



IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT

No. S EC 2024 05243

Case 24 05243
Filed on: 16/09/2025 02:54 PM

B E T W E E N

TRACEY LEIGH HEPI, ERU MARTIN HEPI AND GLENDA WALKER

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

FURTHER AMENDED STATEMENT OF CLAIM

(Amended pursuant to orders 1 – 4 of the orders made by Osborne J on 15 September 2025)

Date of Document: 16 September 2025

~~3 April 2025~~ ~~11 June 2025~~

Solicitors Code: 11747

Filed on behalf of: The Plaintiffs

DX: N/A

Prepared by: Echo Law

Telephone: (03) 7046 3545

L2 / 533 Little Lonsdale St

Ref: E23072001

Melbourne VIC 3000

Email: andrew.paull@echolaw.com.au

CONTENTS

A.	PRELIMINARY	3
A.1.	The Group Members	3
A.2.	The Defendants.....	4
B.	ARRANGEMENTS BETWEEN DEFENDANTS AND DEALERS	5
B.1.	Arrangements between Dealers and Toyota	5
B.2.	Arrangements between Toyota and ADICA.....	7
C.	REGULATORY CONTEXT AND PRODUCT FEATURES	9
C.1.	Financial products and provision of financial services	9
C.2.	Statutory obligations.....	10
C.3.	Absence of value, benefit and suitability of Add-on Insurance products	14
D.	THE SALES SYSTEM IMPLEMENTED BY THE DEFENDANTS, AND the PLAINTIFFS' ADD-ON INSURANCE PRODUCTS	28
D.1.	The Car Loan process implemented by Toyota	28
D.2.	The Add-on Insurance process implemented by Toyota	30
D.3.	The First and Second Plaintiffs' Add-on Insurance.....	36
D.4.	The Third Plaintiff's Add-on Insurance.....	46
D.5.	The Plaintiffs' and Group Members' Add-on Insurance Circumstances	55
D.6.	Toyota did not have in place adequate controls	58
D.7.	ADICA's Knowledge of the Add-on Insurance Features, Add-on Insurance Failures and Dealers' Add-on Insurance Conduct	59
E.	THE CONTRAVENING CONDUCT	61
E.1.	Misleading or deceptive conduct.....	61
E.2.	Unfair Conduct	66
E.3.	Unjust Transactions	69
E.4.	Inappropriate personal advice.....	71
E.5.	Unconscionable conduct	74
E.6.	Money had and received, and unjust enrichment	81
F.	COMMON QUESTIONS OF LAW OR FACT	88
F.1.	The arrangements between Toyota and Dealers.....	88
F.2.	The arrangements between Toyota and ADICA	88
F.3.	Regulatory Context	88
F.4.	The Add-on Insurance.....	89
F.5.	The Car Loan Process implemented by Toyota.....	89
F.6.	The contravening conduct under the Corporations Act and ASIC Act.....	89
F.7.	The contravening conduct under the NCCP Act.....	91
F.8.	The inappropriate personal advice	92
F.9.	The unconscionable conduct	92
F.10.	Money had and received and unjust enrichment	93
	SCHEDULE 1 – DEFINED TERMS.....	98

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) (**Supreme Court Act**) by the Plaintiffs on their own behalf and on behalf of all persons who:
 - (a) between 1 January 2010 and 5 October 2021 (the **Relevant Period**) entered into a finance agreement for the acquisition of an automobile (**Car Loan**) with the First Defendant (**Toyota**) which:
 - (i) was obtained through a Dealer as defined in paragraph 5 below, who supplied the automobile the subject of the Car Loan;
 - (ii) included premiums for one or more of the following products issued by Toyota, including those underwritten by the Second Defendant (**ADICA**):
 - (A) Payment Protection or Finance Protection Insurance (**Finance Protection Insurance**);
 - (B) **Finance Gap Insurance**;
 - (C) Factory Approved Extended Warranty Insurance or Extended Warranty Insurance (**Extended Warranty Insurance**);

(the products in (a) to (c) being together and separately the **Add-on Insurance**), and
 - (ii) where the Car Loan was entered into prior to 1 July 2018, provided for a Flex Commission (as defined in paragraph 6(b)(iii) below) to be paid to the Dealer;
- (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. ARRANGEMENTS BETWEEN DEFENDANTS AND DEALERS

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 of 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) the Plaintiffs and Group Members attended a Dealer for the primary purpose of acquiring an automobile;
 - (b) the Dealer submitted a Car Loan application for the Plaintiffs and Group Members to Toyota, to make a credit decision in relation to the proposed credit amount, which until on or around 30 June 2018, involved Toyota:
 - (i) setting the base rate of interest to be charged on Car Loans (**Base Rate**);
 - (ii) authorising the Dealer to set a rate of interest under a Car Loan, in their discretion, and on a case-by-case basis, higher than the Base Rate (**Contract Rate**) set by Toyota, to be payable by the Plaintiffs and some Group Members; and
 - (iii) paying the Dealer a proportion of the difference between the Base Rate and the Contract Rate (a **Flex Commission**);
 - (c) during the sales process for the automobile, for each Car Loan, an employee and/or Dealer Representative had direct contact with the Plaintiffs and the relevant Group Members for the purpose of promoting or arranging Car Loans offered by Toyota; and

- (d) 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).

Particulars

The Plaintiffs refer to the matters in ASIC Consultation Paper 279 entitled 'Flex commission arrangements in the car finance industry' dated March 2017, [5]-[7], [9]-[10], and Attachment 2, [86]; the inferences to be drawn from the statement of Toyota in its Annual Securities Report filed on 2 July 2018 which included a statement the translation of which was to the effect that from no later than 1 November 2018, [Toyota] would 'determine the interest rate for the customer using risk based pricing with the introducer no longer involved in the process'; and statements attributed to John Chandler, CEO of Toyota Financial Services Corporation (being the parent company of Toyota) by GoAutoNews in an article titled 'Toyota finance jumps the gun', dated 28 June 2018, that Toyota had engaged in 'flex' and that following the changes Toyota implemented from around 1 November 2018, the Dealers' 'business manager [would] no longer [have] to pitch a rate'.

Further particulars may be provided after discovery.

- 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 (now s 9) 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

Toyota was appointed ADICA's agent to issue the Add-on Insurance pursuant to the Agency Agreement made on 1 January 2014.

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(d) above, were:
 - (a) agents of ADICA;
 - (b) representatives of ADICA within the meaning of s 910A (now s 9) of the Corporations Act by acting on behalf of ADICA in arranging the issue of the Add-on Insurance; and
 - (c) further or alternatively, 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 AND PRODUCT FEATURES

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;
- (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, further or alternatively, arranging the issue of the Add-on Insurance to the Plaintiffs and the Group Members was conduct within the scope of their actual or apparent authority as authorised representatives and, further or alternatively, agents of Toyota and ADICA, within the meaning of:

- (a) s 12GH(2) of the ASIC Act; and
- (b) s 769B(1) of the Corporations Act,

and was accordingly conduct engaged in also by Toyota and ADICA.

