



**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMERCIAL COURT**

**No. S ECI 2024 05243**

Case: S ECI 2024 05243

Filed on: 03/04/2025 03:20 PM

**B E T W E E N**

**TRACEY LEIGH HEPI AND ERU MARTIN HEPI**

Plaintiffs

**-and-**

**TOYOTA FINANCE AUSTRALIA LIMITED (ACN 002 435 181)**

First Defendant

**AIOI NISSAY DOWA INSURANCE COMPANY AUSTRALIA PTY  
LTD (ACN 132 524 282)**

Second Defendant

**STATEMENT OF CLAIM**

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Filed on behalf of:	The Plaintiffs	DX:	N/A
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**A. PRELIMINARY**

**A.1. The Group Members**

1. This proceeding is commenced as a group proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) by the Plaintiffs on their own behalf and on behalf of all persons who:

(a) entered into a finance agreement for the acquisition of an automobile (**Car Loan**);

i. with the First Defendant (**Toyota**);

ii. which was obtained through a Dealer as defined in paragraph below, who supplied the automobile the subject of the Car Loan;

iii. between 1 January 2010 and 5 October 2021 (the **Relevant Period**):

(A) commenced entering into discussions concerning finance with the Dealer; and/or executed that finance agreement; and

(B) in which a Flex Commission was paid to the Dealer and whose Car Loan included premiums for one of the following products issued by Toyota:

a. Payment Protection or Finance Protection Insurance (**Finance Protection Insurance**), a form of consumer credit insurance including that underwritten by the second defendant (**ADICA**);

b. Finance Gap Insurance including that underwritten by ADICA; or

c. Factory Approved Extended Warranty Insurance or Extended Warranty Insurance (**Extended Warranty Insurance**) including that underwritten by ADICA,

(the products in (a) to (c) being together and separately the **Add-on Insurance**), or

- (C) whose Car Loan was entered into on or after 1 November 2018 and included premiums for one or more Add-on Insurance products issued by Toyota,
- (b) have suffered loss or damage, or are entitled to relief, by reason of the matters pleaded in this statement of claim; and
- (c) were not during any part of the Relevant Period, and are not as at the date of this statement of claim, any of the following:
  - i. a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**) of the Defendants;
  - ii. a related body corporate (as defined by s 50 of the *Corporations Act*) of the Defendants;
  - iii. an associated entity (as defined by s 50AAA of the *Corporations Act*) of the Defendants;
  - iv. an officer or close associate (as defined by s 9 of the *Corporations Act*) of the Defendants;
  - v. a Justice or the Chief Justice of the Supreme Court of Victoria, or a Justice or the Chief Justice of the High Court of Australia;

(the **Group Members**).

- 2. Immediately prior to the commencement of this proceeding, there were more than seven Group Members.

### **A.2. The Defendants**

- 3. Toyota is and at all materials times was:
  - (a) incorporated pursuant to the *Corporations Act* and capable of being sued;
  - (b) a person within the meaning of s 1041H of the *Corporations Act*;

- (c) a person within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
- (d) the holder of, and trading under, the business names "Toyota Financial Australia", "Lexus Financial Services" or "Powertorque Finance";
- (e) the holder of an Australian credit licence and Australian Financial Services licence; and
- (f) subject to the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**) and National Credit Code which formed Schedule 1 of the NCCP Act (the **Credit Code**);
- (g) a person within the meaning of s 180A of the NCCP Act.

### **Particulars**

During the Relevant Period, Toyota held Australian Credit Licence and Australian Financial Services licence number 392356 (**Toyota AFSL**).

4. ADICA is and at all materials times was:
- (a) incorporated pursuant to the Corporations Act and capable of being sued;
  - (b) a person within the meaning of s 1041H of the Corporations Act;
  - (c) a person and a corporation within the meaning of the ASIC Act; and
  - (d) part of the same corporate group as Toyota;
  - (e) since 29 November 2013:
    - i. carrying on the business in Australia of among other things insurance;
    - ii. the holder of Australian Financial Services Licence number 443540 (**ADICA AFSL**); and
    - iii. trading as among other things, Toyota Insurance.

## **B. THE CLAIMS OF THE PLAINTIFFS AND GROUP MEMBERS**

### ***B.1. Arrangements between Dealers and Toyota***

5. Throughout the Relevant Period, Toyota:
- (a) entered into agreements with accredited dealers (**Dealers**) as agents to facilitate the provision of Car Loans to Group Members (**Dealer Agreements**);
  - (b) appointed the Dealer's finance and insurance sales staff (**Dealer Representatives**) as agents and "Accredited Persons" to arrange Car Loans and/or Add-on Insurance for Group Members; and
  - (c) appointed the Dealers' and Dealer Representatives:
    - i. as its authorised representatives within the meaning of s 916A of the Corporations Act to arrange the issue and to provide general advice on the Add-on Insurance; and
    - ii. to act on its behalf, and therefore as agents of the insurer, including ADICA, in undertaking the steps referred to in (i) above.

### **Particulars**

Particulars may be provided after discovery.

6. At all material times, Toyota implemented a process by which Dealers and Dealer Representatives participated in the process of the offering and writing of Car Loans, which included the following features:
- (a) for each Car Loan, an employee and/or Dealer Representative had direct contact with the relevant Group Member; and
  - (b) the Dealers and/or Dealer Representatives arranged for premiums for Add-on Insurance to be added to the Car Loan application to be submitted to Toyota.
- (Car Loan Process).**

7. At all material times during the Car Loan Process, Toyota was solely responsible for all aspects of credit assessment, credit decisions, loan management, administration and servicing of Car Loans.

**B.2. Arrangements between Toyota and ADICA**

8. In the period from at least 1 January 2014 until the end of the Relevant Period:
- (a) ADICA was the underwriter of the Add-on Insurance;
  - (b) Toyota was appointed by ADICA, during the Car Loan Process:
    - i. as its representative within the meaning of s 910A of the Corporations Act, or agent, to issue, and provide general advice on, the Add-on Insurance; and/or
    - ii. to issue the Add-on Insurance on behalf of ADICA under a binder within the meaning of s 761A of the Corporations Act (**Binder Agreement**);

**Particulars**

The Binder Agreement was disclosed in the Financial Services Guide. Particulars of the Binder Agreement will be provided following discovery.

- (c) Toyota issued the Add-on Insurance under the Binder agreement on ADICA's behalf; and
- (d) ADICA authorised Toyota to appoint agents and/or authorised representatives for the purposes of acting on its behalf to undertake the matters referred to in sub-paragraph (b)(i) above.

**Particulars**

The Plaintiffs do not know if ADICA's authorisation of Toyota to delegate its agency was express or implied.

Further particulars may be provided after discovery.

9. By reason of the matters referred to in paragraphs 5 to 8 above, the Dealers and Dealer Representatives referred to in paragraphs 5 and 6(b) above, were:

(a) representatives of ADICA within the meaning of s 910A of the Corporations Act by acting on behalf of ADICA in arranging the issue of the Add-on Insurance; and

(b) representatives of more than one AFSL,

such that s 917C of the Corporations Act applied with the effect that each of ADICA, and Toyota are jointly and severally responsible for the Dealers' and Dealer Representatives' conduct in relation to the Add-on Insurance.

10. On or about 5 October 2021, Toyota ceased issuing the Add-on Insurance.

## **C. REGULATORY CONTEXT**

### ***C.1. Financial products and provision of financial services***

11. Each of the Add-on Insurance products was:

(a) a financial product within the meaning of s 12BAA of the ASIC Act; and

(b) a financial product within the meaning of ss 763A, 763C and 764A of the Corporations Act; and

(c) the advising on the Add-on Insurance products by Dealers and the Dealer Representatives was in trade or commerce and constituted:

i. the provision of financial product advice within the meaning of s 766B(1) of the Corporations Act;

ii. the provision of financial services within the meaning of s 12BAB of the ASIC Act and s 766A of the Corporations Act(1)(a);

(d) the arranging of their issue by Dealers and the Dealer Representatives was in trade or commerce, and constituted the provision of financial services within the meaning of s 12BAB of the ASIC Act and ss 766A and 766C of the Corporations Act;

(e) their issue by Toyota was in trade or commerce and constituted the provision of financial services within the meaning of s 12BAB of the ASIC Act ss 766A and 766C of the Corporations Act; and

(f) the underwriting of benefits by ADICA, and provision of insurance cover under each Add-on Insurance policy, was in trade or commerce, and constituted the provision of financial services within the meaning of s 12BAB of the ASIC Act and ss 766A and 766C of the Corporations Act.

12. The conduct of the Dealers and the Dealer Representatives during the Relevant Period in advising on and/or arranging the issue of the Add-on Insurance to the Plaintiffs and the Group Members, on behalf of Toyota and ADICA, was, by reason of s 12GH(2) of the ASIC Act and s 769B(1) of the Corporations Act, engaged in also by Toyota and ADICA.

13. The conduct of Toyota during the Relevant Period in issuing the Add-on Insurance to the First Plaintiff and the Group Members, on behalf of ADICA, was, by reason of s 12GH(2) of the ASIC Act and s 769B(1) of the Corporations Act, engaged in also by ADICA.

## **C.2. Statutory obligations**

### *C.2.1. AFSL requirements*

14. At all material times, Toyota, as holder of the Toyota AFSL was authorised, among other things to:

- (a) provide general advice in respect of Add-on Insurance; and
- (b) deal in Add-on Insurance.

15. At all material times after 29 November 2013 ADICA, as holder of the ADICA AFSL was authorised, among other things to:

- (a) provide general advice in respect of Add-on Insurance; and
- (b) deal in Add-on Insurance.

16. At all material times, Toyota, and from 29 November 2013 ADICA, as holders of the Toyota AFSL and the ADICA AFSL respectively, in relation to the sale of Add-on Insurance were required to comply with the general obligations under s 912A of the Corporations Act.

17. Section 912A of the Corporations Act required Toyota and ADICA in respect of the sale of Add-on Insurance to:
- (a) do all things necessary to ensure that the Add-on Insurance was provided efficiently, honestly and fairly;
  - (b) have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to activities undertaken by themselves as licensees, or by Dealers and Dealer Representatives, in the provision of the Add-on Insurance as part of their financial services businesses;
  - (c) take reasonable steps to ensure the Dealers and Dealer Representatives complied with the financial services laws (including the best interest obligations in Division 2 of Part 7.7A of the Corporations Act); and
  - (d) ensure that the Dealers and Dealer Representatives were adequately trained to provide the Add-on Insurance (including by complying with s 912D of the Corporations Act) and were competent to provide the Add-on Insurance.
18. Sections 912A(1)(ca) and 961 of the Corporations Act required Toyota and ADICA in respect of the sale of Add-on Insurance to take reasonable steps to ensure that if personal advice was provided by the Dealers and/or Dealer Representatives to clients, then the Dealers and Dealer Representatives should:
- (a) act in the best interest of the clients in relation to that advice, in accordance with s 961B of the Corporations Act;
  - (b) only provide the advice to clients if it would be reasonable to conclude that the advice was appropriate to the client, in accordance with s 951G of the Corporations Act;
  - (c) warn the clients if it was reasonably apparent to the Dealers and/or Dealer Representatives that information relating to the objectives, financial situation and needs of the clients on which the advice was based was incomplete or inaccurate, in accordance with s 961H of the Corporations Act; and

- (d) give priority to the interests of the clients over any other interest in accordance with s 961J of the Corporations Act.

