



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

Case: S ECI 2021 00930

Filed on: 18/10/2021 03:43 PM

**No. S ECI 2021 00930**

BETWEEN

**ZOEY ANDERSON-VAUGHAN**

Plaintiff

and

**AAI LIMITED (ACN 005 297 807) and others according to the schedule**

First Defendant

**~~ASTERON LIFE & SUPERANNUATION LIMITED (ACN 073 979 530)~~**

~~Second Defendant~~

**FURTHER AMENDED STATEMENT OF CLAIM**

**(Filed pursuant to the Order of Justice Nichols made on 18 October 2021)**

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Filed on behalf of:	The Plaintiff	DX: N/A
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**Table of Contents**

<b>A. PARTIES AND GROUP MEMBERS</b> .....	<b>3</b>
A.1. The Plaintiff.....	3
A.2. Representative proceeding .....	3
A.3. The Defendants .....	6
<b>B. REGULATORY CONTEXT</b> .....	<b>78</b>
B.1. Entity Relationships.....	78
B.2. Add-On Insurance – Key Characteristics.....	911
B.3. Key Statutory Obligations.....	1114
<b>C. SALES OF ADD-ON INSURANCE</b> .....	<b>1417</b>

C.1.	The Sales Systems.....	<del>14</del> <u>17</u>
C.2.	Sales System deficiencies.....	<del>18</del> <u>21</u>
D.	<b>PLAINTIFF’S PURCHASES ON 23 and 28 OCTOBER 2015</b> .....	<del>23</del> <u>26</u>
E.	<b>PURCHASES OF ADD-ON INSURANCE PRODUCTS BY GROUP MEMBERS</b> .....	<del>29</del> <u>32</u>
F.	<b>PERSONAL ADVICE CONTRAVENTIONS</b> .....	<del>32</del> <u>35</u>
G.	<b>MISLEADING CONDUCT</b> .....	<del>33</del> <u>36</u>
G.1.	Material non-disclosures.....	<del>33</del> <u>36</u>
G.2.	Misleading representations by Dealers as agents for MTAI, AAI and SLSL .....	<del>35</del> <u>38</u>
G.3.	False or misleading representations – Preconditions Subgroup .....	<del>36</del> <u>40</u>
G.4.	Loss and Damage.....	<del>38</del> <u>42</u>
H.	<b>MONEY HAD AND RECEIVED</b> .....	<del>38</del> <u>42</u>
I.	<b>COMMON QUESTIONS OF LAW OR FACT</b> .....	<del>41</del> <u>45</u>
J.	<b>RELIEF</b> .....	<del>44</del> <u>49</u>

## A. PARTIES AND GROUP MEMBERS

### A.1. The Plaintiff

#### 1. The Plaintiff:

- (a) is a natural person;
- (b) was employed as a casual administrative officer with Queensland Health between in or around August 2015 and August 2016 and has been a permanent part time administrative officer with Queensland Health since then;
- (c) was and is a member of QSuper, 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**);
- (d) by reason of the superannuation in (c) has had life insurance, income protection insurance and total and permanent disability cover since in or around August 2015; and
- (e) was and is a 'consumer' within the meaning of section 12BC of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) in her dealings with the defendants.

### A.2. Representative proceeding

#### 2. The Plaintiff commences this proceeding as a representative proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) (**SC Act**) on her own behalf and on behalf of all persons who, subject to paragraph 3 below:

- (a) at any time between 1 May 2006 and 30 June 2018 (**Period**):
  - (i) purchased or leased a motor vehicle or motorcycle (**Vehicle**) from a motor vehicle dealer (**Dealer**) ~~who was a representative of the First Defendant (**AAI**) and/or Second Defendant, formerly known as Suncorp Life & Superannuation Limited (**SLSL**) and/or MTA Insurance Pty Ltd (ACN 070 583 701) (**MTAI**) for the purpose of arranging insurance for customers of the Dealer in connection with customers' purchases or leases of Vehicles;~~
  - (ii) purchased or leased the said Vehicle using loan finance arranged by the

Dealer (**Finance**); and

(iii) in conjunction with the purchase or lease in (ii) – purchased any of:

- A. **Loan Protection Insurance or Commercial Loan Protection Insurance** (also referred to as “consumer credit insurance”) (**CCI**) issued by the First Defendant (AAI) and/or Asteron Life & Superannuation Limited (ACN 073 979 530), formerly known as Suncorp Life & Superannuation Limited (SLSL) and/or Third Defendant (MTAI);
- B. **Equity or Equity Plus Insurance** (also referred to as “guaranteed asset protection insurance”, “GAP insurance” or “shortfall insurance”) (**GAP Insurance**) issued by AAI or MTAI;
- C. **Cash Benefit Insurance** issued by AAI or MTAI;
- D. **Extended Vehicle Warranty Insurance** (also referred to as “extended vehicle warranty”, “mechanical insurance”, “mechanical breakdown insurance” or “extended manufacturers warranty”) (**Extended Warranty Insurance**) issued by AAI or MTAI; or
- E. **Tyre and Rim Insurance** issued by AAI or MTAI;

(the products in (A) to (E) being together and severally **Add-On Insurance**) ~~issued by AAI and/or SLSL and/or MTAI~~ and, for the avoidance of doubt, excluding any such insurance distributed by NM Insurance Pty Ltd.

### **Particulars**

- i. CCI purported to insure the consumer against circumstances where they might be unable to meet financial obligations associated with finance obtained to purchase or lease a vehicle, and could include “Trauma or Traumatic Event and Death” cover (**trauma and death cover**).*
- ii. GAP Insurance 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.*
- iii. Under Cash Benefit Insurance policies, a policyholder was purportedly insured for a pre-agreed sum if the policyholder’s motor vehicle, comprehensively insured on a market value basis, was written off by the motor vehicle insurer as a total loss.*

- iv. *Extended Warranty Insurance 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.*
  - v. *Tyre and Rim Insurance purported to insure against the risk of accidental damage to the wheels or tyres of a vehicle.*
  - vi. *The terms and conditions upon which each of the said Add-On Insurance products was issued from time to time were set out in the Product Disclosure Statements (**PDS**) and Applications/Certificates of Insurance issued in respect of each of them.*
  - vii. *Further particulars may be provided after discovery.*
- (b) by reason of the purchases in (a) – made payments to AAI and/or SLSL and/or MTAI (directly or indirectly) for the Add-On Insurance (**Premiums**);
  - (c) were and are 'consumers' within the meaning of section 12BC of the ASIC Act in their dealings with the defendants;
  - (d) in the case of persons who purchased Add-On Insurance on a day prior to 6 years before the date of filing of ~~the~~ this Statement of Claim on 30 March 2021 (being the **General relation-back day**) – did not prior to the General relation-back day discover, and could not with reasonable diligence have discovered, any or all of the mistakes pleaded in paragraph 76 below;
  - (e) were not at the time of the purchases in (a), 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 2001* (Cth) (**Corporations Act**) of the Defendants; or
    - (ii) a judge, Associate Judge or Judicial Registrar of the Supreme Court of Victoria; and
  - (f) have suffered loss or damage by reason of the contravening conduct of the Defendants as pleaded in this Further Amended Statement of Claim;

(the persons satisfying the criteria in (a) to (d) and (f) being the **Group Members**).

3. Persons whose claims are governed by the law of the Northern Territory (**NT Claimants**) are a Group Member if:

- (a) sub-paragraphs 2(a) – 2(c) and (f) apply; and
- (b) in the case of NT Claimants who purchased Add-On Insurance on a day prior to

3 years before the date of filing of ~~the~~this Statement of Claim on 30 March 2021 (being the **NT relation-back day**) – did not prior to the NT relation-back day discover, and could not with reasonable diligence have discovered, any or all of the mistakes pleaded in paragraph 76 below.

4. As at the date of the commencement of this proceeding there are seven or more Group Members.

### **A.3. The Defendants**

5. At all material times, the First Defendant, AAI:
  - (a) was and is a corporation and capable of being sued;
  - (b) was and is a person and a corporation within the meaning of the ASIC Act;
  - (c) carried on and carries on the business of insurance throughout Australia;
  - (d) since 1 July 2015, was and is responsible for all “Insurance Contracts” entered into or assumed by MTAI as defined in the Scheme for the Transfer of the Insurance Business of MTAI to AAI effected on 1 July 2015 (**AAI’s MTAI Transfer Liability**);

#### ***Particulars***

*Clause 1.1 and 10(b)(iv) of the Scheme for the Transfer of the Insurance Business of MTA Insurance Limited to AAI Limited filed with ASIC on 6 July 2015 and approved by the Federal Court of Australia in AAI Limited, application under the Insurance Act 1973 (Cth) (No. 2) [2015] FCA 617.*

- (e) was and is since 29 August 2014, the owner of all the issued share capital of MTAI; and
  - (f) was and is the holder of an Australian Financial Services License (**AFSL**) (No 230859) (**AAI AFSL**).
6. At all material times, ~~the Second Defendant,~~ SLSL:
  - (a) was ~~and~~ is a corporation and capable of being sued;
  - (b) was ~~and~~ is a person and a corporation within the meaning of the ASIC Act;
  - (c) during the Period, carried on a business of, inter alia, issuing policies of insurance

in respect of trauma and death cover including in connection with CCI;

- (d) until 2019 was part of the same corporate group as AAI; and
- (e) was and is the holder of an AFSL (No 229880) (**SLSL AFSL**).

