchasers the impression that the acquisition of one or more of the Add-On Insurance Products was necessary in order for them to obtain Finance for the purchase of the Vehicle they were considering buying;
 - c. failing to disclose or adequately disclose to potential purchasers of Add-On Insurance Products all material information about the Add-On Insurance Products that would indicate to potential purchasers that the Add-On Insurance Product(s) they were considering were not suitable for them or would not represent value for money for them;
 - d. giving a recommendation or statement of opinion in relation to the Add-On Insurance Products, in circumstances where it was not reasonable for Dealers to conclude that such advice was appropriate, having regard to their objectives, financial situation and needs; and/or
 - e. including provision for the purchase of one or more Add-On Insurance Products in the transaction documentation for the purchase of the Vehicle and associated Finance, without drawing that to the attention of the customer adequately or at all.

Training for Dealers

40. From a date known to Allianz but not known to the Plaintiffs, Allianz developed and provided training and instruction to the Dealers on how to promote and sell the Add-On Insurance Products to the Dealers' customers using different sales techniques.

Electronic Sales System

41. From a date known to Allianz but not known to the Plaintiffs, Allianz had in place an electronic sales system which could monitor the levels of sales of Add-On Insurance Products by the Dealers and through which the Dealers could ascertain their potential commission on each sale.

Sales System deficiencies

42. At all material times, Allianz was or ought reasonably to have been aware, and it was the fact, that:
- a. the customers to whom the Dealers would or were likely to sell the Add-On Insurance attended the Dealers' businesses for the primary purpose of purchasing a Vehicle and not for the purpose of purchasing Add-On Insurance;
 - b. many of the customers would need to obtain Finance to purchase a Vehicle through the Dealer;
 - c. in arranging Finance for a Vehicle, the practice of the Dealers was to obtain the following personal financial information:
 - i. the customers' income, assets and liabilities; and
 - ii. the customers' employment status, including whether the customers were employees with a regular income;
 - d. in the course of asking customers for the information pleaded at subparagraph (c) above, the Dealers would ascertain that at least some of those customers were employees and were therefore:
 - i. members of superannuation funds; and
 - ii. likely to have income protection insurance, total and permanent disability cover, and death and/or trauma cover through the said memberships,

(the information in (c) and (d) being the **Personal Circumstances Information**).

Particulars

1. *Allianz's state of mind is to be inferred from:*
 - a. *the knowledge of its directors, officers, servants, and agents (**responsible officers**) responsible for:*
 - i. *approving the terms of the agreements by which Dealers were appointed the authorised representatives or agents of Allianz (**Dealer Agreements**);*
 - ii. *approving the terms of Allianz documents provided to Dealers*

for use in connection with arranging Add-On Insurance for customers of the Dealers; further or alternatively

- iii. training and supervising Dealers in relation to arranging Add-On Insurance for customers of the Dealers;*
- b. Allianz's business arrangements with the Dealers, including the establishment of the Dealer Agreements and the operation of the Allianz Sales System;*
- c. Allianz's purported compliance with its obligations in respect of the sale of Add-On Insurance Products;*
- d. the circumstance that the process of negotiating and purchasing Vehicles from Dealers is a matter of common experience;*
- e. the circumstance that, as authorised representatives or agents of Allianz, the knowledge of the Dealers as to the characteristics of their customers may imputed to Allianz as principal; and*
- f. its awareness of the practice of Dealers in collecting the Personal Circumstances Information from customers.*

2. Further particulars may be provided after discovery.

43. At all material times, Allianz, by its responsible officers, knew or ought reasonably to have known, and it was the fact, that by reason of the Product Commissions and/or the Volume Commissions, the Dealers had a financial incentive to:
- a. sell as many of the Add-On Insurance Products as possible, irrespective of whether the insurance was suitable for the customers' needs;
 - b. emphasise to customers the advantages of the Add-On Insurance Products, rather than providing fair and balanced information to customers about the advantages and disadvantages of the Add-On Insurance Products or about alternative products that were available and likely to be suitable;
 - c. convey to customers the impression that purchasing one or more of the Add-On Insurance Products was necessary or desirable in order for the customers to obtain Finance for the purchase of the Vehicle they were considering buying;
 - d. add one or more Add-On Insurance Products to the customers' Finance documents without drawing the addition to the attention of the customer adequately or at all;
 - e. not advise, recommend or suggest the customers seek independent advice as

to whether the Add-On Insurance Products were suitable for the customers, having regard to the customers' personal circumstances;

- f. not encourage customers to review and consider the PDS and/or the Financial Services Guide (**FSG**) in respect of the Add-On Insurance Products;
- g. not provide the customers with the PDS or FSG in respect of the Add-On Insurance Products at all, alternatively with sufficient opportunity for the customers to review, consider and take advice about the PDS or FSG; further or alternatively
- h. not disclose the terms by which the Product Commissions or the Volume Commissions were calculated.

Particulars

- 1. *Allianz's state of mind is to be inferred from its knowledge of the design of the Product Commissions and Volume Commissions.*
- 2. *The Plaintiffs otherwise refer to and repeat the particulars under paragraph 42 above.*
- 3. *Further particulars may be provided after discovery.*

44. At all material times, Allianz, by its responsible officers, knew or ought reasonably to have known, and it was the fact, that, notwithstanding any terms of the Dealer Agreements, the Dealers in the circumstances set out in paragraphs 42 and 43 above were likely to:

- a. refer to the Add-On Insurance Products in terms that could reasonably be regarded as recommending the said insurance to Group Members or expressing an opinion as to the necessity for, value of or desirability of the insurance for the Group Members; alternatively
- b. by adding one or more Add-On Insurance Products to a customer's Finance documents without drawing the addition to the customer's attention adequately or at all – by omission, represent to the customer that the insurance was necessary, valuable or desirable;
- c. in the premises in a, further or alternatively b above – make a recommendation or a statement of opinion that could reasonably be regarded as intending to influence the Group Members in making a decision in relation to the Add-On Insurance Products within the meaning of section 766B(1) of the Corporations Act; and

- d. engage in the conduct in sub-paragraph c above in circumstances where a reasonable person might expect the Dealers to have considered one or more of the following matters:
- i. the customer's objectives;
 - ii. the customer's financial situation; and
 - iii. the customer's needs;

within the meaning of section 766B(3) of the Corporations Act.

Particulars

The Plaintiffs refer to and repeat the particulars under paragraphs 42 and 43 above.

E. CLAIMANTS' PURCHASES OF ADD-ON INSURANCE PRODUCTS

Ms Fuller's purchases - 14 December 2015

45. At times presently not known to Ms Fuller, ACM Liverpool Pty Ltd trading as Lansvale Holden ABN 60 121 604 055 (**Lansvale Holden**) entered into a Dealer Agreement with Allianz (**Lansvale Holden Agreement**).
46. At all material times Lansvale Holden while dealing with Ms Fuller was, by reason of the Lansvale Holden Agreement:
- a. an authorised representative of Allianz within the meaning of sections 761A and 916A(1) of the Corporations Act; further or alternatively
 - b. an agent of Allianz.
47. Ms Fuller:
- a. in or around early December 2015:
 - i. attended the Vehicle dealership operated by Lansvale Holden;
 - ii. offered to purchase from Lansvale Holden a new 2015 Holden Trax LTZ for a total price of \$28,458.99 (**Trax**);
 - iii. paid a deposit of \$1,000; and
 - iv. requested that Lansvale Holden arrange a loan to facilitate the net purchase price.

Particulars

1. *Ms Fuller had this conversation with Cuong Pham, a car salesman at Lansvale Holden.*
2. *Further particulars may be provided after discovery.*

b. on 14 December 2015, attended the Vehicle dealership operated by Lansvale Holden for the purpose of completing the purchase and collecting the Trax.

48. Consistent with the practice described at paragraph 42 above, Lansvale Holden obtained the following Personal Circumstances Information from Ms Fuller:

- a. that the First Plaintiff was employed as a casual employee of Work Force Australia;
- b. details of the First Plaintiff's income from her employer; and
- c. details of the First Plaintiff's personal financial circumstances including that:
 - i. she was living in rented accommodation;
 - ii. she did not have any assets other than some cash on hand and the contents of her home;
 - iii. she had no credit cards;

(Ms Fuller's Personal Circumstances Information).

49. By reason of having obtained Ms Fuller's Personal Circumstances Information, Lansvale Holden knew or ought to have known that:

- a. Ms Fuller was a member of a superannuation fund;
- b. there was therefore a reasonable likelihood that Ms Fuller would have total and permanent disability cover, and death and/or trauma cover associated with the said membership, that covered some or most of the risks covered by the Loan Insurance product offered by Allianz;
- c. it was in the best interests of Ms Fuller to ascertain whether she had total and permanent disability cover and death and/or trauma cover associated with the said membership and the terms of any such coverage before deciding whether to purchase the Loan Insurance product; and
- d. Ms Fuller would not have been able to make an informed decision about whether to purchase the Loan Insurance product until she had ascertained whether she had total and permanent disability cover and death and/or trauma cover associated with the said membership and to the extent that she had such cover, had considered the extent (if any) to which the Loan Insurance

product would provide her with an additional benefit over and above such cover.