13. The conduct of Toyota during the Relevant Period in issuing the Add-on Insurance to the Plaintiffs and the Group Members was conduct within the scope of its actual or apparent authority as an authorised representative and/or, further or alternatively, agent of ADICA, within the meaning of:

- (a) s 12GH(2) of the ASIC Act; and
- (b) s 769B(1) of the Corporations Act,

and was accordingly conduct 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, further or alternatively, 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, further or alternatively, 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 Period:

- (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

At this stage and prior to discovery, the best particulars the Plaintiffs can give is by reason of the Defendants, Dealers and Dealer Representatives offering for sale and (in the case of the Defendants) issuing the Add-on Insurance.

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

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, further or alternatively, 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 or about 19 October 2011, ASIC issued report 256, 'Consumer credit insurance: A review of sales practices by authorised deposit taking institutions' (**Report 256**), which examined the sales practices of authorised deposit taking institutions which were selling consumer credit insurance, identified concerns with sales methods, and made recommendations regarding inter alia, formal sales scripts, evidence of customers' consent, quoting the premiums separately

from the financing charges, and timely provision of product disclosure statements.

23. On 31 July 2013, ASIC issued report 361 'Consumer credit insurance policies; Consumers' claims experiences' (**Report 361**), which was commissioned by ASIC and produced by Susan Bell Research, and set out the results of research into consumers' experiences with consumer credit insurance policies and found that some consumers were unaware they had the policy or thought the policy was mandatory.
24. 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.
25. 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.
26. 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.

27. In about September 2016, following its review of the data produced by the seven insurers, including ADICA, referred to in paragraph 26 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:

- a. 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
- b. 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.
28. Toyota was aware of each of the ASIC Reports referred to at paragraphs 22 to 25 and 27 above, and ADICA was aware of each of the ASIC Reports referred to at paragraphs 24 to 25 and 27 above, at or around the time when each of them were issued.

Particulars

It may be inferred that:

- a. Toyota was aware of the ASIC Reports at or around the time when each report was issued;
- b. ADICA:
 - i. was aware of Report 256 and Report 361 since at least November 2013; and
 - ii. was aware of each other ASIC Report at or around the time when each report was issued,

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

29. 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:

- a. Payment Protection Insurance Policy and Product Disclosure Statement dated 1 March 2012.
- b. Finance Protection Insurance Policy and Product Disclosure Statement dated 1 February 2014.
- c. Finance Protection Insurance Supplementary Product Disclosure Statement dated 1 July 2016.
- d. Finance Protection Insurance Policy and Product Disclosure Statement dated 1 January 2017.
- e. Finance Protection Insurance Supplementary Product Disclosure Statement dated 25 January 2017.

In respect of Finance Gap Insurance:

- a. Finance Gap Insurance Policy and Product Disclosure Statement dated 1 March 2012.
- b. Finance Gap Insurance Policy and Product Disclosure Statement dated 1 January 2014.
- c. Finance Gap Insurance Supplementary Product Disclosure Statement dated 1 May 2019.
- d. Finance Gap Insurance Supplementary Product Disclosure Statement dated 28 January 2021.

In respect of Extended Warranty Insurance:

- a. Factory Approved Extended Warranty Insurance Policy and Product Disclosure Statement dated 1 January 2014 (for Toyota manufactured vehicles).
- b. Extended Warranty Insurance Policy and Product Disclosure Statement dated 1 January 2014.
- c. 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

30. 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

31. During the Relevant Period, 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

32. During the Relevant Period:

- (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 their Add-on Insurance; and

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

Particulars

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;
 - 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); 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.
- 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.

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.

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

33. During the Relevant Period, 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 Period. 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 (**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

34. During the Relevant Period, the Insurance Benefits provided by the Add-on Insurance:
- (a) were likely to overlap with other insurance coverage held by some Group Members and the Plaintiffs;

Particulars

The First Plaintiff has held, since at least September 2009, separate life and total and permanent disability insurance through her Superannuation with Government Employees Superannuation Board (**GESB**).

The Second Plaintiff has held, since at least September 2009, separate life and total and permanent disability insurance through his Superannuation.

The Third Plaintiff has held, at all relevant times, separate life and total and permanent disability insurance through her Superannuation with HESTA, and a standalone life insurance policy with Asteron Life.

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 Australian Prudential Regulation Authority (APRA)-regulated superannuation funds: 67% had Total and Permanent Disability (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.

- (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 and the Plaintiffs;

Particulars

The Plaintiffs refer to and repeat the particulars at paragraphs 34(a) above.

Further, the Plaintiffs refer to and repeat paragraph 32 and the particulars subjoined to that paragraph. Because of the exclusions and limits referred to in paragraph 32 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.

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

- (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.

35. As a result of the matters referred to in paragraphs 22 to 27, and 31 to 34 above, the Add-on Insurance products were:
- (a) of no value to;
 - (b) of no material financial value for;
 - (c) were unsuitable for; and
 - (d) conferred no benefit on, or no material benefits on,
- (alternatively, any combination or subset of the above) the Plaintiffs and the Group Members.
36. 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 33 above.

D. THE SALES SYSTEM IMPLEMENTED BY THE DEFENDANTS, AND THE PLAINTIFFS' ADD-ON INSURANCE PRODUCTS

D.1. 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

37. 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.
38. 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.

39. 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.
40. By reason of the matters pleaded in paragraph 39, 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

41. The Dealers carried on business in Australia.
42. By reason of the matter pleaded in paragraph 41, the Dealers carried on business in this jurisdiction within the meaning of s 21(2) of the NCCP Act.
43. 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 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.

44. By reason of the matters pleaded in paragraph 43, 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

45. By reason of the matters pleaded in paragraph 40 and, or alternatively, paragraph 44, 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.2. The Add-on Insurance process implemented by Toyota

46. Throughout the Relevant Period, Toyota implemented an Add-on Insurance sales system:

- (a) pursuant to which the Plaintiffs and 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 47 to 50 below (**Add-on Insurance Features**).

Particulars

On or around 18 December 2017, the First and Second Plaintiffs entered into a Car Loan with Toyota, which included policies for Finance Protection Insurance and Finance Gap Insurance in respect of their loan, which were underwritten by ADICA.

On or around 31 December 2019, the Third Plaintiff entered into a Car Loan with Toyota, which included policies for Finance Protection Insurance and Finance Gap Insurance in respect of their loan, which were underwritten by ADICA.

47. The premium for the Add-on Insurance for the Plaintiffs and Group Members:
- (a) was financed by a Car Loan;
 - (b) increased the amount of credit owing under the relevant Car Loan; and
 - (c) accrued interest, charged by Toyota under the terms of the relevant Car Loan.

Particulars

The Car Loans of the First and Second Plaintiff, and the Third Plaintiff, are pleaded at paragraphs 60 and 77 (respectively) below.

48. 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.

The commission paid by ADICA to Toyota for issuing Add-on Insurance is referred to in clauses 10.1 and 10.2, and Schedule 1 of the Agency Agreement dated 1 January 2014.

- (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.

- 49. 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.

- 50. 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

- a. The First and Second Plaintiffs' Personal Information was collected by Broome Toyota (as defined at paragraph 54 below) on or about 18 December 2017, and was recorded, among other places, on the application form for the First and Second 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.
- b. The Third Plaintiff's Personal Information was collected by Brian Hilton Toyota (as defined at paragraph 61 below) on or about 29 December 2019, and was recorded, among other places, on the application form for the Third Plaintiff's loan. At all material times, Brian Hilton Toyota was acting, in respect of the sales of Add-on Insurance, as an authorised representative or agent of Toyota.

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 34(a) above.