6A. The Second Defendant, TAL Life Limited:

- (a) is a corporation and capable of being sued; and
- (b) accepts that:
  - (i) following orders made on 24 September 2021 in Federal Court proceeding No NSD575/2021, the scheme for the transfer of all of the life insurance business of Asteron Life & Superannuation Limited to TAL Life Limited took effect on and from 12.01 AEST on 1 October 2021;
  - (ii) by reason of that transfer, TAL Life Limited is substituted as the Second Defendant in this proceeding in place of Asteron Life & Superannuation Limited, which is referred to in this pleading as SLSL;
  - (iii) TAL Life Limited, as Second Defendant, is responsible for responding to the allegations made against SLSL; and
  - (iv) for the avoidance of any doubt, TAL Life Limited is responsible for responding to allegations made against 'the Defendants' to the extent that those allegations relate to SLSL.

6B. At all material times, the Third Defendant, MTAI:

- (a) was and is a corporation and capable of being sued;
- (b) was and is a person and a corporation within the meaning of the ASIC Act;
- (c) carried on the business of, among other things, being an insurer;
- (d) was and is since 29 August 2014, a wholly-owned subsidiary of AAI; and
- (e) was and is the holder of an AFSL (No. 239912) (**MTAI AFSL**).

## B. REGULATORY CONTEXT

### B.1. Entity Relationships

7. ~~At all material times in the Period prior to 1 July 2015, MTAI:~~
- (a) ~~Offered the Add-On Insurance for purchase by consumers including the Group Members; in the Period prior to 1 July 2015:~~
    - (i) issued the Add-On Insurance (save for trauma and death cover in connection with CCI); and
    - (ii) arranged the issue of trauma and death cover in connection with CCI on behalf of SLSL; and/or
    - (iii) promoted and/or distributed the Add-On Insurance,  
for purchase by consumers including the Group Members; and
  - (b) ~~held an AFSL (No. 239912) (~~MTAI AFSL~~) in the Period after 1 July 2015:~~
    - (i) arranged the issue of the Add-On Insurance on behalf of AAI and/or SLSL; and/or
    - (ii) promoted and/or distributed the Add-On Insurance,  
for purchase by consumers including the Plaintiff and Group Members.
8. At all material times in the Period after 1 July 2015, AAI:
- (a) ~~offered~~issued the Add-On Insurance (save for trauma and death cover in connection with CCI) for purchase by consumers including the Plaintiff and Group Members;
  - (b) appointed MTAI as its representative within the meaning of section 910A of the Corporations Act or as its agent to sell, promote and/or arrange for the issue and/or distribute the Add-On Insurance to the Plaintiff and Group Members; and

#### **Particulars**

*So far as the Plaintiff is able to say prior to discovery, the agency/representative relationship was disclosed in the product disclosure statements. Examples may be inspected by appointment at the offices of the Plaintiff's solicitors.*



(ba) further or in the alternative to (b):

- (i) appointed MTAI under a “binder” within the meaning of section 761A of the Corporations Act to, among other things, enter into the Add-On Insurance contracts with consumers including the Plaintiff and Group Members on behalf of AAI; and
  - (ii) in the premises of (i) above and paragraphs 35(e), 38(e) and 42(c), section 916E(2) of the Corporations Act applied to MTAI’s conduct in relation to the entry into the Add-On Insurance contracts with the Plaintiff and Group Members;
- (c) authorised MTAI to appoint agents on its behalf for the purpose of doing the matters pleaded at paragraph 8(b) above.

**Particulars**

*The Plaintiff is not aware whether MTAI’s authority to delegate its agency was express or implied. It is apparent from the conduct of MTAI, AAI and the Dealers in the MTAI Sales System pleaded at paragraphs 19 to 26 below. Further particulars may be provided after discovery.*

9. At all material times in the Period, SLSL:

- (a) ~~offered~~issued the trauma and death cover included in CCI for purchase by consumers including the Plaintiff and Group Members;
- (b) appointed MTAI as its representative within the meaning of section 910A of the Corporations Act or as its agent to promote and/or arrange the issue and/or distribute to sell that cover to the Plaintiff and Group Members; and

**Particulars**

*So far as the Plaintiff is able to say prior to discovery, the agency/representative relationship was disclosed in the product disclosure statements. Examples may be inspected by appointment at the offices of the Plaintiff’s solicitors.*

(ba) further or in the alternative to (b):

- (i) appointed MTAI under a “binder” within the meaning of section 761A of the Corporations Act to, among other things, enter into the CCI contracts with consumers including the Plaintiff and Group Members on behalf of SLSL;

and

- (ii) in the premises of (i) and paragraphs 35(e) and 42(c), section 916E(2) of the Corporations Act applied to MTAI's conduct in relation to the entry into the CCI contracts with the Plaintiff and Group Members;
- (c) authorised MTAI to appoint agents on its behalf for the purpose of doing the matters pleaded at paragraph 9(b) above.

### **Particulars**

*The Plaintiff is not aware whether MTAI's authority to delegate its agency was express or implied. It is apparent from the conduct of MTAI, SLSL and the Dealers in the MTAI Sales System pleaded at paragraphs 19 to 26 below. Further particulars may be provided after discovery.*

- 10. At all material times in the Period, MTAI operated the sales system pleaded at paragraphs 19 to 26 below (**MTAI Sales System**) ~~to sell the~~ in relation to the Add-On Insurance to the Plaintiff and Group Members by appointing the Dealers (under **Dealer Agreements**) as:
  - (a) its agents or representatives within the meaning of section 910A of the Corporations Act;
  - (b) agents or representatives of SLSL within the meaning of section 910A of the Corporations Act; and or
  - (c) after 1 July 2015, agents or representatives of AAI within the meaning of section 910A of the Corporations Act.

10A. In the premises, the Dealers referred to in paragraph 10 were representatives of more than one Australian Financial Services licensee such that section 917C of the Corporations Act applied with the effect that each of MTAI, AAI and/or SLSL are jointly and severally responsible for the Dealers' conduct in relation to the Add-On Insurance.

- 11. At all material times in the Period ~~prior to 1 July 2015,~~ in relation to the purchase by consumers of the Add-On Insurance, MTAI was, in trade or commerce, by itself and by the Dealers as its representatives or agents:
  - (a) engaged in the ~~supply~~ provision of financial services to ~~customers~~ consumers within the meaning of section 12BAB of the ASIC Act, being the ~~sale~~ provision of financial product advice and/or the dealing in a financial product of the Add-On Insurance; and

- (b) providing a financial service, ~~being the supply of the Add-On Insurance~~, within the meaning of sections 766A and 766C of the Corporations Act, being the provision of financial product advice and/or the dealing in a financial product.
12. At all material times in the Period after 1 July 2015, AAI was, in relation to the purchase by consumers of the Add-On Insurance, in trade or commerce, by itself and by MTAI and/or the Dealers as its representatives or agents:
- (a) engaged in the ~~supply~~provision of financial services to ~~customers~~consumers within the meaning of section 12BAB of the ASIC Act, being the provision of financial product advice and/or the dealing in a financial product~~sale of the Add-On Insurance~~; and
- (b) providing a financial service, ~~being the supply of the Add-On Insurance~~, within the meaning of sections 766A and 766C of the Corporations Act, being the provision of financial product advice and/or the dealing in a financial product.
13. At all material times in the Period SLSL was, in relation to the purchase by consumers of the trauma and death cover included in CCI, in trade or commerce, by itself and by MTAI and/or the Dealers as its representatives or agents:
- (a) engaged in the ~~supply~~provision of financial services to ~~customers~~consumers within the meaning of section 12BAB of the ASIC Act, being the provision of financial product advice and/or the dealing in a financial product~~sale of the trauma and death cover included in the Add-On Insurance~~; and
- (b) providing a financial service, ~~being the supply of the trauma and death cover included in the Add-On Insurance~~, within the meaning of sections 766A and 766C of the Corporations Act, being the provision of financial product advice and/or the dealing in a financial product.

## **B.2. Add-On Insurance – Key Characteristics**

14. Each of the Add-On Insurance products was:
- (a) a financial product within the meaning of:
- (i) section 12BAA of the ASIC Act; further or alternatively
- (ii) sections 763A and 763C of the Corporations Act; and
- (b) upon issue, a financial service within the meaning of section 12BAB(1)(b) of the

ASIC Act and section 766A(1)(b) of the Corporations Act.

15. At all material times, the Add-On Insurance products:
- (a) were complex financial instruments for protecting against the risks identified in the policy terms for each product; and
  - (b) had numerous and important exclusions, exceptions and limits to the protection offered, which significantly limited the circumstances in which the policies would respond;

**Particulars**

- i. *Exclusions in CCI included that:*
  - a. *permanent employees who worked for less than 20 hours per week were ineligible to apply for disability cover, accidental injury cover, or involuntary unemployment and carer cover;*
  - b. *until around December 2015, casual employees were ineligible to apply for disability cover, accidental injury cover, or involuntary unemployment cover;*
  - c. *from around December 2015, casual employees who worked for less than 20 hours per week in their usual occupation were ineligible to apply for disability cover, accidental injury cover, or involuntary unemployment and carer cover;*
  - d. *self-employed persons who worked for less than 20 hours per week were ineligible to apply for disability cover, accidental injury cover, or involuntary unemployment and carer cover;*
  - e. *consumers who were aged over 59-69 years of age at the time of application, depending on when the policy was entered into, were ineligible to apply for any cover; and*
  - f. *consumers who had pre-existing medical conditions had exclusions attached to their disability cover, accidental injury cover, trauma and death cover, and depending on when the policy was entered into, involuntary unemployment cover.*
  - g. *Examples of CCI Product Disclosure Statements may be inspected by appointment at the offices of the Plaintiff's solicitors.*
  - h. *Further particulars of CCI exclusions may be provided following discovery.*
- ii. *Exclusions in GAP Insurance included that:*
  - a. *For policies prior to around December 2015, no payment would be made if consumers' comprehensive insurers did not pay out the full market value or the full agreed value of a vehicle, following a total loss*