19. At all material times during the Relevant Periods:

- (a) ADICA;
- (b) Toyota; and
- (c) the Dealers and Dealer Representatives as the authorised representatives or agents of Toyota, and agents or representatives of ADICA,

engaged in conduct that:

- (a) was intended to influence persons to acquire Add-on Insurance; or
- (b) could reasonably be regarded as being intended to have such an influence,

within the meaning of s 766B(1) of the Corporations Act.

### **Particulars**

The Plaintiffs attended Broome Toyota in or about early December 2017 for the purpose of buying an automobile. The Plaintiffs did not request Broome Toyota to arrange or sell them Add-on Insurance.

Broome Toyota included amounts for premiums for the Finance Protection Insurance and Finance Gap Insurance in the loan application form and loan offer documentation for the Plaintiffs' Loan without the Plaintiffs' consent.

Broome Toyota's conduct was on behalf of Toyota and ADICA and is therefore attributable to Toyota and ADICA.

#### *C.2.2. Industry Codes of Practice*

20. At all material times, the Insurance Industry Codes of Practice (**Codes**) issued by the Insurance Council of Australia were:

- (a) binding on ADICA in respect of the supply of Add-on Insurance; and
- (b) applicable industry codes within the meaning of s 51ACA of the *Competition and Consumer Act 2010* (Cth).

### **Particulars**

Insurance Industry Codes of Practice (2012), (2014) and (2020).

21. ADICA was required by the terms of the Codes to:

- (a) (with respect to the (2012), (2014) and (2020) Codes):
  - i. require Toyota, Dealers and Dealer Representatives as authorised representatives or distributors to conduct their dealings with customers including their sales practices in an efficient, honest, fair and transparent manner;
  - ii. only permit Toyota, Dealers and Dealer Representatives as authorised representatives and/or distributors to perform functions that matched their expertise;
  - iii. ensure adequate training of Toyota, Dealers and Dealer Representatives as authorised representatives or distributors to carry out their sales tasks and functions competently; and
  - iv. require Toyota, Dealers and Dealer Representatives as authorised representatives or distributors to inform the Plaintiffs and Group Members of the service they have been asked to provide and the identity of the insurer;
- (b) (with respect to the 2012 Code):
  - i. train Toyota, Dealers and Dealer Representatives, as authorised representatives, on the principles of general insurance and any relevant consumer protection law, product knowledge and the requirements of the Insurance Industry Code of Conduct; and
  - ii. measure the effectiveness of training by monitoring the performance of Toyota, Dealers and Dealer Representatives

and requiring additional or remedial training to address any identified deficiencies;

(c) (with respect to the 2014 Code):

- i. measure the effectiveness of training by monitoring the performance of authorised representatives' services; and
- ii. provide Toyota, Dealers and Dealer Representatives as authorised representatives with, or require them to receive appropriate education or training to correct any identified performance shortcomings;

(d) (with respect to the 2014 and 2020 Codes):

- i. provide Toyota, Dealers and Dealer Representatives as authorised representatives or distributors with, or require them to receive, appropriate education and training to provide their services competently and to deal with consumers professionally, including training on the Code.

### ***C.3. Absence of value, benefit and suitability of Add-on Insurance products***

#### ***C.3.1. ASIC Reports***

22. On about 29 February 2016, ASIC issued report 470, 'Buying add-on insurance in car yards: Why it can be hard to say no' (**Report 470**), which examined the sales practices of Australian car-yards in selling add-on insurance with car loans and identified concerns with the sales practices of add-on insurance, the high rates of commission paid on premiums, and the lack of consumer awareness of add-on insurance products generally and of the add-on insurance products they had actually bought.
23. On about 29 February 2016, ASIC issued report 471, 'The sales of life insurance through car dealers: Taking consumers for a ride' (**Report 471**), which examined the premiums, product design, claim outcomes and sale of the life insurance component of a consumer credit insurance (**CCI**) products sold through car dealers, and found that car-yard life insurance products provided poor value for consumers.

24. In about early 2016, ASIC issued a data request to seven insurers who issued add-on car insurance through car dealers, including ADICA, including a request for data on sales, premiums, commissions, claims, pricing, over a three-year period (2013 to 2015) and information on sales processes and copies of relevant product disclosure statements.

#### **Particulars**

ASIC Report 492, 'A market that is failing consumers:  
The sales of add-on insurance through car dealers  
(**Report 492**), p 4, 5, 45 and 46.

25. In about September 2016, following its review of the data produced by the seven insurers, including ADICA, referred to in paragraph 24 above, ASIC issued Report 492, which examined five types of add-on insurance sold to consumers by car dealers, including CCI, finance gap insurance (also known as guaranteed asset protection (GAP) insurance), and extended warranty insurance (also known as mechanical breakdown insurance), and made the following findings:

- (a) consumers received a low claim payout relative to premiums;

#### **Particulars**

ASIC reported that across all add-on insurance products it reviewed, over a three-year period, the gross amount paid in claims was \$144 million, or only 9% of gross premiums of just over \$1.6 billion.

The claims ratio for the two products with the highest dollar value in sales were even lower:

1. for GAP insurance, 6.3 cents in the dollar was paid back in claims (with total claims of \$39.9 million, and premiums of \$631.1 million); and
2. for CCI, covering both general and life insurance components, 5 cents in the dollar was paid back in claims (with claims of \$25.3 million, and premiums of \$506.8 million).

- (b) consumers received much less in claims than dealers received in commissions;

#### **Particulars**

ASIC reported that upfront commissions of up to 79% of the premium were paid to car dealers arranging the sale of add-on insurance products.

Insurers paid \$602.2 million in commissions to car dealers and only \$144 million to consumers in claims. This meant car dealers earned four times more in commissions than consumers received in claims.

- (c) there was a lack of competition which resulted in poor consumer outcomes, including dual pricing, so that business-use consumers were charged higher premiums than personal-use consumers, and discretionary pricing by some insurers;
  - (d) insurers were selling products that were poorly designed so that consumers were paying for something they did not need or that offered poor value, including extended warranty insurance which overlapped with statutory consumer guarantees;
  - (e) the practice of consumers paying for single upfront premium could contribute to poor outcomes including interest costs, reduced consumer awareness and no refunds on unused premiums; and
  - (f) sales processes adopted by insurers lacked adequate controls, were complex and were inhibiting good or informed decision making.
26. Both Toyota and ADICA were aware of each of the ASIC Reports referred to at paragraphs 22, 23 and 25 above at or around the time when each of them were issued.

#### **Particulars**

This may be inferred from the fact that each report was available publicly and directly relevant to each of their businesses.

Further particulars may be provided following discovery.

*C.3.2. The Add-on Insurance products and their terms*

27. At all relevant times, the Add-on Insurance products had standard terms and conditions which were set out in policy and product disclosure statement documents (**PDSs**) which were updated from time to time.

**Particulars**

In respect of Finance Protection Insurance:

1. Payment Protection Insurance Policy and Product Disclosure Statement dated 1 March 2012.
2. Finance Protection Insurance Policy and Product Disclosure Statement dated 1 February 2014.
3. Finance Protection Insurance Supplementary Product Disclosure Statement dated 1 July 2016.
4. Finance Protection Insurance Policy and Product Disclosure Statement dated 1 January 2017.
5. Finance Protection Insurance Supplementary Product Disclosure Statement dated 25 January 2017.

In respect of Finance Gap Insurance:

1. Finance Gap Insurance Policy and Product Disclosure Statement dated 1 March 2012.
2. Finance Gap Insurance Policy and Product Disclosure Statement dated 1 January 2014.
3. Finance Gap Insurance Supplementary Product Disclosure Statement dated 1 May 2019.
4. Finance Gap Insurance Supplementary Product Disclosure Statement dated 28 January 2021.

In respect of Extended Warranty Insurance:

1. Factory Approved Extended Warranty Insurance Policy and Product Disclosure Statement dated 1 January 2014 (for Toyota manufactured vehicles).
2. Extended Warranty Insurance Policy and Product Disclosure Statement dated 1 January 2014.
3. Factory Approved Extended Warranty Insurance / Extended Warranty Insurance Supplementary Product Disclosure Statement dated 19 February 2021.

Further particulars may be provided following discovery.

*C.3.3. The setting of terms of the Add-on Insurance products*

28. At all material times,

- (a) Toyota; and
- (b) since about 29 November 2013, ADICA,

were aware of and were involved in setting the terms of the Add-on Insurance specified in the PDSs.

**Particulars**

Toyota's knowledge and involvement may be inferred from the fact that Toyota issued the Add-on Insurance and its name appeared in each of the PDSs.

ADICA's knowledge and involvement may be inferred from the fact that it began trading as an insurer in Australia from 29 November 2013, and from at least 1 January 2014 was the underwriter for the Add-on Insurance and its name appeared in each of the PDSs issued from that date.

*C.3.4. The benefits provided by the Add-on Insurance products*

29. During the Relevant Periods, the benefits provided under the Add-on Insurance were as follows:

- (a) for Finance Protection Insurance:

- i. Life (until 31 January 2014);
- ii. Accidental Death and Funeral (from 1 February 2014 until 31 December 2016);
- iii. Injury and Illness;
- iv. Involuntary Unemployment (until 31 January 2014);
- v. Redundancy (from 1 February 2014); and
- vi. Vehicle Hand-back, Self-employed bankruptcy, Carer, and Overseas posting (from 1 February 2014);

#### **Particulars**

The detailed definition of each of these benefits was described in the relevant PDSs.

(b) for Finance Gap Insurance, four options of cover providing:

- i. payment of outstanding loan balance following a total loss claim being paid by the comprehensive insurer while the vehicle is under finance;
- ii. payment of extra costs associated with the purchase of a replacement vehicle following a total loss; and
- iii. finance establishment fees (up to \$750) if replacement vehicle is financed with Toyota.

#### **Particulars**

Option 1 paying up to \$30,000 outstanding loan balance and up to \$4,000 extra costs;

Option 2 paying up to \$15,000 outstanding loan balance and up to \$4,000 extra costs;

Option 3 paying up to \$10,000 outstanding loan balance and up to \$2,000 extra costs; and

Option 4 paying up to \$10,000 outstanding loan balance and up to \$1,000 extra costs.

The detailed definition of each of these benefits, and options was described in the relevant PDSs.

- (c) for Extended Warranty Insurance, repair costs for vehicle failure, with six options for period of insurance coverage,

#### **Particulars**

Option 1: 12 months to maximum of 100,000km odometer;

Option 2: 24 months to maximum of 100,000km odometer;

Option 3: 36 months to maximum of 100,000km odometer;

Option 4: 12 months to maximum of 150,000km odometer;

Option 5: 24 months to maximum of 150,000km odometer; and

Option 5: 36 months to maximum of 150,000km odometer.

The detailed definition of each of these benefits and options was described in the relevant PDS.

(separately and together, the benefits in (a) to (c) being the **Insurance Benefits**).

#### *C.3.5. Limits and exclusions*

30. During the Relevant Periods:

- (a) the Add-on Insurance products had numerous conditions for eligibility, exclusions, exceptions and limits;
- (b) these conditions for eligibility, exclusions, exceptions and limits significantly limited the circumstances the Group Members and the Plaintiffs could obtain the Insurance Benefits under the Add-on Insurance; and

- (c) some Group Members and the Plaintiffs were excluded from one or more benefits under the Add-On Insurance.