Particulars

1. *Lansvale Holden's state of mind is to be inferred from of the fact that it knew:*
 - a. *Ms Fuller was an employee; and*
 - b. *the legal requirement for Ms Fuller's employer to make the SGA Payments, since that requirement also applied to Lansvale Holden in respect of its own employees. Further, as an employer obliged to make SGA Payments, Lansvale Holden ought to have known that superannuation funds include insurance benefits.*
2. *Further particulars may be provided after discovery.*

50. On or about early December 2015:

- a. Lansvale Holden submitted some or all of Ms Fuller's Personal Circumstances Information to St George Bank;
- b. Lansvale Holden informed Ms Fuller that because she was obtaining a loan to purchase the Trax, she also needed to purchase comprehensive car insurance;

Particulars

Conversation between Ms Fuller and Mr Cuong Pham from Lansvale Holden.

- c. St George approved a loan to Ms Fuller to, among other things, purchase the Trax (**St George Loan**), which included the following terms:
 - i. amount was \$34,391.35;
 - ii. interest rate was 9.35% p.a.;
 - iii. term was 60 months;
 - iv. repayments were made weekly; and
 - v. total interest charges were \$8,729.41;

Particulars

1. *St George Loan contract dated 14 December 2015 A/C number 96962038.*
2. *Further particulars may be provided after discovery.*

- d. Lansvale Holden, after the St George Loan had been approved, informed Ms Fuller of the weekly repayment amounts;

Particulars

Conversation between Ms Fuller and Mr Cuong Pham of Lansvale Holden.

- e. Lansvale Holden informed Ms Fuller that her payments would include Motor Equity Insurance which would benefit her because it would cover what was left owing on her St George Loan if her Trax was written off but did not inform her that the Motor Equity Insurance added an additional amount to her weekly payments;

Particulars

Conversation between Ms Fuller and Mr Cuong Pham of Lansvale Holden.

- f. Lansvale Holden did not inform Ms Fuller that her payments would also include the purchase of Loan Insurance and Tyre and Rim Insurance;
- g. Lansvale Holden then presented documents to Ms Fuller to sign to effect the purchase of the Vehicle and the Finance (**Fuller paperwork**) but did not inform her that the Fuller paperwork included provision for her to purchase the Loan Insurance and Tyre and Rim Insurance at additional cost; and
- h. Ms Fuller signed the Fuller paperwork in the belief that it contained the Trax, the St George Loan, the comprehensive car insurance, the Motor Equity insurance and an extended warranty plan.

Particulars

1. *The Fuller paperwork signed by Ms Fuller included:*
 - a. *The St George Loan contract and finance application dated 14 December 2015;*

- b. *Motor Equity Insurance Policy Schedule;*
- c. *AHG Protected Warranty Plan; and*
- d. *Lansvale Holden Vehicle Contract.*
- e. *Tyre and Rim Insurance;*
- f. *Loan Insurance;*

2. *Further particulars may be provided after discovery.*

51. By executing the St George Loan contract, Ms Fuller, from the total financed amount of \$34,391.35:

- a. directed St George to pay Lansvale Holden:
 - i. the net financed amount of \$27,938.99 to purchase the Trax; and
 - ii. the amount of \$770.00 for an origination fee;
- b. directed St George to pay Allianz the amount of \$5,329.06 towards the purchase of:
 - i. Loan Insurance for \$3,734.06 (including \$217.12 GST), policy number 108E161456FPI, which included Trauma and Death Cover issued by Allianz Life and disability cover;
 - ii. Motor Equity Insurance for \$1,595.00 (including \$133.03 GST), policy number 108E469944MEI; and
- c. directed Lansvale Holden to pay Allianz, from the cash deposit, Tyre and Rim Insurance in the amount of \$480.00 (including \$40.03 GST), policy number 108E108705TRI,
(Ms Fuller's Add-On Insurance Products);
- d. directed St George to pay itself, after Ms Fuller received a credit of \$52.50 for "Total ITC":
 - i. a \$399.00 establishment fee and to pay the "relevant government authority";
 - ii. \$6.80 for the registration of St George's mortgage over the Trax; and
- e. became liable to repay to St George in weekly repayments of \$166.71 for 260 weeks and \$167.66 for one week with an annual interest of rate of 9.3500% and an estimate of \$8,729.41 accruing in interest.

52. In the premises set out in paragraphs 45-51 above, and by:

- a. requiring Ms Fuller to purchase the comprehensive insurance;
- b. informing Ms Fuller that she would have Motor Equity Insurance which would benefit her but without informing her of the additional cost of that insurance; and
- c. presenting the Fuller paperwork with the Loan Insurance (including Trauma and Death Cover) and Tyre and Rim Insurance included, but without drawing that to her attention,

Lansvale Holden:

- d. made a recommendation or a statement of opinion that could reasonably be regarded as intending to influence Ms Fuller in making a decision in relation to Ms Fuller's Add-On Insurance Products, within the meaning of section 766B(1) of the Corporations Act; and
- e. engaged in the conduct in circumstances where a reasonable person might expect Lansvale Holden to have considered one or more of the following matters:
 - i. Ms Fuller's objectives;
 - ii. Ms Fuller's financial situation; and
 - iii. Ms Fuller's needs;

within the meaning of section 766B(3) of the Corporations Act;

53. In selling Ms Fuller's Add-On Insurance Products to her, Lansvale Holden:

- a. was acting within the scope of its apparent authority as authorised representative of Allianz;
- b. was effecting the ordinary role of a Dealer within the Allianz Sales System;
- c. advised Ms Fuller to purchase Ms Fuller's Add-On Insurance Products despite the fact it was not reasonable to conclude that the advice was appropriate to Ms Fuller;
- d. failed to warn Ms Fuller that that the information relating to the objectives, financial situation and needs of Ms Fuller on which the recommendation was based was incomplete or inaccurate in accordance with section 961H of the Corporations Act.

Particulars

The advice was not appropriate to Ms Fuller as she:

- a. *did not seek to purchase Ms Fuller's Add-On Insurance Products;*
 - b. *was not told of the matters pleaded in paragraphs 49.b- 49.d above and advised to ascertain whether she had total and permanent disability cover and death and/or trauma cover associated with her superannuation membership and consider whether such insurance was adequate for her needs;*
 - c. *was reasonably likely to have already had the benefit of the insurance attached to her membership of her superannuation fund;*
 - d. *was a casual employee and was therefore likely to be ineligible for the Loan Insurance disability cover;*
 - e. *was not told to ascertain whether she was eligible for the benefits available under the total and permanent disability cover and death and/or trauma cover associated with her superannuation membership; and*
 - f. *had no substantial liabilities other than the St George Loan.*
- e. failed to warn Ms Fuller about the matters pleaded in paragraph 78 below; and
 - f. did not give priority to the interests of Ms Fuller over any other interest.

Particulars

Lansvale Holden prioritised its own commercial interests to earn commissions, over Ms Fuller's interest in not incurring the cost of insurance she did not want or need.

Mr Wilkinson's purchases - 11 July 2015

- 54. At times presently not known to Mr Wilkinson, Melbourne's Cheapest Cars Pty Ltd (A.C.N 086 996 036) (**MCCPL**) entered into a Dealer Agreement with Allianz (**MCCPL Agreement**).
- 55. At all material times MCCPL while dealing with Mr Wilkinson was, by reason of the MCCPL Agreement:
 - a. an authorised representative of Allianz within the meaning of sections 761A and 916A(1) of the Corporations Act; further or alternatively
 - b. an agent of Allianz.

56. On or about 11 July 2015 Mr Wilkinson and his wife:
- a. attended the Vehicle dealership operated by MCCPL for the purpose of purchasing a Vehicle of a sufficient size to carry five people;
 - b. offered to purchase from MCCPL a used 2012 Ford Falcon XR6 sedan (**Falcon**); and
 - c. requested that MCCPL arrange a loan to facilitate the said purchase.

Particulars

1. *Mr Wilkinson does not recall the name of the car salesman at MCCPL with whom he and his wife had this conversation.*
2. *Further particulars may be provided after discovery.*

57. Consistent with the practice described at paragraph 42 above, MCCPL obtained the following Personal Circumstances Information from Mr Wilkinson:
- a. that Mr Wilkinson was employed;
 - b. Mr Wilkinson's most recent payslips from his employer; and
 - c. details of Mr Wilkinson's personal financial circumstances including that:
 - i. he was living in rented accommodation with his wife;
 - ii. he did not have any assets other than the contents of his home, his superannuation and his current car;
 - iii. he had an existing personal loan with the National Australia Bank and no credit cards;

(Mr Wilkinson's Personal Circumstances Information).