*for any reason whatsoever.*

- b. For policies after around December 2015, no payment would be made if consumers' comprehensive insurers did not pay out the full market value or the full agreed value of a vehicle, or provide the consumer with a replacement vehicle, following a total loss for any reason whatsoever.*
- c. Examples of GAP Insurance Product Disclosure Statements may be inspected by appointment at the offices of the Plaintiff's solicitors.*
- d. Further particulars of GAP Insurance exclusions may be provided following discovery.*

*iii. Exclusions in Cash Benefit Insurance included that:*

- a. No payment would be made if consumers' comprehensive insurers did not pay out the full market value or the full agreed value of a vehicle following a total loss for any reason whatsoever.*
- b. An example of a Cash Benefit Insurance Product Disclosure Statement dated 29 July 2014 may be inspected by appointment at the offices of the Plaintiff's solicitors.*
- c. Further particulars of Cash Benefit Insurance exclusions may be provided following discovery.*

*iv. Exclusions in Tyre & Rim Insurance included that:*

- a. No cover would be provided for tyres and/or rims that had previously been repaired, other than punctures; and*
- b. No cover would be provided for re-tread tyres.*
- c. An example of a Tyre & Rim Product Disclosure Statement dated 3 September 2012 may be inspected by appointment at the offices of the Plaintiff's solicitors.*
- d. Further particulars of Tyre & Rim Insurance exclusions may be provided following discovery.*

(c) had a low "**Claims Loss Ratio**", indicating that:

- (i) a relatively low proportion of claim payments were received by policyholders compared to premiums paid; and
- (ii) the policies were commensurately likely to be of reduced or no value to the insureds.

### **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.*

### **B.3. Key Statutory Obligations**

#### *AFSL obligations*

15A. At all material times, the financial services covered by the AAI AFSL, SLSL AFSL and MTAI AFSL included, among other things:

- (a) providing advice in relation to the Add-On Insurance; and
- (b) dealing in the Add-On Insurance.

16. In the premises, At all material times, AAI, and/or SLSL and/or MTAI as the holders of the AAI AFSL, SLSL AFSL and MTAI AFSL were, in relation to the supply by them of the Add-On Insurance products, required by:

- (a) section 912A of the Corporations Act to:
  - (i) do all things necessary to ensure that the Add-On Insurance products were provided efficiently, honestly and fairly;
  - (ii) have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by themselves as licensees, or by Dealers, in the provision of the Add-On Insurance products as part of their financial services businesses;
  - (iii) take reasonable steps to ensure the Dealers complied with the financial services laws; and
  - (iv) ensure that the Dealers were adequately trained to provide the Add-On Insurance products (including by complying with section 912D) and were competent to provide the Add-On Insurance products;
- (b) section 961 of the Corporations Act to take reasonable steps to ensure that if personal advice was provided by Dealers to clients, then the Dealers:
  - (i) in accordance with section 961B of the Corporations Act – acted in the best interests of the clients in relation to the advice;

- (ii) in accordance with section 961G of the Corporations Act – only provided the advice to the clients if it would be reasonable to conclude that the advice was appropriate to the client;
- (iii) in accordance with section 961H of the Corporations Act – 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;
- (iv) in accordance with section 961J of the Corporations Act prior to 19 March 2016 – gave priority to the interests of the clients over any other interest;
- (v) in accordance with section 961J of the Corporations Act after 19 March 2016 – gave priority to the interests of the clients over any other interest in relation to policies that were not general insurance products.

*Code of Practice*

17. The Insurance Industry Codes of Practice (**Codes**) issued by the Insurance Council of Australia were at all material times and are:
- (a) applicable industry codes within the meaning of section 51ACA of the *Competition and Consumer Act 2010* (Cth); and
  - (b) binding on AAI and MTAI in respect of the supply of Add-On Insurance.

***Particulars***

*The relevant Codes are dated 2006, 2010, 2012 and 2014. Copies of the said Codes may be inspected by appointment at the offices of the Plaintiff's solicitors.*

18. At all material times, the Codes required that AAI and/or MTAI in connection with the supply of (*inter alia*) Add-On Insurance products:
- (a) under all versions of the Codes:
    - (i) require the Dealers, as representatives, to conduct their sales practices in an honest, efficient, fair and transparent manner;
    - (ii) only permit the Dealers, as representatives, to perform functions that matched their expertise;
    - (iii) train the Dealers, as representatives, to carry out their sales tasks and

functions competently; and

- (iv) require the Dealers, as representatives, to inform the Plaintiff and Group Members of the service they have been asked to provide and the identity of the insurer;

**Particulars**

- i. 2006, 2010 and 2012 Codes: clauses 2.4(1), 2.4(4), 2.4(5), 2.4(3);*
- ii. 2014 Code: clauses 4.4, 5.1(b), 5.1(a), 5.3.*

- (b) under the 2006, 2010 and 2012 Codes:

- (i) train the Dealers, as 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;
- (ii) measure the effectiveness of the said training by monitoring the performance of the Dealers; and
- (iii) require additional or remedial training to address any identified deficiencies; and

**Particulars**

- i. 2006, 2010 and 2012 Codes: clauses 2.4(6), 2.4(8)(a), 2.4(8)(b);*

- (c) under the 2014 Code:

- (i) provide the Dealers, as 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;
- (ii) measure the effectiveness of training in (i) by monitoring the performance of representatives' services; and
- (iii) correct any shortcoming identified as a result of (ii).

**Particulars**

*Clauses 5.1(a), 5.1(c), 5.1(d).*



## C. SALES OF ADD-ON INSURANCE

### C.1. The Sales Systems

19. At all material times in the Period, MTAI operated the MTAI Sales System pursuant to which, *inter alia*:

- (a) MTAI provided training and instruction to the Dealers on how to promote and sell the Add-On Insurance to customers;
- (b) Dealers were paid commissions by MTAI calculated by reference to:
  - (i) the promotion and sale of the Add-On Insurance products (**Product Commissions**); further or alternatively
  - (ii) the sale of specified volumes of some Add-On Insurance products (**Volume Commissions**);
- (c) MTAI operated an electronic sales system (**MTAI Platform**) by which:
  - (i) Dealers were able to access the MTAI Platform to arrange or obtain Add-On Insurance for customers;
  - (ii) Dealers could calculate their potential commission on each sale of Add-On Insurance; and
  - (iii) MTAI could monitor the volumes of sales of Add-On Insurance arranged by each Dealer;
- (d) Dealers in fact used the MTAI Platform as described in (c)(i) and (ii) above; and
- (e) Dealers pursuant to the Dealer Agreements and as agents of MTAI, and/or AAI and/or SLSL, sold or arranged the sale of Add-On Insurance to customers, including the Plaintiff and Group Members.

20. At all material times in the Period, MTAI:

- (a) by itself, by operating the MTAI Sales System; and
- (b) by the Dealers as its representatives or agents;

engaged in conduct that was intended to influence customers, including the Plaintiff and Group Members, to acquire Add-On Insurance within the meaning of section 766B(1)

of the Corporations Act.

**Particulars**

- i. MTAI's intention is to be inferred from the nature of the MTAI Sales System as a mechanism for marketing and selling Add-On Insurance to customers.*
- ii. Further particulars may be provided after discovery.*

21. At all material times in the Period, the officers of MTAI (within the meaning of the Corporations Act) with responsibility for:

- (a) approving the terms of Dealer Agreements;
- (b) approving or finalising the terms of MTAI documents provided to Dealers for use in connection with arranging Add-On Insurance for customers of the Dealers; further or alternatively
- (c) training and supervising Dealers in relation to arranging Add-On Insurance for customers of the Dealers;

(being the **MTAI responsible officers**) were or ought reasonably to have been aware that:

- (i) the customers to whom the Dealers would or were likely to sell the Add-On Insurance attended the Dealers' businesses for the purpose of purchasing or leasing a vehicle and not for the purpose of purchasing Add-On Insurance;
- (ii) many of the said customers would need to obtain finance to purchase or lease a vehicle;
- (iii) in arranging the Finance for a vehicle, the Dealers would obtain the following personal financial information:
  - A. the customers' income, assets and liabilities;
  - B. whether the customers were employees with a regular income; and
  - C. the fact that some customers, as employees, were also therefore:
    - (1) members of superannuation funds; and
    - (2) likely to have income protection, total and permanent disability

insurance and/or trauma and death insurance through the said memberships;

(the information in (iii) being the **Personal Circumstances Information**).