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;
- (d) the Plaintiffs and Group Members were not given any opportunity to negotiate the terms of the Add-on Insurance;
- (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.

51. 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 48 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.

D.3. The First and Second Plaintiffs' Add-on Insurance

52. The First Plaintiff:

- (a) is a natural person;
- (b) was and is a 'consumer' within the meaning of s 5 of the NCCP Act and s 12BC of the ASIC Act in her dealings with the Defendants.
- (c) was at all times a citizen of New Zealand and not a permanent resident of Australia;
- (d) was at all times a nurse of WA Country Health Service;
- (e) was a member of GESB through which she had insurance; and
- (f) by reason of the matters pleaded in sub-paragraph (e) above, held life and total and permanent disablement since in or around September 2009.

53. The Second Plaintiff:

- (a) is a natural person;
- (b) was and is a 'consumer' within the meaning of s 5 of the NCCP Act and s 12BC of the ASIC Act in his dealings with the Defendants.
- (c) was at all times a citizen of New Zealand and not a permanent resident of Australia;

- (d) was from in or around October 2017 a casual employee of a family business;
 - (e) was a member of a superannuation fund through which he had insurance;
 - (f) by reason of the matters pleaded in sub-paragraph (e) above, held life and total and permanent disablement since in or around 2009.
54. On or around a date presently not known to the First and Second Plaintiffs, Broome Toyota ABN 94 839 137 724 (**Broome Toyota**) entered into a Dealer Agreement with Toyota (**Broome Dealer Agreement**).

Particulars

The Broome Toyota ABN is recorded on the Plaintiffs' Tax Invoice for the sale of a pre-owned motor vehicle dated 5 December 2017 (HEP.002.001.0001).

Further particulars to be provided.

55. At all material times, in its dealings with the First and Second Plaintiffs, including in respect of the sale of Add-on Insurance, Broome Toyota was, by reason of the Broome Dealer Agreement and the matters pleaded at paragraphs 8 to 9 above:
- (a) an accredited dealer and agent of Toyota;
 - (b) an authorised representative of Toyota within the meaning of ss 761A and 916A(1) of the Corporations Act; and
 - (c) an agent of ADICA.

Particulars

The Plaintiffs refer to and repeat paragraphs 8 to 9 above and the particulars to paragraph 8.

56. In or about early December 2017, the First and Second Plaintiffs:
- (a) attended the Broome Toyota dealership in Broome, Western Australia, for the purpose of buying an automobile;

- (b) offered to buy a Colorado LTZ 6-speed automatic diesel ute (**Colorado**) from Broome Toyota for the price of \$34,000 (including GST);
- (c) requested a trade-in of their 2015 Mitsubishi Pajero Sport GLX;
- (d) used the payout from the trade-in of their Mitsubishi Pajero Sport GLX to pay a deposit on the Colorado of \$10,123.63;
- (e) requested that Broome Toyota arrange finance for the remaining purchase balance for the Colorado after the trade-in of their 2015 Mitsubishi Pajero Sport GLX.

Particulars

The First and Second Plaintiffs cannot recall which employee representative they spoke to at Broome Toyota.

Further particulars may be provided after discovery.

- 57. On or around 18 December 2017, the First and Second Plaintiffs attended the Broome Toyota dealership for the purpose of completing the purchase and collecting the Colorado.
- 58. Consistent with the practice described at paragraph 50(a) above, Broome Toyota obtained Personal Information from the First and Second Plaintiffs being:
 - (a) age, salary, number of dependents;
 - (b) employment status, employer and length of employment;
 - (c) property ownership;
 - (d) details of their salary or wages and other income;
 - (e) details of general living expenses and financial obligations under other credit arrangements;
 - (f) name and address of the nearest relative;
 - (g) details of their personal financial circumstances including:

- (i) general living expenses;
- (ii) value of their furniture and fittings;
- (iii) their monetary savings;
- (iv) financial obligations under other credit arrangements;
- (v) details of their living circumstances;

Particulars

The First and Second Plaintiffs cannot recall which employee representative they spoke to at Broome Toyota. They recall being asked to provide the Personal Information contained at (a) – (g) above. On or about 18 December 2017, Broome Toyota submitted the Plaintiffs' Personal Information to Toyota via a loan application form. The Personal Information obtained from the Plaintiffs included:

- a. that the First Plaintiff was employed;
- b. that the Second Plaintiff had been in his current position for only two months;
- c. the Plaintiffs' residential property was subject to a mortgage;
- d. amounts for general living expenses;
- e. amounts of financial obligations under other credit facilities;
- f. the First Plaintiff's nearest relative not living at the same address, lived in Whakatane, 3120 (Bay of Plenty), New Zealand; and
- g. the total cost of the Colorado bought by the Plaintiffs, was \$34,000 including GST, with a total balance owing after the trade in and finance payout of \$44,123.63.

Further particulars may be provided after discovery.

59. The First and Second Plaintiffs' loan application and loan offer documentation was prepared by Broome Toyota and included amounts for premiums for Finance Protection Insurance and Finance Gap Insurance without the First and Second Plaintiffs' knowledge.
60. On or around 18 December 2017, Toyota approved a Car Loan to the First and Second Plaintiffs which, among other things, included the following:
- (a) a loan amount of \$47,760.43;
 - (b) an interest rate of 10.95% p.a.;
 - (c) a term of 72 months;
 - (d) repayments to be made monthly;
 - (e) total interest charges of \$17,748.77;
 - (f) a premium of \$1,680 for Finance Protection Insurance and 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), which policies were underwritten by ADICA.

Particulars

The First and Second Plaintiffs' Add-on Insurance policies were:

- a. Finance Gap Insurance: 01258929GAP
- b. Finance Protection Insurance: 01258928FPI.

61. The First and Second Plaintiffs were sold their Add-on Insurance in conjunction with their Car Loan by Broome Toyota in the following circumstances:
- (a) without having provided 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 First and Second Plaintiffs' loan documentation; and, further or alternatively
 - (ii) the fact that there were lower levels of coverage of the Add-on Insurance products available that may be more suitable for them;
- (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 the First and Second Plaintiffs' loan and was not required by their Car Loan application;
- (f) without them being aware that the Car Loan was increased by the amount of extra interest payable under the terms of their Car Loan by virtue of the Add-on Insurance premium being added to the amount of credit provided under their 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 without sufficient opportunity 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 Finance Protection 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, further or alternatively,

- (l) without being provided with a statement of advice as required for personal advice under s 946A of the Corporations Act.

Particulars

The First and Second Plaintiffs were not given the General Advice Warning. The First and Second 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:

- a. the First and Second Plaintiffs did not want to buy insurance;
- b. the First and Second Plaintiffs were not Australian citizens or permanent residents of Australia;
- c. the First Plaintiff had a pre-existing condition being a thyroid condition for which she had received treatment for a medical practitioner or health professional from within the 6-month period before the commencement date of the policy;
- d. the Second Plaintiff was working in a casual role with part time hours in a family business as at December 2017; and
- e. the benefits for the Finance Protection Insurance were likely to overlap with other insurance held by the First and Second Plaintiffs through their superannuation funds.