### **Particulars**

1. Conditions, exclusions and limits for the Finance Protection Insurance included:

- a. The following groups were ineligible to apply for and receive any benefits under the Finance Protection Insurance policy;
  - i. From October 2010, consumers who were not permanent residents or citizens of Australia at the commencement of the policy. This included both of the Plaintiffs who were New Zealand citizens and were not citizens or permanent residents of Australia;
  - ii. Permanent employees working less than 16 hours a week at the commencement of the policy;
  - iii. Consumers who were aged under 18 at the commencement of the policy or turned 65 years of age or over during the period of cover;
  - iv. Consumers who were not in permanent and continuous employment at the commencement of the policy (including seasonal, temporary, or working on a non-renewable contract, or with a fixed or finishing date). This included the Second Plaintiff who was working in a casual role with part-time hours in a family business as at December 2017; and
  - v. Consumers who at the commencement of the policy were aware that they had an illness or injury that could be expected to lead them to become disabled.

- b. Consumers who had a pre-existing condition (being an injury or illness as defined in the PDS) were ineligible for Life, or Injury or Illness benefits for an illness, injury or condition as a result of the pre-existing condition. This included the First Plaintiff who had a pre-existing condition, being a thyroid condition for which she had received treatment from a medical practitioner or health professional within the 6-month period before the commencement date of the policy.
  - c. From October 2010, self-employed consumers or those in a business partnership whose business ceased for any reason were ineligible for Involuntary Employment/Redundancy benefits (except in the case of a court declaring the consumer bankrupt).
  - d. Consumers who were unable to prove 120 days of continuous permanent and gainful employment were ineligible for Involuntary Employment/Redundancy benefits. This included the Second Plaintiff who was working in a casual role with part-time hours in a family business as at December 2017.
2. Conditions, exclusions and limits for the Finance Gap Insurance included:
- a. No coverage was provided for any benefit where a total loss payment had not been paid in full by the consumer's comprehensive motor vehicle insurance.
  - b. To be eligible for any cover and entitled to claim for benefits, the vehicle must be covered by comprehensive motor vehicle insurance, and the policy ended in the event the vehicle was no longer covered by comprehensive motor vehicle insurance. This exclusion applied to the Plaintiffs, whose comprehensive motor vehicle insurance lapsed

within about the first year of cover of the Finance Gap Insurance issued to the First Plaintiff.

3. Exclusions, and limits for the Extended Warranty Insurance included:
  - a. The policy did not start (or provide any benefits) until the later of:
    - i. the date of issue as stated in the policy schedule;
    - ii. the date that the Dealer statutory warranty expires; or
    - iii. the date that the Toyota new vehicle warranty expires.
  - b. The policy did not cover:
    - i. the costs of normal maintenance or services;
    - ii. consumable items with a limited working life; or
    - iii. repairs for failures caused by not having the vehicle serviced in accordance with the manufacturer's recommended service schedule, or failing to take reasonable care to protect and maintain the vehicle.
  - c. The policy did not cover any repairs to replacement of components while they were covered by any other warranty or guarantee, including:
    - i. Dealer statutory warranty required by law;
    - ii. new vehicle manufacturer warranty;
    - iii. Manufacturer's recall campaigns; or
    - iv. a repairer's warranty or guarantee.

- d. The period of cover ended after the earlier of:
  - i. the date the vehicle had travelled the distance since new set out under the period of cover in the policy schedule (between a maximum of 100,000 to 150,000 km);
  - ii. the expiry of time set out under the period of cover (12 months, 24 months or 36 months); and
  - iii. if the vehicle was used outside normal operating conditions including for hire, fare or reward, taxi, loan, courier or mail delivery, or fast-food delivery.

#### C.3.6. *Claims ratio*

31. During the Relevant Periods, the claims ratio for the Add-on Insurance, being the amount paid overall to policy-holders as a proportion of the total insurance premiums was:
- (a) low; and
  - (b) significantly lower than the claims ratio of other types of consumer insurance generally over that period.

#### **Particulars**

ASIC Report 492, pages 9, 12, 14, 15 which includes industry claims ratio data for add-on insurance for the period 2013 to 2015, which it might be inferred was consistent with claims ratios for the Add-on Insurance for the Relevant Periods. ADICA was one of the seven insurers whose data was relied on by ASIC in preparing Report 492.

ASIC Report 622: Consumer Credit Insurance: Poor Value Products and Harmful Sales Practices dated 11 July 2019 (ASIC Report 622), page 10 contains comparative industry claims ratios in the period 2010 to 2018 for other types of consumer insurance (such as other consumer credit insurance, travel

insurance, home and contents insurance, domestic motor insurance).

Further particulars may be provided following discovery and evidence.

*C.3.7. Lack of value of Add-on Insurance products*

32. During the Relevant Periods, the Insurance Benefits provided by the Add-on Insurance:

- (a) were likely to overlap with other insurance coverage held by some Group Members including the First Plaintiff;

**Particulars**

In the case of the Finance Protection Insurance, the First Plaintiff and a significant proportion of Group Members held one or more of the following insurances, including through their superannuation fund, which provided benefits that were likely to overlap with the benefits provided by the Finance Protection Insurance:

- a. life insurance cover (in the case of Finance Protection Insurance products entered into up to January 2017);
- b. total and permanent disability insurance cover;
- c. income protection insurance;
- d. trauma cover; and/or
- e. other consumer credit insurance.

The First Plaintiff held total and permanent disability (**TPD**) insurance cover through her superannuation.

- (b) were likely to be unnecessary or largely unnecessary, and/or conferred no material benefit, and/or made the Add-on Insurance unsuitable for some or all Group Members including the Plaintiffs;

### **Particulars**

The Plaintiffs refer to and repeat the particulars at paragraph 32(a) above.

The Plaintiffs refer to and repeat paragraph 30 and the particulars subjoined to that paragraph. Because of the exclusions and limits referred to in paragraph 30 above, many Group Members would not be eligible for coverage of one or more of the Insurance Benefits, or would only be eligible for coverage for a limited period of time. For example, in the case of the Extended Warranty Insurance:

- a. If the vehicle was a new vehicle, the vehicle would be covered by the vehicle's manufacturer warranty.
- b. If the consumer sold the vehicle before the expiry of the manufacturer's warranty, the consumer would obtain no benefit from the Extended Warranty Insurance.
- c. If at the expiry of the manufacturer's warranty, the distance travelled by the vehicle exceeded the distance stated in the policy, coverage under the policy would have already ended before the policy commenced.

In the case of the Extended Warranty Insurance, consumers already had the benefit of statutory consumer guarantees under the *Trade Practices Act 1974 (Cth)* or after 1 January 2011, the *Australian Consumer Law* which require the dealer and manufacturer to meet the cost of repairs if the car is not of an acceptable quality.

- (c) were at a higher price and/or had lower coverage than for equivalent policies available from a supplier other than Toyota.

### **Particulars**

ASIC Report 470, p 4.

Further, the cost to consumers for the Add-on Insurance Products was higher than the cost of equivalent products bought separately, including because the premium for the Add-on Insurance was capitalised into the Car Loan, which meant a higher overall cost to consumers taking into account the interest payable on the premium.

Further particulars may be provided following discovery and evidence.

33. As a result of the matters referred to in paragraphs to above, the Add-on Insurance products were:

- (a) of no value;
- (b) of no material financial value;
- (c) were unsuitable for; and/or
- (d) further or alternatively conferred no benefit on, or no material benefits on,

the Group Members.

34. The Plaintiffs and Group Members were required to pay higher premiums for the Add-on Insurance than was reasonably necessary for the protection of the legitimate interests of ADICA and/or Toyota.

#### **Particulars**

This can be inferred from the lower claims ratios referred to in paragraph 31 above.

#### **D. THE CAR LOAN PROCESS IMPLEMENTED BY TOYOTA**

*D.1.1. The Dealers and/or Dealer Representatives provided credit assistance to the Plaintiffs and Consumer Group Members*

35. The Plaintiffs and some Group Members are natural persons (**Consumer Group Members**) and thereby consumers within the meaning of s 5 of the NCCP Act.

36. Car Loans entered into with the Plaintiffs and Consumer Group Members (**Consumer Car Loans**) were contracts under which credit was or may be provided and thereby were credit contacts within the meaning of s 4 of the Credit Code and s 5 of the NCCP Act.
37. At all material times, Dealers and/or Dealer Representatives:
- (a) dealt directly with the Plaintiffs and Consumer Group Members in the course of, or as part of, or incidentally to, the business of the Dealers;
  - (b) and:
    - i. suggested that the Plaintiffs and Consumer Group Members apply for a Consumer Car Loan with Toyota; or
    - ii. assisted the Plaintiffs and Consumer Group Members to apply for a Consumer Car Loan with Toyota; or
    - iii. suggested that the Plaintiffs and Consumer Group Members apply for a Consumer Car Loan that was a consumer lease with Toyota; or
    - iv. assisted the Plaintiffs and Consumer Group Members to apply for a Consumer Car Loan that was a consumer lease with Toyota.
38. By reason of the matters pleaded in paragraph 37, Dealers and/or the Dealer Representatives provided credit assistance to the Plaintiffs and Consumer Group Members within the meaning of ss 7(a) and 8 of the NCCP Act.

*D.1.2. The Dealers and/or the Dealer Representatives were intermediaries between Consumer Group Members and Toyota*

39. The Dealers carried on business in Australia.
40. By reason of the matter pleaded in paragraph 39, the Dealers a carried on business in this jurisdiction within the meaning of s 21(2) of the NCCP Act.
41. Dealers and/or the Dealer Representatives in the course of, or as part of, or incidentally to, the business carried on by the Dealers in this jurisdiction:

- (a) acted as an intermediary (whether directly or indirectly) between Toyota and the Plaintiffs and Consumer Group Members wholly or partly for the purposes of securing a provision of credit for the Plaintiffs and Consumer Group Members under a Consumer Car Loan for the Plaintiffs and Consumer Group Members with Toyota; or,
- (b) acted as an intermediary (whether directly or indirectly) between Toyota, as a lessor, and the Consumer Group Members wholly or partly for the purposes of securing a Consumer Car Loan that was a consumer lease for the Consumer Group Members with Toyota.

42. By reason of the matters pleaded in paragraph 41, the Dealers and/or the Dealer Representatives acted as an intermediary for the purposes of ss 7(b) and 9 of the NCCP Act.

*D.1.3. The Dealers provided a “credit service” to the Plaintiffs and Consumer Group Members*

43. By reason of the matters pleaded in paragraph 38 and, or alternatively, paragraph 42, the Dealers and/or the Dealer Representatives provided a credit service to the Plaintiffs and Consumer Group Members within the meaning of ss 7 and 180A(1)(a) of the NCCP Act.

*D.1.4. The Add-on Insurance Process*

44. Throughout the Relevant Period, Toyota implemented an Add-on Insurance sales system:
- (a) pursuant to which the Group Members paid for one or more Add-on Insurance products issued by Toyota in conjunction with their Car Loan; and
  - (b) which included the features referred to in paragraphs 45 to 51 below (**Add-on Insurance Features**).

**Particulars**

On or around 18 December 2017, the Plaintiffs entered into a Car Loan with Toyota (**Plaintiffs’ Loan**), following the Plaintiffs’ discussions with the Dealer, Broome Toyota.

The Plaintiffs' Loan was for the sum of \$47,760.43, on a Contract Rate of 10.95% per annum and a Loan Term of 72 months.

The Plaintiffs' Loan included:

- (a) a premium of \$1,680 for Finance Protection Insurance; and
- (b) a premium of \$960 for Finance Gap Insurance (*Option 1, cover for outstanding finance contract balance up to \$30,000 and extra costs up to \$4,000*).

45. The premium for the Add-on Insurance:

- (a) was financed by the Car Loan;
- (b) increased the amount of credit owing under the Car Loan; and
- (c) accrued interest, charged by Toyota under the terms of the Car Loan.