58. On or about 11 July 2015:
- a. MCCPL submitted some or all of Mr Wilkinson's Personal Circumstances Information to Australian and New Zealand Banking Group Limited (**ANZ**) trading as '*Esanda – the Credit Provider*' (**Esanda**);
 - b. MCCPL informed Mr Wilkinson that because he was obtaining a loan to purchase the Falcon, he also needed to purchase comprehensive car insurance, which Mr Wilkinson then agreed to do;

Particulars

Conversation between Mr Wilkinson, his wife and Mr Savvas Ambelidis from MCCPL.

- c. MCCPL also obtained Mr Wilkinson's bank account details and arranged for a direct debit to that account to pay for the purchase of the comprehensive car insurance;
- d. Esanda approved a loan to Mr Wilkinson to, among other things, purchase the Falcon (**Esanda Loan**);

Particulars

- 1. *Esanda Loan Contract dated 11 July 2015:*
 - a. *Contract number: 320294562;*
 - b. *Credit assessment number: 77157 01;*
- 2. *Further particulars may be provided after discovery.*

- e. After the Esanda Loan had been approved, MCCPL informed Mr Wilkinson of:
 - i. the total amount being borrowed from Esanda;
 - ii. the fortnightly repayment amounts;
 - iii. the interest rate; and
 - iv. the cost of the comprehensive insurance.

Particulars

Conversation between Mr Wilkinson, his wife and Mr Ambelidis.

- f. MCCPL did not inform Mr Wilkinson that the Finance was also being used to purchase for Mr Wilkinson:
 - i. Loan Insurance; and
 - ii. Motor Equity Insurance;
 offered by Allianz and badged as "Esanda Insurance" (**Mr Wilkinson's Add-On Insurance Products**);
- g. MCCPL did not discuss the Loan Insurance or Motor Equity Insurance Products with Mr Wilkinson;;
- h. MCCPL then presented documents to Mr Wilkinson to sign in order to effect

the purchase of the Vehicle and the Finance and which provided for his purchase of the Loan Insurance and Motor Equity Insurance (**Wilkinson paperwork**);

- i. MCCPL did not orally inform Mr Wilkinson that the Wilkinson paperwork also provided for his purchase of the Loan Insurance and Motor Equity Insurance and Mr Wilkinson was unaware of that fact;
- j. Mr Wilkinson signed the Wilkinson paperwork in the belief that it provided for the purchase of the Falcon, the comprehensive car insurance and direct debit arrangement, and Finance through the Esanda Loan but was unaware that he had also agreed to purchase Loan Insurance and Motor Equity Insurance and for those products to be added to the Finance MCCPL had arranged.

Particulars

The Wilkinson paperwork signed by Mr Wilkinson included:

- a. *The Esanda Loan contract dated 11 July 2015;*
- b. *A document styled "Customer Declaration" dated 11 July 2015;*
- c. *Direct debit for comprehensive car insurance;*
- d. *A document styled "Declaration and privacy consents by applicant(s)" dated 11 July 2015;*
- e. *A document styled "Esanda Representative – Applicant Statement (NCCP)" dated 11 July 2015;*
- f. *Further particulars may be provided after discovery.*

- 59. By executing the Esanda Loan contract, Mr Wilkinson:
 - a. directed Esanda to pay MCCPL the amount of \$19,453.30 to purchase the Falcon;
 - b. directed Esanda to pay Allianz the amounts of \$2,341.22 and \$745 for the purchase of the Second Plaintiff's Add-On Insurance Products;
 - c. directed Esanda to pay itself a \$350 establishment fee and to pay the "relevant government authority" \$6.80 for the registration of Esanda's mortgage over the Falcon; and
 - d. became liable to repay these amounts to Esanda in fortnightly repayments of \$252.87 for 5 years with an annual interest of rate of 14.9909% and an

estimate of \$9,676.48 accruing in interest charges and \$657.10 in other credit fees and charges.

60. In the premises set out in the three preceding paragraphs, and by:
- a. requiring Mr Wilkinson to purchase the comprehensive insurance; and
 - b. presenting the paperwork with Mr Wilkinson's Add-On Insurance included;
- MCCPL:
- i. made a recommendation or a statement of opinion that could reasonably be regarded as intending to influence Mr Wilkinson in making a decision in relation to Mr Wilkinson's Add-On Insurance Products, within the meaning of section 766B(1) of the Corporations Act; and
 - ii. engaged in the conduct in i in circumstances where a reasonable person might expect MCCPL to have considered one or more of the following matters:
 - A. Mr Wilkinson's objectives;
 - B. Mr Wilkinson's financial situation; and
 - C. Mr Wilkinson's needs;

within the meaning of section 766B(3) of the Corporations Act.

61. In selling Mr Wilkinson's Add-On Insurance Products to him, MCCPL:
- a. was acting within the scope of its apparent authority as authorised representative of Allianz;
 - b. was effecting the ordinary role of a Dealer within the Allianz Sales System;
 - c. by implication, advised Mr Wilkinson to purchase the Add-On Insurance Products despite the circumstance that it was not reasonable to conclude that the advice was appropriate for Mr Wilkinson;

Particulars

The advice was not appropriate to Mr Wilkinson as he:

- a. did not seek to purchase the Add-On Insurance Products;*
- b. already had the benefit of the insurance attached to his membership of his superannuation fund;*
- c. was 26 years old and had little to no need for the Trauma and Death Cover of the Loan Insurance, in particular as he had no substantial liabilities other than the Esanda Loan that his superannuation fund's*

insurance would likely cover; and

- d. was a casual employee of Salway Transport Services Pty Ltd and was therefore likely to be ineligible for the Loan Insurance disability cover and involuntary unemployment cover.*
- d. failed to warn Mr Wilkinson about the matters pleaded in paragraph 78 below; and
- e. did not give priority to the interests of Mr Wilkinson over any other interest.

Particulars

MCCPL prioritised its own commercial interests to earn commissions, over Mr Wilkinson's interest in not incurring the cost of insurance he did not want or need.

Group Members' purchases of Add-On Insurance Products

62. Each of the Group Members during the Relevant Period purchased a Vehicle from a Dealer which:
- a. had entered into a Dealer Agreement with Allianz;
 - b. was an authorised representative of Allianz; and/or
 - c. was an agent of Allianz.

Particulars

Particulars of the purchase by Group Members will be provided following the trial of common questions or otherwise as the Court may direct.

63. In conjunction with their purchase of a Vehicle from a Dealer who was an authorised representative of one or both of the Defendants, each of the Group Members purchased one or more Add-On Insurance Products and:
- a. paid or became liable to pay (directly or indirectly) premiums to one or both of the Defendants (the **Premiums**); and
 - b. paid other charges associated with the Add-On Insurance Products, such as GST and stamp duty.

Particulars

Particulars of the purchase by Group Members will be provided at an appropriate stage in the Proceedings.

Financed Group Members

64. The Group Members financed the payment of the Add-On Insurance Products through:
- a. Finance they obtained with the assistance of the Dealer or a loan they obtained without the assistance of the Dealer (**Non-Dealer Finance**) (**Financed Group Members**); or
 - b. otherwise – their own funds.

Particulars

Particulars of the Finance and Non-Dealer Finance of the Financed Group Members will be provided following the trial of common questions or otherwise as the Court may direct.

65. The Financed Group Members paid interest and other charges incurred in connection with financing the purchase of their respective Add-On Insurance Products and associated charges by means of the Finance or Non-Dealer Finance, meaning that those charges were capitalised into the total value of the amount loaned.

Particulars

Particulars will be provided following the trial of common questions or otherwise as the Court may direct.

Recommendation Group Members

66. In obtaining the Finance, some or all of the Group Members (**Recommendation Group Members**) provided to their respective Dealers the Personal Circumstances Information, including whether they were employees, unemployed or self-employed.

Particulars

Particulars relating to individual Recommendation Group Members may be provided following the trial of common questions or otherwise as the Court may direct.

67. By reason of having obtained the Personal Circumstances Information for each Recommendation Group Member referred to in paragraph 66 above, each respective Dealer knew or ought to have known that:
- a. in the case of Recommendation Group Members who were employees:

- i. because the Recommendation Group Member was an employee – the Recommendation Group Member was a member of a superannuation fund and entitled to SGA Payments; and accordingly
- ii. there was a reasonable likelihood that the Recommendation Group Member would have income protection insurance, total and permanent disability cover and/or death and/or trauma cover that covered some or most of the risks covered by the Add-On Insurance Products;

Particulars

- 1. *The Dealers' states of mind are to be inferred from of the fact that they knew the Recommendation Group Members were employees and knew the legal requirement for the Recommendation Group Members' employers to make the SGA Payments as this was also a legal obligation also owed by the Dealers to their own employees.*
- 2. *Further, as employers obliged to make SGA Payments to their own employees, the Dealers should have known that superannuation policies include insurance benefits.*
- 3. *Further particulars may be provided after discovery.*

- b. in the case of the Recommendation Group Members who were unemployed, casually employed or self-employed – the Recommendation Group Member was unlikely to be entitled to claim involuntary unemployment cover under their Loan Insurance.