***Particulars***

- i. MTAI's state of mind is to be inferred from the following matters:*
  - a. MTAI's business arrangements with the Dealers, including the establishment of the Dealer Agreements and the operation of the MTAI Sales System;*
  - b. MTAI's purported compliance with its obligations in respect of the sale of Add-On Insurance products pleaded in paragraphs 16 and 18 above;*
  - c. the circumstance that the process of negotiating and purchasing motor vehicles from Dealers is a matter of common experience;*
  - d. the circumstance that, as representatives or agents of MTAI, the knowledge of the Dealers as to the characteristics of their customers is imputed to MTAI as principal;*
- ii. Further particulars may be provided after discovery.*

22. At all material times in the Period, the MTAI responsible officers knew or ought reasonably to have known that, notwithstanding any terms of the Dealer Agreements, the Dealers in the circumstances set out in paragraph 21 were likely to:

- (a) refer to Add-On Insurance in terms that could reasonably be regarded as recommending the said insurance to the customer or expressing an opinion as to the necessity for, value of or desirability of the insurance for the customer; or alternatively
- (b) add one or more Add-On Insurance products to the customer's Finance documents without drawing the addition to the customer's attention adequately or at all, and by omission represent to the customer that the insurance was necessary, valuable or desirable;
- (c) in the premises in (a) or, alternatively, (b) – make a recommendation or a statement of opinion that could reasonably be regarded as intending to influence the customer in making a decision in relation to the Add-On Insurance, within the meaning of section 766B(1) of the Corporations Act; and
- (d) engage in the conduct in (c) 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 Plaintiff refers to and repeats the particulars under paragraph 21 above.*

23. At all material times in the Period, the MTAI responsible officers knew or ought to have known 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, rather than providing fair and balanced information to customers about the advantages and disadvantages of the Add-On Insurance 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 or lease of the Vehicle they were considering buying or leasing;
  - (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 afford the customers any or any sufficient opportunity to obtain independent advice as to whether Add-On Insurance was 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;

- (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 or adequately disclose the terms by which the Product Commissions or the Volume Commissions were calculated.

***Particulars***

- i. MTAI's state of mind is to be inferred from the design of the Product Commissions and Volume Commissions.*
- ii. The Plaintiff otherwise refers to and repeats the particulars under paragraph 21.*

**C.2. Sales System deficiencies**

24. At all material times, it was the case that:

- (a) the purchase of Add-On Insurance was not a condition of obtaining Finance for the purchase or lease of a Vehicle;
- (b) the terms of the Add-On Insurance were not able to be negotiated by customers, including the Plaintiff and the Group Members;
- (c) the purchase of the Add-On Insurance was added to a customer's Finance documents at a late stage of the dealings between the Dealer and a customer and, in particular, after a customer had otherwise agreed to purchase or lease the Vehicle;
- (d) Dealers frequently added Add-On Insurance to a customer's Finance documents without drawing the addition to the attention of a customer;
- (e) customers for whom Add-On Insurance was included in the Finance were likely to pay more for the insurance than if the insurance was not included in the Finance;

***Particulars***

*Consumers paid interest and other charges in respect of the Add-On Insurance that was included in the Finance, which charges were capitalised into the total value of the Finance.*

- (f) CCI, GAP Insurance and Cash Benefit Insurance offered coverage that:
- (i) overlapped or was likely to overlap with other insurance coverage already held by consumers and in particular in the case of CCI, the Plaintiff and employed Group Members;
  - (ii) was or may be unnecessary or largely unnecessary; further or alternatively
  - (iii) was likely to be available by means of other insurance policies for a lower price;

**Particulars**

- i. *If consumers were employees, at least some cover under CCI overlapped or was likely to overlap with cover the consumers already held under insurance policies through their superannuation funds.*
  - ii. *If consumers also had CCI, at least some cover under GAP Insurance overlapped or was likely to overlap with cover under their CCI policies. For example, if the amount outstanding under the consumer's Finance contract was paid out due to a trauma and death benefit claim under their CCI policy, the consumer's GAP Insurance would or may become unnecessary.*
  - iii. *At least some cover under CCI was or may be unnecessary for some consumers given their Personal Circumstances Information. In the case of some CCI policies, consumers would be ineligible to claim under their policies because of the terms of their employment. Some consumers were also sold life insurance coverage under their CCI policies that they did not need because they were under a certain age and/or had no dependants.*
  - iv. *Some consumers would be unable to claim on their GAP Insurance policies. One example being because they may have paid a large deposit on the car loan so that the insured value of the car was more than the amount borrowed.*
  - v. *Many consumers did not receive rebates under their GAP Insurance policies when they paid out their loan early, even though cover under those policies had ended.*
  - vi. *GAP Insurance and Cash Benefit Insurance became void and therefore were unnecessary for consumers in circumstances where the comprehensive insurance for their Vehicle had ended or been cancelled without replacement.*
  - vii. *Dealers sold most CCI, GAP Insurance and Cash Benefit Insurance as single premium policies such that consumers would incur interest charges, increasing the cost of the insurance.*
  - viii. *Further particulars may be provided after discovery.*
- (g) cover provided by the Extended Warranty Insurance was or may be unnecessary

or largely unnecessary, given the provisions of the *Trade Practices Act 1974* (Cth) (**TPA**) or, after 1 January 2011, the *Australian Consumer Law* (**ACL**); and

**Particulars**

- i. Consumers already had the benefit of guarantees under the TPA and ACL, which required the dealer and manufacturer to meet the cost of repairs if the Vehicle was not of an acceptable quality. This position was further exacerbated if the Vehicle was a new Vehicle, given the usual manufacturer's warranties.*
  - ii. Dealers sold most Extended Warranty Insurance as single premium policies such that consumers would incur interest charges, increasing the cost of the insurance.*
  - iii. Further particulars may be provided after discovery.*
- (h) offering Add-On Insurance products immediately after the sale or lease of the Vehicle (a high value product):
- (i) presented the cost of the insurance as relatively minor compared to the price of the Vehicle or the cost of leasing, thereby distorting customers' perceptions of the cost of the Add-On Insurance product; and
  - (ii) created the impression that the Add-On Insurance products offered value for money in their own right.

25. At all material times MTAI (~~in the period prior to 1 July 2015~~), AAI (in the period after 1 July 2015) and/or SLSL (in respect to trauma and death cover) failed to disclose or adequately disclose, in documentation to be provided to customers in connection with the Add-On Insurance (**Product Information**) that:

- (a) Add-On Insurance featured a low "Claims Loss Ratio", indicating that:
  - (i) a relatively low proportion of claim payments were received by policyholders compared to premiums paid; and
  - (ii) the policies were commensurately likely to be of reduced or no value to the insureds;

**Particulars**

*The Plaintiff repeats the particulars under subparagraph 15(c) above.*

- (b) the purchase of Add-On Insurance was not a condition of obtaining Finance for the purchase or lease of a Vehicle;

- (c) by reason of the Product Commissions and/or the Volume Commissions, Dealers had a financial incentive to sell as many Add-On Insurance products as possible;

**Particulars**

- i. *Because Product Commissions were paid to Dealers in respect of each Add-On Insurance product sold, Dealers received a greater amount of Product Commissions the more Add-On Insurance products they sold;*
- ii. *Because Volume Commissions were paid to Dealers when they reached certain volumes of sales of some Add-On Insurance products, Dealers had a financial incentive to sell high volumes of these Add-On Insurance products.*

- (d) customers for whom Add-On Insurance was included in the Finance were likely to pay more for the insurance than if the insurance was not included in the Finance;

**Particulars**

*The Plaintiff repeats the particulars under subparagraph 24(e) above.*

- (e) CCI, GAP Insurance and Cash Benefit Insurance offered coverage that:

- (i) overlapped or was likely to overlap with other insurance coverage already held by the customer, particularly in the case of CCI those who were employed and received SGA payments;
- (ii) was or may be unnecessary or largely unnecessary; further or alternatively
- (iii) was likely to be available by means of other insurance policies for a lower price;

**Particulars**

*The Plaintiff repeats the particulars under subparagraph 24(f) above.*

- (f) cover provided by the Extended Warranty Insurance was or may be unnecessary or largely unnecessary, given the provisions of the TPA or ACL as the case may be; and

**Particulars**

*The Plaintiff repeats the particulars under subparagraph 24(g) above.*

- (g) the matters identified in (a) and (d) to (f) meant there was a substantial likelihood that prospective purchasers would be better off financially by declining to



purchase the Add-On Insurance;

(the matters in (a) to (g) being together and severally the **Non-disclosures**).

**Particulars**

- i. The Product Information included, for each Add-On Insurance product:*
  - a. the Applications/Certificates of Insurance;*
  - b. the PDS and/or Supplementary PDS; and*
  - c. the FSG.*
- ii. Further particulars may be provided after discovery.*

26. Further or in the alternative, during the Period MTAI~~(in the period prior to 1 July 2015)~~, AAI (in the period after 1 July 2015) and/or SLSL (in respect to trauma and death cover) failed to have or implement any or any adequate system for:

- (a) training Dealers' personnel to ensure adequate disclosure to customers of the matters the subject of the Non-disclosures (**Cautionary Matters**);
- (b) monitoring compliance by Dealers' personnel with any protocols or guidelines for interactions with customers in respect of Add-On Insurance; further or alternatively
- (c) identifying and correcting Dealers' non-compliance with any protocols or guidelines for interactions with customers in respect of Add-On Insurance.

27. In the premises set out in:

- (a) paragraph 25; further or alternatively
- (b) paragraph 26;

MTAI~~(in the period prior to 1 July 2015)~~, AAI (in the period after 1 July 2015) and/or SLSL (in respect to trauma and death cover):

- (i) failed to take any or any adequate step to ensure the Dealers did not engage in conduct as described in paragraphs 22 and 23; further or alternatively
- (ii) in the premises set out in paragraphs 21 to 23 inclusive – acquiesced in the conduct of the Dealers as described in paragraphs 22 and 23.

**D. PLAINTIFF'S PURCHASES ON 23 and 28 OCTOBER 2015**

28. ~~At times presently not known to the Plaintiff,~~ On or around 29 July 2014, AP Motors (No. 3) Pty Ltd (A.C.N 010 585 252) (**AP Motors**) entered into its second a Dealer Agreement with MTAI (**AP Motors Agreement**).

**Particulars**

MTAI Financial Services Distribution Agreement with document ID SUN.0001.1500.0252.