46. Throughout the Relevant Period, incentives were provided for the sale of Add-on Insurance products, which included the following:

- (a) Toyota was paid a commission by the insurer, including ADICA, for the sale of Add-on Insurance;

#### **Particulars**

The commission paid to Toyota by the insurer (including ADICA) is referred to in the Financial Services Guide, and included a base calculated as a percentage of the base premium, or a fixed dollar fee, or both; and also in some cases a profit share commission depending on the performance of the portfolio.

- (b) Toyota paid Dealers a commission for the sale of Add-on Insurance; and

#### **Particulars**

The commission paid to Dealers is referred to in the Financial Services Guide, and was paid out of the commission received by Toyota from the insurer. It included a flat fee, a commission

calculated as a percentage of the premium, or a combination of both.

- (c) Dealer Representatives received a commission for the sale of Add-on Insurance.

#### **Particulars**

The commission paid to Dealer Representatives is referred to in the Financial Services Guide. Dealer Representatives could receive a proportion of the Dealer's commission and/or performance bonus if they achieved certain performance targets, and soft dollar commissions from Toyota and insurers.

- 47. Throughout the Relevant Period, Toyota facilitated a system through which:
  - (a) Dealers and Dealer Representatives could add premiums for one or more Add-on Insurance products to the Car Loan; and
  - (b) Dealers and Dealer Representatives arranged the sale and issue of Add-on Insurance.

#### **Particulars**

Particulars may be provided following discovery.

- 48. Throughout the Relevant Period, Toyota was, or ought to have been aware, and it was the fact that:
  - (a) in arranging a Car Loan for customers, the Dealers and the Dealer Representatives would obtain the customer's personal information including the customer's:
    - i. age, salary, number of dependents;
    - ii. employment status, employer and length of employment;
    - iii. property ownership;
    - iv. salary or wages and other income;

- v. general living expenses and financial obligations under other credit arrangements;
- vi. name and address of the nearest relative;
- vii. total price of the proposed automobile the subject of the Car Loan; and
- viii. the amount of deposit and/or any trade-in (including any payout required on financing of the traded-in vehicle).

**(Personal Information);**

### **Particulars**

The Plaintiffs' Personal Information collected by Broome Toyota was recorded, among other places, on the application form for the Plaintiffs' Loan. At all material times, Broome Toyota was acting, in respect of the sales of Add-on Insurance, as an authorised representative or agent of Toyota.

On or about 11 December 2017, Broome Toyota submitted the Plaintiffs' Personal Information to Toyota. The Personal Information obtained from the Plaintiffs included:

- 1. that the First Plaintiff was employed;
- 2. that the Second Plaintiff had been in his current position for only two months;
- 3. the Plaintiffs' residential property was subject to a mortgage;
- 4. amounts for general living expenses;
- 5. amounts of financial obligations under other credit facilities;
- 6. the First Plaintiff's nearest relative not living at the same address, lived in Whakatane, 3120 (Bay of Plenty), New Zealand; and

7. the total cost of the Colorado LTZ 6-speed automatic diesel ute bought by the Plaintiffs (**Colorado**), was \$34,000 including GST, with a total balance owing after the trade in and finance payout of \$44,123.63.

The Personal Information collected by the Dealer was recorded, among other places, on the application form prepared by the Dealer for the Car Loan, which was provided to Toyota in arranging the Car Loan.

- (b) the Plaintiffs and a substantial proportion of the Group Members, including those who were members of superannuation funds by reason of their employment were likely to hold separate insurance that was likely to overlap with coverage of the Finance Protection Insurance;

#### **Particulars**

The Plaintiffs refer to and repeat the particulars to paragraph 32(a) above.

It may be inferred that Toyota was aware, or ought to have been aware of this because ASIC Report 646 ('Insurance in Superannuation 2019-20') dated December 2019 found that 12 million of the 15.6 million Australians with superannuation hold life insurance in their superannuation. The Australian Government Productivity Commission report dated 21 December 2018 entitled 'Superannuation: Assessing Efficiency and Competitiveness' found that of the 15.4 million MySuper accounts in APRA-regulated superannuation funds: 67% had TPD insurance and 29% had income protection insurance, and of the 12 million non-MySuper accounts, 23% had TPD insurance and 9% had income protection insurance. It can be inferred from these statistics that a significant proportion of Group Members also held one or more of the insurances through their superannuation.

Further particulars may be provided following discovery.

- (c) customers who attended a Toyota Dealership to buy an automobile:

- i. did so with the primary purpose of purchasing an automobile, and not for the purpose of purchasing Add-on Insurance;
  - ii. were very unlikely to have researched the options available for Add-on Insurance and/or considered whether they need it; and, or alternatively
- (d) the Plaintiffs and Group Members were not given any opportunity to negotiate the terms of the Add-on Insurance; and, or alternatively,
- (e) Toyota and ADICA were not willing to negotiate the terms of the Add-on Insurance; and, or alternatively,
- (f) a substantial proportion of customers taking out Car Loans would be unfamiliar with add-on insurance generally.

#### **Particulars**

It can be inferred that Toyota was aware, or ought to have been aware of this because of ASIC Report 470.

Further particulars may be provided following discovery.

49. Throughout the Relevant Period:

- (a) Toyota, and from at least 1 January 2014, ADICA, had the opportunity to, and in fact did, earn substantial revenue and/or made significant profits from the sale of Add-on Insurance; and
- (b) by reasons of the matters referred to at paragraph 46 above, Toyota, the Dealers and the Dealer Representatives were incentivised to:
  - i. sell as many Add-on Insurance products as possible regardless of whether the Add-on Insurance was suitable for the customer's needs;
  - ii. encourage customers and/or arrange for customers to take out higher levels of cover, regardless of whether this was suitable for, or needed by, the customer;

- iii. emphasise the features and benefits of the Add-on Insurance rather than providing a fair and balanced opinion about the advantages and disadvantages of the products including relevant limits and exclusions or available alternatives;
- iv. convey to customers the impression that purchasing one or more of the Add-on Insurance products was a standard part of the Car Loan, and/or necessary or desirable in order for the customers to obtain a Car Loan for the purchase of the automobile they were considering buying; and/or
- v. add one or more Add-on Insurance products to the customers' Car Loan documents without:
  - (A) first seeking the customer's informed consent or agreement that they wanted or required the Add-on Insurance products; and/or
  - (B) drawing to the attention of the customer adequately or at all:
    - a. the addition of the Add-on Insurance products to the Car Loan; and/or
    - b. the fact that there were lower levels of coverage of the Add-on Insurance products available.

### **Particulars**

In respect of (a), this can be inferred from ASIC Report 492, page 7, 9, 15 which found that across the seven add-on insurance insurers surveyed (including ADICA) in the 2013–15 financial years, \$1.6 billion was paid in premiums, and only \$144 million in claims was paid to consumers.

Further, it may be inferred that ADICA and Toyota earned substantial revenue and profits from the sale of Add-on Insurance from the fact the Add-on Insurance was sold for over a decade (by Toyota) and for almost eight years (by ADICA).

Further particulars may be provided following discovery.

50. The Plaintiffs and Group Members were sold the Add-on Insurance in conjunction with their Car Loan in the following circumstances:
- (a) without having provided informed consent or agreement that they required the Add-on Insurance;
  - (b) without having requested the Add-on Insurance;
  - (c) without having had drawn to their attention adequately or at all:
    - i. the addition of the premiums for the Add-on Insurance to the Car Loan documentation; and/or
    - ii. the fact that there were lower levels of coverage of the Add-on Insurance products available that may be more suitable;
  - (d) without them being fully or sufficiently informed of the exclusions and limits to the cover applicable to them;
  - (e) without them being fully informed that the Add-on Insurance was optional or separate to their Car Loan and was not required by the Car Loan application;
  - (f) without them being aware that the Add-on Insurance premium was increased by the amount of extra interest payable under the terms of the Car Loan by virtue of the Add-on Insurance premium being added to the amount of credit provided under the Car Loan;
  - (g) without being encouraged or adequately encouraged to review and consider the relevant PDS and/or Financial Services Guide in respect of the Add-On Insurance products;
  - (h) without being provided with the PDS and/or Financial Services Guide in respect of the Add-On Insurance products at all, alternatively with sufficient opportunity for the customers to review, consider and take advice about the PDS or Financial Services Guide;
  - (i) without being disclosed the amount of interest that was payable on each of the premiums for the Add-on Insurance;

- (j) without being disclosed who commission would be paid to for the Add-on Insurance, or the amounts of commissions payable for the Finance Gap Insurance, or Extended Warranty Insurance;
  - (k) without being warned that any advice provided to them in relation to the policy had been prepared without taking into account their objectives, financial situation or needs, so that they should consider the appropriateness of the advice, having regard to their own objectives, financial situation and needs (**General Advice Warning**); and/or
  - (l) without being provided with a statement of advice as required for personal advice under s 946A of the Corporations Act,
- (together, the **Add-on Insurance Failures**)

### **Particulars**

The Plaintiffs attended Broome Toyota in or about early December 2017 for the purpose of buying an automobile. They offered to buy the Colorado for the unit price of \$34,000 including GST. They requested that Broome Toyota provide financing for the Colorado, and a trade in for their 2015 Mitsubishi Pajero Sport GLX. The Plaintiffs did not request Broome Toyota to arrange or sell them Add-on Insurance.

Broome Toyota did not ask the Plaintiffs if they required or consented to being sold Add-on Insurance. Broome Toyota included amounts for premiums for the Finance Protection Insurance and Finance Gap Insurance in the loan application form and loan offer documentation for the Plaintiffs' Loan without the Plaintiffs' consent.

The Plaintiffs' Loan application form was prepared by Broome Toyota. A premium of \$1,680 was included for the Finance Protection Insurance. A premium of \$960 was included for the Finance Gap Insurance, for the highest level of cover being option 1 (cover for outstanding finance contract balance up to \$30,000 and extra costs up to \$4,000).

Broome Toyota did not draw to the attention of the Plaintiffs that the loan documentation for the Plaintiffs' Loan included the premiums for Finance Protection Insurance and Finance Gap Insurance which policies were issued by Toyota to the First Plaintiff.

The Plaintiffs were not given the General Advice Warning. The Plaintiffs were not encouraged to review and consider the PDSs for the Finance Protection Insurance or Finance Gap Insurance or to consider whether they were appropriate for their own objectives, financial situation and needs (including any conditions, limits or exclusions that may be relevant to them. This included the fact that the Plaintiffs did not want to buy insurance, they were not Australian citizens or permanent residents, the First Plaintiff had a pre-existing condition, and the benefits for the Finance Protection Insurance were likely to overlap with other insurance held by the First Plaintiff through her superannuation.

The Plaintiffs were not informed about the amount of interest that would be payable on the premiums for the Plaintiffs' Add-on Insurance which increased the cost of their Car Loan. The Plaintiffs were not informed or sufficiently informed who commission would be paid to for the Plaintiffs' Add-on Insurance, or the amount of commission payable out of the premium for the Plaintiffs' Add-on Insurance including to Toyota Broome, or its representatives (other than the fact that the Loan Offer referred to a commission percentage of 20% of the premium for the Finance Protection Insurance).

The Plaintiffs were not informed that there were lower levels of cover for the Finance Gap Insurance available (being options 2, 3, or 4), which may have been more suitable (if they had wanted insurance) given the unit price of the Colorado was \$34,000 including GST, and therefore in the event of a total loss, the gap between the payout from the comprehensive insurer (based on market value) of the Colorado and the outstanding loan balance

on the Plaintiffs' Car Loan (which at its highest was \$47,760) was unlikely to be anywhere near \$30,000.