68. In the premises of paragraphs 66 to 67 above, Dealers who engaged in the conduct pleaded at paragraph 44.a and/or 44.b above in respect of each Recommendation Group Member's acquisition of Add-On Insurance Products:

- a. made a recommendation or a statement of opinion which could reasonably be regarded as intending to influence the Recommendation Group Member in making a decision in relation to the Add-On Insurance Products within the meaning of section 766B(1) of the Corporations Act; and
- b. engaged in the conduct in sub-paragraph (a) above in circumstances where a reasonable person might expect the Dealers to have considered one or more of the following matters:
 - i. the Recommendation Group Member's objectives;
 - ii. the Recommendation Group Member's financial situation; and
 - iii. the Recommendation Group Member's needs;

within the meaning of section 766B(3) of the Corporations Act.

69. In selling the Add-On Insurance Products to Recommendation Group Members, each Dealer:
- a. was acting within the scope of its apparent authority as authorised representative of Allianz;
 - b. was effecting the ordinary role of a Dealer within the Allianz Sales System;
 - c. advised each Recommendation Group Member to purchase the Add-On Insurance Products despite the fact it was not reasonable to conclude that the advice was appropriate to the Recommendation Group Members;
 - d. failed to warn each Recommendation Group Member that the information relating to the objectives, financial situation and needs of the Group Member on which the recommendation was based was incomplete or inaccurate in accordance with section 961H of the Corporations Act.
 - e. failed to warn Recommendation Group Members about the matters the subject of the non-disclosure pleaded at paragraph 78 below; and
 - f. did not give priority to the interests of Recommendation Group Members over any other interest, and in particular the interest of the Dealer in earning the Product Commissions or the Volume Commissions.

Particulars

1. *The Dealers prioritised their own commercial interests to earn commissions over those of Recommendation Group Members not to have insurance that did not meet their needs.*
2. *Further particulars may be provided after discovery.*

F. PERSONAL ADVICE CONTRAVENTIONS

70. In the premises set out in:
- a. paragraphs 45 – 53 in respect of Ms Fuller;
 - b. paragraphs 54 – 61 in respect of Mr Wilkinson; further or alternatively
 - c. paragraphs 68 and 69 in respect of the Recommendation Group Members, Dealers (including MCCPL and Lansvale Holden) contravened sections 961B and 961J of the Corporations Act.

71. Further and in the alternative, by reason of the matters set out in paragraphs 78 to 81, Allianz:
- a. failed to take reasonable steps to ensure that the Dealers (including MCCPL and Lansvale Holden) complied with sections 961B and 961J of the Corporations Act; and
 - b. in the premises, contravened section 961L of the Corporations Act.
72. By reason of the conduct pleaded in paragraphs 70 and/or 71 (**Allianz Personal Advice Contraventions**), the Plaintiffs and Recommendation Group Members:
- a. acquired Add-On Insurance Products; as aforesaid; and thereby
 - b. suffered loss or damage.

Particulars of loss

1. *Payment by the Plaintiffs and Recommendation Group Members of the Premiums and interest and other charges paid or incurred with respect to those Premiums.*
 2. *In the alternative, the difference between the amount paid by Recommendation Group Members for the Add-On Insurance products and their true value (if any).*
 3. *Further particulars of loss and damage for the Plaintiffs may be provided after discovery. Particulars relating to individual Recommendation Group Members may be provided after discovery or otherwise as the Court may direct.*
73. Pursuant to section 961M(2)(b) of the Corporations Act, Allianz is liable to pay compensation for any loss or damage suffered by the Plaintiffs or Recommendation Group Members as a result of the Allianz Personal Advice Contraventions.
74. Pursuant to section 961M(4) of the Corporations Act, the Plaintiffs and Recommendation Group Members seek recovery of the profits made by Allianz resulting from the Allianz Personal Advice Contraventions, as part of the damage they suffered.

G. MISLEADING OR DECEPTIVE CONDUCT

Material non-disclosures

75. The Allianz Sales System involved the sale of the Add-On Insurance Products by the Dealers to the Plaintiffs and Group Members in one or more of the following circumstances, where:
- a. Allianz, by its responsible officers, was aware of, and bound by, the obligations pleaded at paragraphs 22 to 29 above;
 - b. the terms of each of the Add-On Insurance Products could not be negotiated by the Plaintiffs and the Group Members;
 - c. the Plaintiffs and Group Members were offered Add-On Insurance Products in circumstances where they had gone to the dealership for the purposes of buying a Vehicle and not for the purposes of buying Add-On Insurance Products;
 - d. the Add-On Insurance Products were complex financial instruments for protecting against certain risks and had numerous and important exclusions, exceptions and limits to the protection offered, which were difficult to understand and which significantly limited the circumstances in which the policies would respond;
 - e. Dealers were incentivised to sell the Add-On Insurance Products to prospective purchasers where the Dealers were not permitted to provide personal advice to prospective purchasers about the suitability of the Add-On Insurance Products in light of their own personal circumstances;
 - f. the Recommendation Group Members were requested by the Dealers to provide, and did provide, the Personal Circumstances Information for the purpose of obtaining the Finance;
 - g. prospective purchasers were making a decision at the dealership as to whether to buy the Add-On Insurance Products, in the absence of independent advice as to whether the Add-On Insurance Products were suitable for them, having regard to their own personal circumstances and were dependent upon the Dealers to provide them with accurate, complete and reliable information about the Add-On Insurance Products;
 - h. Add-On Insurance Products would or may have no material financial value to the Plaintiffs and Group Members including because of the existence of the low Claims Loss Ratio for the Add-On Insurance Products;

- i. Loan Insurance and Motor Equity Insurance offered coverage that may have overlapped with other insurance coverage already held by the Plaintiffs and Group Members, in that the cover provided by Motor Equity Insurance was effectively provided by comprehensive insurance with new for old replacement, and some of the coverage provided by Loan Insurance was effectively provided by death and/or trauma cover, total and permanent disability cover, and income protection insurance;
- j. the Loan Insurance and Motor Equity Insurance offered coverage which could potentially have been obtained by means of other insurance policies for a lower price, being the insurance referred to in paragraph 75.i;
- k. the cover provided by the Extended Warranty referred to in paragraph 16.b.ii was unnecessary, or in the alternative, may have been unnecessary, given the provisions of the *Trade Practices Act 1974* (Cth) (**TPA**) or, after 1 January 2011, the *Australian Consumer Law* (**ACL**);
- l. the matters identified in paragraphs 75.h to 75.k above meant that there was a substantial likelihood that prospective purchasers would be better off financially by declining to purchase any of the Add-On Insurance Products;
- m. the Plaintiffs and Group Members were subject to a sales process which was structured in a way that prompted the Plaintiffs and Group Members to disengage through decision fatigue, information overload, complex product offerings and multiple options of product combinations, constraining the Plaintiffs and Group Members' ability to make an informed purchasing decision;
- n. the price of Add-On Insurance Products was anchored to the price of the Vehicle purchased by the Plaintiffs or a Group Member and/or to the terms of Finance, thereby distorting the Plaintiffs' and Group Members' perception of the cost of the Add-On Insurance Products; and
- o. one or more of the following occurred:
 - i. the Dealers used sales techniques that conveyed the impression that the purchase of one or more of the Add-On Insurance Products was necessary, or alternatively was recommended, in order for finance for the purchase of the Vehicle to be obtained;
 - ii. the Plaintiffs and Group Members were not encouraged to review and consider the PDS and/or the FSG in respect of the Add-On Insurance Products;

- iii. the Plaintiffs and Group Members were not given sufficient time to review the PDS and/or FSG in respect of the Add-On Insurance Products;
- iv. the Plaintiffs and Group Members were given the PDS and/or FSG in respect of the Add-On Insurance Products at an inappropriate stage in the selling process; and/or
- v. the Plaintiffs and Group Members were not given the PDS and/or FSG in respect of the Add-On Insurance Products;
- p. the purchase of the Add-On Insurance Products was added to some of the Financed Group Members' Finance documents at a later stage of the dealings between the Dealer and the customer and, in particular, after the customer had otherwise agreed to purchase the Vehicle; and/or
- q. Financed Group Members for whom Add-On Insurance Products were included in the Finance were likely to pay more for the insurance than if the insurance was not included in the Finance.

76. Having regard to the matters pleaded in paragraph 75.a to 75.q above, Allianz, by its responsible officers, knew or ought to have known that, in the absence of full and complete disclosure to the Plaintiffs and Group Members of all material information concerning the advantages and disadvantages of the Add-On Insurance Products and a proper opportunity to consider whether the acquisition of the Add-On Insurance Products was in their best interests, there was a substantial risk that the Plaintiffs and Group Members:

- a. would be considering purchasing the Add-On Insurance Products based on incomplete information and therefore could not make an informed decision whether the Products were suitable for them; and/or
- b. would act contrary to their financial interests and purchase Add-On Insurance Products that were not suitable for them and/or in circumstances in which they would have been better off financially by declining to purchase the Add-On Insurance Products; and/or
- c. would or might incur costs that were not necessary or prudent having regard to their personal financial circumstances.