29. At all material times AP Motors while dealing with the Plaintiff was, by reason of the AP Motors Agreement and the authority to delegate pleaded at paragraphs 8(c) and 9(c), in relation to the sale of the Add-On Insurance:
- (a) a representative of MTAI and/or AAI and/or SLSL within the meaning of section 910A of the Corporations Act; further or alternatively
  - (b) an agent of MTAI and/or AAI and/or SLSL.
30. Prior to 23 October 2015, the Plaintiff's husband telephoned Mr Jason Bovey at AP Motors to arrange a finance appointment at the vehicle dealership operated by AP Motors on or about 23 October 2015.

**Particulars**

*Telephone conversation between the Plaintiff's husband and Jason Bovey.*

31. On or about 23 October 2015, the Plaintiff and her husband:
- (a) attended the vehicle dealership operated by AP Motors for the purpose of purchasing two Vehicles for them to use;
  - (b) offered to purchase from AP Motors:
    - (i) a second hand Toyota Corolla sedan (**Corolla**); and
    - (ii) a second hand Ford Ranger Utility (**Ranger**);
  - (c) requested that AP Motors arrange Finance to facilitate the said purchases.

**Particulars**

- i. The Plaintiff does not recall the name of the car salesperson at AP Motors with whom she and her husband had this conversation but does recall*

*he/she referred them to Jason Bovey who then arranged the Finance.*

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

32. For the purpose of assisting the Plaintiff and her husband to obtain the Finance referred to in the preceding paragraph, AP Motors, acting as a credit representative of the credit provider, obtained the following Personal Circumstances Information from the Plaintiff:

(a) that the Plaintiff was employed;

(b) details of the Plaintiff's personal financial circumstances including that:

(i) she was living in rented accommodation with her husband;

(ii) she did not have any assets other than her current car;

(iii) she did not have any debts or credit cards;

**(Plaintiff's Personal Circumstances Information).**

33. By reason of having obtained the Plaintiff's Personal Circumstances Information, AP Motors knew or ought to have known that:

(a) the Plaintiff was a member of a superannuation fund; and accordingly

(b) it was likely that the Plaintiff would have income protection insurance, total and permanent disability insurance, and trauma and death insurance associated with the said membership, that covered some or most of the risks covered by the Add-On Insurance products.

#### ***Particulars***

*i. AP Motors' state of mind is to be inferred from of the fact that it knew:*

*a. the Plaintiff was an employee; and*

*b. the legal requirement for the Plaintiff's employer to make the SGA payments, since that requirement also applied to AP Motors in respect of its own employees. Further, as an employer obliged to make SGA payments, AP Motors ought to have known that superannuation funds include insurance benefits.*

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

34. On or about 23 October 2015:

(a) AP Motors submitted some or all of the Plaintiff's Personal Circumstances

Information to St George Bank for the purchase of the Corolla (**St George**);

- (b) AP Motors presented at least one document to the Plaintiff to sign to effect the purchase of the Corolla (**First St George Loan**);

***Particulars***

- i. St George Loan Contract number 96544048 dated by the Plaintiff on 23 October 2015:*
- ii. Further particulars may be provided after discovery or subpoenas.*

- (c) AP Motors, informed the Plaintiff of:

- (i) the fortnightly repayment amounts;
- (ii) the interest rate; and
- (iii) that she was purchasing comprehensive insurance.

***Particulars***

*Conversation between the Plaintiff, the Plaintiff's husband and Jason Bovey.*

- (d) AP Motors did not inform the Plaintiff that the First St George Loan was also being used to purchase for the Plaintiff:

- (i) CCI; and
- (ii) Shortfall insurance;

offered by AAI and SLSL and badged as "MTAI Insurance" (**Plaintiff's First Add-On Insurance Products**);

- (e) the Plaintiff signed the paperwork in the belief that it contained the items which had been discussed in paragraphs 31(b)(i), and 34(b) and (c) above.

- 35. By executing the First St George Loan, the Plaintiff, *inter alia*:

- (a) directed St George to pay AP Motors the amount of \$16,977 to purchase the Corolla and \$770 as an 'Origination Fee';
- (b) directed St George to pay MTAI the amounts of \$3,866.28 and \$2,135 for the purchase of the Plaintiff's First Add-On Insurance Products;

- (c) directed St George to pay itself a \$399 establishment fee and to pay the Personal Property Securities Registrar \$6.80 for the registration of St George's mortgage over the Corolla; and
- (d) upon St George approving the loan, became liable to repay these amounts to St George in fortnightly repayments of \$214.83 for 7 years with an annual interest of rate of 14% and an estimate of \$14,016.48 accruing in interest charges;
- (e) relied in good faith upon the conduct of MTAI in relation to the purchase of the Plaintiff's First Add-On Insurance Products.

36. Shortly prior to 28 October 2015, AP Motors informed the Plaintiff that St George had approved the First St George Loan but that St George would not lend to her husband and that she needed to purchase the Ranger for her husband.

***Particulars***

*Telephone conversation between the Plaintiff and Jason Bovey.*

37. On or about 28 October 2015:

- (a) AP Motors presented at least one document to the Plaintiff to sign to effect her purchase of the Ranger for her husband (**Second St George Loan**);

***Particulars***

- i. St George Loan Contract number 96580254 dated by the Plaintiff on 28 October 2015.*
- ii. Further particulars may be provided after discovery or subpoenas.*

(b) AP Motors informed the Plaintiff of:

- (i) the total amount being borrowed from St George;
- (ii) the fortnightly repayment amounts; and
- (iii) that she was purchasing comprehensive insurance.

***Particulars***

*Conversation between the Plaintiff, the Plaintiff's husband and Jason Bovey.*

(c) AP Motors did not inform the Plaintiff that the Second St George Loan was also

being used to purchase for the Plaintiff Shortfall insurance offered by AAI and badged as “MTAI Insurance” (**Plaintiff’s Second Add-On Insurance Product**);

- (d) the Plaintiff signed the paperwork in the belief that it contained the items which had been discussed in paragraphs 31(b)(ii) and 37(a) and (b) above.

38. By executing the Second St George Loan, the Plaintiff, *inter alia*:

- (a) directed St George to pay AP Motors the amount of \$28,485 to purchase the Ranger and \$770 as an ‘Origination Fee’;
- (b) directed St George to pay MTAI the amount of \$2,135 for the purchase of the Plaintiff’s Second Add-On Insurance Product;
- (c) directed St George to pay itself a \$399 establishment fee and to pay the Personal Property Securities Registrar \$6.80 for the registration of St George’s mortgage over the Ranger; and
- (d) upon St George approving the loan, became liable to repay these amounts to St George in fortnightly repayments of \$297.89 for 7 years with an annual interest of rate of 16.1% and an estimate of \$21,531.68 accruing in interest charges;
- (e) relied in good faith upon the conduct of MTAI in relation to the purchase of the Plaintiff’s Second Add-On Insurance Products.

39. In the premises set out in paragraphs 32 and 33, and by presenting the Plaintiff with paperwork that included the Plaintiff’s First and Second Add-On Insurance Products included, AP Motors:

- (a) made a recommendation or a statement of opinion that could reasonably be regarded as intending to influence the Plaintiff in making a decision in relation to the Plaintiff’s First and Second Add-On Insurance Products, within the meaning of section 766B(1) of the Corporations Act; and
- (b) engaged in the conduct in (a) in circumstances where a reasonable person might expect AP Motors to have considered one or more of the following matters:
  - (i) the Plaintiff’s objectives;
  - (ii) the Plaintiff’s financial situation; and

(iii) the Plaintiff's needs;

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

40. In selling to the Plaintiff the Plaintiff's First and Second Add-On Insurance Products, AP Motors:

- (a) was acting within the scope of its apparent authority as ~~authorised~~-representative or agent of MTAI and/or AAI and/or SLSL;
- (b) was effecting the ordinary role of a Dealer within the MTAI Sales System;
- (c) advised the Plaintiff to purchase the Plaintiff's First and Second Add-On Insurance Products despite the fact it was not reasonable to conclude that the advice was appropriate to the Plaintiff;

**Particulars**

- i. The advice was not appropriate for the Plaintiff as she:*
  - a. did not seek to purchase the Plaintiff's First and Second Add-On Insurance Products;*
  - b. already had the benefit of the insurance attached to her membership of her superannuation fund;*
  - c. was 25 years old, had no children and little to no need for the trauma and death component of the CCI product, in particular as she had no substantial liabilities other than the First and Second St George Loans that her superannuation fund's insurance would likely cover; and*
  - d. was then a casual employee of Queensland Health and was therefore likely to be ineligible for the CCI disability cover, accidental injury cover, and involuntary unemployment cover.*
- (d) failed to warn the Plaintiff about the Cautionary Matters; and
- (e) did not give priority to the interests of the Plaintiff over any other interest.

**Particulars**

*AP Motors prioritised its own commercial interests to earn commissions, over the Plaintiff's interest in not incurring the cost of insurance she did not want or need.*

**E. PURCHASES OF ADD-ON INSURANCE PRODUCTS BY GROUP MEMBERS**

41. Each of the Group Members during the Period purchased or leased a Vehicle from a Dealer who:
- (a) had entered into a Dealer Agreement with MTAI;
  - (b) was a representative of MTAI and/or AAI and/or SLSL; further or alternatively
  - (c) was an agent of AAI and/or MTAI and/or SLSL.
42. In connection with each purchase or lease referred to in the preceding paragraph, each Group Member purchased one or more Add-On Insurance products and:
- (a) paid or became liable to pay the Premiums; and
  - (b) paid other charges associated with the Add-On Insurance products, such as GST and stamp duty;

***Particulars***

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

- (c) relied in good faith upon the conduct of MTAI in relation to the purchase of the Add-On Insurance products.

