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

Not Restricted

S ECI 2021 00930

ZOEY ANDERSON-VAUGHAN — Plaintiff

v

AAI LIMITED (ACN 005 297 807) (and others according to the attached schedule) — Defendants

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| JUDGE: | Delany J |
| WHERE HELD: | Melbourne |
| DATE OF HEARING: | 12 February 2024 |
| DATE OF RULING: | 27 February 2024 |
| CASE MAY BE CITED AS: | Anderson-Vaughan v AAI Limited (No 2) |
| MEDIUM NEUTRAL CITATION: | [2024] VSC 65 |

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PRACTICE AND PROCEDURE – Group proceeding – 'Soft class closure' orders – Whether group members must register to be entitled to distribution of a settlement reached at mediation – Whether appropriate or necessary to ensure that justice is done – Judicial mediation ordered – Proceeding set down for trial on 'not before' date – Class closure likely to assist parties to resolve proceeding – *Supreme Court Act 1986* (Vic), ss 33ZF, 33ZG – *Fox v Westpac; O'Brien v ANZ; Nathan v Macquarie* [2023] VSC 414; *Melbourne City Investments Pty Ltd v Treasury Wine Estates Ltd* (2017) 252 FCR 1; *Regent Holdings Pty Ltd v State of Victoria* (2012) 36 VR 424, applied.

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| APPEARANCES: | Counsel | Solicitors |
|---|---|---|
| For the Plaintiff | D Fahey | Maurice Blackburn |
| For the Defendants | D Thomas SC with J Findlay and H Atkin | King & Wood Mallesons |

**TABLE OF CONTENTS**

HIS HONOUR:

**Introduction**

1 This ruling concerns a group proceeding issued under Part 4A of the *Supreme Court Act 1986* (Vic) (the 'Act') on 30 March 2021 on behalf of all persons who:

(a) at any time between 1 May 2006 and 30 June 2018 purchased or leased a motor vehicle from a motor vehicle dealer using loan finance arranged by the dealer, and purchased certain specified insurance ('Add-On Insurance') issued by the first defendant ('AAI'), Asteron Life & Superannuation Limited (formerly known as Suncorp Life & Superannuation Limited) ('SLSL') and/or the third defendant ('MTAI');

(b) by reason of the purchases in (a), made payments to AAI, SLSL and/or MTAI for the Add-On Insurance ('Premiums'); and

(c) in the cases of persons who purchased Add-On Insurance on a day prior to six years before the date of filing the statement of claim on 30 March 2021 (the 'General relation-back day'), did not prior to that day discover, and could not with reasonable diligence have discovered, any or all of the mistakes pleaded in paragraph 76 of the further amended statement of claim.

2 Paragraph 76 alleges the plaintiff and the group members purchased the Add-On Insurance, 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 value; further or alternatively

(d) that the Add-On Insurance products were suitable for them.

3 Pleadings closed on 17 December 2021. On 6 September 2022 and 28 February 2023, orders were made regarding discovery. Subject to their ongoing obligations, the defendants have completed discovery. On 11 August 2023, the Court made a group costs order ('GCO') pursuant to s 33ZDA of the Act.[1] Evidence is yet to be filed and no timetable has been set for that to occur. There has not yet been a mediation. No orders have been made fixing the matter for trial.

4 I was informed by counsel for the plaintiff that lay evidence would be adduced at trial from the plaintiff and that expert evidence was likely from behavioural economists, insurance experts and loss assessors. I invited counsel to confer and to provide the Court with a proposed timetable for the filing of evidence. The orders I will make include a cut-off date for the filing of evidence. If agreement is not reached between the parties for a timetable for the filing of evidence prior to the cut-off date, the matter will be listed for directions to make the necessary orders so that the case can progress in a timely manner towards trial.

5 Although the proceeding is nearly three years old, notice of the proceeding has not yet been given to group members. While some of the insurance policies alleged to give rise to claims by group members were first issued around 18 years ago, the parties have access to detailed information that is likely to enable the existence of the proceeding to effectively be drawn to the attention of potential group members:

(a) email addresses are available for 64,370 persons;

(b) mobile telephone numbers to which text messages may be sent are held in respect of 155,000 persons; and

(c) there are approximately 45,347 policies where there is no email address or mobile telephone number for the policy holder but in respect of which there is a unique postal address.

6 When giving notice to potential group members, information held by the parties will

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[1] Following the delivery of reasons on 8 August 2023, the Court made a group costs order on 11 August 2023 pursuant to s 33ZDA of the Act. See *Anderson-Vaughan v AAI Limited* [2023] VSC 465.

enable bespoke notices to be directed to many individuals describing the type of Add-On Insurance product and the date the product was purchased by that person.

7 The parties are agreed that an order should be made fixing the date by which a group member may opt out of the proceeding pursuant to ss 33J(1) and (3) of the Act.

8 Section 33J relevantly provides:

> **33J Right of group member to opt out**
>
> (1) The Court must fix a date before which a group member may opt out of a group proceeding.
>
> …
>
> (3) The Court, on the application of a group member, the plaintiff or the defendant, may extend the period within which a group member may opt out of the group proceeding.

9 The defendants contend that in addition to an opt out order, an order should be made requiring group members to register and the Court should make a 'soft class closure' order under ss 33ZF and 33ZG of the Act.

10 Sections 33ZF and 33ZG are in the following terms:

> **33ZF General power of court to make orders**
>
> In any proceeding (including an appeal) conducted under this Part the Court may, of its own motion or on application by a party, make any order the Court thinks appropriate or necessary to ensure that justice is done in the proceeding.
>
> **33ZG Order may specify a date by which group members must take a step**
>
> Without limiting the operation of section 33ZF, an order made under that section may—
>
> (a) set out a step that group members or a specified class of group members must take to be entitled to—
>
> (i) any relief under section 33Z; or
>
> (ii) any payment out of a fund constituted under section 33ZA; or
>
> (iii) obtain any other benefit arising out of the proceeding—
>
> irrespective of whether the Court has made a decision on liability or there has been an admission by the defendant on liability;
>
> (b) specify a date after which, if the step referred to in paragraph (a) has

> not been taken by a group member to whom the order applies, the group member is not entitled to any relief or payment or to obtain any other benefit referred to in that paragraph.

11 The plaintiff opposes the making of registration and soft class closure orders. She contends for a regime in which an opt out notice only is issued prior to mediation, and a combined registration and settlement or judgment notice is issued following a successful mediation or judgment. The plaintiff submitted the Court could not be satisfied that to make a soft class closure order is either 'appropriate or necessary'.

12 A soft class closure order is used to describe an order which requires group members to register as a precondition to an entitlement to share in a settlement reached at or following a mediation and prior to the commencement of the trial, being a settlement later approved by the Court. A soft class closure order does not remove group members who do not register from the represented class and does not affect the entitlement of any unregistered group member to benefit from any judgment in favour of the plaintiff or any settlement arrived at after the commencement of the trial.[2]

13 There is no contest about the power of the Court to make a soft class closure order. The issue is whether the evidence establishes the making of such an order is 'appropriate or necessary to ensure that justice is done in the proceeding'.

14 Although registration and soft class closure are separate issues, unless a soft class closure order is made, there is little utility in making an order for registration by group members at this stage of the proceeding.

15 The parties agree that if a combined opt out/registration/soft class closure order is made, the time period within which group members must either opt out or register should be the same.

16 Neither party asked for an order for mediation and soft class closure was not contended for on the basis of an early mediation. However, I propose to make an order for mediation.

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[2] See the description of the effect of a soft class closure order by Murphy and Lee JJ in *Parkin v Boral Ltd* [2022] FCAFC 47; (2022) 291 FCR 116.

17 Sections 7(1) and (2)(c) of the *Civil Procedure Act 2010* (Vic) (the 'CPA') are in the following terms:

> **7 Overarching purpose**
>
> (1) The overarching purpose of this Act and the rules of court in relation to civil proceedings is to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute.
>
> (2) Without limiting how the overarching purpose is achieved, it may be achieved by—
>
> …
>
> (c) any appropriate dispute resolution process—
>
> (i) agreed to by the parties; or
>
> (ii) ordered by the court.

18 Section 9(1)(b) of the CPA provides:

> **9 Court's powers to further the overarching purpose**
>
> (1) In making any order or giving any direction in a civil proceeding, a court shall further the overarching purpose by having regard to the following objects—
>
> …
>
> (b) the public interest in the early settlement of disputes by agreement between parties; …

19 There is no reason to delay the commencement of a mediation until after evidence has been filed and served. Given the age of the proceeding and the stage that has been reached, as part of the management of the proceeding in accordance with the CPA, and noting the power in s 9(1)(b), it is appropriate to make an order fixing the date after which mediation must commence. To further the overarching purpose, and to facilitate settlement pursuant to s 7(2)(c)(ii) of the CPA, I will order the proceeding is referred to judicial mediation by an Associate Judge or a Judicial Registrar, such mediation to commence not before 1 July 2024.

20 The parties agree the principles to be applied to the disputed issues of registration and soft class closure are those helpfully set out by Nichols J in *Fox v Westpac; O'Brien v*

*ANZ; Nathan v Macquarie* ('*Fox*').[3] I adopt the principles to which her Honour referred as applicable to the disputed issues in this case.

21 As Nichols J observed in *Fox*, whether an open class proceeding should be closed requires a fact specific answer.[4] One cannot reason from a result in one case to the result that should follow in any other case. That is so including where, as here, the group members are a subset of the group members in the Flex Commission cases with which *Fox* was concerned.