The First and Second Plaintiffs were not informed about the amount of interest that would be payable on the premiums

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

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

62. The First and Second Plaintiffs were sold Add-on Insurance by Broome Toyota in a manner which involved the following conduct:
- (a) without being informed, sufficiently or at all, prior to signing their 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;
 - (b) without being informed, sufficiently or at all, prior to signing their Car Loan documentation that the Car Loan documentation included premiums for Add-on Insurance which was not suitable for their needs, or for which they may not be able to receive any material benefit, including because:
 - (i) the Second Plaintiff was not named as an insured on the policy schedule for the Add-on Insurance;

- (ii) they were not 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 overlapped with the benefits available under their existing insurance including through their superannuation;
- (iv) the level of coverage was higher than reasonably necessary given their objectives, circumstances and requirements.

Particulars

- a. Broome Toyota did not ask the First and Second Plaintiffs whether they needed the Add-on Insurance. Broome Toyota did not inform the First and Second 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 First and Second Plaintiffs' Add-on Insurance. Broome Toyota did not inform the First and Second Plaintiffs that their Add-on Insurance was optional, that they 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 and Second Plaintiffs' superannuation, and that the Finance Gap Insurance would expire if there was no comprehensive insurance policy on the vehicle.
- b. Broome Toyota did not inform the Second Plaintiff that he would not be able to receive benefits from the Finance Protection Insurance and Finance Gap Insurance, but would be nonetheless obliged (along with the First Plaintiff) to pay the debt in respect of the premiums on those products as well as any interest.

63. In selling the First and Second Plaintiffs Add-on Insurance, Broome Toyota:

- (a) was acting within the scope of its authority as an authorised representative and agent of Toyota;
- (b) was acting within the scope of its authority as an authorised representative and agent of ADICA; and
- (c) obtained a commission.

Particulars

Particulars of the commission paid are to be provided after discovery.

64. The First and Second Plaintiffs would have refused the inclusion of any Add-on Insurance products in respect of their Car Loan if they had been informed that the Add-on Insurance products were included in their loan application, and, further or alternatively, they did not benefit from them, because:
- (a) neither of them wanted extra insurance or the added expense of the premiums or interest payable in respect of those amounts;
 - (b) they were not eligible to apply for or obtain benefits in respect of the Finance Protection Insurance product as they were not citizens or permanent residents of Australia; and
 - (c) the Finance Protection Insurance overlapped with the First and Second Plaintiffs' life and TPD insurance held through their respective superannuation funds.

Particulars

The First and Second Plaintiffs refer to and repeat the particulars subjoined to paragraph 61 above.

65. The Second Plaintiff derived no benefit from the addition of the Add-on Insurance because:
- (a) he was not named as an insured on the policy schedule for the Add-on Insurance included in the loan (being the policy schedules for the Finance Protection Insurance and the Finance Gap Insurance) and therefore was ineligible to receive benefits; and

- (b) despite not being an insured, he was nonetheless required to pay the premiums in respect of the Add-on Insurance as a party and co-debtor in respect of the First and Second Plaintiffs' Car Loan.
66. The First and Second 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 Plaintiffs obtained no benefit under that policy.
67. The First and Second Plaintiffs' Finance Protection Insurance lapsed after the termination of their Car Loan in or around April 2023.
68. The First and Second Plaintiffs did not make any claims under either the Finance Protection Insurance or Finance Gap Insurance policies.
69. The First and Second Plaintiffs paid \$2,640 in respect of the premiums for their Add-on Insurance, and interest on those amounts, which amounts were included in their repayments of their Car Loan.

D.4. The Third Plaintiff's Add-on Insurance

70. The Third Plaintiff:
- (a) is a natural person;
 - (b) was and is a 'consumer' within the meaning of s 5 of the NCCP Act and s 12BC of the ASIC Act in her dealings with the Defendants.
 - (c) was at all times a psychologist of Central Cost Health on a full-time basis, and self-employed on a part-time basis;
 - (d) was at all times a member of HESTA through which she had life insurance;
 - (e) at the time of acquiring the Add-on Insurance, held a separate life insurance policy with Asteron Life (to the value of \$500,000); and
 - (f) by reason of the matters pleaded in sub-paragraph (e) and (f) above, held life and total and permanent disablement insurance during the Relevant Period.

71. On or around a date presently not known to the Third Plaintiff, Brian Hilton Motor Group ABN 44 002 590 758 (**Brian Hilton Toyota**) entered into a Dealer Agreement with Toyota (**Brian Hilton Toyota Dealer Agreement**).

Particulars

Further particulars to be provided following discovery.

72. At all material times, in its dealings with the Third Plaintiff, Brian Hilton Toyota was, by reason of the Brian Hilton Toyota Dealer Agreement and the matters pleaded at paragraphs 8 to 9 above:
- (a) an accredited dealer and agent of Toyota;
 - (b) an authorised representative of Toyota within the meaning of ss 761A and 916A(1) of the Corporations Act; and
 - (c) an agent of ADICA.

Particulars

The Third Plaintiff refers to and repeats paragraphs 8 to 9 above and the particulars to paragraphs 8.

73. In or about mid December 2019, the Third Plaintiff:
- (a) attended the Brian Hilton Toyota dealership in North Gosford, New South Wales, for the purpose of buying an automobile;
 - (b) offered to buy a 2019 Toyota Corolla Hatch Ascent Sport (**Corolla**) from Brian Hilton Toyota for the price of \$28,800 (including accessories and GST);
 - (c) requested a trade-in of her 2005 Holden Astra TS Classic;
 - (d) used the payout from the trade-in of her 2005 Holden Astra TS Classic in the amount of \$100 to pay a deposit on the Corolla of \$5,000;
 - (e) requested that Brian Hilton Toyota arrange finance for the remaining purchase balance for the Corolla after the trade-in of her 2005 Holden Astra TS Classic.

Particulars

The Third Plaintiff cannot recall which employee representative she spoke to at Brian Hilton Toyota.

Further particulars may be provided after discovery.

74. On or around 31 December 2019, the Third Plaintiff attended the Brian Hilton Toyota dealership for the purpose of completing the purchase and collecting the Corolla.
75. Consistent with the practice described at paragraph 50(a) above, Brian Hilton Toyota obtained Personal Information from the Third Plaintiff being:
 - (a) age, salary, number of dependents;
 - (b) employment status, employer and length of employment;
 - (c) property ownership;
 - (d) details of her salary or wages and other income;
 - (e) details of general living expenses and financial obligations under other credit arrangements;
 - (f) details of her personal financial circumstances including:
 - (i) general living expenses;
 - (ii) monetary savings;
 - (iii) financial obligations under other credit arrangements;
 - (iv) details of living circumstances;

Particulars

The Third Plaintiff cannot recall which employee representative she spoke to at Brian Hilton Toyota. She recalls being asked to provide the Personal Information contained at (a) – (f) above, which was collected by Brian Hilton Toyota.

Further particulars may be provided after discovery.

76. The Third Plaintiff's loan application and loan offer documentation was prepared by Brian Hilton Toyota and included amounts for premiums for Finance Protection Insurance and Finance Gap Insurance without the Third Plaintiff's knowledge.

Particulars

The Third Plaintiff was not provided with a copy of her loan documentation or the PDS for the Add-on Insurance products or any other documents or information related to her loan or Add-on Insurance.

Further particulars may be provided after discovery.

77. On or around 31 December 2019, Toyota approved a Car Loan to the Third Plaintiff which, among other things, included the following:

- (a) a loan amount of \$25,371;
- (b) an interest rate of 3.88%p.a.;
- (c) a term of 48 months;
- (d) repayments to be made monthly;
- (e) total interest charges of \$2,076.84;
- (f) a premium of \$925 for Finance Protection Insurance and a premium of \$265 for Finance Gap Insurance, which policies were underwritten by ADICA.