The Plaintiffs comprehensive cover for the Colorado lapsed within about the first year of acquiring the Add-on Insurance, and as a result coverage for the Finance Gap Insurance ceased at that time, so the First Plaintiff obtained no benefit under the policy. The Plaintiffs paid back the Plaintiffs' Loan early in about April 2023 without having been aware of the fact that Toyota had issued the Plaintiffs' Add-on Insurance to the First Plaintiff. It was not until shortly before commencing this proceeding, that the Plaintiffs were aware that the Plaintiffs' Add-on Insurance was included in the Plaintiffs' Loan.

Further particulars including in relation to one or more sample Group Members will be provided prior to the initial trial.

51. During the Relevant Periods until at least December 2017, Toyota did not have adequate controls in place to ensure that the Dealers and the Dealer Representatives did not sell Add-on Insurance to customers:
- (a) unless they had provided consent to, or had requested to purchase the Add-on Insurance;
  - (b) unless they had been fully or sufficiently informed of the exclusions to the cover applicable to them;
  - (c) unless they had been fully or sufficiently informed that the Add-on Insurance was optional and was not a necessary part of the Car Loan;
  - (d) who were not eligible to apply for or obtain one or more Insurance Benefits under the Add-on Insurance products; and/or
  - (e) at a higher level of coverage than was reasonably necessary given the customer's objectives, circumstances and requirements,
- (together, the **Add-on Insurance Conduct**).

## Particulars

The lack of adequate controls regarding the matters in (a) to (d) can be inferred from the fact that Toyota Broome sold the Plaintiffs' Add-on Insurance when they had not consented or requested the products (and did not want extra insurance), and were not aware that the Plaintiffs' Add-on Insurance had been added to their Car Loan, and the fact that the Finance Protection Insurance was issued in the First Plaintiff's name even though the Plaintiffs were not eligible to apply for, or obtain benefits from Finance Protection Insurance, as they were not Australian citizens or permanent residents, and therefore would not have paid for the insurance if they had been informed of it.

The lack of adequate controls regarding the level of cover can be inferred from the fact that Toyota Broome sold the Plaintiffs Finance Gap Insurance at the highest level of cover (option 1, with a \$30,000 gap cover limit) when the total amount financed under the Plaintiffs Loan was only \$47,760.

Further particulars may be provided following discovery.

52. Toyota benefitted as a result of the issue of the Finance Protection Insurance and the Finance Gap Insurance, because:
- (a) in the case of Finance Protection Insurance, it was assured the satisfaction of any balance outstanding owed under the Car Loan in the event of the death (or after 1 February 2014, accidental death) of the Group Members; and
  - (b) in the case of Finance Gap Insurance, it was assured the satisfaction of any balance outstanding owed under the Car Loan in the event the vehicle was stolen, or damaged beyond repair, and the amount paid by the comprehensive vehicle insurer for a total loss claim was less than the balance outstanding.

## E. THE CONTRAVENING CONDUCT

### E.1. *Misleading or deceptive conduct*

53. Throughout the Relevant Periods, some Group Members (**Misled Group Members**):

- (a) after providing the Dealer or Dealer Representative with the Personal Information referred to in paragraph 48 above, were presented with Car Loan documentation (including a loan application form and loan offer document) that the Dealer or Dealer Representative had pre-filled with the details of one or more Add-on Insurance products;
- (b) were informed by the Dealers and/or the Dealer Representatives, prior to signing the Car Loan documentation or acquiring the Add-on Insurance, that they needed to take the Add-on Insurance as part of obtaining the Car Loan;
- (c) were not informed, sufficiently or at all, prior to signing the Car Loan documentation or acquiring the Add-on Insurance, that they were acquiring the Add-on Insurance or that the Add-on Insurance was optional; and/or
- (d) were not informed, sufficiently or at all, prior to signing the Car Loan documentation that the Car Loan documentation included premiums for Add-on Insurance which may not be suitable for their needs, and/or for which they may not be able to receive any material benefit, including because:
  - i. Toyota did not name them as an insured on the policy schedule for the Add-on Insurance; and/or
  - ii. they may not be eligible to apply for, or receive one or more Insurance Benefits for the Add-on Insurance under the terms of the relevant PDSs,
  - iii. the Insurance Benefits for the Add-on Insurance may overlap with their benefits available under their existing insurance including through superannuation,

((a) to (d) being the **Unfair Add-on Insurance Processes**).

### **Particulars**

The Plaintiffs refer to ASIC Report 470, p 32.

Broome Toyota did not ask the Plaintiffs whether they needed the Add-on Insurance. Broome Toyota did not inform the Plaintiffs that Broome Toyota had added Finance Protection Insurance and Finance Gap Insurance in the documentation presented to them for signing including the loan application form dated 18 December 2017, and the loan offer documentation for the Plaintiffs' Loan dated 18 December 2017, before issuing the Plaintiffs' Add-on Insurance. Broome Toyota did not inform the Plaintiffs that the Plaintiffs' Add-on Insurance was optional, that the Plaintiffs may not be eligible to apply for, or receive, benefits under the Finance Protection Insurance, that the benefits under the Finance Protection Insurance may overlap with any insurance held through the First Plaintiff's superannuation, and that the Finance Gap Insurance would expire if there was no comprehensive insurance policy on the vehicle.

Further particulars including in relation to one or more sample Group Members will be provided prior to the initial trial.

54. Further or alternatively, in the circumstances pleaded at paragraph 53 above, the Misled Group Members had a reasonable expectation that had:
- (a) the Car Loans included features of the same or similar kind as the Add-on Insurance Features; and, or alternatively,
  - (b) the Car Loan documentation (including the application form and the loan offer) included premiums for Add-on Insurance and, the included Add-on Insurance was optional; and, or alternatively
  - (c) they been possibly ineligible to apply for, or claim one or more of the Insurance Benefits under the included Add-on Insurance, or the Add-on Insurance was not suitable for them,

the Dealer, the Dealer Representative and/or Toyota would have disclosed such matters or one or more of them to the Misled Group Members.

### **Particulars**

The fact that the Add-on Insurance was optional, and was not a mandatory part of the Car Loan, and a person did not need to acquire it in order to obtain a Car Loan, or that the person was possibly ineligible to apply for the insurance or obtain benefits (as the case may be), or that the Add-on Insurance was not suitable or provided no material financial value, is material information that would have been relevant to the decision of the Plaintiffs and Misled Group Members whether to acquire the Add-on Insurance.

Further, the Plaintiffs and Misled Group Members would expect the Dealers and/or Dealer Representatives to take into account the Personal Information disclosed in the Car Loan application process, and warn them if there were matters disclosed that indicated the person may not be eligible to apply for or obtain one or more of the Insurance Benefits from the Add-on Insurance or the Add-on Insurance may not be suitable (including by reason of their age, or employment status). This included the First Plaintiff's employment status, which indicated that it was reasonably likely that she had overlapping insurance benefits through her superannuation. This also included the unit price of the Colorado which was relevant to the suitability of the Finance Gap Insurance which Broome Toyota included at the highest level of cover (option 1, with a \$30,000 gap cover limit) when the total amount financed under the Plaintiffs' Loan (including insurance) was only \$47,760.

Further particulars including in relation to one or more sample Misled Group Members will be provided prior to the initial trial.

55. By reason of the matters pleaded in paragraph 54 above, the Dealers and/or the Dealer Representatives represented to the Misled Group Members:

- (a) that it was necessary to purchase, or they were liable for, or required to pay for, the Add-on Insurance as part of obtaining the Car Loan;
- (b) that they would be eligible for coverage under the Add-on Insurance (in that they were not excluded from one or more of the Insurance Benefits under the Policy);
- (c) the Add-on Insurance had material financial value; and/or
- (d) the Add-on Insurance was suitable for them.

56. In fact, during the Relevant Periods:

- (a) the Add-on Insurance was optional; and
- (b) some Group Members were ineligible to apply for or receive one or more of the Insurance Benefits from the Add-on Insurance;
- (c) the Add-on Insurance was of no value, or no material financial value for some or all Group Members;
- (d) the Add-on Insurance was not suitable for some Group Members;
- (e) Toyota failed to disclose or adequately disclose, or cause the Dealers and Dealer Representatives to disclose or adequately disclose to the Misled Group Members one or more of the facts and circumstances referred to in paragraph 53(b) to 53(d) above that constituted material information that was relevant to the Group Members' decision whether to invest in the Add-On Insurance.

### **Particulars**

The Plaintiffs refer to and repeat the particulars to paragraph 30 to 32, 50 and 53 above.

Neither of the Plaintiffs wanted extra insurance, and they were not eligible to apply for or obtain benefits for the Finance Protection Insurance as they were not citizens or permanent residents of Australia and the Finance Protection Insurance overlapped with the First Plaintiff's TPD insurance held through

her superannuation, and therefore it was not suitable for their needs, and had no value to them.

The Finance Gap Insurance was not suitable for the Plaintiffs' needs and requirements, as they did not want to pay for extra insurance, and the policy provided poor value, including because they were sold coverage of \$30,000, when the Colorado had a unit price of \$34,000 including GST, and the amount of credit (at its highest) was only \$47,760.

The Second Plaintiff, although paying for the insurance through the premiums included in the Plaintiffs' Car Loan, was not named as an insured on the policy schedule for the Add-on Insurance included in the Plaintiffs' Car Loan (being the policy schedules for the Finance Protection Insurance, or the Finance Gap Insurance) and therefore was ineligible to receive benefits and received no value from the Add-on Insurance. This was a material matter that was not disclosed to him.

Further particulars including in relation to one or more sample Misled Group Members will be provided prior to the initial trial.

57. The Dealers, Dealer Representatives and/or Toyota failed to disclose to the Misled Group Members the matters pleaded in paragraph 54 and 56 above.
58. By reason of the matters referred to in paragraphs 53 to 57 above, the Dealers, the Dealer Representatives and/or Toyota engaged in conduct in trade or commerce in relation to financial services that was misleading or deceptive or was likely to mislead or deceive in contravention of:
  - (a) section 1041H of the Corporations Act; alternatively
  - (b) section 12DA(1) of the ASIC Act,

**(Misleading Conduct).**
59. The Dealers and or Dealer Representatives conduct referred to in paragraphs 53 to 58 above during the Relevant Period was, by reason of s 12GH of the ASIC Act and s 769B of the Corporations Act, engaged in also by Toyota.

60. The Dealers and/or Dealer Representatives and Toyota's conduct in respect of Add-on Insurance referred to in paragraphs 53(a) to 53(d), paragraphs 54(b) and 54(c) and paragraphs 55 to 58 above during the Relevant Period was, by reason of s 12GH of the ASIC Act and s 769B of the Corporations Act, engaged in also by ADICA.
61. By reason of the matters pleaded at paragraphs 55 to 58, in reliance on the Misleading Conduct, the Misled Group Members:
- (a) became liable to pay the premiums for Add-on Insurance included in the Car Loan, thereby increasing the total credit amount owing and the interest payable under the Car Loans than would otherwise have been the case; and, or alternatively
  - (b) acquired the Add-on Insurance.

#### **Particulars**

The Plaintiffs executed the documentation that Broome Toyota provided them for the Plaintiffs' Car Loan and Add-on Insurance without knowing that it included premiums for the acquisition of optional Add-on Insurance (including the fact that it was only in the First Plaintiff's name), or that they were both not eligible to receive benefits for the Finance Protection Insurance.