22 The issue that separates the parties is whether the parties already have sufficient information available to conduct settlement negotiations, as the plaintiff contends to be the case, or whether the effect of a soft class closure order, being to provide a higher level of certainty about group member participation rates in any settlement arrived at prior to trial, means it is appropriate or necessary in the interests of justice to make an order for soft class closure. In that regard the following observations by Nichols J in *Fox*, referring to the decision of the Full Federal Court in *Melbourne City Investments Pty Ltd v Treasury Wine Estates Ltd* ('*Treasury Wine*'),[5] are pertinent:[6]

> Such an order would allow parties to have a better understanding of the total quantum of the claim, permitting a settlement amount to be capped by reference to the number of registered group members. Their Honours said that the Court must exercise caution with respect to timing, considering at what stage in the proceeding it would be appropriate to close the class and that the Court's discretion should not be exercised merely on the basis of the defendant's assertion that it is unwilling to enter settlement discussions without the certainty of a closed class.

23 For the reasons that follow, I consider a soft class closure order is appropriate or necessary in the interests of group members to ensure that justice is done in the proceeding. Soft class closure will provide the parties with more accurate and complete information than would otherwise be the case, in particular concerning the participation rates of the group members in the two categories of claimants to which the pleading refers.

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3 [2023] VSC 414, [15]-[30].
4 Ibid [17].
5 [2017] FCAFC 98; (2017) 252 FCR 1.
6 Ibid [23] (citations omitted).

24 In addition to an opt out order, an order will be made for registration and for soft class closure to apply between the date of commencement of mediation and the first day of trial. I will fix the proceeding for trial on a date to be fixed not before 1 September 2024. While a 'not before' order is made in relation to the trial date, I expect the trial of the proceeding will take place in the last quarter of this calendar year. I will order the parties to confer and to file a joint trial plan by no later than 3 June 2024. The provision of a trial plan will enable the allocation of a firm trial date.

25 An order will be made that provides for the sharing of the costs associated with soft class closure in the first instance, in identical terms to the costs sharing order made in *Fox*. An order to that effect was sought by the plaintiff and, at the hearing, was not opposed by the defendants.

**The principles**

26 In opposition to a soft class closure order, the plaintiff referred to *Treasury Wine* where the Full Court of the Federal Court said:[7]

> 73 Class proceedings are intended to require little or no active involvement by class members and class members participate principally for the limited purpose of taking the benefit or suffering the burden of the findings made on the common questions: *P Dawson Nominees Pty Ltd v Brookfield Multiplex Ltd (No 2)* [2010] FCA 176 at [16] (*P Dawson No 2*) (Finkelstein J). As J Forrest J said in *Thomas v Powercor Australia Ltd (No 1)* [2010] VSC 489 (*Thomas v Powercor No 1*) at [30], "one of the consequences of the opt out model, as was clearly intended by the legislature, is the ability of group members to 'sit back' and watch the proceeding unfold". There must be a good reason to exercise the discretion to make a class closure order which may operate to deny the benefits of a settlement to class members who do not opt out and who do not take the active step of registering: *P Dawson No 2* at [17].
>
> …
>
> 77 Caution should also be exercised in relation to the stage at which a class closure order is made. In our view, the Court should usually not exercise the discretion to make a class closure order based merely on a respondent's assertion that it is unwilling to discuss settlement unless such an order is made. It is a common if not inevitable feature of opt out class actions that the defendant will be faced with uncertainty regarding the quantum of class members' claims: *P Dawson No 2* at [31];

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7 *Melbourne City Investments Pty Ltd v Treasury Wine Estates Ltd* [2017] FCAFC 98; (2017) 252 FCR 1, 21-22 [73], [77].

*Thomas v Powercor No 1* at [37]-[38].

27 In *Treasury Wine*, the Full Court also said that if a class closure order operates to facilitate the desirable end of settlement, it may be reasonably adapted for the purpose of obtaining justice in the proceeding and therefore appropriate under s 33ZF.[8]

28 When considering earlier decisions of the Federal Court, including *Treasury Wine*, it is important to bear in mind that legislation governing the conduct of group proceedings in the Federal Court does not include an equivalent to s 33ZG. Section 33ZG(a) expressly contemplates orders requiring group members or a specified class of group members to take a positive step. The power to make an order under s 33ZG includes the express power in s 33ZG(b) to order that, if the group member does not take the required step by a specified date, the group member to whom the order applies is not entitled to any relief or payment.

29 As Nichols J said in *Fox*:[9]

> The emphasis given by the Full Court in *Treasury Wine* to Parliament's intention that group members not be required to take a positive step in the proceeding, must be read in light of the fact that unlike Part 4A of the Act (the Victorian regime), Part IVA of the *Federal Court Act* does not contain the express provision in found in s 33ZG. It will be recalled that an order made under s 33ZG may set out a step that group members must take in order to be entitled to obtain any benefit arising out of the proceeding (and specify a date after which the group members who has not taken that step will not be so entitled), and may do so irrespective of whether the Court has made a decision on liability or there has been an admission as to liability.

30 Notwithstanding the express power in s 33ZG, in Victoria as in other Australian jurisdictions, group proceedings are based on an opt out rather than an opt in procedure.[10] The power to make an order pursuant to s 33ZG is conditional on the Court finding that it is appropriate or necessary to ensure that justice is done that such an order be made. As Gageler J (as his Honour then was) and Gordon and Edelman

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8 Ibid 21 [74].

9 *Fox v Westpac; O'Brien v ANZ; Nathan v Macquarie* [2023] VSC 414, [24].

10 See *Melbourne City Investments Pty Ltd v Treasury Wine Estates Ltd* [2017] FCAFC 98; (2017) 252 FCR 1, [72], to which Nichols J referred. In that decision, by reference to the High Court's decision in *Mobil Oil Australia Pty Ltd v Victoria* [2002] HCA 27; (2002) 211 CLR 1, 32 [40], the Full Court of the Federal Court emphasised it was the intention of Parliament to adopt an opt out rather than an opt in procedure and that group members need take no positive step in class proceedings.

JJ noted in *Wigmans v AMP Limited*,[11] when ensuring that justice is done, all courts must be astute to protect the best interests of group members.[12]

31 When determining whether it is 'appropriate or necessary' to make a soft class closure order, the statements of principle by Nichols J in *Fox*, including principles derived from *Matthews v SPI Electricity Pty Ltd (Ruling No 13)* ('*Matthews*')[13] which her Honour summarised, are to be applied:[14]

> (a) The terms of s 33ZF make clear that it was the legislature's intention that the Court have a wide power to maintain close supervision over novel problems that may arise under Part 4A proceedings.
>
> (b) It is of particular note that s 33ZG specifically enables a court to impose such a requirement prior to judgment or settlement of the liability issue.
>
> (c) It is also relevant to an application of this kind, that s 49 of the *Civil Procedure Act 2010* (Vic) empowers a court to give any direction or make any order it considers appropriate to further the overarching purpose in relation to the conduct of a hearing of a civil proceeding.
>
> (d) It is within the Court's power to order class closure in the sense that a member of the class must take a positive step such as identifying himself or herself after receiving notice of class closure. It is also within the Court's power to terminate the entitlement to compensation of any group member who does not come forward and indicate a willingness to participate in a distribution (putative or actual) pursuant to either a settlement or judgment.
>
> (e) One of the fundamental bases for the class action provisions is achieving finality not only for the group members but also for the defendants to the proceeding.
>
> (f) It may be appropriate, to make orders for class closure prior to a settlement or judgment. Such a course may be warranted notwithstanding that there is no prospective settlement, but on the material available it is in the interests of the class as a whole, to require such a step to be taken. Relevant considerations include the point at which the case has reached, the attitude of the parties to such a step, and the complexity and likely duration of the case.
>
> (g) …
>
> (h) The point in time at which a class closure order is made, is important. Ultimately, it is a question of balance and judicial intuition, requiring a determination as to when it is appropriate and in the interests of group members as a whole to require a step to be taken which may promote a

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11 [2021] HCA 7; (2021) 270 CLR 623.
12 Ibid 670 [116].
13 [2013] VSC 17; (2013) 39 VR 255.
14 *Fox v Westpac; O'Brien v ANZ; Nathan v Macquarie* [2023] VSC 414, [18] (citations omitted).

> prospective settlement as against "simply letting the case proceed, perhaps interminably, without requiring group members to lift a finger – even if that course leads to disaster".

32 The defendants contended two of the factors relevant on the facts of *Matthews* operate in this case in favour of the making of an order, namely:

(a) no sensible estimate could be made of the size of the claim until the number of claims was ascertained;[15] and

(b) the CPA encourages parties to reach resolution and for the Court to give effect to that aim.[16]

**The evidence**

33 In support of a soft class closure order, the defendants rely on the affidavits of Alexander Basil Morris, solicitor, dated 3 November 2023 and 15 December 2023.

34 In opposition, the plaintiff relies on an affidavit of Rebecca Gilsenan, solicitor, dated 24 November 2023.

35 The affidavit evidence establishes there are 298,687 Add-On Insurance policies to which the proceeding potentially has application. After de-duplication based on full names and contact details there are potentially approximately 205,000 unique persons and, after accounting for anomalies in the data, there are likely close to 200,000 group members.

36 The parties and practitioners involved in the proceeding are to be commended for the steps they have taken to exchange meaningful information concerning the individual claims of potential group members. As a result of that process both parties are aware of:

(a) the type of Add-On Insurance product purchased by each potential group member;

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15 *Matthews v SPI Electricity Pty Ltd* [2013] VSC 17; (2013) 39 VR 255, 274 [80(a)]; cited in *Fox v Westpac; O'Brien v ANZ; Nathan v Macquarie* [2023] VSC 414, [19(a)].