43. Each of the Group Members financed the purchase or lease of the Vehicle using Finance in respect of which their Dealer acted as the credit assistance provider, alternatively as the agent of the credit provider.
44. Many or most of the Group Members:
- (a) financed the purchase or lease of the Add-On Insurance using Finance in respect of which their Dealer acted as the credit assistance provider, alternatively as the agent of the credit provider; and accordingly

***Particulars***

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

- (b) paid interest and other charges in respect of the financing of the Add-On Insurance, which charges were capitalised into the total value of the Finance.



**Particulars**

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

45. In obtaining the Finance, some or all of the Group Members provided to the Dealers the Personal Circumstances Information, including whether they were employees or unemployed.

**Particulars**

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

46. By reason of having obtained the Personal Circumstances Information for each Group Member referred to in paragraph 45, each Dealer knew or ought to have known that:

(a) in the case of employees:

- (i) because the Group Member was an employee – the Group Member was a member of a superannuation fund and entitled to SGA payments; and accordingly
- (ii) it was likely that the Group Member would have income protection insurance, total and permanent disability insurance and/or trauma and death insurance that covered some or most of the risks covered by the Add-On Insurance products;

**Particulars**

- i. The Dealers' state of mind is to be inferred from the fact that they knew the Group Members were employees and the legal requirement for the Group Members' employers to make the SGA payments. This was also a legal obligation owed by the Dealers to their employees.*
- ii. Further as employers obliged to make SGA payments to their own employees, the Dealers should have known that superannuation policies include insurance benefits.*
- iii. Further particulars may be provided after discovery.*

- (b) in the case of the Group Members who were unemployed, the Group Member was unlikely to be entitled to claim involuntary unemployment and carer cover, and in certain situations unlikely to be entitled to claim disablement cover or accidental injury cover under CCI.

47. In the premises of paragraphs 45 and 46, and by the sale to the Group Members of the Add-On Insurance products, each Dealer in respect of each 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 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 (a) in circumstances where a reasonable person might expect the Dealers to have considered one or more of the following matters:
  - (i) the Group Member's objectives;
  - (ii) the Group Member's financial situation; and
  - (iii) the Group Member's needs;within the meaning of section 766B(3) of the Corporations Act.

48. In selling the Add-On Insurance to the Group Members, each Dealer:

- (a) was acting within the scope of its apparent authority as a representative or agent of MTAI and/or ~~(in the period prior to 1 July 2015),~~ AAI (in the period after 1 July 2015) and/or SLSL (in respect to trauma and death cover);
- (b) was effecting the ordinary role of a Dealer within the MTAI Sales System;
- (c) advised each Group Member to purchase the Add-On Insurance despite the fact it was not reasonable to conclude that the advice was appropriate to the Group Members;
- (d) failed to warn the Group Members about the Cautionary Matters; and
- (e) did not give priority to the interests of the Group Members over any other interest, and in particular the interest of the Dealer in earning the Product Commissions or the Volume Commissions.

#### ***Particulars***

- i. The Dealers prioritised their own commercial interests to earn commissions over those of the Group Members not to have insurance that did not meet their needs.*

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

**F. PERSONAL ADVICE CONTRAVENTIONS**

49. In the premises set out in paragraphs 39 to 40 and 47 to 48, the Dealers (including AP Motors) contravened sections 961B and 961J of the Corporations Act.
50. Further and in the alternative, by reason of the matters set out in paragraphs 25 to 27, during the Period MTAI~~(in the period prior to 1 July 2015)~~, AAI (in the period after 1 July 2015) and/or SLSL (in respect of the trauma and death cover) failed to ensure that the Dealers (including AP Motors) complied with sections 961B and 961J of the Corporations Act.
51. In the premises and by reason of paragraph 50:
- (a) MTAI during the Period~~in the period prior to 1 July 2015~~; and/or
  - (b) AAI in the period after 1 July 2015; and/or
  - (c) SLSL during the Period,
- contravened section 961L of the Corporations Act.
52. By reason of the conduct pleaded in paragraphs 49, further or alternatively 50 and 51 (**Personal Advice Contraventions**) the Plaintiff and Group Members:
- (a) acquired Add-On Insurance products as aforesaid; and thereby
  - (b) suffered loss or damage.

***Particulars of loss***

- i. *Payment by the Plaintiff and Group Members of the Premiums and interest and other charges paid or incurred with respect to those Premiums.*
  - ii. *In the alternative, the difference between the amount paid by the Plaintiff and Group Members for the Add-On Insurance products and their true value (if any).*
  - iii. *Further particulars of loss and damage for the Plaintiff may be provided after discovery. Particulars relating to individual Group Members may be provided after discovery or otherwise as the Court may direct.*
53. Pursuant to section 961M(2)(a), further or alternatively, section 961M(2)(b), MTAI and/or AAI by its own conduct and by reason of AAI's MTAI Transfer Liability and/or SLSL are

liable to pay compensation for any loss or damage suffered by the Plaintiff and Group Members as a result of the Personal Advice Contraventions.

54. Pursuant to section 961M(4) of the Corporations Act, the Plaintiff and Group Members seek recovery of the profits made by MTAI and/or AAI and/or SLSL resulting from the Personal Advice Contraventions, as part of the damage they suffered.

## **G. MISLEADING CONDUCT**

### **G.1. Material non-disclosures**

55. In the premises where:

- (a) MTAI, AAI and SLSL were required to comply with the statutory obligations pleaded at paragraphs 16 and/or 18;
- (b) customers (including the Plaintiff and Group Members) approached or were likely to approach the Dealers:
  - (i) for the purpose of purchasing or leasing the Vehicles; and
  - (ii) not for the purpose of purchasing Add-On Insurance;
- (c) the Add-On Insurance was or was likely to be offered to customers after the customers had agreed to purchase or lease the Vehicles;
- (d) the customer was requested by the Dealer to provide, and did provide, the Personal Circumstances Information for the purpose of obtaining the Finance; further or alternatively
- (e) the Dealer represented to the customer, expressly or by implication, that the Add-On Insurance was necessary, or alternatively was recommended, in respect of the customer's Finance;
- (f) each Dealer, in respect of the customer's purchase of Add-On Insurance, dealt with the customer within the Dealer's apparent authority as a representative or agent of MTAI, and/or AAI and/or SLSL;

it was reasonable for customers to expect that MTAI, and/or AAI and/or SLSL:

- (i) by the Dealers; further or alternatively

- (ii) in documentation to be provided to customers prior to them making the application for insurance, or prior to the expiry of any cooling-off period in respect of the insurance (being the Product Information as defined);

would adequately disclose to customers the Cautionary Matters.

56. Further or alternatively, at all material times, MTAI (~~in the period prior to 1 July 2015~~), AAI (in the period after 1 July 2015) and/or SLSL (in respect of death and trauma cover), ought reasonably to have known that, in the absence of disclosure of the Cautionary Matters, there was a material risk that customers of the Dealers:

- (a) would or might purchase Add-On Insurance based on incomplete information;
- (b) would not or might not be able to make an informed decision as to whether Add-On Insurance was suitable for them;
- (c) would or might purchase Add-On Insurance that was not suitable for them; and
- (d) in the premises – would or might incur costs that:
  - (i) an informed person would not have incurred; and
  - (ii) were not necessary or prudent having regard to the personal financial circumstances of the customers.

### **Particulars**

*The knowledge of the Dealers and/or MTAI arising from the MTAI Sales System should be attributed to MTAI, AAI and SLSL. The knowledge of MTAI arising from the MTAI Sales System (including the knowledge attributed to it) should be attributed to AAI and SLSL. The Plaintiff relies upon the principle of attribution identified in *Sargent v ASL Development Ltd (1974) 131 CLR 634 at 659*. Further particulars may be provided after discovery.*

57. Further MTAI (~~in the period prior to 1 July 2015~~), AAI (in the period after 1 July 2015) and/or SLSL (in respect of death and trauma cover) took no or no adequate step to:

- (a) ensure the Dealers adequately disclosed;
- (b) ensure MTAI, through the Dealers, adequately disclosed; further or alternatively
- (c) ensure the Product Information adequately disclosed;

the Cautionary Matters to customers.

### **Particulars**

*The Plaintiff refers to and repeats paragraphs 25 and 26.*

58. In the premises set out in paragraphs 55 to 57, MTAI ~~(in the period prior to 1 July 2015),~~ and/or AAI (in the period after 1 July 2015) and/or SLSL:

(a) engaged in conduct that was misleading or deceptive or likely to mislead or deceive customers including the Plaintiff and Group Members; and

(b) in the premises, contravened:

(i) section 1041H of the Corporations Act; further or alternatively

(ii) section 12DA of the ASIC Act;

(together and severally the **Misleading Conduct Contraventions**).

59. By reason of AAI's MTAI Transfer Liability, AAI is liable for MTAI's Misleading Conduct Contraventions in the period prior to 1 July 2015.

#### **G.2. Misleading representations by Dealers as agents for MTAI, AAI and SLSL**

60. Further and in the alternative, in the premises set out in paragraphs 39 to 40 and 47 to 48, the Dealers:

(a) represented to customers including the Plaintiff and Group Members that or to the effect that:

(i) there were no Cautionary Matters applicable to the customer that a reasonable person would expect to be disclosed but had not been disclosed; further or alternatively

(ii) the Add-On Insurance had material value to the customer, such that a prudent person would rationally purchase the insurance;

(together and severally **False Reassurance Representations**) and

(b) in the premises in (a) – made a false or misleading representation:

(i) in connection with the supply, or possible supply, of financial services or the promotion by any means of the supply or use of financial services, being ~~the sale of the Add-On Insurance products~~ the Add-On Insurance and/or

the dealing in the Add-On Insurance; and

- (ii) concerning the services being of a particular standard, quality or value within the meaning of section 12DB(1)(a) of the ASIC Act;

***Particulars***

*The False Reassurance Representations are to be implied from the conduct of the Dealers described in paragraphs set out in paragraphs 39 to 40 and 47 to 48 inclusive.*

(c) in the alternative to (b), in the premises of (a) engaged in conduct that was misleading or deceptive or likely to mislead or deceive customers including the Plaintiff and Group Members in relation to:

- (i) financial services within the meaning of section 12DA of the ASIC Act and section 1041H(1) of the Corporations Act; and/or
- (ii) a financial product within the meaning of section 1041H(1) of the Corporations Act.