But for the matters referred to in paragraphs 54 to 56 above, the Plaintiffs would not have agreed to pay the premiums for the Add-on Insurance, or for the premiums to be included in the Plaintiffs' Loan, or acquired the Plaintiffs' Add-on Insurance.

The causative effect of the conduct pleaded is to be inferred by reason of the Misled Group Members' acquisition of the Add-on Insurance in the circumstances pleaded above.

Further particulars including in relation to one or more sample Misled Group Members will be provided prior to the initial trial.

62. By reason of the above, the Misled Group Members have suffered loss and damage.

## Particulars

The loss and damage suffered by the Misled Group Members include:

1. the premiums paid by the Misled Group Members, including any amounts paid for GST and stamp duty on the premiums; and, or alternatively
  2. the interest charged by Toyota to the Misled Group Members on the premiums, GST and stamp duty added to their Car Loan for the Add-on Insurance.
63. The Misled Group Members whose Add-on Insurance was issued, or entered into, during the six-year period:
- (a) prior to commencement of this proceeding, may recover their loss and damage pursuant to s 12GF(1) and/or s 12GM(1) of the ASIC Act and/or or s 1041I of the Corporations Act from Toyota; and/or
  - (b) prior to commencement of this proceeding, may recover their loss and damage pursuant to s 12GF(1) and/or s 12GM(1) of the ASIC Act and/or s 1041I of the Corporations Act from ADICA.

### **E.2. Unfair Conduct**

#### *E.2.1. The Dealers and Dealer Representatives engaged in unfair conduct*

64. Further or alternatively, by reason of the Add-on Insurance Features (including the Add-on Insurance Failures) and/or the Unfair Add-on Insurance Processes:
- (a) the Consumer Group Members were at a special disadvantage in dealing with the Dealers and Dealer Representatives in relation to the Consumer Car Loans; and, or alternatively,
  - (b) the Add-on Insurance Features (including the Add-on Insurance Failures) and Unfair Add-on Insurance Processes involved techniques that:
    - i. should not in good conscience have been used; or

- ii. manipulated the Consumer Group Members; and, or alternatively,
- (c) Toyota could determine or significantly influence the terms of the Consumer Car Loans; and, or alternatively,
- (d) Toyota was in a stronger bargaining position than the Consumer Group Members, both generally and specifically in relation to financing and insurance products; and, or alternatively,
- (e) the Consumer Group Members were not given an adequate opportunity to consider whether the Add-on Insurance was suitable for them or provided material value or benefit before premiums were included in the Car Loan.

### **Particulars**

The matters are to be inferred from the Add-on Insurance Features and/or Unfair Add-on Insurance Processes. Further particulars may be provided after discovery.

65. By reason of the matters pleaded in paragraph 64, the Dealers and/or Dealer Representatives engaged in conduct in connection with the provision of a credit service that was unfair within the meaning of s 180A(1)(b) of the NCCP Act (**Dealers' Unfair Conduct**).

#### *E.2.2. Consequences of the Dealers' Unfair Conduct*

66. The Dealers' Unfair Conduct had the result that the Consumer Group Members became liable to pay premiums for the Add-on Insurance, and interest charges for the Add-on Insurance premiums.
67. By reason of the matters pleaded in paragraph 66 the Consumer Group Members are entitled to claim a remedy against the Dealers and/or the Dealer Representatives pursuant to s 180A of the NCCP Act.
68. The Dealers and Dealer Representatives were:
- (a) persons acting on behalf of Toyota, being a holder of an Australian credit licence; and, or alternatively,

- (b) credit representatives of Toyota, being persons authorised in writing by Toyota, being a holder of an Australian credit licence, to:
  - i. provide a credit service; and, or alternatively,
  - ii. engage in a credit activity.
  
- 69. By reason of the matters pleaded in paragraph 68, each Dealer and Dealer Representative was a representative of Toyota within the meaning of s 5 of the NCCP Act.
  
- 70. By reason of the matters pleaded in paragraph 43, the Dealers' Unfair Conduct was conduct that related to a credit activity within the meaning of s 74(a) of the NCCP Act.
  
- 71. The Dealers' Unfair Conduct was conduct on which the Consumer Group Members could reasonably be expected to rely within the meaning of s 74(b) of the NCCP Act.
  
- 72. The Dealers' Unfair Conduct was conduct on which the Consumer Group Members did rely in good faith within the meaning of s 74(c) of the NCCP Act.

### **Particulars**

At this stage and prior to discovery the best particulars the Plaintiffs can give in relation to the claims of Consumer Group Members is the acquisition of the Add-on Insurance.

Further particulars including in relation to one or more sample Consumer Group Members will be provided prior to the initial trial.

- 73. By reason of the matters pleaded in paragraphs 70, 71 and 72, Toyota is responsible for the Dealers' Unfair Conduct.
  
- 74. By reason of s 77 of the NCCP Act, Toyota is liable to the Consumer Group Members in relation to any loss or damage suffered by the Consumer Group Members as a result of the Dealers' Unfair Conduct.
  
- 75. By reason of s 78(1) of the NCCP Act, the Consumer Group Members have the same remedies against Toyota as they have against the Dealers.

76. In the premises, the Consumer Group Members are entitled to an order against Toyota under s 180A(2) of the NCCP Act that it:
- (a) pay to the Consumer Group Members the whole of their costs of their Add-on Insurance (including the interest charged by Toyota to finance the premiums); and, or alternatively,
  - (b) pay interest on the sums payable under (a) above.

**E.3. Unjust Transactions**

77. By reason of the Add-on Insurance Features (including the Add-on Insurance Failures and Add-on Insurance Conduct) and/or the Unfair Add-on Insurance Processes:
- (a) the Consumer Group Members had poor relative bargaining power in dealing with the Dealers including in relation to the Add-on Insurance, including because of the matters pleaded in paragraph 64 above; and, or alternatively
  - (b) the terms of the Add-on Insurance were subject to little negotiation between the Dealers and the Consumer Group Members, despite the considerable discretion over the terms held (but not disclosed) by Dealers; and, or alternatively
  - (c) Toyota was not willing to, or it was not reasonably practicable for, the Consumer Group Members to negotiate with the Dealers, particularly given the Add-on Insurance Failures; and, or alternatively
  - (d) the Add-on Insurance Features and/or the Unfair Add-on Insurance Processes constituted unfair tactics by Toyota, Dealers and/or Dealer Representatives, including because of the matters pleaded in paragraph 64 above; and, or alternatively
  - (e) the addition of the Add-on Insurance premiums to the Car Loans was not accurately explained to the Consumer Group Members, and the Group Members did not sufficiently understand the effect of the addition of the Add-on Insurance premiums to the Car Loans.

78. By reason of the matters pleaded in paragraph 77, the Consumer Car Loans were unjust within the meaning of s 76 of the Credit Code.
79. In the premises, the Consumer Group Members are entitled to have their Consumer Car Loan transactions reopened, and to orders against Toyota under s 77 of the Credit Code:
- (a) requiring Toyota to pay the Consumer Group Members an amount equal to the whole of their costs of their Add-on Insurance;
  - (b) requiring Toyota to pay the Consumer Group Members interest on the sums payable under subparagraph (a).

***E.4. Inappropriate personal advice***

80. Further or alternatively, some or all Group Members who, acquired the Add-on Insurance within the six-year period prior to the commencement of this proceeding after giving their respective Dealers and/or Dealer Representatives the Personal Information referred to at paragraph 48 above (**Advised Group Members**), acquired the Add-on Insurance following a recommendation or statement of opinion by a Dealer and/or the Dealer Representative that they should purchase the Add-on Insurance, that they would benefit from purchasing the Add-on Insurance, or that the Add-on Insurance was suitable for them (or a combination of one or more of these matters) in circumstances:
- (a) that could reasonably be regarded as being intended to influence them in making a decision in relation to the Add-on Insurance; and
  - (b) where a reasonable person might expect the relevant Dealer to have considered their objectives, financial situation and needs.

**Particulars**

The Plaintiffs refer to and repeat the particulars subjoined to paragraphs 48(a) and 50 above.

By adding the premiums for the insurance to the Plaintiffs' Loan documentation provided to the Plaintiffs on 18 December 2017, without drawing the Plaintiffs' attention adequately or at all, to the addition of the insurance to the Plaintiffs' Loan, Broome

Toyota made a recommendation to the Plaintiffs that they should purchase the Add-on Insurance, that they would benefit from purchasing the Add-on Insurance, or that the Plaintiffs' insurance was suitable for them (or a combination of one or more of these matters).

Further particulars including in relation to one or more sample Advised Group Members will be provided prior to the initial trial.

81. The conduct referred to in paragraph 80 above constituted:
  - (a) financial product advice within the meaning of s 766B(1) of the Corporations Act;
  - (b) personal advice within the meaning of s 766B(3) of the Corporations Act;
  - (c) advice provided by representatives of Toyota (within the meaning of s 910A of the Corporations Act); and
  - (d) advice provided to the Advised Group Members as retail clients within the meaning of s 761G of the Corporations Act.
82. By reason of the matters referred to in paragraphs 30 to 32, 45, and 50 to 52 above, the Dealers and/or the Dealer Representatives did not act in the best interests of the Advised Group Members in relation to the advice, and thereby contravened s 961B of the Corporations Act.
83. Further or alternatively, by reason of the matters referred to in paragraphs 30 to 32 and 45 above, it would not be reasonable to conclude that the advice provided by the Dealers and the Dealer Representatives was appropriate to the Advised Group Members, had the Dealer Representatives satisfied the duty under s 961B to act in the Advised Group Members' best interests, and the Dealers and Dealer Representatives thereby contravened s 961G of the Corporations Act.
84. Further or alternatively, the Dealer Representatives knew, or ought to have reasonably known, that there was a conflict between (a) the interests of the Advised Group Members (in not paying premiums (and interest on those premiums) with respect to the Add-on Insurance) and (b) the interests of Toyota

(in receiving the premiums on Add-on Insurance and interest) and/or the interests of the Dealer Representatives, the Dealers and Toyota (in receiving the commissions).

### **Particulars**

It can be inferred that this was known or ought reasonably to have been known, including from the matters referred to in paragraphs 46 to 49 above.

85. By reason of the matters referred to in paragraphs 30 to 32, 46 to 49 and 84 above, the Dealers and Dealer Representatives failed to give priority to the interests of each of the Advised Group Members when giving advice to them, and thereby contravened s 961J of the Corporations Act.
86. As a result of the Dealers and Dealer Representatives' contraventions of ss 961B, and/or 961G and/or 961J of the Corporations Act, the Advised Group Members have suffered loss and damage.

### **Particulars**

The losses include:

- a. The premiums paid by the Advised Group Members, including any amounts paid for GST and stamp duty for the Add-on Insurance.
  - b. The interest charged by Toyota to the Advised Group Members on the premiums, GST and stamp duty added to their Car Loan in respect of the Add-on Insurance.
87. The Advised Group Members whose Car Loan and/or Add-on Insurance was issued, or entered into, during the six-year period:
    - (a) prior to commencement of this proceeding, may recover their loss and damage pursuant to 961M of the Corporations Act from Toyota; and/or
    - (b) prior to the commencement of this proceeding, may recover their loss and damage pursuant to 961M of the Corporations Act from ADICA.

**E.5. Unconscionable conduct**

88. Further or alternatively:

- (a) Toyota knew, or ought to have known that the Dealers and/or Dealer Representatives were engaging in the conduct in the manner alleged in paragraphs 44 to 52 above; and
- (b) the Group Members acquired the Add-on Insurance in circumstances where:
  - i. the Group Members were not given any opportunity to negotiate the terms of the Add-on Insurance; and, or alternatively,
  - ii. Toyota and ADICA were not willing to negotiate the terms of the Add-on Insurance; and, or alternatively,

**Particulars**

Toyota's knowledge can be inferred from the matters pleaded in paragraphs 26, 28, 44, 47 and 48 above.