16 *Matthews v SPI Electricity Pty Ltd* [2013] VSC 17; (2013) 39 VR 255, 274 [80(b)]; cited in *Fox v Westpac; O'Brien v ANZ; Nathan v Macquarie* [2023] VSC 414, [19(b)].

(b) the date of purchase;

(c) the name of the motor dealership where the person purchased the Add-On Insurance policy;

(d) whether any claim has been made against the policy;

(e) whether the person cancelled the policy before the product term was due to terminate;

(f) whether the person received any remediation payment (described below) relating to the policy; and

(g) the state or territory in which the person resided when they purchased the Add-On Insurance products.

37 As revealed by the further amended statement of claim, there are essentially two categories of group members. The first group comprises persons whose policies were acquired within six years prior to the issue of the proceeding (within three years in the case of persons who at the time of acquisition resided in the Northern Territory). The second group comprises group members who acquired their policies in the period between 1 May 2006 to 30 March 2015, more than six years prior to the filing of the proceeding (referred to as the 'Non-Statutory Claim Period').[17]

38 The evidence establishes that approximately 77% of the policies to which the proceeding potentially has application, around 230,000 out of 298,687 policies, were issued in the Non-Statutory Claim Period.

39 The following information is of assistance in enabling a calculation of the maximum exposure of the defendants to damages, assuming the plaintiff succeeds at trial, assuming all eligible group members register to participate and assuming all who register are successful in establishing liability in their favour:

(a) there are around 298,687 AOIP [Add-On Insurance products] policies

[17] Or, in the case of persons who at the time of acquisition resided in the Northern Territory, who acquired their policies in the period between 1 May 2006 and 30 March 2018.

that are potentially within the scope of the proceeding,

(b) the total premiums paid (before accounting for refunds, remediation and claims paid) is around $505,214,606;

(c) the average premium paid is around $1,691;

(d) the total refund payments (both cancellation and complaint) paid to policy holders is around $73,542,843;

(e) the total remediation payments paid to policy holders (not including amounts for which policy holders were eligible but did not receive) is around $10,633,277;

(f) the total amount paid in claims is around $35,026,733;

(g) the policies can be broken down by product type as follows:

i. 83,756 Loan Protection Insurance policies;

ii. 184,554 Equity or Equity Plus Insurance policies;

iii. 35,952 Cash Benefit Insurance policies;

iv. 738 Extended Vehicle Warranty Insurance policies; and

v. 3,687 Tyre & Rim Insurance policies.

40 The reference to remediation payments is a reference to a remediation package agreed between ASIC and the defendants (on a without admissions basis) in December 2017. That remediation package was publicised by ASIC and notified to eligible policy holders, a large number of whom have been compensated. Remediation payments paid to policy holders totalled $10,633,277.33 (across 28,202 policy holders). Other policy holders were eligible for but did not receive remediation payments. Remediation payments not paid but for which policy holders were eligible totalled $5,661,457.16 (across 11,742 policy holders). For some policy holders the remediation package also contemplated an election between remediation and keeping the cover in place.

41 The parties do not know the number of group members who would register to participate in a settlement of the proceeding or following judgment in favour of the plaintiff and they do not know the composition of those who would register as between the two categories of group members.

42 Because of time limitation issues, the claims by the Non-Statutory Claim Period group members are dependent upon individual potential group members establishing unilateral mistake in relation to one or more of the matters referred to in paragraph 2 above. The need for those group members to prove mistake places those group members in a different category to the remaining group members.

**Defendants' submissions**

43 In written submissions, the defendants relied on seven features in support of a soft class closure:

(a) first, the number of potential group members is very substantial;

(b) second, a large subset (77%) of potential group members' claims concern events up to 17 years ago (policies acquired in the period between 1 May 2006 and 30 March 2015). Whether the policy holders are group members will depend on when they made, discovered or could have discovered one of the mistakes. The allegations will necessarily involve policy-makers coming forward to:

(i) identify themselves as group members;

(ii) prove their mistaken state of mind; and

(iii) prove that they could not, with reasonable diligence, have discovered the mistake;

(c) third, group members will need to take a positive step at some stage in the proceeding, so registration is not a question of whether group members will be required to take a positive step, but rather when that should occur;

(d) fourth, the assessment of overall quantum is complicated by the fact that a material number of policy holders have already been remediated pursuant to a remediation package agreed between ASIC and the defendants in December 2017;

(e) fifth, some policy holders have received discounted commission rates, and

others have made claims on their policies or received cancellation refunds, which the defendants contend will need to be taken into account;

(f) sixth, the value attributed to peace of mind afforded by the policy is subjective and will vary between individual policy holders, but the receipt of financial and non-financial benefits will, the defendants contend, need to be taken into account; and

(g) seventh, some group members prefer to pursue claims against the defendants outside of the proceeding.

44 During the hearing the defendants identified four key propositions in support of a soft class closure order:

(a) first, the structure and size of the class and the manner in which the case is pleaded means there is a need for increased clarity. 77% of potential group members have policies issued in the Non-Statutory Claim Period and only have a claim if they can establish unilateral mistake, otherwise their claims are time-barred. There are a number of other factual matters, such as the remediation payments, which further complicate the ability of the defendants to understand the real and likely level of exposure;

(b) second, there is a consequential inability to participate in settlement discussions as a result. There is no reliable way for the defendants to assess the number of persons who claim to be group members and the number of group members who are likely to pursue their claims. Soft class closure would provide the parties with an objective framework to resolve their positions on participation, which would facilitate mediation;

(c) third, it is in the interests of group members and the parties that steps be taken to facilitate settlement discussions; and

(d) fourth, there will be no prejudice to group members if a soft class closure order is made.

45 The defendants submitted the factors identified make it impossible for them to reliably assess:

(a) the number of persons who claim to be group members (as the definition depends on individual circumstances); and

(b) the number of group members who will ultimately choose to take a step in the proceeding (including seeking to participate in any settlement).

46 The defendants submitted they have no reliable means of estimating the quantum of potential claims for the purposes of mediation or settlement discussions.

**Plaintiff's submissions**

47 In written submissions the plaintiff advanced the following reasons why it is not appropriate or necessary to make a soft closure order:

(a) first, such an order would significantly increase the estimated costs of the communication regime with group members compared with the plaintiff's proposed regime;

(b) second, such an order would place a significant demand on the plaintiff's legal team resources and would divert resources from the substantive steps in the proceeding, including the preparation of evidence, leading to delay;

(c) third, the parties already possess the customer data of group member enabling them to form assessments as to the global loss for all group members.[18] There are participation rates in analogous proceedings, the *Flex Commission* proceedings and the *Swann* class action, in which the same solicitors who acted for the defendants in this proceeding also act or acted from which guidance may be gleaned;

(d) fourth, courts must be astute to protect the best interests of group members.[19]

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18 Citing *Fox v Westpac; O'Brien v ANZ; Nathan v Macquarie* [2023] VSC 414, [99] (Nichols J).

19 Citing *Wigmans v AMP Limited* [2021] HCA 7; (2021) 270 CLR 62, [116] (Gageler, Gordon and Edelman JJ).

There are approximately 200,000 unique persons with relevant insurance policies who may be unaware that they purchased Add-On Insurance products. They will likely be affected by soft class closure orders and are at risk of being disadvantaged by not comprehending that the registration notice applies to them;

(e) fifth, the proceeding is not sufficiently advanced as no evidence has been filed and mediation is likely to be some time away;[20]

(f) sixth, it is not clear how soft class closure would resolve the issue of the individual circumstances of group members; and

(g) seventh, soft class closure is opposed by the plaintiff which, although not determinative, is a relevant consideration.[21]

48 During the hearing, relying on *Treasury Wines*, the plaintiff submitted the defendants' arguments rise no higher than assertions that if the information sought were to be provided it would enhance the prospects of settlement. The Court should not make a soft class closure order based merely upon a respondent's assertion it is unwilling to discuss settlement unless such an order is made.

49 It was submitted that to make orders in the form sought by the defendants would be unfair, inappropriate and prejudicial to group members because they would not know the period of time for which they are 'locked out'. This submission was advanced in a context in which defendants' draft orders do not provide for the period of soft class closure to end at the end of mediation, as was the case in *Fox*, and the orders themselves do not include an order fixing a date for mediation.

50 It was submitted:

(a) under the defendants' proposed regime there is no mediation on the horizon and there are no orders for evidence and, as a result, the soft class closure order

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20 Citing *Fox v Westpac; O'Brien v ANZ; Nathan v Macquarie* [2023] VSC 414, [61] (Nichols J).

21 Citing *Fox v Westpac; O'Brien v ANZ; Nathan v Macquarie* [2023] VSC 414, [28] (Nichols J).

that is sought is sought in a vacuum;

(b) the parties already know what products each group member purchased, when they were purchased, how much was paid and any refunds paid. They are already in possession of the key metrics to calculate the loss. They already have 'an objective framework';

(c) participation rates are only one factor that may impact a party's assessment of loss and settlement discussions, and cases settle without such data;

(d) the registration process cannot involve an individual assessment of the state of mind of the 77% group members with mistake claims. Registration is not needed to enable the parties to identify who falls within this cohort. The parties already know or can work out this information;

(e) the foundation of the defendants' application is a belief that, because there is a large number of group members, registration will facilitate mediation and settlement. *Fox* supports the proposition that mere assertion about the fate of negotiations before they occur is not instructive;[22] and

(f) there are greater risks to group members if an order for class closure is made now than would be the case if an order were to be made following a successful trial because of the notoriety that would likely attend any such trial.