Particulars

The Third Plaintiff's Add-on Insurance policies were numbered:

- a. Finance Gap Insurance: 01386208GAP.
- b. Finance Protection Insurance: 01386209FPI.

78. The Third Plaintiff was sold Add-on Insurance in conjunction with her Car Loan by Brian Hilton Toyota in the following circumstances:
- (a) without having provided informed consent or agreement that she required the Add-on Insurance;
 - (b) without having requested the Add-on Insurance;
 - (c) without having had drawn to her attention adequately or at all:
 - (i) the addition of the premiums for the Add-on Insurance to her Car Loan documentation; and, further or alternatively
 - (ii) the fact that there were lower levels of coverage of the Add-on Insurance products available that may be more suitable for her;
 - (d) without being fully or sufficiently informed of the exclusions and limits to the cover applicable to her;
 - (e) without being fully informed that the Add-on Insurance was optional or separate to her Car Loan and was not required by the Car Loan application;
 - (f) without being aware that the Car Loan 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 without sufficient opportunity 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;
- (k) without being provided with a General Advice Warning; and, further or alternatively,
- (l) without being provided with a statement of advice as required for personal advice under s 946A of the Corporations Act.

Particulars

The Third Plaintiff was not given the General Advice Warning. The Third Plaintiff was not encouraged to review and consider the PDS for the Finance Protection Insurance or Finance Gap Insurance or to consider whether they were appropriate for her own objectives, financial situation and needs (including any conditions, limits or exclusions that may be relevant to her). This included the fact that the Third Plaintiff did not want to buy insurance, that the benefits for the Finance Protection Insurance were likely to overlap with other insurance held through her superannuation and her separate, standalone life insurance policy, that the Third Plaintiff had multiple pre-existing conditions including in relation to her thyroid, bowel, lungs and was in remission following treatment for breast cancer, that the Third Plaintiff was working in a self-employed role and the Third Plaintiff had comprehensive car insurance at an agreed value (being the sale price of the Corolla), which reduced the value of the Finance Gap Insurance.

The Third Plaintiff was not informed about the amount of interest that would be payable on the premiums for the Add-on Insurance, or that this would increase the cost of her Car Loan. The Third Plaintiff was not informed or sufficiently informed who commission would be paid to for the Add-on Insurance, or the amount of such commission, including to Brian Hilton Toyota, 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).

79. The Third Plaintiff was sold Add-on Insurance by Brian Hilton Toyota in a manner which involved the following conduct:
- (a) without being informed, sufficiently or at all, prior to signing the Car Loan documentation or acquiring the Add-on Insurance, that she was acquiring the Add-on Insurance or that the Add-on Insurance was optional;
 - (b) without being informed, sufficiently or at all, prior to signing the Car Loan documentation that the Car Loan documentation included premiums for Add-on Insurance which was not suitable for her needs, or for which she may not be able to receive any material benefit, including because:
 - (i) the Insurance Benefits for the Add-on Insurance overlapped with the Third Plaintiff's benefits available under her existing insurance, including through their superannuation;
 - (ii) the Third Plaintiff was not 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 level of coverage was higher than reasonably necessary given the Third Plaintiff's objectives, circumstances and requirements.

Particulars

Brian Hilton Toyota did not ask the Third Plaintiff whether she needed the Add-on Insurance. Brian Hilton Toyota did not inform the Third Plaintiff that Brian Hilton Toyota had added Finance Protection Insurance and Finance Gap Insurance in the documentation presented to her on or around 31 December 2019, before issuing the Third Plaintiff's Add-on Insurance. Brian Hilton did not inform the Third Plaintiff that the Third Plaintiff's Add-on Insurance was optional, that she may not be eligible to apply for, or receive, benefits under the Finance Protection Insurance, including

because of her pre-existing conditions and because she was self-employed, or that the benefits under the Finance Protection Insurance may overlap with any insurance already held through the Third Plaintiff's superannuation and other insurance policies.

80. In selling the Third Plaintiff Add-on Insurance, Brian Hilton Toyota:
- (a) was acting within the scope of its authority as an authorised representative and agent of Toyota;
 - (b) was acting within the scope of its authority as an authorised representative and agent of ADICA; and
 - (c) obtained a commission.

Particulars

Particulars of the commission paid are to be provided after discovery.

81. The Third Plaintiff would have refused the inclusion of any Add-on Insurance products in respect of her Car Loan if she had been informed that the Add-on Insurance products were included in her loan application, and, further or alternatively, she did not benefit from them, because:
- (a) the Third Plaintiff had a number of pre-existing conditions;
 - (b) the Third Plaintiff did not want extra insurance or the added expense of the premiums or interest payable in respect of those amounts;
 - (c) the Finance Protection Insurance overlapped with the Third Plaintiff's life and TPD insurance held through her superannuation and her separate life insurance policy; and
 - (d) the Third Plaintiff acquired comprehensive vehicle insurance for the Corolla at an agreed value which was similar to the amount owing under Third Plaintiff's Car Loan.

Particulars

The Third Plaintiff refers to and repeats the particulars to paragraph 78(l) in respect of her pre-existing conditions.

The Third Plaintiff did not want extra insurance and held a separate life insurance policy, and life and TPD insurance through her superannuation; therefore, it was not suitable for her needs, and did not provide value to her.

The Third Plaintiff held a comprehensive vehicle insurance policy for the Corolla at an agreed value, which was similar to the value of the Third Plaintiff's Car Loan. As such, the Finance Gap Insurance was not suitable for the Third Plaintiff's needs and requirements, including because she did not want to pay for extra insurance and as the policy provided poor value.

Further particulars may be provided after discovery.

82. The Third Plaintiff did not know that she was sold Add-on Insurance until she received correspondence from Toyota in respect of the Finance Protection Insurance and Finance Gap Insurance in or around December 2020 or January 2021.
83. The Third Plaintiff's Add-on Insurance was terminated at the request of the Third Plaintiff on or around 27 January 2021.

Particulars

Upon becoming aware that Add-on Insurance had been added to her loan without her knowledge or consent, the Third Plaintiff contacted Toyota by phone and requested the immediate cancellation of the Add-on Insurance.

84. The Third Plaintiff did not make any claims under either the Finance Protection Insurance or Finance Gap Insurance.

85. The Third Plaintiff paid \$1,190.00 in respect of the premiums for her Add-On Insurance, and interest on those amounts, which amounts were included in her repayments of her Car Loan.
86. The Third Plaintiff received a refund of approximately 50% of the premiums she had paid following cancellation of her Add-on Insurance policies.

Particulars

After cancelling her Add-on Insurance on or around 27 January 2021, the Third Plaintiff received a refund in the amount of \$598.36, which was paid directly to her Car Loan balance.