77. In the premises of paragraphs 22, 23, 26, 27, 28, 29, 75 and 76 above, the Plaintiffs and Group Members had a reasonable expectation that Allianz and/or the Dealers would disclose or adequately disclose to them all material information of which they were aware, or ought to have been aware, concerning the decision of whether or not to purchase the Add-On Insurance Products.

78. Allianz failed to disclose or adequately disclose, or cause the Dealers to disclose or adequately disclose to the Plaintiffs and the Group Members one or more of the following facts and circumstances that constituted material information of which they were aware, or ought to have been aware, concerning the decision of whether or not to purchase the Add-On Insurance Products:
- a. that the Add-On Insurance Products were optional to purchase;
 - b. that acquisition of one or more of the Add-On Insurance Products was not a condition of obtaining Finance for the purchase of the Vehicle;
 - c. that the purchase of one or more Add-On Insurance Products was included in the contractual documentation they were about to sign;
 - d. that the Add-On Insurance Products would have no material financial value for them including because of the existence of the low Claims Loss Ratio for the Add-On Insurance Products;
 - e. that the Add-On Insurance Products may not be suitable for them;
 - f. that it was likely that they had incomplete information about whether the Add-On Insurance Product(s) they were considering purchasing were suitable for them or would represent value for money for them;
 - g. that the Add-On Insurance Products were complex financial instruments for protecting against certain risks and had numerous and important exclusions, exceptions and limits to the protection offered which significantly limited the circumstances in which the policies would respond;
 - h. that Loan Insurance and Motor Equity Insurance offered coverage that may overlap with other insurance coverage already held by the Plaintiffs and Group Members;
 - i. that the Loan Insurance and Motor Equity Insurance offered coverage which could potentially be obtained by means of other insurance policies for a lower price;
 - j. that the cover provided by the Extended Warranty referred to in paragraph 16.b.ii was unnecessary, or in the alternative, may be unnecessary, given the provisions of the TPA or, after 1 January 2011, the ACL;
 - k. in the alternative to paragraph 78.j, that there were only limited features of the Extended Warranty which provided benefits beyond the existing statutory obligations of the manufacturer or seller of the Vehicle pursuant to the provisions

of the TPA or, after 1 January 2011, the ACL, and what those limited features were;

- l. that the Dealers were financially incentivised and encouraged, by one or both of the Defendants, to sell as many Add-On Insurance Products as possible to them by means of the Product Commissions and Volume Commissions;
- m. in the alternative to 78.l, the total quantum of the Product Commissions and Volume Commissions paid to the Dealers;
- n. that, in respect of the Financed Group Members, given the Finance or Non-Dealer Finance, they would pay interest charges on the amounts borrowed to pay the Premiums and associated charges, and therefore pay a greater amount for those Add-On Insurance Products than they would pay if they did not finance the Premiums and associated charges; and/or
- o. there was a substantial risk that they could not determine, in the absence of independent financial advice or a proper opportunity to consider the terms of the Add-On Insurance Products and their own financial circumstances, whether it was in their best interests to acquire the Add-On Insurance Product(s) under consideration.

79. By reason of the matters pleaded in paragraph 78, prior to purchasing the Add-On Insurance Products, the Plaintiffs and the Group Members did not know:

- a. one or more of the matters pleaded in paragraph 78 above, each of which constituted material information that would have been relevant to the decision of the Plaintiffs and Group Members whether to proceed with the purchase of Add-On Insurance Products; and
- b. that they were making a decision whether to purchase the Add-On Insurance Products based on incomplete information.

80. Further or in the alternative, during the Relevant Period, Allianz failed to have or implement any or any adequate system for:

- a. training Dealers' personnel to ensure adequate disclosure to customers of the matters pleaded in paragraph 78 above;
- b. monitoring compliance by Dealers' personnel with Allianz's conditions of authorisation, protocols or guidelines for interactions with customers in respect of Add-On Insurance Products; further or alternatively
- c. identifying and correcting Dealers' non-compliance with Allianz's conditions of authorisation.

81. In the premises set out in:

- a. paragraphs 78 and 79 above; further or alternatively
- b. paragraph 80 above,

Allianz:

- i. failed to take any or any adequate step to ensure the Dealers did not engage in conduct as described in paragraphs 43 and 44 above; further or alternatively
- ii. in the premises set out in paragraphs 42 to 44 inclusive – acquiesced in the conduct of the Dealers as described in paragraphs 43 and 44 above.

Express Representation Group Members

82. During the Relevant Period, Dealers represented to some of the Group Members that it was necessary to purchase one or more Add-On Insurance Products in order to obtain Finance approval (**Express Representation**).

Particulars

Particulars relating to a sample Group Member, Ms Kylie Ewen, are as follows:

1. *Ms Ewen purchased a 2010 Volkswagen Passat 125 TDI Highline (**Passat**) from a Dealer, Massaro Motors Pty Ltd (**Massaro Motors**) in Morwell, Victoria on or about 12 March 2015.*
2. *At the time of purchasing the Passat, Ms Ewen also purchased Motor Equity Insurance and Loan Insurance issued by Allianz.*
3. *In a telephone discussion between Ms Ewen and an employee of Massaro Motors (the **Business Manager**) in about early March 2015:*
 - a. *the Business Manager said words to the effect that Ms Ewen's finance application was approved, subject to some extra insurance being added to her loan, and that she would only be eligible for the loan if she purchased the insurance;*
 - b. *Ms Ewen said words to the effect that if that was the only way to get her car, then she would buy the insurance.*
4. *In a meeting between Ms Ewen and the Business Manager in Morwell, Victoria on or about 12 March 2015:*
 - a. *the Business Manager, referring to the Motor Equity*

Insurance and Loan Insurance which had been included in Ms Ewen's loan agreement, said words to the effect of "These are the insurances that enable you to have the loan.";

- b. *Ms Ewen said words to the effect of "Are you absolutely sure that I need to have these to get my loan?"; and*
- c. *the Business Manager said words to the effect of "Yes, you need to buy them."*

Particulars relating to other individual group members may be provided following the trial of common questions or otherwise as the Court may direct.

- 83. Contrary to the Express Representation, it was not necessary to purchase one or more Add-On Insurance Products to obtain Finance or any other kind of approval.
- 84. The Dealers, in engaging in the conduct pleaded in paragraph 82 above, engaged in conduct within the scope of their actual or apparent authority as authorised representatives or agents of Allianz, within the meaning of:
 - a. section 769B(1)(a) of the Corporations Act; and
 - b. section 12GH(2)(a) of the ASIC Act.
- 85. By reason of the matters pleaded in:
 - a. paragraph 84.a above and section 769B(1) of the Corporations Act, Allianz is taken, for the purposes of Chapter 7 of the Corporations Act, to have made the Express Representation; and
 - b. paragraph 84.b above and section 12GH(2) of the ASIC Act, Allianz is taken, for the purposes of Division 2 of the ASIC Act, to have made the Express Representation.

Section 1041E Corporations Act

- 86. In selling the Add-On Insurance Products to the Plaintiffs and Group Members, Allianz (including through the Dealers acting as authorised representatives and/or agents of Allianz) failed to disclose or adequately disclose material information that was relevant to the Plaintiffs' and Group Members' decision whether to purchase the Add-On Insurance Products, being the matters pleaded in paragraph 78.
- 87. By selling the Add-On Insurance Products in circumstances where Allianz (including through the Dealers acting as authorised representatives and/or agents of it) did not

disclose or adequately disclose or cause the Dealers to disclose or adequately disclose the matters identified in paragraph 78, Allianz made a statement and/or disseminated information that was:

- a. materially misleading; and
- b. likely to induce the Plaintiffs and Group Members, being persons in this jurisdiction as defined in section 9 of the Corporations Act, to acquire Add-On Insurance Products.

88. When Allianz sold the Add-On Insurance Products (including through the Dealers acting as authorised representatives and/or agents of Allianz) Allianz, by its responsible officers, ought reasonably to have known that it was making a statement and/or disseminating information that was materially misleading, because it was aware, or ought to have been aware, by its responsible officers, of the matters that were not disclosed or adequately disclosed to the Plaintiffs or Group Members, as pleaded in paragraph 78.