**Defendants' responses to plaintiff's submissions**

51 In response the defendants submitted as follows.

52 First, the argument that increased costs mean there should not be an order is a curious argument when only the solicitors in whose favour a GCO has been made will bear the risk of costs.[23]

53 Second, in respect of the diversion of resources argument, there is no evidence that the plaintiff's solicitors are unable to obtain the services of the additional personnel

22 *Fox v Westpac; O'Brien v ANZ; Nathan v Macquarie* [2023] VSC 414, [30].
23 *Anderson-Vaughan v AAI Limited* [2023] VSC 465, [30(c)], [36].

required. Further, some of the figures supporting the plaintiff's estimates of the additional resources required are figures for opt-out rather than registration.

54 Third, the cost to the plaintiff's solicitors of registration need to be considered in light of the fact that notification of the proceeding and opt-out will need to occur in any event. Section 33X(6) of the Act requires notification to group members promptly, 'as soon as practicable' after commencement of the proceeding. Pursuant to paragraph 11.2 of SC Gen 10 Conduct of Group Proceedings (Class Actions) (Second Revision) Practice Note, opt out is a step usually taken shortly after the close of pleadings.

55 Fourth, the defendants disputed that participation rates in the Flex Commission group proceeding and in the Swann class action would provide meaningful proxies for the participation rate in the present case. Those proceedings involve dissimilar claims and dissimilar products. The participation rates in other cases is information that is confidential and the subject of *Harman v Secretary of State for Home Department* ('*Harman*')[24] and is not available to be taken into consideration in this case.

56 It was submitted the evidence in the present case is that:

(a) using a sample set of participation rates achieved in other proceedings is not a reliable or accurate way to assess the quantum of potential claims in this proceeding;

(b) a soft closure process would provide the parties with an objective framework to resolve their positions on participation and converge on a quantum of likely claims; and

(c) that objective framework would facilitate mediation and settlement discussions, and the prospect of reaching a settlement would increase significantly, consistent with the fundamental purpose of achieving finality and resolving disputes efficiently.

57 Fifth, there is no evidence which would provide a foundation for a finding that soft

[24] [1983] 1 AC 280; [1982] 1 All ER 532.

class closure would be confusing or otherwise detrimental to group member interests.

58 Sixth, in circumstances where the proceeding was commenced nearly three years ago, discovery is complete, evidence orders can be timetabled, pleadings are closed and both sides have accurate data that allows them to prepare bespoke notices to group members it is appropriate that a single notice be issued dealing with opt out and registration.

59 The defendants submitted there are compelling reasons why registration ought to occur concurrently with opt out. First, the proceeding is at a relatively advanced stage. Second, there is a simplicity to providing group members with one notice containing all options – being to opt out, register to participate in settlement or do nothing and continue to be a group member but not eligible to participate in any settlement.

60 The defendants submitted, as noted in *Matthews* and *Fox*, one of the fundamental purposes of the class closure provisions is to achieve finality for group members and defendants. Ordering soft closure will enable the parties to obtain a better understanding of the quantum of group member claims and is likely to facilitate meaningful settlement discussions.

**Consideration**

61 In this case the parties are in possession of detailed information relevant to the claims by potential group members. The parties are aware of the details of the 298,687 individual policies of insurance, the identity of the persons who took out each of those policies, the premiums paid, claims paid, refund payments made, and remediation received or to which a potential group member is entitled. The information that is missing is how many potential group members will register to participate in the proceeding if the plaintiff succeeds in obtaining a favourable settlement or judgment following a trial.

62 The parties and their practitioners do not have participation information, at a 'whole of group' level or at a level that responds separately to the two categories of group members. Registration and soft class closure orders will enable that gap in the

available information to be filled, but is it appropriate or necessary in the interests of justice that such orders be made?

63 As a starting point I accept it is in the best interests of group members that steps be taken to facilitate settlement. In *Regent Holdings Pty Ltd v State of Victoria* ('*Regent*'),[25] the Court of Appeal said:[26]

> 20 Contrary to the applicant's contentions, it is not improper for a judge to make orders for particulars and discovery calculated to facilitate mediation. We take to be self-evident that it is desirable that proceedings be settled; and, in Victoria, Ch 2 of the Civil Procedure Act 2010 obligates courts and litigants alike to strive to achieve that end. The kinds of orders for particulars and discovery which the judge made in this case are well within the ambit of s 33ZF of the Supreme Court Act 1986 and s 9 of the Civil Procedure Act 2010.
>
> …
>
> 22 Counsel for the applicant argued that the mediation generally and particularly in this case ought be conducted in a "without prejudice environment", and that for a judge to make orders for particulars and discovery of the kind in contention was to risk undermining the consensual process which mediation entails.
>
> 23 We do not accept that submission. Of course, mediation should be conducted without prejudice. But that does not mean that is should be conducted in ignorance. Court ordered mediation is not a game of bluff and bluster in which one party is free to mislead another to conclude that a claim is worth more than it is. It is designed to be an exercise in rational bargaining between relatively well-informed parties aimed at providing just compensation for worthy claims. The more accurate and complete the available information as to quantum, the more likely that rational settlements will be achieved. Where a party seeks the court's assistance to obtain further information which ex facie will facilitate a court directed mediation process, cogent submissions are required to demonstrate that the provision of that assistance will undermine the process.

64 There are a number of factors which in my opinion favour the making of a soft class closure order.

65 First, the size and structure of the class is a factor in favour of soft class closure. That is so that the participation rate of the two categories of group members is established for the purposes of any settlement at mediation or up until the first day of trial. The

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25 [2012] VSCA 221; (2012) 36 VR 424.

26 Ibid 429-430, [20], [22]-[23] (citations omitted).

experience of participation levels in the remediation scheme in which ASIC was involved shows that is likely not all eligible group members will register. However, it cannot be assumed and the parties did not submit that the participation rate in the remediation scheme is representative of or can be used as a proxy for the anticipated participation rate in any settlement between mediation and trial or of the likely participation rate following a trial of the proceeding at which the plaintiff is successful.

66 Second, I accept the fact there are potentially 200,000 group members is a significant factor that favours the making of a soft class closure order. The evidence is of 298,687 policies with an average premium of around $1,691. If there is a very high rate of registration, perhaps 70% or more, then the exposure of the defendants is obviously very substantially higher than if there is a low registration rate, perhaps 30% or less. To know the worst case scenario so far as the defendants are concerned and the best case scenario so far as the plaintiff and group members are concerned is likely to be a critical element in attempts to resolve the proceeding whether at mediation or otherwise.

67 Third, registration will identify individual group members who wish to participate in any settlement. The parties have information which will enable them to identify in respect of each such registered person; their policy, premium(s) paid, claims and refunds (if any), and participation in and eligibility to participate in remediation. As a result, following registration the defendants will be in a very good position to know their actual maximum exposure with some precision. To quote *Regent*, '[t]he more accurate and complete the available information as to quantum, the more likely that rational settlements will be achieved'.

68 I agree with the defendants that the assessment of quantum is complicated by the remediation payments. The parties know who received what amounts pursuant to the remediation scheme and who was otherwise eligible to participate. Soft class closure will enable the parties to identify of the persons who register those persons who have already received or are eligible to receive remediation payments and those who fall outside the remediation scheme. This factor is a further factor in favour of

soft class closure.

69 The same is the case in relation to the identification of policy holders who have made successful claims or who have received refunds. Because of the detailed information that is available to the parties, if a soft class closure order is made they will be able to identify those who have registered, those who have or who have not made claims on the policies, or who have received cancellation refunds.

70 Fourth, I reject the proposition that participation rates achieved in other proceedings are available to be taken into account and, even assuming they are available, constitute a reliable proxy for this proceeding. Participation rates in the Flex Commission proceedings would be known on a confidential basis to parties and their practitioners involved in those proceedings. That information is either the subject of legal professional privilege, without prejudice privilege or a *Harman* restriction, or all three, and is information which can only be used by the parties to those proceedings for the purposes of those proceedings.

71 Even if the information concerning the Flex Commission participation rates were to be available, it relates to a different cohort. The time periods to which the Flex Commission proceedings relate do not coincide with the time periods applicable to group member definitions in this proceeding. This proceeding involves two categories of group members. The causes of action are not identical to those in the Flex Commission proceedings.

72 Fifth, I reject the submission this proceeding is similar to a proceeding known as the Swann class action such that participation rates in that proceeding provide either an available or a meaningful proxy for the purposes of settlement negotiations. The Swann class action involved approximately 500,000 group members who were sold add-on insurance products by car dealerships over approximately a 10-year period. The Swann class action was settled without soft class closure in 2020 for approximately $138 million. To the best of counsel's knowledge, information about participation rates in that proceeding is not publicly available. To the extent

information about participation rates might be available to the defendants' solicitors, such information cannot be used in this proceeding for the same reasons that apply concerning Flex Commission.

73 Sixth, although the plaintiff submitted there will be prejudice to group members if a soft class closure order were to be made, no relevant prejudice was identified. The proposition that group members will be locked out for an indeterminate amount of time ceases to be an issue when the soft class closure order will operate from the commencement of mediation after 1 July 2024 and the trial after 1 September 2024. Group members are not locked out for an indeterminate amount of time, but only until the trial, anticipated to be in the last quarter of this year, and expected to be known shortly after 3 June 2024.

74 Seventh, the proposition it will or may be more confusing, unfair or prejudicial to group members if they are given notice now about opting out and registration rather than if registration occurs either after a successful settlement or after a successful trial has no substance. The plaintiff argued a large number of consumers may be unaware that they purchased the Add-On Insurance products and are at risk of being disadvantaged by not comprehending that the registration notice applies to them. The fact group members may be unaware of the proceeding is an argument in favour of giving notice sooner rather than later, particularly given that some of the claims extend as far back as 18 years. Group proceedings are conducted for the benefit of all group members. Solicitors who have the benefit of a GCO are required to act so as to advance the interests of all group members. It will advance the interests of group members to tell them of their right to participate in a potential settlement at the same time as they are told of their right to opt out. To inform them of both options at the same time will not be confusing so long as the notice itself is not confusing.