D.5. The Plaintiffs' and Group Members' Add-on Insurance Circumstances

87. The Plaintiffs and Group Members were sold the Add-on Insurance in conjunction with their Car Loan by Dealers 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 without sufficient opportunity 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 provided with a 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

- a. The Plaintiffs refer to and repeat paragraph 18 and the particulars to paragraphs 61 and 78 above.
- b. Delson Packer and Sarah Bell had Finance Gap Insurance added to their Car Loan by the Morayfield dealership in or around September 2019, in the circumstances contained at contained at (b), (c)(ii), (d), (f) – (l) above. They did not ask for Finance Gap Insurance, but were told by the dealer representative that they should take out Finance Gap Insurance who said words to the effect “it is important you have it because it will cover the entire difference between what your car insurance pays out and what you owe on

your loan” in circumstances of a write-off. The exclusions and benefit limits were not explained to them. They were not aware or told that there were different levels of cover available. They were not provided with, or encouraged to read, the PDS and/or Financial Services Guide. They were not informed that the Finance Gap Insurance premium would incur interest under the terms of their Car Loan. They were not informed about any commissions payable in respect of the Finance Gap Insurance. They did not receive a General Advice Warning or statement of advice.

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

88. The Plaintiffs and Group Members were sold Add-on Insurance by Dealers and Dealer Representatives in a manner which involved one or all (or alternatively a combination) of the following conduct by Dealers and/or Dealer Representatives:
- (a) after providing the Dealer or Dealer Representative with the Personal Information referred to in paragraph 50(a) above, they 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 or were required 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;
 - (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, or for which they may not be able to receive any material benefit, including because:

- (i) they were not named as an insured on the policy schedule for the Add-on Insurance;
- (ii) they were not eligible, or may not have been eligible, to apply for, or receive one or more Insurance Benefits for the Add-on Insurance under the terms of the relevant PDSs; and/or
- (iii) the Insurance Benefits for the Add-on Insurance overlapped, or may have overlapped, with their benefits available under their existing insurance including through superannuation,
- (iv) the level of coverage was higher than reasonably necessary given the customer's objectives, circumstances and requirements,

((a) to (d) being the **Dealers' Add-on Insurance Conduct**).

Particulars

The Plaintiffs refer to ASIC Report 470, p 32 and repeat the particulars joined to paragraphs 62 and 79.

Delson Packer and Sarah Bell attended the Morayfield dealership in or around September 2019 to purchase a new car and were not informed at all prior to signing their Car Loan documentation that the Finance Gap Insurance may not be suitable for their needs. Further particulars including in relation to one or more sample Group Members will be provided prior to the initial trial.

D.6. Toyota did not have in place adequate controls

89. During the Relevant Period, Toyota did not have adequate controls in place to ensure that the Dealers and the Dealer Representatives did not engage in the Dealers' Add-on Insurance Conduct.

Particulars

The lack of adequate controls in place can be inferred from the particulars subjoined to paragraphs 62 and 79.

Further particulars may be provided following discovery.

90. 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.

D.7. ADICA's Knowledge of the Add-on Insurance Features, Add-on Insurance Failures and Dealers' Add-on Insurance Conduct

91. At all material times, ADICA knew, or ought to have known, that Dealers, Dealer Representatives and Toyota were selling Add-on Insurance in the manner alleged in paragraphs 46 to 50 and 87 to 89 above.

Particulars

- a. By reason of ASIC Report 256, Report 470, Report 471 and Report 492, ADICA ought to have known of the concerns identified by ASIC with the sale and distribution of add-on insurance products through car dealerships, and ought to have taken steps to ascertain whether Add-on Insurance was being sold by Toyota and its dealerships in the manner alleged;
- b. in respect of paragraph 47, ADICA's knowledge can be inferred from clause 5.3(b)(iii) of the Agency Agreement dated 1 January 2014;
- c. in respect of paragraph 48, the Plaintiffs refer to and repeat the particulars subjoined to that paragraph. ADICA's knowledge of commissions paid to Dealers and

Dealer Representatives can be inferred from clause 4.1(b) of the Agency Agreement dated 1 January 2014;

- d. in respect of paragraph 49, ADICA's knowledge can be inferred from clauses 4.1(a) and 5.2(b) of the Agency Agreement dated 1 January 2014;
- e. in respect of paragraph 50(a), ADICA's knowledge can be inferred from clause 18 of the Agency Agreement dated 1 January 2014, to the extent that Personal Information is collected for the purpose of Add-on Insurance. Further or alternatively, ADICA's knowledge can be inferred from its membership in the OneToyota Network. Toyota's Group Privacy and Credit Information Policy the "Toyota Group collects and shares your personal information with other members of the OneToyota Network".
- f. ADICA's knowledge can be inferred from its membership in the OneToyota Network.
- g. Toyota's knowledge is attributable to ADICA because in arranging the issue of the Add-on Insurance on behalf of ADICA, Toyota acted as the agent of ADICA, as set out in paragraph 8(b) and 8(d) above.
- h. The knowledge of Dealers and Dealer Representatives of the allegations set out in paragraph 88 (being the Dealers' Add-on Insurance Conduct) is attributable to ADICA because in selling the Add-on Insurance on behalf of ADICA, each Dealer and Dealer Representative acted as the agent of ADICA, as set out in paragraph 8(b) and 8(d) above.

Further particulars may be provided after discovery.

E. THE CONTRAVENING CONDUCT

E.1. Misleading or deceptive conduct

92. The Third Plaintiff and Group Members had a reasonable expectation that had:

- (a) the Car Loans included features of the same or similar kind as alleged in paragraphs 47 and 48;
- (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, further 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; and, further or alternatively;
- (d) the Add-on Insurance been unsuitable for them or of no material value,

the Dealer, the Dealer Representative and/or Toyota would have disclosed such matters or one or more of them to the Third Plaintiff and 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 Third Plaintiff and Group Members whether to acquire the Add-on Insurance.

Further, the Third Plaintiff and 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).

The Third Plaintiff refers to and repeats the particulars subjoined to paragraph 78 above.

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

93. Further or alternatively, the Third Plaintiff and some Group Members 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.

Particulars

The Third Plaintiff refers to and repeats her particulars to paragraph 78 above.

94. The Dealers and/or the Dealer Representatives represented to the Third Plaintiff and Group Members, one or all, or alternatively any combination, of the following:

- (a) in respect of the Third Plaintiff and those Group Members who were not informed sufficiently or at all that they were acquiring the Add-on Insurance, that Add-on Insurance and premiums for the same had not been included in their Car Loan;
- (b) 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;
- (c) 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);
- (d) the Add-on Insurance had material financial value;
- (e) the Add-on Insurance was suitable for them.

95. In fact, during the Relevant Period:

- (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.

Particulars

The Plaintiffs refer to and repeat the particulars to paragraph 32 to 34, and 87 above.

96. Toyota failed to disclose or adequately disclose, or cause the Dealers and Dealer Representatives to disclose or adequately disclose to the Third Plaintiff and Group Members one or more of the facts and circumstances referred to in paragraph 92, 93 and 95 above, which constituted material information that was relevant to the Third Plaintiff's and Group Members' decision whether to purchase the Add-on Insurance.

Particulars

The Third Plaintiff refers to and repeats her particulars to paragraph 78 above.

Delson Packer and Sarah Bell did not request, but were sold Finance Gap Insurance by the Morayfield dealership in or around September 2019, did not want extra insurance, but were told words to the effect that it was "important" for them to have. The Finance Gap Insurance was not suitable for their needs and requirements, as they did not want to pay extra for insurance (or interest on the premium), and the policy provided poor value for the reasons set out at paragraphs 22 to 34 above.