Further particulars will be provided following discovery.

89. By reason of the matters referred to in paragraphs 5 to 88 above, Toyota engaged in conduct, in trade or commerce and in connection with the supply, or possible supply, of financial services, which was, in all the circumstances, unconscionable, in contravention of s 12CB of the ASIC Act.

90. Further or alternatively, by reason of the matters referred to in paragraphs 5 to 88 above, in issuing the Add-on Insurance to the Group Members, in circumstances where:

- (a) the Add-on Insurance products were entered into in the manner alleged in paragraphs 44 to 57 above;
- (b) the Add-on Insurance products had no value, or no material value, and/or were unsuitable, for, further or alternatively provided no benefits, or no material benefits, to the Group Members, as alleged in Section C.3 above;

- (c) Toyota knew or should have known of the matters alleged in paragraphs 33 above,

Toyota engaged in a system of conduct or pattern of behaviour (within the meaning of s 12CB(4) of the ASIC Act) which was unconscionable, in all the circumstances, in contravention of section 12CB(1) of the ASIC Act.

91. By reason of s 12GH of the ASIC Act, Toyota's unconscionable conduct alleged in respect of Add-on Insurance referred to in paragraphs 5 to 90 above during the Relevant Period was engaged in also by ADICA.
92. By reason of the Defendants' unconscionable conduct the Group Members have suffered loss and damage.

### **Particulars**

The loss and damage suffered by the Group Members will be:

1. the premiums paid, including any amounts paid for GST and stamp duty on the premiums; and, or alternatively
  2. the interest charged by Toyota to the Group Members on the premiums, GST and stamp duty added to their Car Loan for the Add-on Insurance.
93. The Group Members whose Add-on Insurance was issued, or entered into, during the six-year period:
- (a) prior to commencement of this proceeding, may recover their loss and damage pursuant to s 12GF(1) and/or s 12GM(1) of the ASIC Act from Toyota; and/or
  - (b) prior to the commencement of this proceeding, may recover their loss and damage pursuant to s 12GF(1) and/or s 12GM(1) of the ASIC Act from ADICA.

### ***E.6. Money had and received, and unjust enrichment***

94. Further or alternatively, the Plaintiffs and some or all of the Group Members (**Mistaken Group Members**) were not at any stage prior to applying for or

entering into a Car Loan informed, either sufficiently or at all, of one or more of the following facts:

- (a) the Car Loan included features of the same or similar kind as the Add-on Insurance Failures and/or the Add-on Insurance Conduct; and, or alternatively,
- (b) for the Consumer Group Members, the existence of the Dealers' Unfair Conduct and, by reason thereof, the Consumer Group Members:
  - i. would be entitled to claim a remedy against the Dealers pursuant to s 180A of the NCCP Act;
  - ii. would, under s 78(1) of the NCCP Act, have the same remedies against Toyota that the Consumer Group Members have against the Dealers;
  - iii. in the premises in (i)-(ii), would be entitled to obtain orders against Toyota under s 180A(2) of the NCCP Act as pleaded in paragraph 76;
  - iv. would be entitled to have the Consumer Car Loans reopened as unjust transactions under s 76 of the Credit Code; and
  - v. in the premises in (iv), would be entitled to obtain orders against Toyota under s 77 of the Credit Code as pleaded in paragraph 79;
- (c) that were purchasing the Add-on Insurance;
- (d) that it was not necessary to purchase, or they were not liable to or required to pay for, the Add-on Insurance as a condition of obtaining the Car Loan;
- (e) that they would not be eligible for coverage under the Add-on Insurance (in that they were excluded from one or more of the Insurance Benefits under the Policy);
- (f) that the Add-on Insurance did not have material financial value to them;

- (g) that the Add-on Insurance was unsuitable for them; further, and, or alternatively
  - (h) that at the time of making the decision to acquire the Add-on Insurance, they had not received from the Dealer and Toyota all material information, including some or all of the matters pleaded at paragraph 56 above that was relevant to their decision whether to acquire the Add-on Insurance and/or enter into the Car Loan.
95. By reason of the matters pleaded in paragraph 94, prior to applying for or entering into a Car Loan, the Plaintiffs and Mistaken Group Members did not know one or more of the matters pleaded in paragraph 94 above, each of which constitute material information that would have been relevant to the decision of the Plaintiffs and Mistaken Group Members whether to acquire the Add-on Insurance.
96. By reason of the matters pleaded in paragraph 94 to 95, the Plaintiffs and Mistaken Group Members:
- (a) paid Add-on Insurance premiums and interest on those premiums, under one or more of the following causative mistaken beliefs:
    - (b) the Car Loans did not include features of the same or similar kind as the Add-on Insurance Features;
    - (c) at the time of making the decision to enter into the Car Loan, they had received from the Dealer and Toyota all material information, including some or all of the matters pleaded at paragraph 94;
    - (d) for the Consumer Group Members—
      - i. the conduct of the Dealers was not unfair within the meaning of s 180A(1)(b) of the NCCP Act;
      - ii. the Car Loan was not an unjust transaction within the meaning of s 76 of the Credit Code; and, or alternatively
      - iii. the conduct of Dealers was not unconscionable within the meaning of the ASIC Act.

- (e) that they had not purchased the Add-on Insurance;
- (f) that it was necessary to purchase, or they were liable to or required to pay for, the Add-on Insurance as condition of obtaining the Car Loan;
- (g) that they would be eligible for coverage under the Add-on Insurance (in that they were not excluded from one or more of the Insurance Benefits under the Policy);
- (h) that the Add-on Insurance had material financial value to them;
- (i) that the Add-on Insurance was suitable for them; further or alternatively; and/or
- (j) that at the time of making the decision to acquire the Add-on Insurance, they had received from the Dealer and Toyota all material information, including some or all of the matters pleaded at paragraph 56 above that was relevant to their decision whether to invest in the Add-on Insurance.

### **Particulars**

Reliance of the Plaintiffs and the Group Members is to be inferred by reason of the Plaintiffs and the Group Members entry into the Car Loans and issuing of the Add-on Insurance in the circumstances pleaded above.

Further particulars may be provided at the time of service of the Plaintiffs' evidence in chief, or prior to the trial of the individual claims of Group Members following the determination of the common questions.

- 97. By reason of the matters pleaded in paragraphs 50 and 56 each of the beliefs pleaded in paragraph 96 was a unilateral mistake.
- 98. The Plaintiffs and Mistaken Group Members acquired Add-on Insurance and became liable to pay the premium (and interest on the premium) to Toyota, by reason of one or more of the mistakes pleaded in paragraphs 96 and 97.
- 99. By reason of;
  - (a) the Add-on Insurance Features, Toyota:

- i. was aware, from those circumstances, of the matters pleaded in paragraphs 94, 95, 96, 97 and/or 98 above;
    - ii. induced the matters pleaded in paragraphs 94, 95, 96, 97 and/or 98;
    - iii. concealed the matters pleaded in paragraph 94 and, or alternatively,
    - iv. chose to leave the Plaintiffs and Mistaken Group Members under one or more of the mistaken beliefs,
  - (b) the Add-on Insurance Features, ADICA:
    - i. was aware that circumstances existed which indicated that the Plaintiffs and Mistaken Group Members were acquiring the Add-on Insurance under one or more of the mistaken beliefs pleaded in paragraphs 96(e) to 96(j) above; and
    - ii. chose to leave the Plaintiffs and the Mistaken Group Members under that mistaken belief in acquiring or agreeing to be issued with their respective Add-on Insurance and paying the interest under the Car Loan on the premiums for the Add-on Insurance.
100. By reason of the matters pleaded in paragraphs 98 and 99:
  - (a) the Plaintiffs and Mistaken Group Members are entitled, at their election, to rescind the Add-on Insurance contracts;
  - (b) the Add-on Insurance contracts are void; and, or alternatively,
  - (c) the Add-on Insurance issued by Toyota is liable to be set aside for unilateral mistake.
101. By reason of the matters pleaded in paragraphs 94 to 99 and/or 100, the interest paid under the Car Loans are monies had and received by Toyota to the use of the Plaintiffs and Mistaken Group Members, and Toyota is obliged to repay those sums to the Plaintiffs and Mistaken Group Members.
102. Further or alternatively, by reason of the matters pleaded in paragraphs 98 to 99 and/or 100,

- (a) one or both of the Defendants have been unjustly enriched by the receipt of the respective premiums paid to them under the Plaintiffs' Add-on Insurance at the expense of the Plaintiffs and Mistaken Group Members;
- (b) further or alternatively, premiums paid under the Add-on Insurance are monies had and received by one or both of the Defendants to the use of the Plaintiffs and Mistaken Group Members,

and the Defendants are liable to make restitution of those respective sums to the Plaintiffs and Mistaken Group Members.

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

### ***F.1. The arrangements between Toyota and Dealers***

103. Did Toyota enter into agreements with Dealers and appoint Dealer Representatives as agents and "Accredited Persons" to arrange Car Loans and Add-on Insurance to the Plaintiffs and Group Members?

### ***F.2. The arrangements between Toyota and ADICA***

104. Did ADICA appoint Toyota as its representative within the meaning of s 910A of the Corporations Act, or agent, to issue, and providing general advice on, the Add-on Insurance and/or to issue the Add-on Insurance on behalf of ADICA under the Binder Agreement?

### ***F.3. Regulatory Context***

105. By reason of the matters pleaded in this statement of claim, did Dealers and/or Dealer Representatives provide credit assistance to the Consumer Group Members (including those with Add-on Insurance) within the meaning of ss 7(a) and 8 of the NCCP Act?
106. By reason of the matters pleaded in this statement of claim, did Dealers and/or Dealer Representatives act as an intermediary for the purposes of ss 7(b) and 9 of the NCCP Act?
107. By reason of the matters pleaded in this statement of claim, did Dealers and/or Dealer Representatives provide a credit service to the Consumer Group Members within the meaning of ss 7 and 180A(1)(a) of the NCCP Act?

**F.4. The Add-on Insurance**

- 108. Did the Add-on Insurance have the Insurance Benefits pleaded in paragraph 29?
- 109. Did the Add-on Insurance have the limits and exclusions pleaded in paragraph 30?
- 110. Did the Add-on Insurance have the features pleaded in paragraph 33?
- 111. Did Toyota benefit from the issue of the Add-on Insurance by reason of the matters pleaded in paragraph 52?

**F.5. The Car Loan Process implemented by Toyota**

- 112. Did the Car Loans include the Add-on Insurance Features?
- 113. Did the Add-on Insurance Failures arise?
- 114. Did the Add-on Insurance Conduct arise?
- 115. Did the Dealer and Dealer Representatives obtain customers Personal Information when arranging a Car Loan?
- 116. Was Toyota, or ought Toyota have been, aware of the matters pleaded in paragraph 48?

**F.6. The contravening conduct under the Corporations Act and ASIC Act**

- 117. By reason of the matters pleaded in this statement of claim, did the Misled Group Members have a reasonable expectation that had:
  - (a) the Car Loans included features of the same or similar kind as the Add-on Insurance Features; and, or alternatively,
  - (b) the Car Loan documentation (including the application form and the loan offer) included premiums for Add-on Insurance and, or alternatively,
  - (c) the included Add-on Insurance was optional; and, or alternatively,
  - (d) that they may be ineligible to apply for, or claim one or more of the Insurance Benefits under the included Add-on Insurance,

Toyota would have disclosed such matters or one or more of them to the Misled Group Members?