75 I reject the proposition group members are at risk of being disadvantaged by not comprehending that the registration notice applies to them. It is of critical importance the rights of group members to register and the rights to opt out are clearly stated in the notice. That is a consideration relevant to the need for careful drafting and not a

reason against registration. It is time group members were made aware of the proceeding, of their right to opt out and also of their right to register to participate in any settlement achieved prior to trial. There is no reason to suppose that a notice sent now will be more confusing than one sent after a settlement or trial and no reason was identified.

76 In this case the draft form of notice carries a reduced risk of confusion because included in the case of persons to whom emails or letters will be sent will be bespoke information about the type of policy the individual person purchased or paid for and the date on which the person purchased or paid for that policy. That level of information is likely to assist potential group members to make an informed choice about whether they wish to register, whether they wish to opt out or whether they wish to do nothing, in which case they will remain members of the class should the matter not settle but proceed to trial.

77 Eighth, I accept the submission that all group members will need to take a positive step in the proceeding if there is either settlement or the plaintiff succeeds at trial. Subject to the success precondition, it is correct to say that registration is not a question of *whether* members should be required to take a positive step but rather *when* that should occur.

78 Ninth, I reject the submission the costs of soft class closure is a factor which militates against the making of an order. Subject to the requirement that costs of the proceedings be reasonable and proportionate, and it is not suggested that the costs of giving effect to a soft class closure order would be unreasonable or not proportionate, I do not regard costs of giving effect to a soft class closure as a relevant consideration. The interests of group members are not adversely affected by whatever costs might be incurred by the solicitors in whose favour a GCO has been made. Part of the 'price' of a GCO is that the solicitors and not for the plaintiff or group members bear the risk and responsibility for costs.

79 I also do not consider the diversion of resources of the plaintiff's solicitors to be a factor

against the making of class closure order. Resources will need to be devoted to notifying group members of their ability to opt out. If additional resources need to be applied because a soft closure order is made, that is another element of the work required to be undertaken to advance the best interests of group members. It is not a reason not to make a soft class closure order.

80 I reject the defendants' submission that the peculiar and ambulatory group member definition adopted by the plaintiff means that soft class closure is necessary before the parties are able to engage in meaningful settlement discussions. It was submitted the group is defined in such a way that a person who purchased the Add-On Insurance on a day prior to six-years before the date of filing the statement of claim (or three years for persons who reside in the Northern Territory) will only be a group member if (a) they made one or more of the mistakes pleaded; and (b) they did not discover (and could not with reasonable diligence have discovered) the mistake(s) prior to the General relation-back day and that by virtue of that definition, the parties have no means of knowing how many persons are group members, let alone how many group members are likely to wish to participate in any settlement or judgment or the total quantum of their claims.

81 The problem with this argument is that whatever orders may be made, registration and class closure will not improve the information available concerning whether or not some or more of the individual potential group members were relevantly mistaken. Registration will not assist the parties to identify which of the claims by group members to whom the Non-Statutory Claim Period applies are likely to be successful at trial. That level of information is only likely to become available following a trial at which the plaintiff is successful and the establishment of an individual claims process.

82 I also reject the assertion in Mr Morris's affidavit that there is no reliable information relating to 77% of the group who fall within the Non-Statutory Claim Period. There is detailed information relating to those potential group members, but the key detail relevant to whether in fact they are a group member, whether each individual made a

relevant mistake, is missing. That information will continue to be missing if a soft class closure order is made. However, what will be known if an order is made is the participation rate of that cohort in any settlement.

83 This is not a case where the only argument in support of soft class closure is an assertion by the defendants that they will not or are unable to participate in settlement negotiations. A soft class closure order in this case will enable the parties to reliably assess the number of persons who wish to pursue a claim to be a group member and the number of group members who will ultimately choose to take a step in the proceeding including to participate in any settlement. I consider it beneficial to the parties and to group members to find out participation levels now as that information is likely to assist in resolution of the proceeding by agreement. As noted in *Matthews*, the CPA encourages parties to reach resolution and for the Court to give effect to that aim.

84 I accept as noted in *Matthews* and *Fox* that an advantage for group members of class closure is to enhance the prospects of finality for group members and defendants by settlement. For that reason and for the reasons discussed above it is the best interests of group members to make a soft class closure order. It is both appropriate and necessary that such order be made to enable a realistic estimate of the size of the claim to be made based on registration, such an estimate to be informed by detailed information already held by the parties but which, as a result of soft class closure, will enable a much more complete and accurate assessment to be made concerning quantum, including concerning the two categories of group members.

85 As earlier mentioned, I will make an order for judicial mediation. I do not accept that the proceeding is not sufficiently advanced for the making of an order for mediation. It is important that evidence be filed and the matter be progressed toward trial as soon as practicable. However, proceedings can settle at any stage. Mediation of group proceedings by a judicial officer is typically a process conducted in parallel to steps being taken to progress proceedings towards trial. If a proceeding begins to be mediated before the expense of expert evidence has been incurred, that can sometimes

be a factor that works in favour of a settlement. The fact evidence has not yet been filed is no reason to delay the start of the mediation process.

**Form of Orders**

86 I will make an order for soft class closure to apply between the date of commencement of mediation and the first day of trial.

87 For the reasons set out above, I will make orders setting the proceeding down for trial not before **1 September 2024** and referring the proceeding for judicial mediation to commence not before **1 July 2024**. The deadline for group members to opt-out or register is **11 June 2024.** Participation rates will be known prior to the mediation commencing.

88 I will make an order for the distribution of notice to potential group members largely in accordance with the plaintiff's proposed order, incorporating the plaintiff's proposal for the distribution of main round and reminder notices. I will include in addition the defendants' proposed order requiring the solicitors for the plaintiff to deliver a list of registered group members to the solicitors for the defendants.

89 By **4:00pm** on **4 March 2024**, the parties are to confer and seek to agree on:

(a) the appropriate form and content of the registration form by which group members can register their claim (to ensure there is an equivalence between procedures for opt out and registration); and

(b) the appropriate form and content of correspondence for the main round of notices and reminder notices.

90 If the parties are unable to agree, they are to provide their proposed registration forms and correspondence to Chambers by **4:00pm** on **4 March 2024** and I will determine the matter on the papers.

91 Annexed to these reasons is a draft form of order. If the parties have concerns or consider the draft order should be modified to better give effect to reasons, they should communicate with Chambers by no later than **4:00pm** on **4 March 2024**,

following which the order will be authenticated.

**Form of Notice**

92 Recently the Court has experienced a number of instances where opt out notices have been received on behalf of group members and individual group members have later contacted the Court and advised the earlier opt out notice was a mistake. It is appropriate to modify the opt out orders originally proposed by the parties to seek to minimise the risk of mistaken opt outs by group members and to make the process as clear and simple as possible. Error in opting out disadvantages and causes inconvenience to group members who need to take action to correct the error. The need to correct error also imposes an administrative burden on the Court and on practitioners involved in group proceedings. The modifications to orders proposed by the parties seek to address this issue by including a requirement that opt out forms be completed by group members personally or by a limited class of authorised representatives – namely by directors of companies who are group members or by executors, powers of attorney or by the solicitor acting on behalf of group members. The orders I will make disposing of this application will include orders that limit the manner of opt out accordingly.

93 The Court now has the capability for an automated opt-out process. The draft Notice will be amended to provide for opt-out to occur via the automated process accessible via the Court's website.

**Costs**

94 The plaintiff submits the costs of and incidental to the distribution (including disbursements and professional fees incurred) ought to be borne in equal shares by the plaintiff and the defendants in the first instance, but on the basis that those costs be costs in the proceedings. It is appropriate that the costs be borne equally in circumstances where opt out and any registration is in the interests of all parties to achieve a just and quick settlement of the proceeding.

95 I propose to make the order sought, which was not opposed by the defendants.

96 The costs of the application are otherwise reserved.

**CERTIFICATE**

I certify that this and the 28 preceding pages are a true copy of the reasons for ruling of the Honourable Justice Delany of the Supreme Court of Victoria delivered on 27 February 2024.

DATED this twenty seventh day of February 2024.


.....

**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 |

# ANNEXURE

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

S ECI 2021 00930

BETWEEN:

**ZOEY ANDERSON-VAUGHAN** Plaintiff

- and -

**AAI LIMITED (ACN 005 297 807) & ORS (according to the Schedule)** Defendants

## ORDER

| | |
|---|---|
| JUDGE: | The Honourable Justice Delany |
| DATE MADE: | [Insert] 2024 |
| ORIGINATING PROCESS: | Writ filed on 30 March 2021 |
| HOW OBTAINED: | At the opt out and registration hearing on 12 February 2024 |
| ATTENDANCE: | D Fahey, counsel for the plaintiff<br>D Thomas SC with J Findlay and H Atkin, counsel for the defendants |
| OTHER MATTERS: | A. The order made in paragraph 6 is made pursuant to the general power in s 33ZF of the *Supreme Court Act 1986* (Vic) ('Act') and the specific power in s 33J(2) of the Act.<br>B. The combined updated customer data provided by the defendants on 6 and 24 November 2023 is referred to as the 'Customer Data'. |

**THE COURT ORDERS THAT:**

**Trial**

1. The proceeding is set down for trial on a date to be fixed not before **1 September 2024**.

**Steps prior to trial**

2. The proceeding is listed for directions on **22 March 2024** before Justice Delany unless by that time the parties have agreed upon a timetable for:

   (a) the common questions to be determined at the trial to commence not before 1 September 2024;

   (b) the filing and service of lay evidence;

   (c) the filing and service of expert evidence; and

   (d) the conduct of expert conclaves and joint reports by experts of like disciplines,

   with all evidence to be filed and served by no later than **18 June 2024** and with expert joint reports to be completed by **2 August 2024**.