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

97. The Dealers, Dealer Representatives and/or Toyota failed to disclose to the Third Plaintiff and Group Members the matters pleaded in paragraphs 92, 93 and 95 above.
98. By reason of the matters referred to in paragraphs 92 to 97 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).
99. The Dealers' and or Dealer Representatives' conduct referred to in paragraphs 94 and 97 to 98 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.
100. The Dealers' and/or Dealer Representatives' and Toyota's conduct in respect of Add-on Insurance referred to in paragraphs 94 to 98 above during the Relevant Period was conduct within the scope of their actual or apparent authority as agents of ADICA, within the meaning of:
 - (a) s 12GH of the ASIC Act; and
 - (b) s 769B of the Corporations Act,

and accordingly was conduct also engaged in by ADICA.
101. In reliance on the Misleading Conduct, the Third Plaintiff and 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 Third Plaintiff refers to and repeats the particulars to paragraphs 78 and 79 above.

Delson Packer and Sarah Bell who entered into a Car Loan through the Morayfield dealership in or around September 2019 would not have purchased Finance Gap Insurance but for the matters contained in paragraphs 94(d) and 94(e) above.

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

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

102. By reason of the above Misleading Conduct, the Third Plaintiff and Group Members have suffered loss and damage.

Particulars

The loss and damage suffered by the Third Plaintiff and Group Members include:

- a. the premiums paid by the Third Plaintiff and Group Members, including any amounts paid for GST and stamp duty on the premiums; and, or alternatively
- b. the interest charged by Toyota to the Third Plaintiff and Group Members on the premiums, GST and stamp duty added to their Car Loan for the Add-on Insurance.

103. The Third Plaintiff and Group Members whose Add-on Insurance was issued, or entered into, during the six-year period prior to commencement of this proceeding:
- (a) 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) 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

104. Further or alternatively, by reason of the Add-on Insurance Features (including the Add-on Insurance Failures) and, or further or alternatively, the Dealers' Add-on Insurance Conduct:
- (a) the Third Plaintiff and 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) involved techniques that:
 - (i) should not in good conscience have been used; or
 - (ii) manipulated the Third Plaintiff and 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 Third Plaintiff and Consumer Group Members, both generally and specifically in relation to financing and insurance products; and, or alternatively,
 - (e) the Third Plaintiff and 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 the Dealers' Add-on Insurance Conduct.

The Third Plaintiff refers to and repeats the particulars to paragraphs 78 and 79 above.

Delson Packer and Sarah Bell entered into a Car Loan through the Morayfield dealership in or around September 2019 without being given an adequate opportunity to consider whether the Finance Gap Insurance was suitable for them, or provided material value or benefit, before it was added to their Car Loan.

Further particulars may be provided after discovery.

105. The Dealers' Add-on Insurance Conduct, as set out in paragraph 88 above, was conduct engaged in by the Dealers and/or Dealer Representatives 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

106. The Dealers' Unfair Conduct had the result that the Third Plaintiff and Consumer Group Members became liable to pay premiums for the Add-on Insurance, and interest charges for the Add-on Insurance premiums.
107. By reason of the matters pleaded in paragraphs 106, the Third Plaintiff and 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.
108. 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.
- 109. By reason of the matters pleaded in paragraph 108, each Dealer and Dealer Representative was a representative of Toyota within the meaning of s 5 of the NCCP Act.
- 110. By reason of the matters pleaded in paragraph 45, the Dealers' Unfair Conduct was conduct that related to a credit activity within the meaning of s 74(a) of the NCCP Act.
- 111. The Dealers' Unfair Conduct was conduct on which the Third Plaintiff and Consumer Group Members could reasonably be expected to rely within the meaning of s 74(b) of the NCCP Act.
- 112. The Dealers' Unfair Conduct was conduct on which the Third Plaintiff and Consumer Group Members did rely in good faith within the meaning of s 74(c) of the NCCP Act.

Particulars

The Third Plaintiff refers to and repeats the particulars subjoined to paragraphs 78 and 79 above.

At this stage and prior to discovery the best particulars the Plaintiffs can give in relation to the claims of the Third Plaintiff and 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.

- 113. By reason of the matters pleaded in paragraphs 110, 111 and 112, Toyota is responsible for the Dealers' Unfair Conduct.

114. By reason of s 77 of the NCCP Act, Toyota is liable to the Third Plaintiff and Consumer Group Members in relation to any loss or damage suffered by the Third Plaintiff and Consumer Group Members as a result of the Dealers' Unfair Conduct.
115. By reason of s 78(1) of the NCCP Act, the Third Plaintiff and Consumer Group Members have the same remedies against Toyota as they have against the Dealers.
116. In the premises, the Third Plaintiff and Consumer Group Members in respect of whom the Dealers' Unfair Conduct took place during the six-year period prior to the commencement of this proceeding are entitled to an order against Toyota under s 180A(2) of the NCCP Act that it:
- (a) pay to the Third Plaintiff and 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

117. By reason of the Add-on Insurance Features (including the Add-on Insurance Failures) and, further or alternatively, the Dealers' Add-on Insurance Conduct:
- (a) the Plaintiffs and 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 104 above; and, or alternatively
 - (b) the terms of the Add-on Insurance were subject to little negotiation between the Dealers and the Plaintiffs and 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 Plaintiffs and 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 Dealers' Add-on Insurance Conduct constituted unfair tactics by Toyota, Dealers and/or Dealer Representatives, including because of the matters pleaded in paragraph 104 above; and, or alternatively
- (e) the addition of the Add-on Insurance premiums to the Car Loans was not accurately explained to the Plaintiffs and Consumer Group Members, and the Plaintiffs and Consumer Group Members did not sufficiently understand the effect of the addition of the Add-on Insurance premiums to the Car Loans.

Particulars

The Plaintiffs refer to and repeat paragraphs 61, 62, 78, 79, 87 and 88 above and the particulars thereto.

Delson Packer and Sarah Bell entered into a Car Loan with Finance Gap Insurance through the Morayfield dealership in or around September 2019 in the circumstances described in (a) – (e) above.

Further particulars may be provided following discovery.

- 118. By reason of the matters pleaded in paragraph 117, the Plaintiffs' Car Loans and Consumer Car Loans were unjust within the meaning of s 76 of the Credit Code.
- 119. In the premises, the Plaintiffs and Consumer Group Members whose Car Loans remained extant at the time of, or whose Car Loans were rescinded or discharged within 2 years prior to, the commencement of this proceeding, 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 Plaintiffs and Consumer Group Members an amount equal to the whole of their costs of their Add-on Insurance;
 - (b) requiring Toyota to pay the Plaintiffs and Consumer Group Members interest on the sums payable under subparagraph (a).

Particulars

The First and Second Plaintiffs' Car Loan was discharged in or around April 2023.

The Third Plaintiff's Car Loan was discharged in or around November 2023.

The amount equal to the whole costs of the Add-on Insurance referred to in (a) will be calculated by reference to:

- a. The premiums paid by the Plaintiffs and Consumer Group Members, including any amounts paid for GST and stamp duty for the Add-on Insurance.
- b. The interest paid by the Plaintiffs and Consumer Group Members on the premiums, GST and stamp duty added to their Car Loan in respect of the Add-on Insurance.