Particulars

1. *Allianz's state of mind is to be inferred from the following matters:*
 - a. *Allianz's knowledge, by its responsible officers, of its obligations in respect of the sale of Add-On Insurance Products pleaded in paragraphs 22 to 29 above;*
 - b. *The knowledge of the Dealers as authorised representatives and/or agents of Allianz as to what the Dealers told the Plaintiffs and Group Members, and did not tell the Plaintiffs and Group Members, is imputed to Allianz as principal;*
 - c. *Allianz was and is an expert in the design and development of insurance policies;*
 - d. *Allianz designed and developed the Add-On Insurance Products and was at all material times aware, by its responsible officers, of:*
 - i. *the circumstances of coverage of the Add-On Insurance Products, as well as the limitations and exceptions to that coverage;*
 - ii. *the coverage provided by other insurance products offered by the Defendants or other insurance providers;*
 - iii. *the prices of the other insurance products offered by the Defendants or other insurance providers;*
 - iv. *the matters pleaded in paragraphs 19 to 21;*
 - e. *the elements of the Allianz Sales System; and*
 - f. *the matters pleaded in paragraph 38.*

2. *Further particulars may be provided by way of evidence or after discovery at an appropriate stage in the Proceedings.*

89. Further or alternatively, when Allianz sold Add-On Insurance Products to the Plaintiffs and Group Members, Allianz (including through the Dealers acting as its authorised representatives and/or agents) did not care whether it made a statement or disseminated information which was true or false.

Particulars

1. *The Plaintiffs refer to and repeat paragraphs 76 and 88.*
2. *Further particulars may be provided by way of evidence or after discovery at an appropriate stage in the Proceedings*

Section 12DB ASIC Act

90. By selling the Add-On Insurance Products without disclosing the matters pleaded in paragraph 78, Allianz (including through the Dealers acting as authorised representatives and/or agents of it):

- a. represented to the Plaintiffs and Group Members that, or to the effect that:
 - i. there were no matters in the nature of the matters pleaded in paragraph 78 applicable to the customer that a reasonable person would expect to be disclosed but had not been disclosed or adequately disclosed; further or alternatively
 - ii. the Add-On Insurance Products had material financial value to the customer, such that a prudent person would rationally purchase the insurance; and
- b. by reason of the matters pleaded in sub-paragraph a, made a false or misleading representation in connection with the supply, or possible supply, of financial services, being the sale of the Add-On Insurance Products:
 - i. concerning the need for those services, within the meaning of section 12DB(1)(h) of the ASIC Act (section 12DB(1)(f) prior to 1 January 2011);
 - ii. concerning the services being of a particular standard, quality or value within the meaning of section 12DB(1)(a) of the ASIC Act; and/or
 - iii. on and from 1 January 2011, concerning a requirement to pay for a contractual right that a person has under a law of the Commonwealth, a

State or Territory within the meaning of section 12DB(1)(j)(ii) of the ASIC Act.

Particulars

1. *In failing to disclose or adequately disclose the matters pleaded in paragraph 78, Allianz failed to disclose or adequately disclose:*
 - a. *features of the Add-On Insurance Products that were material to the Plaintiffs' and Group Members' need (or otherwise) for those products. Accordingly, in failing to disclose or adequately disclose the matters pleaded in paragraph 78, Allianz made a false or misleading representation in connection with the sale of the Add-On Insurance Products concerning the Plaintiffs' and Group Members' need for, and the benefits of, those services.*
 - b. *the matters referred to in paragraphs 78.d to 78.k above, accordingly, Allianz made a false or misleading representation in connection with the sale of the Add-On Insurance Products concerning the standard, quality or value of the services.*
 - c. *the matters referred to in paragraph 78.j and 78.k above, and therefore made a false or misleading representation in connection with the sale of the Add-On Insurance Products concerning a requirement to pay for a contractual right that a person has under a law of the Commonwealth, a State or Territory.*
2. *Further particulars may be provided following discovery.*

Contraventions

Sections 12DA, 12DF ASIC Act and section 1041H Corporations Act

91. By reason of the matters pleaded in paragraphs 12 to 18 and 75 to 81 and/or 82 to 85, Allianz:
 - a. engaged in conduct in trade or commerce in relation to financial services that was misleading or deceptive or was likely to mislead or deceive in contravention of section 12DA(1) of the ASIC Act;
 - b. engaged in conduct in trade or commerce that was liable to mislead the public as to the nature, characteristics and the suitability for their purpose of financial services in contravention of section 12DF(1) of the ASIC Act; and

- c. engaged in conduct in this jurisdiction in relation to a financial product or a financial service that was misleading or deceptive or was likely to mislead or deceive in contravention of section 1041H(1) of the Corporations Act.

Section 1041E Corporations Act

- 92. By reason of the matters pleaded in paragraphs 17 and 86 to 89, Allianz contravened section 1041E of the Corporations Act.

Section 12DB ASIC Act

- 93. By reason of the matters pleaded in paragraphs 18 and 90, Allianz contravened section 12DB of the ASIC Act.

Loss and Damage

- 94. Had:
 - a. the Plaintiffs and Group Members known:
 - i. the matters pleaded in paragraph 78; or
 - ii. that there was material information that had not been disclosed or adequately disclosed to them about the Add-On Insurance Products that was relevant to their decision to purchase the Products; or
 - iii. that they were not in a position to make an informed decision about whether to purchase the Add-On Insurance Products; or
 - b. the Express Representation Group Members known of the matters pleaded in paragraph 83,
 the Plaintiffs and some or all of the Group Members would not have purchased the Add-On Insurance Products that they purchased.
- 95. By reason of the matters pleaded in one or more of paragraphs 91, and/or 92, and/or 93 together with 62 to 65 and 94, the Plaintiffs and the Group Members have suffered loss or damage:
 - a. by the conduct of Allianz in contravention of sections 12DA(1), 12DB and 12DF(1) of the ASIC Act, and claim damages pursuant to section 12GF(1) of the ASIC Act; and

- b. by the conduct of Allianz in contravention of sections 1041E and 1041H(1) of the Corporations Act, and claim damages pursuant to section 1041I(1) of the Corporations Act.

Particulars

1. *The loss or damage suffered by the Plaintiffs and Group Members comprises:*
 - a. *in respect of the Plaintiffs and Group Members, the Premiums together with other costs (such as GST and stamp duty) incurred in respect of the Add-On Insurance Products; and*
 - b. *in respect of the Plaintiffs and Financed Group Members, the additional interest paid on the Finance or Non-Dealer Finance arising from the financing of the Premiums and the associated costs.*
2. *In the alternative, the difference between the amount they paid for the Add-On Insurance Products and their true value (if any).*
3. *Further particulars of loss and damage may be provided after discovery.*

96. Pursuant to section 917E of the Corporations Act and/or the unwritten general law, Allianz is liable for any loss or damage suffered by the Plaintiffs or Group Members as a result of Dealers' conduct.

H. UNCONSCIONABLE CONDUCT

97. The Allianz Sales System involved the sale of the Add-On Insurance Products to the Plaintiffs and the Group Members in one or more of the following circumstances:
- a. the circumstances referred to in paragraph 75, with Allianz having the knowledge pleaded in paragraph 76;
 - b. where the Add-On Insurance Products were sold without the purchasers being informed, either sufficiently or at all, of the matters pleaded in paragraph 78;
 - c. where the Add-On Insurance Products had the features referred to in one or more of paragraphs 19 to 21, 78.d, 78.g, 78.h, 78.i, 78.j and 78.k;
 - d. where it was not reasonably necessary for the Add-On Insurance Products to have the features referred to in one or more of paragraphs 19 to 21, 78.d, 78.g, 78.h, 78.i, 78.j and 78.k in order to protect the legitimate interests of one or both of the Defendants; and

e. where the commissions paid to the Dealers referred to in paragraphs 34 to 35 were disproportionate to the complexity of, and costs involved in, the sales service provided by the Dealers to Allianz in selling the Add-On Insurance Products to the Plaintiffs and Group Members.

98. By reason of the matters pleaded in paragraphs 30 to 41 and 97, the purpose or effect of the Allianz Sales System was to encourage or require Dealers to adopt a sales process predominantly focused on generating sales of Add-On Insurance Products for Dealers and one or both of the Defendants by:

- a. emphasising the benefits of the Add-On Insurance Products, distracting from the true value of the Add-On Insurance Products to the Plaintiffs and Group Members (if any), and
- b. not disclosing the matters pleaded in paragraph 78 above.

99. At all material times, Allianz, by its responsible officers, was aware of the following matters:

- a. the circumstances in paragraph 75;
- b. the Add-On Insurance Products were optional to purchase, and purchasers of Vehicles were not obliged to purchase the Products in order to obtain Finance;
- c. Dealers were incentivised by one or more of the Defendants to sell as many Add-On Insurance Products to consumers as possible and that in doing so, such Dealers were likely to emphasise the benefits of Add-On Insurance Products to prospective purchasers, convey the impression that acquisition of one or more of the Add-On Insurance Products was necessary for them to obtain Finance and not disclose or adequately disclose to prospective purchasers the matters pleaded in paragraph 78 above;
- d. Allianz had not put in place any adequate systems to ensure that prospective purchasers were provided with all material information about the Add-On Insurance Products, including the matters pleaded in paragraph 78, and there was therefore a substantial risk that prospective purchasers would acquire Add-On Insurance Products that would have no material financial value for them or in the alternative which were not suitable for their needs;
- e. the premiums for some of the Add-On Insurance Products offered to the Plaintiffs and Group Members were far greater than premiums for similar products offered by other insurers through different sales channels;

- f. at or about the date of release of the reports referred to below, the contents of the reports:
- i. report titled “Report 470 – Buying add-on insurance in car yards: Why it can be hard to say no” dated 29 February 2016;
 - ii. report titled “Report 471: the sale of life insurance through car dealers – Taking consumers for a ride” dated 29 February 2016;
 - iii. report titled “Report 492 – A market that is failing consumers: The sale of add-on insurance through car dealers” dated 12 September 2016; and

Particulars

- 1. The Plaintiffs refer to and repeat paragraph 42 and the particulars to paragraph 88.*
- 2. Further particulars will be provided with the Plaintiffs’ expert evidence after further discovery.*

- g. customers’ likely focus upon the purchase of a new Vehicle.