61. At all material times, the Dealers, in engaging in the conduct pleaded in paragraph 60 above, engaged in conduct within the scope of their apparent authority as representatives or agents of MTAI ~~(in the period prior to 1 July 2015)~~, and/or AAI (in the period after 1 July 2015) and/or SLSL within the meaning of section 12GH(2)(a) of the ASIC Act and section 769B(1)(a) of the Corporations Act.

62. By reason of the matters pleaded in paragraph 61 above and section 12GH(2) of the ASIC Act and section 769B(1) of the Corporations Act, MTAI ~~(in the period 1 July 2015)~~, and/or AAI (after 1 July 2015) and/or SLSL are taken:

(a) for the purposes of Division 2 of the ASIC Act;

(b) for the purposes of Division 7 of the Corporations Act;

to have engaged in the conduct pleaded in paragraph 60 above.

63. In the premises, MTAI ~~(in the period 1 July 2015)~~, and/or AAI (after 1 July 2015) and/or SLSL made false or misleading representations in connection with the supply, or possible supply, of financial services or in connection with the promotion by any means of the supply or use of financial services being of a particular standard, quality or value within the meaning of section 12DB(1)(a) of the ASIC Act.

64. In the premises set out in the preceding paragraph MTAI ~~(in the period prior to 1 July 2015)~~, and/or AAI (in the period after 1 July 2015) and/or SLSL contravened section 12DB of the ASIC Act (the **False Reassurance Contraventions**).

64A. In the alternative to 63 and 64, in the premises of 60(c), 61 and 62, MTAI and/or AAI (in the period after 1 July 2015) and/or SLSL:

(a) engaged in conduct that was misleading or deceptive or likely to mislead or deceive customers including the Plaintiff and Group Members in relation to financial services and/or financial products; and

(b) in the premises, contravened:

(i) section 12DA of the ASIC Act and section 1041H of the Corporations Act in relation to financial services; further or alternatively

(ii) section 1041H of the Corporations Act in relation to financial products;

(the **Alternative False Reassurance Contraventions**).

65. By reason of AAI's MTAI Transfer Liability, AAI is liable for MTAI's False Reassurance Contraventions or the Alternative False Reassurance Contraventions in the period prior to 1 July 2015.

### **G.3. False or misleading representations – Preconditions Subgroup**

66. Further and in the alternative, during the Period, the Dealers stated to some of the Group Members (**Preconditions Subgroup**) that or to the effect that the Add-On Insurance was a precondition to the Finance (**False Precondition Representation**).

#### ***Particulars***

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

67. At all material times, the Dealers, in engaging in the conduct pleaded in paragraph 66 above, engaged in conduct within the scope of their apparent authority as representatives or agents of MTAI ~~(in the period prior to 1 July 2015)~~, and/or AAI (in the period after 1 July 2015) and/or SLSL within the meaning of:

(a) section 769B(1)(a) of the Corporations Act; and



- (b) section 12GH(2)(a) of the ASIC Act.
68. By reason of the matters pleaded in:
- (a) paragraph 67(a) and s 769B(1) of the Corporations Act, MTAI ~~(in the period prior to 1 July 2015)~~, and/or AAI (in the period after 1 July 2015) and or SLSL are taken, for the purposes of Chapter 7 of the Corporations Act, to have made the False Precondition Representation to the Preconditions Subgroup; and
- (b) paragraph 67(b) and section 12GH(2) of the ASIC Act, MTAI ~~(in the period prior to 1 July 2015)~~, and/or AAI (in the period after 1 July 2015) and or SLSL are taken, for the purposes of Division 2 of the ASIC Act, to have made the False Precondition Representation to the Preconditions Subgroup.
69. In the premises set out in the preceding paragraph, by making the False Precondition Representation to the Preconditions Subgroup, MTAI ~~(in the period prior to 1 July 2015)~~, and/or AAI (in the period after 1 July 2015) and or SLSL:
- (a) in connection with the supply or possible supply of financial services (being the sale of the Add-On Insurance) made a false or misleading representation:
- (i) concerning the need for those services, within the meaning of section 12DB(1)(h) of the ASIC Act (being section 12DB(1)(f) prior to 1 January 2011); further or alternatively
- (ii) concerning the services being of a particular quality or value, within the meaning of section 12DB(1)(a) of the ASIC Act; further or alternatively
- (b) engaged in conduct in relation to financial services that was misleading or deceptive or likely to mislead or deceive within the meaning of section 12DA(1) of the ASIC Act and/or section 1041H(1) of the Corporations Act; further or alternatively
- (c) engaged in conduct in relation to a financial product that was misleading or deceptive or likely to mislead or deceive within the meaning of section 1041H(1) of the Corporations Act.
70. In the premises set out in the preceding paragraph MTAI ~~(in the period prior to 1 July 2015)~~, and/or AAI (in the period after 1 July 2015) and or SLSL contravened:
- (a) section 12DA of the ASIC Act;

(b) section 12DB of the ASIC Act; further or alternatively

(c) section 1041H of the Corporations Act

(the **False Precondition Contraventions**).

71. By reason of AAI's MTAI Transfer Liability, AAI is liable for MTAI's False Precondition Contraventions in the period prior to 1 July 2015.

#### **G.4. Loss and Damage**

72. By reason of:

(a) the Misleading Conduct Contraventions,

(b) the False Reassurance Contraventions or the Alternative False Reassurance Contraventions, further or alternatively

(c) the False Precondition Contraventions,

the Plaintiff and the Group Members:

(i) acquired Add-On Insurance products as aforesaid; and thereby

(ii) suffered loss or damage.

#### ***Particulars of loss***

*The Plaintiff refers to and repeats the particulars under paragraph 52 above.*

#### **H. MONEY HAD AND RECEIVED**

73. Further or alternatively, by reason of:

(a) the Personal Advice Contraventions;

(b) the Misleading Conduct Contraventions;

(c) the False Reassurance Contraventions or the Alternative False Reassurance Contraventions; further or alternatively

(d) for the Preconditions Subgroup – the False Precondition Contraventions;

the Plaintiff and Group Members (or the Preconditions Subgroup as the case may be) were not at any stage prior to purchasing the Add-On Insurance informed, sufficiently or at all, of one or more of the following matters:

- (i) that they had purchased the Add-On Insurance;
- (ii) that it was not a precondition to Finance that they purchase the Add-On Insurance;
- (iii) that the Add-On Insurance had no or no material financial value; further or alternatively
- (iv) that the Add-On Insurance products were not suitable for the Plaintiff and Group Members.

74. Prior to purchasing the Add-On Insurance products, the Plaintiff and Group Members did not know one or more of the matters pleaded in paragraph 73 above.

75. Each of the matters pleaded in paragraph 73 constituted material information that was relevant to the decision of the Plaintiff and Group Members whether to:

- (a) proceed with the entry into the Finance on terms which included financing the Add-On Insurance products; and/or
- (b) purchase the Add-On Insurance products.

76. By reason of the matters pleaded in paragraphs 73 to 75, the Plaintiff and Group Members purchased the Add-On Insurance products, and thereafter paid the Premiums, because of one or more of the following mistaken beliefs:

- (a) that they had not purchased the Add-On Insurance products;
- (b) that it was a precondition to Finance that they purchase the Add-On Insurance products;
- (c) that the Add-On Insurance products had material financial value; further or alternatively
- (d) that the Add-On Insurance products were suitable for them.

77. The Group Members did not on a day prior to:

- (a) in the case of NT Claimants – three years prior to the commencement of this proceeding;
- (b) in the case of General Claimants – six years prior to the commencement of this proceeding;

discover, and could not with reasonable diligence have discovered, the mistake as pleaded in paragraph 76.

78. By reason of the Contraventions pleaded in paragraph 73, MTAI ~~(in the period prior to 1 July 2015, AAI (in the period after 1 July 2015), and/or~~ SLSL:

- (a) induced the matters pleaded in paragraphs 73, 74, 76, and/or 77 above;
- (b) concealed the matters pleaded in paragraph 73 above;
- (c) further or alternatively:
  - (i) were aware that circumstances existed which indicated that the Plaintiff and mistaken Group Members were acquiring their respective policies under the mistaken beliefs; and
  - (ii) chose to leave the Plaintiff and the mistaken Group Members under the mistaken beliefs in acquiring or agreeing to be issued with their respective policies.

***Particulars in relation to 78(c)(i)***

*The knowledge of the Dealers ~~and/or MTAI~~ arising from the MTAI Sales System should be attributed to MTAI, AAI and SLSL. The knowledge of MTAI arising from the MTAI Sales System (including the knowledge attributed to it) should be attributed to AAI and SLSL. The Plaintiff relies upon the principle of attribution identified in *Sargent v ASL Development Ltd (1974) 131 CLR 634 at 659*. Further particulars may be provided after discovery.*

79. By reason of the matters pleaded in paragraphs 76 and 78 above:

- (a) the Plaintiff and the Group Members are entitled, at their election, 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 said contracts requiring payment of the Premiums are void.