3. By no later than **4:00pm** on **3 June 2024**, the plaintiff, after consultation with the defendants, is to file and serve a trial plan in the form of Annexure A to this Order, amended as necessary, to enable a firm trial date to be set.

**Opt Out Deadline**

4. The date by which a group member may opt out of this proceeding, pursuant to s 33J(1) of the *Supreme Court Act 1986* (Vic) ('Act'), be fixed at **4:00pm AEST** on **11 June 2024** ('Opt Out Deadline').

**Completion of Opt Out Notices by Group Members**

5. For the purposes of s 33J(2) of the Act, each group member who wishes to opt out of the group proceeding must opt out by the Opt Out Deadline by:

   (a) completing and submitting the 'Opt Out Form' in the form of Attachment B to Annexure B to this Order; or

   (b) completing and submitting the 'Online Opt Out' through the Supreme Court of Victoria website at: [TO BE INSERTED].

6. Each group member who wishes to opt out of the group proceeding in accordance with paragraph 5 of this Order must complete the Opt Out Form or the Online Opt Out either:

   (a) by personally signing or personally affixing their electronic signature;

   (b) in the case of a corporation who is a group member, by a director of the corporation personally signing or personally affixing their electronic signature;

   (c) by the group member's solicitor personally authorised to act on behalf of the group member personally signing or personally affixing their electronic signature as that group member's solicitor;

   (d) in the case of an executor of an estate which is a group member, by the executor personally signing or personally affixing their electronic signature; or

(e) in the case of a person holding a power of attorney for a group member, by the attorney personally signing or personally affixing their electronic signature.

7. Unless an Opt Out Form or Online Opt Out is completed by or on behalf of a group member by that group member personally in accordance with paragraph 6(a) of this Order, or by a person in accordance with paragraphs 6(b)-(e) of this Order, any Opt Out Form or Online Opt Out otherwise received by the Court will not be treated as a valid and effective opt out notice for the purposes of s 33J of the Act.

**Registration Deadline**

8. The date by which a group member may register their claim be fixed at **4:00pm AEST** on **11 June 2024** ('Registration Deadline').

9. The solicitors for the plaintiff will make an online registration process available on their website for potential group members ('Online Registration').

10. Pursuant to s 33ZG of the Act, any group member who wishes to participate in any distribution of any in-principle settlement of this proceeding reached prior to the first day of trial (subject to Court approval) must register their claim by the Registration Deadline by:

(a) completing and submitting the 'Registration Form' by post or email to the plaintiff's solicitors, Maurice Blackburn, in the form of Attachment A to Annexure B to this Order;

(b) completing and submitting the Online Registration through the 'AAI class action' website at https://www.mauriceblackburn.com.au/class-actions/join-a-class-action/aai-car-dealer-add-on-insurance-class-action/; or

(c) signing a retainer agreement with the plaintiff's solicitors, Maurice Blackburn, before the Registration Deadline,

(the 'Registered Group Members').

11. For the avoidance of doubt, group members who have registered their claim with Maurice Blackburn before the date of this Order are taken to be Registered Group Members.

12. For the avoidance of doubt, failure by a group member to provide all the information requested on the Registration Form will not render the group member's registration invalid provided the group member is identifiable as such based on the information provided.

13. Pursuant to ss 33ZF and 33ZG of the Act, subject to further order, only Registered Group Members shall be entitled to any relief or payment arising from an agreement to settle the proceedings where that agreement is reached at any time between the date of these orders and the day prior to the commencement of the trial referred to in paragraph 1 of this Order and the agreement is subsequently approved by the Court. Any group member who by the Registration Deadline has not opted out, and who is not a Registered Group Member, will remain a group member for all purposes of this proceeding (including for the purpose of being bound by any judgment in this

proceeding and being entitled to participate in any award of damages by the Court) but will not, without the leave of the Court, be permitted to seek any benefit pursuant to any such settlement (subject to Court approval) of this proceeding but will be bound by the terms of any settlement agreement approved by the Court in respect of such a settlement.

**Notice of Opt Out and Registration**

14. Pursuant to ss 33X(1)(a) and (5) and 33Y of the Act, the form and content of the opt out and registration notice ('Notice'), correspondence for the main round of notices ('Main Round Correspondence') and reminder notices ('Reminder Correspondence') and newspaper advertisement ('Advertisement') set out in Annexures B to D respectively to this Order are approved.

15. Pursuant to s 33Y of the Act, the Notice be given to group members according to the following procedure:

*Main round*

(a) During business hours between **18 March 2024** ('Notice Date') and **1 April 2024**, Maurice Blackburn shall send the Notice (or instruct Computershare Communication Services Pty Limited ('Computershare') in the case of prepaid ordinary post) under the cover of the Main Round Correspondence:

(i) by email to each person in the Customer Data at that person's email address, to the extent that an email address associated with that person is specified in the Customer Data;

(ii) by SMS to each person in the Customer Data to that person's mobile phone number, to the extent that a mobile phone number associated with that person is specified in the Customer Data; or

(iii) by prepaid ordinary post to each person in the Customer Data to that person's postal address for whom the Customer Data does not include an email address or mobile phone number, and to the extent that a postal address associated with that person is specified in the Customer Data; and

*Reminder notices*

(b) During business hours between **13 May 2024** and **27 May 2024**, Maurice Blackburn shall send the Notice under the cover of the Reminder Correspondence:

(i) by email to each person in the Customer Data at that person's email address, to the extent that an email address associated with that person is specified in the Customer Data, but excluding:

(A) any Registered Group Members; and

(B) any persons whereby Maurice Blackburn received a 'bounce-back' notification from the associated email address from the distribution of notices in the main round;

(ii) by SMS to each person in the Customer Data to that person's mobile phone number, to the extent that a mobile phone number associated with that person is specified in the Customer Data, but excluding:

(A) any Registered Group Members; and

(B) any persons whereby Maurice Blackburn received a 'bounce-back' notification from the associated mobile phone number from the distribution of notices in the main round.

(c) The subject line of the email shall be 'Court Notice regarding AAI Add-On Insurance Class Action (S ECI 2021 00930)'.

(d) Where:

(i) subject to 15(d)(iii) below, an email is not delivered and a 'bounce-back' notification is received by Maurice Blackburn, Maurice Blackburn shall send the Notice by SMS or prepaid ordinary post as the case may be, to the mobile phone number or postal address in the Customer Data for that group member within 10 business days of that bounce-back notification;

(ii) subject to 15(d)(iii) below, an SMS is not delivered and a 'bounce-back' notification is received by Maurice Blackburn, Maurice Blackburn shall send the Notice by email or prepaid ordinary post as the case may be, to the email address or postal address in the Customer Data for that group member within 10 business days of that bounce-back notification; and

(iii) a group member is sent both an email and a text Notice (i.e. dual distribution), and only one of those delivery methods fails and a 'bounce-back' notification is received by Maurice Blackburn, Maurice Blackburn is not required to send the Notice again via an alternative method per 15(d)(i) or 15(d)(ii) above, as the case may be.

(e) By the Notice Date, Maurice Blackburn shall cause the Notice to be posted on its website until the Registration Deadline.

(f) The Commercial Court Registry of the Supreme Court of Victoria shall cause the Notice to be posted on the Supreme Court of Victoria website and be available for inspection at the Commercial Court Registry by the Notice Date.

(g) Maurice Blackburn shall cause the Advertisement to be published once in each of the following newspapers by the Notice Date:

(i) the Adelaide Advertiser;

(ii) the Age;

(iii) the Australian;

(iv) the Courier Mail;

(v) the Canberra Times;

(vi) the Mercury;

(vii) the Northern Territory News;

(viii) the Sydney Morning Herald; and

(ix) the West Australian.

16. The Notice may be amended by Maurice Blackburn before it is sent or published and without any further approval of the Court in order to correct any typographical error or any email, website, postal address or telephone number details.

17. If the Notice is amended by Maurice Blackburn in accordance with paragraph 16 of this Order, Maurice Blackburn shall provide a copy of the amended Notice to the Commercial Court Registry of the Supreme Court of Victoria by **4:00pm** on **12 March 2024**, being 6 days before the Notice Date.

**Receipt of Opt Out and Registration Notices**

18. If, between the Notice Date and the Opt Out Deadline, the solicitors for any party, the defendants, or Computershare receives a notice from a group member purporting to be an opt out notice referable to this proceeding, they shall provide a copy of that notice to the Commercial Court Registry of the Supreme Court of Victoria within 14 days of receipt of the notice with a notation specifying the date it was received and the notice shall be treated as an opt out notice received by the Court at the time it was received by the solicitors, the defendants or Computershare, as relevant.

19. The parties have leave to inspect the Court file and copy any opt out notices filed.

20. By **4:00pm** on each of **18 May 2024** and **25 June 2024**, the solicitors for the plaintiff must deliver to the solicitors for the defendants (in electronic form), a list of Registered Group Members, which list shall contain a unique identification number for each Registered Group Member.

**Costs**

21. The costs of and incidental to sending the Notice (including any disbursements incurred) shall be paid by the plaintiff and defendants in equal shares, but on the basis that those costs will subsequently fall to be costs in the proceeding.

22. For the avoidance of doubt, addressing inquiries by group members and members of the public in relation to the Notice is work that is incidental to the Notice.