100. By reason of the matters pleaded in paragraphs 12 to 18 and 97 to 99 Allianz engaged in conduct in trade or commerce that was, in all the circumstances, unconscionable in contravention of section 12CB(1) of the ASIC Act in that:
- a. the bargaining position of the Plaintiffs and the Group Members, on the one hand, and Allianz and/or the Dealers, on the other, was unequal;
 - b. by marketing, selling and supplying the Add-On Insurance Products using the Allianz Sales System in the circumstances and with the knowledge pleaded in paragraphs 97 to 99, Allianz engaged in conduct that:
 - i. exploited and took advantage of a sales system that it had designed and implemented and which encouraged and
 - ii. was likely to cause prospective purchasers to decide to purchase the Add-On Insurance Products while being unaware of material information that meant that acquisition of the Add-On Insurance Products was or may not be in their best interests;
 - c. the Add-On Insurance Products had features which were not necessary for the protection of the legitimate interests of one or both of the Defendants;

- d. the Plaintiffs and Group Members were not able to review the Add-On Insurance Product PDS and/or FSG sufficiently to be able to understand their contents, or at all;
 - e. Allianz and/or the Dealers used unfair tactics against the Plaintiffs and the Group Members in the sale of the Add-On Insurance Products;
 - f. equivalent or superior products to Loan Insurance or Motor Equity Insurance could have been acquired by customers through another service provider for a substantially lower premium, by acquiring death and/or trauma cover, total and permanent disability cover, income protection insurance, or comprehensive car insurance with new for old replacement;
 - g. Allianz failed to comply with the obligations referred to in paragraphs 23, 28 and 29;
 - h. Allianz and/or the Dealers failed to disclose or adequately disclose the matters pleaded in paragraph 78;
 - i. one or both of the Defendants were not willing to negotiate with the Plaintiffs and the Group Members any terms of the Add-On Insurance Products; and
 - j. Allianz did not act in good faith towards the Plaintiffs and Group Members.
101. Further or in the alternative, by reason of the matters pleaded in paragraphs 12 to 18 and 97 to 99, Allianz engaged in conduct that was in all the circumstances unconscionable in contravention of section 991A(1) of the Corporations Act.
102. Had Allianz and/or the Dealers not engaged in the conduct pleaded to in paragraphs 99.g and/or 100 above, the Plaintiffs and some or all of the Group Members would not have purchased the Add-On Insurance Products they purchased.
103. Further, the sale of the Add-On Insurance Products to the Plaintiffs and Group Members in circumstances:
- a. where the products were included in the sales paperwork but without their knowledge; and
 - b. without it being drawn to their attention that they were acquiring Add-On Insurance Products at an additional cost constituted conduct;
- that was in all the circumstances unconscionable, in contravention of section 991A(1) of the Corporations Act.
104. By reason of the matters pleaded in paragraphs 99.g, 100 and/or 101 above and 102, the Plaintiffs and the Group Members have suffered loss or damage:

- a. by the conduct of Allianz in contravention of section 12CB(1) of the ASIC Act, and claim damages pursuant to section 12GF(1) and/or section 12GM(1) of the ASIC Act; and
- b. further or alternatively, because Allianz contravened section 991A(1) of the Corporations Act, and seek recovery of the amount of loss or damage pursuant to section 991A(2) of the Corporations Act.

Particulars

1. *The Plaintiffs refer to and repeat the particulars to paragraph 95.*
2. *Further particulars may be provided by way of evidence or after further discovery at an appropriate stage in the Proceedings.*

105. Pursuant to section 917E of the Corporations Act and/or the unwritten general law, Allianz is liable for any loss or damage suffered by the Plaintiffs or Group Members as a result of Dealers' conduct.

I. MISTAKE

106. By reason of the matters pleaded in paragraphs 76 to 81, the Plaintiffs and some or all of the Group Members purchased the Add-On Insurance Products and paid the Premiums under one or more of the following causative beliefs:
- a. that they had not purchased the Add-On Insurance Products;
 - b. that it was necessary to purchase the Add-On Insurance Products;
 - c. that the Add-On Insurance Products had material financial value;
 - d. that the Add-On Insurance Products were suitable for the Plaintiffs or the Group Members; and/or
 - e. that at the time of making the decision to acquire the Add-On Insurance Products, they had received from the Dealer and Allianz all material information, including some or all of the matters pleaded at paragraph 78, that was relevant to their decision whether to invest in the Add-On Insurance Products.
107. Further, or in the alternative, by reason of the matters pleaded in paragraphs 82 to 83, the Express Representation Group Members purchased the Add-On Insurance Products and paid the Premiums under the causative belief that it was necessary to purchase the Add-On Insurance Products for them to obtain Finance.
108. Each of the beliefs pleaded in paragraph 106 and 107 was mistaken.

109. The Plaintiffs and the mistaken Group Members paid one or both of the Defendants the Premiums by reason of one or more of the mistakes pleaded in paragraphs 106 and/or 107.
110. By reason of the matters pleaded in paragraph 72, 91, 98 and 106, Allianz:
- a. induced the matters pleaded in paragraphs 106 to 109 above;
 - b. concealed the matters pleaded in paragraphs 106 to 109 above;
 - c. further or alternatively:
 - i. was aware, by its responsible officers, that circumstances existed which indicated that the Plaintiffs and mistaken Group Members were acquiring their respective policies under the mistaken beliefs; and
 - ii. chose to leave the Plaintiffs and the mistaken Group Members under the mistaken beliefs in acquiring or agreeing to be issued with their respective policies.
111. In the premises:
- a. the Plaintiffs and the mistaken Group Members are entitled, at their election and following the trial of the common issues, to rescind the contracts for the acquisition of the Add-On Insurance Products;
 - b. the contracts for the acquisition of the Add-On Insurance Products are void; further or alternatively,
 - c. the terms of the contracts for the acquisition of the Add-On Insurance Products which require payment of the Premiums are void.
112. By reason of the matters pleaded in paragraphs 106 to 111, one or both of the Defendants have been unjustly enriched by the receipt of the Premiums at the expense of the Plaintiffs and the mistaken Group Members and it would be unconscionable for one or both of the Defendants to retain the Premiums.
113. By reason of the matters pleaded in paragraphs 106 to 111, the Premiums are monies had and received by one or both of the Defendants to the use of the Plaintiffs and the mistaken Group Members, and one or both of the Defendants are obliged to repay those sums to the Plaintiffs and the Group Members.

J. COMMON QUESTIONS OF LAW OR FACT

Add-On Insurance Products and regulatory regime

114. Were the terms of the Add-On Insurance Products able to be negotiated by the Plaintiffs and Group Members and if so, what terms?
115. Were the Add-On Insurance Products complex financial instruments for protecting against certain risks and which had numerous and important exclusions, exceptions and limits to the protection offered, and were difficult to understand, and which significantly limited the circumstances in which the policies would respond?
116. Was the cover provided by the Extended Warranty unnecessary, or in the alternative potentially unnecessary, to the Plaintiffs and Group Members, given the provisions of the TPA, or after 1 January 2011, the ACL?
117. Were there only limited features of the Extended Warranty which provided benefits beyond the existing statutory obligations of the manufacturer or seller of the Vehicle pursuant to the provisions of the TPA, or after 1 January 2011, the ACL, and, if so, what were those limited features?
118. Did some of the elements of the cover provided by Loan Insurance overlap with cover provided by other insurance products, namely total and permanent disability cover, death and/or trauma cover, and income protection insurance?
119. Did the cover provided by Motor Equity Insurance overlap with other insurance products, namely comprehensive Vehicle insurance with new for old replacement?
120. Was the insurance cover provided by the alternative policies referred to in the questions in paragraphs 118 and 119 less expensive than the cover provided by the relevant Add On Insurance Products?
121. Is the Claims Loss Ratio of an insurance product, such as the Add-On Insurance Products, accepted within the insurance industry as a means of assessing the value, or potential value, of a product to the insured?
122. Is a low Claims Loss Ratio an indication that an insurance product is of low or no material financial value to a customer?
123. At all material times, was the Claims Loss Ratio of each of the Add-On Insurance Products:
 - a. low; and/or
 - b. significantly lower, or lower, than the Claims Loss Ratio for other consumer-orientated general insurance products?
124. Did any one or more of the Add-On Insurance Products have no, or no material, financial value, and if so, which one(s)?