118. Was the conduct of Toyota in failing to disclose the matters alleged in paragraphs 54 to 56 or one or more of them to the Misled Group Members prior to or at the time the Car Loans were entered into, and in engaging in the Lender Conduct, misleading or deceptive or likely to mislead or deceive?
119. Was the conduct of Toyota pleaded in paragraph 57 engaged in by Toyota:
- (a) in relation to financial services, within the meaning of ss 1041H(1) and 1041H(2)(b) of the Corporations Act; and, or alternatively,
  - (b) in trade or commerce, in relation to financial services within the meaning of s 12DA(1) of the ASIC Act?
120. By reason of Toyota's conduct pleaded in paragraphs 53 to 57, did Toyota contravene:
- (a) s 1041H of the Corporations Act; and, or alternatively,
  - (b) s 12DA(1) of the ASIC Act?
121. Was the conduct pleaded in paragraphs 53(a) to 53(d), paragraphs 54(b) to 54(c) and paragraphs 55 to 58, by reason of s 12GH of the ASIC Act and s 769B of the Corporations Act, also engaged in by ADICA?
122. What are the principles governing the quantification of loss or damage (if any) suffered by the Misled Group Members by reason of any contraventions as alleged in this statement of claim which have been established?

**F.7. *The contravening conduct under the NCCP Act***

123. By reason of the matters pleaded in this statement of claim, did the Dealers and/or Dealer Representatives engage in conduct in connection with the provision of a credit service that was unfair within the meaning of s 180A(1)(b) of the NCCP Act?
124. By reason of the matters pleaded in this statement of claim, are the Consumer Group Members entitled to claim a remedy against the Dealers pursuant to s 180A of the NCCP Act?

125. By reason of the matters pleaded in this statement of claim, was each Dealer and/or Dealer Representatives a representative of Toyota within the meaning of s 5 of the NCCP Act?
126. By reason of the matters pleaded in this statement of claim, was the Dealers' Unfair Conduct conduct that related to a credit activity within the meaning of s 74(a) of the NCCP Act?
127. Was the Dealers' Unfair Conduct conduct on which the Consumer Group Members could reasonably be expected to rely within the meaning of s 74(b) of the NCCP Act?
128. Was the Dealers' Unfair Conduct conduct on which the Consumer Group Members did rely in good faith within the meaning of s 74(c) of the NCCP Act?
129. By reason of the matters pleaded in this statement of claim, is Toyota responsible for the Dealers' Unfair Conduct?
130. By reason of s 77 of the NCCP Act, is Toyota liable to the Consumer Group Members in relation to any loss or damage suffered by the Plaintiffs and Consumer Group Members as a result of the Dealers' Unfair Conduct?
131. By reason of s 78(1) of the NCCP Act, do the Consumer Group Members have the same remedies against Toyota that the Consumer Group Members have against the Dealers?
132. By reason of the matters pleaded in this statement of claim, are the Consumer Group Members entitled to an order against Toyota under s 180A(2) of the NCCP Act that it:
  - (a) pay to the Consumer Group Members with Add-on Insurance the whole of their costs of their Add-on Insurance (including the interest charged by Toyota to finance the premiums); and
  - (b) pay interest on the sums payable under (a) above?
133. By reason of the matters pleaded in this statement of claim, were the Consumer Car Loans unjust transactions within the meaning of s 76 of the Credit Code?

134. By reason of the matters pleaded in this statement of claim, should the Consumer Car Loans be reopened and should an order be made against Toyota under s 77 of the Credit Code:
- (a) requiring Toyota to pay the Consumer Group Members an amount equal to the whole of their costs of their Add-on Insurance; and,
  - (b) requiring Toyota to pay the Consumer Group Members interest on the sums payable under (a) above?

**F.8. *The inappropriate personal advice***

135. Did the conduct referred to in paragraphs 80 to 85 contravene s 961L of the Corporations Act?
136. Did the conduct pleaded in paragraphs 80 to 85 contravene ss 961B and 961J of the Corporations Act?

**F.9. *The unconscionable conduct***

137. Did the conduct referred to in paragraphs 5 to 88 contravene s 12CB of the ASIC Act?
138. Did the conduct pleaded in paragraphs 5 to 88 amount to a system of conduct or pattern of behaviour (within the meaning of s 12CB(4) of the ASIC Act), in contravention of s 12CB(1) of the ASIC Act?
139. Was the alleged unconscionable conduct during the Relevant Period, insofar as it relates to Add-on Insurance, also engaged in by ADICA, by reason of s 12GH of the ASIC Act?

**F.10. *Money had and received and unjust enrichment***

140. Would the Plaintiffs and Group Members who paid Add-on Insurance premiums or interest on those premiums have been mistaken if they held one or more of the beliefs pleaded in paragraphs 96 and 97 above?
141. By reason of the Add-on Insurance Failures:
- (a) was Toyota aware, from those circumstances, of the matters pleaded in paragraphs 94, 95, 96, 97 and/or 98 above?

- (b) did Toyota induce the matters pleaded in paragraphs 94, 95, 96, 97 and/or 98 above?
  - (c) did Toyota conceal the matters pleaded in paragraph 94 above?
142. By reason of the matters pleaded in paragraphs 98 and 99 above are the Add-on Insurance issued by Toyota to the Plaintiffs and Mistaken Group Members liable to be set aside for unilateral mistake?
143. By reason of the matters pleaded in paragraphs 94 to 99 and/or 100 above, is the interest paid on the Add-on Insurance under the Car Loans monies had and received by Toyota to the use of the Plaintiffs and Mistaken Group Members, such that Toyota is obliged to repay those sums to the Plaintiffs and Mistaken Group Members?
144. Further or alternatively, by reason of the matters pleaded in paragraphs 98 to 99 and/or 100 above, was Toyota unjustly enriched by the receipt of interest on the Add-on Insurance premiums and/or payment over the Loan Term and/or the receipt of the Add-on Insurance premiums at the expense of the Plaintiffs and Mistaken Group Members such that it would be unconscionable for Toyota to retain that interest?
145. Further or alternatively, by reason of the matters pleaded in paragraphs 98 to 99 and/or 100 above, was ADICA unjustly enriched by the receipt of the Add-on Insurance premiums at the expense of the Plaintiffs and Mistaken Group Members such that it would be unconscionable for ADICA to retain those sums?

**AND THE PLAINTIFFS CLAIM on their own behalf and on behalf of the Group Members:**

- A. An order against the First Defendant under s 180A(2) of the NCCP Act that it:
  - (a) refrain from charging the Consumer Group Members interest under the Consumer Car Loans on the Add-on Insurance premiums; and, or alternatively,
  - (b) pay interest on the sums payable under (a) above.
- B. An order against the First Defendant under s 77 of the Credit Code:

- (a) requiring the First Defendant to pay the Consumer Group Members an amount equal to the whole of their costs of their Add-on Insurance:
  - (b) requiring the First Defendant to pay the Consumer Group Members interest on the sums payable under (a) above.
- C. An order against the First Defendant pursuant to:
  - (a) section 1041I of the Corporations Act that the First Defendant pay compensation to the Group Members for damage caused by the conduct of the First Defendant in contravention of s 1041H of the Corporations Act;
  - (b) sections 12GF and 12GM of the ASIC Act that the First Defendant pay compensation to the Group Members for damage caused by the conduct of the First Defendant in contravention of ss 12DA(1) and 12CB(1) of the ASIC Act; and
  - (c) sections 961M(2) and (4) of the Corporations Act that the First Defendant pay compensation to the Group Members for damage (including profits) resulting from the Dealer's and the Dealer Representative's conduct in contravention of ss 961B, 961G and/or 961J of the Corporations Act.
- D. An order that:
  - (a) the Add-on Insurances are void; and, or alternatively
  - (b) the Add-on Insurances are rescinded.
- E. An order against the Second Defendant pursuant to:
  - (a) sections 12GF and 12GM of the ASIC Act that the Second Defendant pay compensation to the Group Members for damage caused by the contraventions of ss 12DA(1) and 12CB(1) of the ASIC Act; and
  - (b) sections 961M(2) and (4) of the Corporations Act that the Second Defendant pay compensation to the Group Members for damage (including profits) resulting from the Dealer's and the Dealer Representative's conduct in contravention of ss 961B, 961G and or 961J of the Corporations Act.

- F. In respect of the claims in mistake:
- (a) a declaration that the Plaintiffs and Mistaken Group Members are entitled, at their individual election, to rescind the contracts for the Add-On Insurance; and, or alternatively
  - (b) the Add-On Insurance contracts are void; and, or alternatively
  - (c) judgment against the Defendants in the full amount of the premiums mistakenly paid for the Add-on Insurance products.
- G. Interest pursuant to statute.
- H. Pursuant to s 33Z(1)(e) of the *Supreme Court Act 1986 (Vic)* (**Supreme Court Act**), an award of damages, being damages consisting of specified amounts or amounts worked out in such manner as the Court specifies, in respect of:
- (a) the Defendants, all of the damages pleaded above to which the Group Members are entitled;
  - (b) the Defendants, all of the damages pleaded above to which the Mised Group Members are entitled;
  - (c) the First Defendant, all of the damages pleaded above to which the Consumer Group Members are entitled;
  - (d) the Defendants, all of the damages pleaded above to which the Advised Group Members are entitled; and/or
  - (e) the Defendants, all of the damages pleaded above to which the Mistaken Group Members are entitled.
- I. In the alternative to paragraph H above, pursuant to s 33Z(1)(f) of the Supreme Court Act, an award of damages in an aggregate amount without specifying amounts awarded in respect of individual Group Members, in respect of:
- (a) the Defendants, all of the damages pleaded above to which the Group Members are entitled;
  - (b) the First Defendant, all of the damages pleaded above to which the Consumer Group Members are entitled;

- (c) the Defendants, all of the damages pleaded above to which the Misled Group Members are entitled;
- (d) the Defendants, all of the damages pleaded above to which the Advised Group Members are entitled; and/or
- (e) the Defendants, all of the damages pleaded above to which the Mistaken Group Members are entitled.

J. Costs.

K. Such further or other order as the Court determines is appropriate.

Dated: 3 April 2025



.....  
Signed by Andrew Paull

**Solicitor for the Plaintiffs**

## SCHEDULE 1 – DEFINED TERMS

<b>Defined Term</b>	<b>Defined in Paragraph</b>
Add-on Insurance	1
Add-on Insurance Conduct	51
Add-on Insurance Failures	50
Add-on Insurance Features	44
ADICA	1
ADICA AFSL	4
Advised Group Members	80
ASIC Act	3
Binder Agreement	8
Car Loan	1
Car Loan Process	6
CCI	23
Codes	20
Colorado	48
Consumer Car Loans	36
Consumer Group Members	35
Corporations Act	1
Credit Code	3
Dealer Agreements	5
Dealer Representatives	5
Dealers	5
Dealers' Unfair Conduct	65
Extended Warranty Insurance	1
Finance Protection Insurance	1
General Advice Warning	50
Group Members	1
Insurance Benefits	29
Misleading Conduct	58
Misled Group Members	53
Mistaken Group Members	94
NCCP Act	3
PDSs	27
Personal Information	48
Plaintiffs' Loan	44
Relevant Period	1
Report 470	22
Report 471	23
Report 492	24
Supreme Court Act	H
Toyota	1
Toyota AFSL	3
TPD	32
Unfair Add-on Insurance Processes	53