23. The costs of the application are otherwise reserved.

**Mediation**

24. The proceeding is referred to judicial mediation by an Associate Judge or a Judicial Registrar, such mediation not before **1 July 2024**.

25. The mediation must be attended by those persons who have the ultimate responsibility for deciding whether to settle the dispute and the terms of any settlement and the lawyers who have ultimate responsibility to advise the parties in relation to the dispute and its settlement.

26. No later than five business days before the date appointed for the mediation, each party is to notify ADRCentre@supcourt.vic.gov.au with the names and contact details of all persons expected to attend the mediation, including in the case of a virtual mediation listing, the email addresses of each attendee requiring a link.

27. If the mediation cannot proceed on the listed date (as advised by the Court's ADR Centre to the parties), the parties are to advise the ADR Centre by email to ADRCentre@supcourt.vic.gov.au as soon as it is known that the mediation cannot proceed.

28. In advance of any anticipated non-compliance with the timetable set by this Order, the parties are to:

    (a) confer with respect to amendments to the timetable; and

    (b) email the Associate to Justice Delany to explain the reason that further time may be required and provide draft minutes of order addressing a revised timetable.

**SCHEDULE OF PARTIES**

| | |
|---|---|
| Anderson-Vaughan, Zoey | 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 |

# ANNEXURE A

## TRIAL PLAN

| | | |
|---|---|---|
| **Plaintiff's opening** | | |
| **Defendant's opening** | | |
| **Name of plaintiff witness** | **Time required for XN** | **Time required for XXN** |
| Lay | | |
| [insert witness names] | | |
| Expert | | |
| [insert witness names] | | |
| **Name of defendant witness** | **Time required for XN** | **Time required for XXN** |
| Lay | | |
| [insert witness names] | | |
| Expert | | |
| [insert witness names] | | |
| **Plaintiff's closing** | | |
| **Defendant's closing** | | |
| **Trial total (days)** | | |

**ANNEXURE B**

# SUPREME COURT OF VICTORIA

**NOTICE TO GROUP MEMBERS: OPT OUT OR REGISTRATION**

**AAI CLASS ACTION**

**Zoey Anderson-Vaughan v AAI Limited & Ors**
**(Proceeding number: S ECI 2021 00930)**

## IMPORTANT NOTICE

The Supreme Court of Victoria has ordered that you receive this notice because you may be a group member in the AAI Class Action.

**If you are a group member:**

a) If you wish to be eligible to claim money from any settlement reached between the plaintiff and the defendants to settle the class action at any point up util the day prior to the commencement of trial of the AAI Class Action you **must** register by **4:00pm AEST on 11 June 2024**.

b) If you do not want your rights determined by the class action, you **must** opt out by **4:00pm AEST on 11 June 2024**. If you opt out, your claim will not be resolved as part of the AAI Class Action but you may pursue such rights as you may have independently.

c) If you do nothing, you will remain a group member in the class action but, subject to further order of the Court, you **will not** be entitled to receive any compensation if there is a settlement before trial.

**THIS NOTICE IS SENT BY ORDER OF THE SUPREME COURT OF VICTORIA.**

**IT IS IMPORTANT THAT YOU READ THIS NOTICE CAREFULLY BECAUSE IT MAY AFFECT YOUR LEGAL RIGHTS.**

## 1. WHAT IS THIS NOTICE?

1. The purpose of this notice is to inform you of the **AAI Class Action** about **add-on insurance products sold in car dealerships**. The class action is in the Supreme Court of Victoria against AAI Limited, MTA Insurance Pty Limited (both companies in the Suncorp Group) and TAL Life Limited (the **defendants**). The plaintiff representing the class is Zoey Anderson-Vaughan. The lawyers for the plaintiff are Maurice Blackburn Lawyers.

2. The class action relates to the following types of **add-on insurance products** issued by the defendants and sold in car dealerships:
   a. **Loan Protection Insurance;**
   b. **Equity or Equity Plus Insurance;**
   c. **Cash Benefit Insurance;**
   d. **Extended Vehicle Warranty Insurance;**
   e. **Tyre & Rim Insurance.**

3. The class action seeks compensation and/or the recovery of premiums paid for by **Group Members.**

4. **This is not a scam**. The Court ordered that this notice be published for the information of persons who might be Group Members in the class action and may be affected by it.

## 2. WHY ARE YOU GETTING THIS NOTICE?

5. The defendants were required by Court-order to provide Maurice Blackburn with customer information relevant to the class action.

6. **The defendants' records show that you purchased and paid premiums for one or more add-on insurance products relevant to this class action, as follows:**[*]

| Type of product | Date product purchased |
|---|---|
| | |
| | |
| | |

7. **Therefore, you <u>may</u> be a Group Member in the class action and you may be entitled to compensation if the class action is successful.**

8. This notice provides important information about the class action and your options, if you are a Group Member. Your options are explained below under the heading 'What are your options?'.

9. **You should read this notice carefully.** If you have any questions about the notice, they should *not* be directed to the Court. Please seek independent legal advice or contact Maurice Blackburn (see section 8 below)**.**

## 3. WHAT IS A CLASS ACTION?

10. A class action is a type of legal proceeding in which the claims of a group of persons (the group members) are brought in a single proceeding.

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[*] For a small number of people, this table may not include all policy purchases. These people may also receive more than one notice, if multiple email addresses were provided for the policies. These issues do not impact eligibility for the class action. Eligibility will be determined at a later stage.

11. A class action is brought by one or more persons (the plaintiffs) on behalf of the group members. Unless a group member opts out, they are automatically covered by the class action even if they did not take any active steps to join it before it was commenced.

## 4. WHAT IS THE AAI CLASS ACTION?

12. The plaintiff commenced the AAI Class Action on 30 March 2021. It is being conducted by Maurice Blackburn.

13. The class action relates to **add-on insurance products** issued by one or more of the defendants and sold in car dealerships.

14. The plaintiff makes a number of allegations, including that the defendants engaged in **misleading or deceptive conduct** and made **false or misleading representations** in relation to the sale of the products to the plaintiff and Group Members. The plaintiff says that, as a consequence of the defendants' alleged conduct, the plaintiff and Group Members suffered **loss or damage.**

15. The plaintiff seeks damages to compensate each Group Member (as well as other types of relief).

16. The defendants deny the allegations and are defending the class action.

## 5. ARE YOU A GROUP MEMBER?

17. You are a Group Member in this class action if at any time between **1 May 2006 and 30 June 2018** you:

| | |
|---|---|
| (a) | purchased or leased a vehicle from a **car dealer** using a **loan** arranged by the car dealer**;** |
| (b) | in connection with the above, also purchased at least one of the following **add-on insurance products** issued by one or more of the defendants:<br>- **Loan Protection Insurance or Commercial Loan Protection Insurance;**<br>- **Equity or Equity Plus Insurance;**<br>- **Cash Benefit Insurance;**<br>- **Extended Vehicle Warranty Insurance;**<br>- **Tyre & Rim Insurance;** |
| (c) | by reason of the above purchases, **made payments** to any of the defendants (directly or indirectly); |
| (d) | satisfied the definition of a 'consumer' within the meaning of s 12BC of *the Australian Securities and Investments Commission Act 2001* (Cth) in your dealings with the defendants; |
| (e) | suffered loss or damage by reason of the alleged contravening conduct of the defendants; and |
| (f) | were not, and are not, any of the following:<br>- a director, an officer, or a close associate of the defendants;<br>- a judge, Associate Judge or Judicial Registrar of the Supreme Court of Victoria; |

18. In addition to the above requirements, for persons who purchased add-on insurance products prior to 30 March 2015, you are a Group Member if your claim falls within the exception to the statutory limitation period applicable to your claim.

19. **We are sending you this notice because we have identified that you purchased at least one add-on insurance product relevant to the class action, and therefore you may be a Group Member.**

## 6. INFORMATION ABOUT COSTS

**No Group Member will ever be "out of pocket" simply by remaining a Group Member in the AAI Class Action.**

**No 'out of pocket' costs for Group Members**

20. If the class action is **unsuccessful**, Group Members will not be liable to pay any legal costs at all.

21. If the class action is **successful** (that is, if any monetary compensation is recovered from the defendants by judgment or settlement), Group Members will not have to pay any costs out of their own pockets. Any legal costs that are payable to Maurice Blackburn will be deducted from, and will not exceed, the amount of monetary compensation recovered for the Group Members.

**What will happen with legal costs?**

22. If the class action is successful, the legal costs payable to Maurice Blackburn will be calculated as 25% of any settlement or judgment sum recovered for Group Members. This means that subject to any order made by the Court to vary the percentage, 75% of any settlement or judgment sum will be distributed to the Group Members. This is called a "group costs order" and it was approved by the Court.

23. The Court may vary the percentage at any time during the class action, but if that occurs the Court will take into account the interests of Group Members in any re-assessment, and Group Members will be notified of any change.

24. If there are any costs payable to the defendants in the class action, the law requires Maurice Blackburn to pay these.

25. This means that Group Members will not have to pay any costs out of their own pocket regardless of the outcome of the class action.

## 7. WHAT ARE YOUR OPTIONS?

26. If you are a Group Member, you have three options, which are set out in detail below.

**Option 1 – Register**

You must register if you wish to be eligible to claim money from any settlement reached between the plaintiff and the defendants to settle the class action at any point up until the day prior to the commencement of trial of the AAI Class Action.