80. By reason of the matters pleaded in paragraphs 73 to 78 and/or 79 MTAI ~~(in the period prior to 1 July 2015)~~, and/or AAI (in the period after 1 July 2015) and/or SLSL (in respect of the trauma and death cover):
- (a) have been unjustly enriched by the receipt of the Premiums at the expense of the Plaintiff and the Group Members; and
  - (b) it would be unconscionable for MTAI and/or AAI (for the period after 1 July 2015 and based on AAI's MTAI Transfer Liability) and/or SLSL to retain the Premiums.
81. By reason of AAI's MTAI Transfer Liability, AAI is liable for MTAI's liability pleaded in paragraph 80.
82. By reason of the matters pleaded in paragraphs 73 to 78 and/or 79, the Premiums are monies had and received by MTAI, and/or AAI and/or SLSL to the use of the Plaintiff and the Group Members, and, having regard to paragraph 81, MTAI and/or AAI and/or SLSL are obliged to repay those sums to the Plaintiff and the Group Members.

#### **I. COMMON QUESTIONS OF LAW OR FACT**

83. The questions of law or fact common to the claims of the Plaintiff and the Group Members are:

*(the Transfer Scheme)*

- (a) Is AAI liable for MTAI's conduct as pleaded at paragraphs 5(d), 53, 59, 65, 71 and 81?

*(Entity Relationships)*

(aa) Did the Defendants have the relationships and consequent liability pleaded at paragraphs 8(b), 8(ba), 8(c), 9(b), 9(ba), 9(c), 10 and/or 10A?

(ab) Were the Add-On Insurance products "risk insurance products" within the meaning of the definition of "binder" in section 761A of the Corporations Act?

(ac) If so, did AAI and/or SLSL give MTAI authorisation to enter into the Add-On Insurance contracts with consumers, including the Plaintiff and Group Members, on their behalf as insurer within the meaning of "binder" in section 761A of the Corporations Act?

(ad) If so, does section 916E(1) of the Corporations Act apply?

(ae) If so, does section 916E(2)(a) of the Corporations Act apply?

*(the Regulatory regime)*

(b) Were AAI, and/or SLSL and/or MTAI required to comply with the statutory obligations set out in paragraphs 16 and/or 18 in respect of supplies of financial services in relation to Add-On Insurance by them or by the Dealers?

*(the Add-On Insurance products)*

(c) Did the Add-On Insurance have the features pleaded in paragraph 15(a), 15(b) and 15(c)?

(d) Did some of the elements of the cover provided by CCI overlap with cover provided by other insurance products, namely income protection insurance, trauma and death insurance, and/or total and permanent disability insurance?

(e) Would some consumers be unable to claim on their GAP Insurance policies because, for example, they had paid a large deposit, or because of other insurance products?

(f) Was the cover provided by the Extended Warranty Insurance unnecessary, or potentially unnecessary, for Group Members, given the provisions of the TPA, or after 1 January 2011, the ACL?

(g) What if any features of the Extended Warranty Insurance 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?

(h) Did any one or more (and if so, which) of the Add-On Insurance products have no, or no material, financial value to persons in the position of the Plaintiff and Group Members?

*(MTAI Sales System)*

(i) Did MTAI operate a system for the sale of Add-On Insurance products with any or all of the features pleaded at paragraphs 19 to 27?

*(Personal Advice Contraventions)*

- (j) Did AAI, and/or SLSL and/or MTAI by the conduct alleged contravene section 961L of the Corporations Act?
- (k) In relation to Dealers:
  - (i) Did conduct by a Dealer as alleged in paragraphs 32, 33, 39, 40, 44, 46 to 48 above contravene sections 961B and 961J of the Corporations Act?
  - (ii) Are AAI, and/or SLSL and/or MTAI by reason of the conduct alleged liable pursuant to section 961M(2)(b) of the Corporations Act for Dealers' contraventions of sections 961B and 961J of the Corporations Act?
- (l) What if any profits did MTAI, and/or AAI and/or SLSL make as result of the Personal Advice Contraventions?

*(Attribution of knowledge)*

- (m) Is the knowledge of the Dealers attributable to MTAI as pleaded at 56 and 78(c)?
- ~~(ma) Is the knowledge of MTAI (including knowledge attributed to it) MTAI and its responsible officers attributable to AAI and/or SLSL as pleaded at 56 and 78(c)?~~

*(Misleading Conduct Contraventions)*

- (n) Did any one or more of the matters in paragraph 25 constitute material information about the Add-On Insurance products that:
  - (i) was relevant to the decision of the Plaintiff and Group Members about whether to proceed with the purchase of the Add-On Insurance products; and
  - (ii) was required to be disclosed by MTAI, and/or AAI, and/or SLSL and/or the Dealers to prospective purchasers of those Add-On Insurance products by reason of the matters in paragraphs 55 and 56?
- (o) Did AAI, and/or SLSL and/or MTAI 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?
- (p) Did AAI, and/or SLSL and/or MTAI engage in misleading or deceptive conduct or

conduct that was likely to mislead or deceive in contravention of section 12DB of the ASIC Act?

*(False Reassurance Contraventions or the Alternative False Reassurance Contraventions)*

(q) If a Dealer made the False Reassurance Representation, did the Dealer and/or AAI, and/or SLSL and/or MTAI contravene:

- (i) section 12DB of the ASIC Act?
- (ii) section 12DA of the ASIC Act?
- (iii) section 1041H of the Corporations Act?

*(False Precondition Contraventions)*

(r) If a Dealer made the False Precondition Representation, did the Dealer and/or AAI, and/or SLSL and/or MTAI contravene:

- (i) section 12DB of the ASIC Act?
- (ii) section 12DA of the ASIC Act?
- (iii) section 1041H of the Corporations Act?

*(Mistake/unjust enrichment)*

(s) Did any one or more of more of the beliefs pleaded at paragraph 76 amount to a mistake on the part of the Plaintiff or any Group Member holding the beliefs while purchasing Add-On Insurance?

(t) Did AAI, and/or MTAI and/or SLSL:

- (i) induce the matters pleaded in paragraphs 73, 74, 76, and/or 77 above?
- (ii) conceal the matters pleaded in paragraph 73 above?

(u) Was MTAI, and/or AAI and/or SLSL aware that circumstances existed which indicated that the Plaintiff and mistaken Group Members were acquiring their respective policies under the mistaken beliefs?

(v) Did MTAI, and/or AAI and/or SLSL choose to leave the Plaintiff and the mistaken



Group Members under the mistaken beliefs in acquiring or agreeing to be issued with their respective policies?

- (w) If yes to any of (s) to (v):
  - (i) are the Plaintiff and mistaken Group Members entitled, at their election, to rescind the contracts for the acquisition of the Add-On Insurance products?
  - (ii) are the contracts for the acquisition of the Add-On Insurance products void?
  - (iii) are the terms of the said contracts requiring payment of the Premiums void?
- (x) Are the Premiums monies had and received by AAI, and/or MTAI and/or SLSL to the use of the Plaintiff and the Group Members, and are AAI and/or MTAI and/or SLSL obliged to repay those sums to the Plaintiff and the Group Members?

*(Loss and Damage)*

- (y) What are the principles governing the quantification of loss or damage (if any) suffered by the Plaintiff and Group Members by reason of any contraventions as alleged in the Further Amended Statement of Claim?
- (z) What if any profits did AAI, and/or MTAI and/or SLSL make as result of the Personal Advice Contraventions which can be recovered by the Plaintiff and Group Members pursuant to section 961M(4) of the Corporations Act?

## **J. RELIEF**

84. The Plaintiff claims on her 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 the Defendants to the use of the Group Member, that is governed by the law of South Australia and that accrued before the date 6 years before the date of the filing of ~~this~~ the Statement of Claim, be granted an extension of time until the date of the filing of ~~this~~ the 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 Defendants to the use of the Group Member, that is governed by the law of Western Australia and that accrued before the date 6 years before the date of the filing of ~~this~~ the

Statement of Claim, be granted an extension of time until the date of the filing of ~~this~~ the Statement of Claim.

- (c) Damages and/or compensation pursuant to:
  - (i) sections 12GF(1) and 12GM(1) of the ASIC Act, alternatively
  - (ii) section 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 AAI, and/or SLSL and/or MTAL's contraventions).
- (e) In respect of the claims in mistake:
  - (i) A declaration that the Plaintiff and mistaken Group Members are entitled, at their individual election, to rescission of the contracts for the Add-On Insurance products; further or alternatively
  - (ii) Judgment in the full amount of the Premiums mistakenly paid for the Add-On Insurance products.
- (f) Judgment pursuant to section 33Z(1) of the SC Act.
- (g) Interest.
- (h) Costs.
- (i) Pursuant to section 33ZJ of the SC Act, an order that the Group Members reimburse the Plaintiff, in such proportions as the Court may deem appropriate, any costs incurred by the Plaintiff and not recovered pursuant to (h) hereof.
- (j) Such further order as the Court may deem appropriate.

Dated: ~~2 August 2021~~ 18 October 2021

R Francois

*Maurice Blackburn Lawyers*

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**Maurice Blackburn Lawyers**  
Solicitors for the Plaintiff

**SCHEDULE OF PARTIES**

**ZOEY ANDERSON-VAUGHAN** **Plaintiff**

and

**AAI LIMITED (ACN 005 297 807)** **First Defendant**

**TAL LIFE LIMITED (ACN 050 109 450)** **Second Defendant**

**MTA INSURANCE PTY LTD (ACN 070 583 701)** **Third Defendant**