125. If the propositions in one or more of the questions in paragraphs 115, 116, 117, 118, 119, 124 and/or 122 and 123 are accepted, were those features of the Add-On Insurance Products necessary in order to protect the legitimate interests of one or both of the Defendants?
126. If a purchaser of Add-On Insurance Products financed their purchase by way of an interest-charging loan, would the purchaser have paid a greater amount for those Add-On Insurance Products than they would have paid if they had purchased the same Add-On Insurance Products for the same price without such borrowing?
127. Was it necessary for the Plaintiffs and Financed Group Members to buy one or more Add-On Insurance Products to obtain Finance, or for any other reason?
128. Was Allianz subject to the duties as set out in paragraphs 23 to 24, 28 and 29?

Allianz Sales System

129. At all material times, did Allianz operate a system for the sale of Add-On Insurance products with any or all of the features pleaded at paragraphs 30 to 44?
130. Did Allianz design, implement and operate a system for the sale of Add-On Insurance Products comprising at least the following elements:
 - a. the sale of the Add-On Insurance Products to prospective purchasers (which included the Plaintiffs and the Group Members) by Dealers on behalf of Allianz with the features referred to in paragraphs 31 to 33;
 - b. a structure for the payment of substantial commissions and incentives designed to motivate and incentivise the Dealers to promote and sell Allianz's Add-On Insurance Products with the features referred to in paragraphs 34 to 35;
 - c. the provision of instruction, direction and training to the Dealers regarding the most effective techniques for promoting and selling the Add-On Insurance Products with features referred to in paragraph 40; and
 - d. the provision of an electronic sales system to record sales made and commissions earned with the features referred to in paragraph 41?
131. At all material times during the Relevant Period was the income generated by the commissions and incentive scheme referred to in paragraph 130.b the most important source, or alternatively a significant source of profits for Dealers?
132. Were the commissions paid to the Dealers referred to in paragraph 130.b disproportionate to the complexity of, and costs involved in, the sales service provided

by the Dealers to Allianz in selling the Add-On Insurance Products to the Plaintiffs and Group Members?

133. Did the Allianz Sales System involve the sale of Add-On Insurance Products to customers in one or more of the circumstances in paragraph 97?
134. At all material times, was the purpose or effect of the Allianz Sales System as pleaded at paragraphs 37 to 39 and 98?
135. To what extent (if at all) was Allianz aware or ought to have been aware of any of the matters pleaded in paragraph 99 during the Relevant Period?

Sale of the Add-On Insurance Products to the Plaintiffs and Group Members

136. Was the purpose of the Plaintiffs and Group Members in visiting the Dealers to buy a Vehicle, and not to buy the Add-On Insurance Products?
137. Were the Plaintiffs and Group Members dependent upon the Dealers to provide them with accurate, complete and reliable information about the Add-On Insurance Products?
138. Was the sales process at the Dealers structured in a way that prompted the Plaintiffs and Group Members to disengage through decision fatigue, information overload, complex product offerings and multiple options of product combinations, constraining the Plaintiffs and Group Members' ability to make an informed purchasing decision?
139. In respect of the Plaintiffs and Financed Group Members, was the price of Add-On Insurance Products anchored to the price of the Vehicle and/or to the terms of Finance, thereby distorting the Plaintiffs' and Financed Group Members' perception of the cost of the Add-On Insurance Products?
140. Did any one or more of the matters in paragraph 78 constitute material information about the Add-On Insurance Products that:
 - a. would have been relevant to the decision of the Plaintiffs and Group Members about whether to proceed with the purchase of the Add-On Insurance Products; and
 - b. was required to be disclosed or adequately disclosed by Allianz and/or the Dealers to prospective purchasers of those Add-On Insurance Products by reason of the matters in paragraphs 75 to 81?
141. Was Allianz aware of the failure to disclose or adequately disclose any one or more of the matters in paragraph 78, or did it not care whether those matters were disclosed or adequately disclosed?

Allianz Misleading Conduct Contraventions

142. Did any one or more of the matters in paragraph 21 constitute material information about the Add-On Insurance products that:
- a. was relevant to the decision of the Plaintiffs and Group Members about whether to proceed with the purchase of the Add-On Insurance Products; and
 - b. was required to be disclosed by Allianz and/or the Dealers to prospective purchasers of those Add-On Insurance Products by reason of the matters in paragraphs 45, 46, 54 and 55?

Mistake/unjust enrichment

143. Would Group Members who purchased one or more of the Add-On Insurance Products have been mistaken, if at the time of acquiring the Product(s) they held one or more of the beliefs pleaded at paragraphs 106 and 107?
144. Did Allianz:
- a. induce the matters pleaded in paragraphs 106 to 109 above?
 - b. conceal the matters pleaded in paragraphs 106 to 109 above?
145. Was Allianz aware that circumstances existed which indicated that the Plaintiffs and mistaken Group Members were acquiring their respective policies under the mistaken beliefs?
146. Did Allianz choose to leave the Plaintiffs and the mistaken Group Members under the mistaken beliefs in acquiring or agreeing to be issued with their respective policies?
147. If yes to any of 143 to 146 above:
- a. are the Plaintiffs and mistaken Group Members entitled, at their election, to rescind the contracts for the acquisition of the Add-On Insurance products?
 - b. are the contracts for the acquisition of the Add-On Insurance products void?
 - c. are the terms of the said contracts requiring payment of the Premiums void?

Contraventions

148. In light of the preceding questions:

- a. Did Allianz engage in misleading or deceptive conduct or conduct that was likely to mislead or deceive in contravention of section 12DA(1) of the ASIC Act?
- b. Did Allianz engage in conduct that was liable to mislead the public as to the nature, characteristics and the suitability for their purpose of financial services in contravention of section 12DF(1) of the ASIC Act?
- c. Did Allianz engage in conduct in this jurisdiction in relation to a financial product or a financial service that was misleading or deceptive or was likely to mislead or deceive in contravention of section 1041H(1) of the Corporations Act?
- d. Did Allianz contravene section 1041E of the Corporations Act?
- e. Did Allianz contravene section 12DB of the ASIC Act?
- f. Did Allianz engage in unconscionable conduct in contravention of section 12CB(1) of the ASIC Act?
- g. Did Allianz engage in unconscionable conduct in contravention of section 991A(1) of the Corporations Act?
- h. Did Dealers contravene sections 961B and/or 961J of the Corporations Act by reason of the conduct pleaded at paragraphs 66 to 69?
- i. Did Allianz contravene section 961L of the Corporations Act?
- j. Is Allianz liable pursuant to section 961M(2)(b) for Dealers' contraventions of sections 961B and 961J of the Corporations Act?

Loss and Damage

149. What are the principles governing the measurement of loss or damage (if any) suffered by the Plaintiffs and Group Members by reason of any contraventions as alleged in the Consolidated Statement of Claim which have been established?
150. What, if any profits, did Allianz make as a result of the Dealers' and/or Allianz's contraventions of sections 961B, 961J and/or 961L of the Corporations Act which can be recovered by the Plaintiffs and Recommendation Group Members pursuant to section 961M(4) of the Corporations Act?

K. RELIEF

151. The Plaintiffs claim on their own behalf and on behalf of the Group Members:

- a. An order under section 48 of the *Limitation of Actions Act 1936* (SA) that any Group Member who has a claim for monies had and received by one or both of the Defendants to the use of the Group Member that is governed by the law of South Australia and that accrued on or before 7 July 2014 be granted an extension of time until the date of the filing of this Consolidated Statement of Claim.
- b. An order under section 38 of the *Limitation of Actions Act 2005* (WA) that any Group Member who has a claim for monies had and received by the Defendant to the use of the Group Member, that is governed by the law of Western Australia and that accrued on or before 7 July 2014 be granted an extension of time until the date of the filing of this Consolidated Statement of Claim.
- c. Damages pursuant to section 12GF(1) of the ASIC Act, sections 991A(2) and 1041I(1) of the Corporations Act.
- d. Compensation for the damage suffered pursuant to section 961M(2) and (4) of the Corporations Act (including profits resulting from Allianz's contraventions).
- e. Such further or other orders as the Court thinks fit pursuant to section 12GM(1) and/or (7) of the ASIC Act.
- f. Further or alternatively, judgment in the full amount of the Premiums mistakenly paid for the Add-On Insurance Products.
- g. Interest.
- h. Costs.
- i. Such further order as the Court determines is appropriate.

Dated the 27 September 2021



Johnson Winter & Slattery

Joint Solicitors for the Plaintiffs



Maurice Blackburn
Lawyers

This consolidated pleading was prepared by:
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SCHEDULE OF PARTIES

TRACY-ANN FULLER First Plaintiff

JORDAN WILKINSON Second Plaintiff

and

ALLIANZ AUSTRALIA INSURANCE LIMITED (ACN 000 122 850) First Defendant

ALLIANZ AUSTRALIA LIFE INSURANCE LIMITED (ACN 076 033 782) Second Defendant