**What is registration?**

You may register your claim by:

- completing the **'registration form'** in **Attachment A** below and sending it to Maurice Blackburn Lawyers (who are acting for the plaintiff in the AAI Class Action); OR
- completing the online registration form with Maurice Blackburn Lawyers at: https://www.mauriceblackburn.com.au/class-actions/join-a-class-action/aai-car-dealer-add-on-insurance-class-action/

You must register your claim by **4:00pm on 11 June 2024** to be eligible to participate in any pre-trial settlement.

If you choose to register a claim as a group member and become a '**Registered Group Member**', you will be required to provide information including your name and contact details.

If you have **already registered**, you do not need to register again. You have already registered if you have already:

- provided your name and contact details in the AAI Class Action via the registration form or using Maurice Blackburn's registration portal; or
- signed an agreement for Maurice Blackburn to represent you in the AAI Class Action.

If you are unsure whether you have already registered your claim, you may contact Maurice Blackburn by emailing [insert] or calling the AAI Class Action Hotline on [insert].

**What are the consequences of not registering?**

If you **register**, and the parties **agree to settle** the AAI Class Action and the settlement is approved by the Court, then you will be entitled to participate in that settlement and will be bound by that settlement. There is no guarantee that the proceeding will settle, but if a settlement is agreed and compensation is payable to group members, **you can only receive compensation if you register by 4:00pm on 11 June 2024**. If you **do not register**, you cannot receive any compensation if a pre-trial settlement occurs.

If you **register**, and the parties **do not agree to settle** the AAI Class Action, then the AAI Class Action will proceed. You will remain a Registered Group Member. You will be bound by the result of the trial. You will be entitled to participate in any subsequent settlement or judgment decided in favour of the plaintiff.

**Option 2 – Opt out**

If you fit the definition of a Group Member but do **not** want your rights to be determined by this class action **you must opt out** by **4:00pm on 11 June 2024.**

**What does opting out mean?**

If you choose to 'opt out':

- **you will cease to be a Group Member** in the AAI Class Action;
- you will not be entitled to share the benefit of any order, judgment or settlement in favour of the plaintiff and Group Members in the AAI Class Action;
- you may be at liberty to bring your own claims against one or more of the defendants, provided that you file Court proceedings within the time limit applicable to your claims. **If you wish to bring your own claims against one or more of the defendants, you should seek your own independent legal advice about your claims and any time limits prior to opting out**.

**How can you opt out?**

If you do not wish to remain a Group Member in the AAI Class Action, you must opt out of the class action by:

- completing an **'opt out notice'** in the form shown at **Attachment B** below and returning the completed notice to the Registry of the Supreme Court of Victoria at the address on the form **by no later than 4:00pm on 11 June 2024, otherwise it will not be effective**; OR
- completing the online opt out form at the Supreme Court of Victoria website at: [TO BE INSERTED]

Each Group Member seeking to opt out should fill out a separate form.

**Option 3 – Do nothing**

If you are a Group Member and you decide **not to opt out and do not register**:

- You will **not** be entitled to receive any compensation if there is a pre-trial settlement, unless the Court makes an order permitting you to participate.
- You may lose your right to seek monetary relief from the Defendants in relation to the same (or similar) claims alleged in the AAI Class Action if there is a settlement before trial.
- You may be given another opportunity to register in the future, but not in relation to a settlement reached before trial. If, following a trial, the judgment concludes that Group Members may be entitled to receive compensation, then you may be eligible to receive compensation.
- If the AAI Class Action does not result in a settlement before trial, you will be bound by any final judgment determined at trial.

## 8. WHERE CAN YOU OBTAIN FURTHER INFORMATION?

27. For more information about the class action, please see relevant documents on:

    a. Maurice Blackburn's website: [link]

    b. the Supreme Court of Victoria website: https://www.supremecourt.vic.gov.au/areas/group-proceedings/aai-limited.

28. If there is anything in this notice of which you are unsure, you can:

    a. contact Maurice Blackburn on [hotline] or [email]

    b. seek independent legal advice.

29. The Supreme Court should **not** be contacted for legal advice.

30. This notice was approved by the Supreme Court and published pursuant to Orders made on XX.

31. **You should not delay in making any decision to register or opt out or seek further advice.**

# ATTACHMENT A

**NOTICE OF REGISTRATION BY GROUP MEMBER**

**AAI CLASS ACTION –** Proceeding No. S ECI 2021 00930

**Zoey Anderson-Vaughan v AAI Limited & Ors**

## OPTION 1: NOTICE OF REGISTRATION BY GROUP MEMBER

ONLY COMPLETE THIS FORM IF YOU WISH TO **REGISTER** FOR THE AAI CLASS ACTION. IF YOU REGISTER, YOU WILL BE ELIGIBLE TO CLAIM MONEY IN ANY SETTLEMENT REACHED BETWEEN THE PLAINTIFF AND THE DEFENDANTS TO SETTLE THE CLASS ACTION AT any POINT UNTIL THE DAY PRIOR TO THE COMMENCEMENT OF TRIAL.

IF YOU WISH TO OPT OUT TO PARTICIPATE YOU MUST COMPLETE THE **OPTION 2** OPT OUT.

# ATTACHMENT B

**NOTICE OF OPTING OUT BY GROUP MEMBER**

**AAI CLASS ACTION –** Proceeding No. S ECI 2021 00930

**Zoey Anderson-Vaughan v AAI Limited & Ors**

## OPTION 2: NOTICE OF OPTING OUT BY GROUP MEMBER

ONLY COMPLETE THIS FORM IF YOU WISH TO **OPT OUT** OF THE AAI CLASS ACTION. IF YOU OPT OUT, YOU WILL NO LONGER BE A GROUP MEMBER.

IF YOU WISH TO REGISTER TO PARTICIPATE YOU MUST COMPLETE THE **OPTION 1** REGISTRATION.

THIS FORM MAY ONLY BE COMPLETED BY A GROUP MEMBER PERSONALLY, OR BY A DIRECTOR OF A COMPANY WHICH IS A GROUP MEMBER, A PERSON WHO IS AN EXECUTOR OF AN ESTATE OF A PERSON WHO IS A GROUP MEMBER, A POWER OF ATTORNEY OF A PERSON WHO IS A GROUP MEMBER OR A SOLICITOR ACTING FOR A GROUP MEMBER.

To: Commercial Court Registry
Supreme Court of Victoria
210 William Street
Melbourne Victoria 3000
aaiclassaction@supcourt.vic.gov.au

I, [*print name* ]……, am (select **one** option only)

☐ a group member;

☐ a director of [*company*]…….which is a group member;

☐ an Executor for the Estate of [*print name*]…….who is a group member;

☐ a power of attorney for [*print name*]……who is a group member; or

☐ a solicitor acting for [*print name*]……...who is a group member.

in the above group proceeding, and give notice under section 33J(2) of the *Supreme Court Act 1986* that I am **opting out** of this proceeding.

| | |
|---|---|
| Date: | |
| Signature of group member, director of group member, Executor, power of attorney or solicitor for group member: | |
| Email address of group member: | |
| Address of group member: | |

**If you would like to opt out of the AAI Class Action, please complete this form online via the Supreme Court of Victoria website OR return this completed form to the Supreme**

**Court of Victoria by email or by post, at the addresses on this form, by 4:00pm AEST on 11 June 2024.**

# ANNEXURE C

# ANNEXURE D

# ANNEXURE E

**NOTICE TO GROUP MEMBERS – SUPREME COURT OF VICTORIA**

**AAI CLASS ACTION (PROCEEDING NO: S ECI 2021 00930)**

The Supreme Court of Victoria has ordered that this notice be published to notify persons who might have claims affected by a class action (**AAI Class Action**) brought against AAI Limited, MTA Insurance Pty Ltd and TAL Life Limited (the **defendants**). The class action relates to **add-on insurance products** issued by one or more of the defendants and sold in car dealerships.

The plaintiff commenced the class action on her own behalf and on behalf of group members. The class action is being conducted by Maurice Blackburn Lawyers.

Group members include persons who, at any time between **1 May 2006 and 30 June 2018** (inclusive):

- purchased a **vehicle** from a car dealership, using a **loan** arranged by the car dealer; and
- in connection with the above, also purchased at least one of the following **add-on insurance products** issued by one or more of the defendants:
    - **Loan Protection Insurance or Commercial Loan Protection Insurance;**
    - **Equity or Equity Plus Insurance;**
    - **Cash Benefit Insurance;**
    - **Extended Vehicle Warranty Insurance;**
    - **Tyre & Rim Insurance.**

The AAI Class Action involves a number of allegations, including that the defendants engaged in misleading or deceptive conduct in relation to the sale of the products to the plaintiff and group members. The plaintiff alleges that as a consequence of the defendants' alleged conduct, the plaintiff and group members suffered loss or damage.

Compensation and damages are sought against the defendants. The defendants deny the allegations and are defending the class action.

**If you purchased one or more of the add-on insurance products listed above, you may be a group member of this class action and may be able to claim compensation.**

**If you are a group member and you wish to be eligible to participate in any pre-trial settlement, you must register your claim by 4:00pm on 11 June 2024.**

If you are a group member and you do not wish to participate in this class action, you must provide an **Opt Out Notice** to the Supreme Court of Victoria by **4:00pm on 11 June 2024.**

If you choose not to register and not to opt out, you do not need to take any action at this time.

Group members will not have to pay any legal costs out of their own pocket simply by remaining a group member in the class action.

For further information or to obtain a copy of the **Long Form Notice**, please visit either:

- the Supreme Court's website: https://www.supremecourt.vic.gov.au/areas/group-proceedings/aai-limited.
- Maurice Blackburn's website: [link]

If you have any questions in relation to the notice, please contact Maurice Blackburn on [hotline] or [email].

You should read the Long Form Notice before deciding whether or not to register for or opt out of the AAI Class Action.