E.4. Inappropriate personal advice

120. Further or alternatively, some 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 50 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) (**Advice**) 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

Delson Packer and Sarah Bell entered into their Car Loan with Finance Gap Insurance through the Morayfield dealership in or around September 2019 did so after providing their Personal Information to the Dealer Representative, and after receiving a recommendation and statement of opinion from the Dealer Representative. The Dealer Representative said, amongst other things, words to the effect that “it’s important that you have this type of cover” and conveyed that the Finance Gap Insurance would provide material value to them. The Group Members received this recommendation without being provided a General Advice Warning and without being provided with a statement of advice.

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

121. The Advice referred to in paragraph 120 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 (now s 9) 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.
122. By reason of the matters referred to in paragraphs 32 to 34, 47, and 87 to 89 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.

123. Further or alternatively, by reason of the matters referred to in paragraphs 32 to 34 and 47 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.
124. 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 48 to 51 above.

125. By reason of the matters referred to in paragraphs 32 to 34, 48 to 51 and 123 above, the Dealers and Dealer Representatives failed to give priority to the interests of each of the Advised Group Members when giving the Advice to them, and thereby contravened s 961J of the Corporations Act.
126. 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.
- 127. The Advised Group Members whose Car Loan and/or Add-on Insurance was issued, or entered into, during the six-year period prior to commencement of this proceeding:
 - (a) may recover their loss and damage pursuant to 961M of the Corporations Act from Toyota; and/or
 - (b) may recover their loss and damage pursuant to 961M of the Corporations Act from ADICA.

E.5. Unconscionable conduct

- 128. 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 46 to 50 and 87 to 90 above (and which involved the Add-on Insurance Features and the Dealers' Add-on Insurance Conduct); and
 - (b) since at least in or around November 2013 ADICA knew, or ought to have known that Toyota, the Dealer and/or Dealer Representatives were engaging in the conduct in the manner alleged in paragraphs 46 to 50 and 87 to 90 above (and which involved the Add-on Insurance Features and the Dealers' Add-on Insurance Conduct); and
 - (c) the Third Plaintiff and Group Members acquired the Add-on Insurance in circumstances where:
 - (i) the Third Plaintiff and 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.

Particulars

Toyota's knowledge in respect of paragraphs (a) and (c) can be inferred from:

- a. the knowledge of its directors, officers, servants, and agents (responsible officers) responsible for approving the terms of the Dealer Agreements by which Dealers were appointed the authorised representatives or agents of Toyota;
- b. training and supervising of Dealers in relation to arranging Add-on Insurance for customers;
- c. Toyota's business arrangements with the Dealers, including the establishment of the Dealer Agreements and the operation of the sales system referred to in paragraphs 46 to 50 above;
- d. the fact that, as authorised representatives or agents of Toyota, the knowledge of the Dealers in their dealings with customers may imputed to Toyota as principal; and
- e. Report 256, Report 361, Report 470, Report 471 and Report 492, from which it knew or ought to have known of the concerns identified by ASIC with the sale and distribution of add-on insurance products through car dealerships.

In respect of ADICA's knowledge in respect of (b):

- a. by reason of Report 256, Report 361, Report 470, Report 471 and Report 492, ADICA ought to have known of the concerns identified by ASIC with the sale and distribution of add-on insurance products through car dealerships, and ought to have taken steps to ascertain whether Add-on Insurance was being sold by Toyota and its dealerships in the manner alleged in paragraphs 46 to 50 and 87 to 90 above;

- b. in respect of paragraph 47, ADICA's knowledge can be inferred from clause 5.3(b)(iii) of the Agency Agreement dated 1 January 2014;
- c. in respect of paragraph 48, the Plaintiffs refer to and repeat the particulars to that paragraph and further say that ADICA's knowledge of commissions paid to Dealers and Dealer Representatives can be inferred from clause 4.1(b) of the Agency Agreement dated 1 January 2014;
- d. in respect of paragraph 49, ADICA's knowledge can be inferred from clauses 4.1(a) and 5.2(b) of the Agency Agreement dated 1 January 2014;
- e. in respect of paragraph 50(a), ADICA's knowledge can be inferred from clause 18 of the Agency Agreement dated 1 January 2014, to the extent that Personal Information is collected for the purpose of Add-on Insurance. Further or alternatively, ADICA's knowledge is inferred from its membership to the OneToyota Network. Toyota's Group Privacy and Credit Information Policy the "Toyota Group collects and shares your personal information with other members of the OneToyota Network".

Further, Toyota's knowledge is attributable to ADICA because in arranging the issue of the Add-on Insurance on behalf of ADICA, Toyota acted as the agent of ADICA, as set out in paragraph 8(b) and 8(d) above.

Further particulars will be provided following discovery.

129. During the Relevant Period, Toyota and ADICA knew, or ought to have known, that the Add-on Insurance products were:
- (a) of no value to;
 - (b) of no material financial value for;
 - (c) unsuitable for; and/or

- (d) further or alternatively conferred no benefit on, or no material benefits on,

the Third Plaintiff and Group Members.

Particulars

It can be inferred that Toyota knew, or ought to have known of the matters pleaded in paragraph 129 by reason of one or more of the following:

- a. There was publicly available information conveying the fact that most superannuation funds offer insurance policies to members, including life and TPD insurance as default cover (for example, this has been stated on the ASIC “Smart Money” website since March 2011), Toyota knew or ought to have known that a significant proportion of Group Members would already hold separate insurance that was likely to overlap with coverage of one or more Add-on Insurance products;
- b. From at least the release of Report 471 in or around February 2016 and Report 492 in or around September 2016, Toyota knew, or ought to have known, the matters contained in those reports, including that a large proportion of add-on insurance claims were denied by insurers, and that the claims ratio for add-on insurance products was low (Report 471 pages 31 and 32, Report 492 pages 9, 12, 14 and 15);
- c. By reason of ADICA’s involvement with Report 492, as referred to in paragraphs 26 and 27 above, from at least in or around 2016, Toyota knew or ought to have known, that add-on insurance products sold to consumers by car dealers had the features referred to in paragraph 129.

It can be inferred that ADICA knew or ought to have known of the matters pleaded in paragraph 129 by reason of one or more of the following:

- a. From the data it held in relation to the Add-on Insurance products, alternatively from its role in reporting data to APRA under the *Financial Sector (Collection of Data) Act 2001*, ADICA knew or ought to have known the low claims ratio and high proportion of claims denied or withdrawn with respect to the Add-on Insurance at all material times;
- b. There was publicly available information conveying the fact that most superannuation funds offer insurance policies to members, including life and TPD insurance as default cover (for example, this has been stated on the ASIC “Smart Money” website since March 2011), from which ADICA knew or ought to have known that a significant proportion of Group Members would already hold separate insurance that was likely to overlap with coverage of one or more Add-On Insurance products;
- c. From at least the release of ASIC Report 471 in or around February 2016 and Report 492 in or around September 2016 (if not before, if ADICA participated in any feedback process with ASIC prior to the public release of those reports), ADICA knew, or ought to have known the matters referred to in the reports, including that a large proportion of add-on insurance claims were denied, and that the claims ratio for add-on insurance products was low (Report 471 pages 31 and 32, Report 492 pages 9, 12, 14 and 15);
- d. As a result of ASIC Report 471, ADICA ought to have reviewed the claims ratios of the Add-on Insurance products, and accordingly ought to have known from at least 29 February 2016 the matters referred to in paragraph 129 above;

- e. By reason of its involvement with ASIC Report 492, from at least in or around September 2016 (if not before, if ADICA participated in any feedback process with ASIC prior to the report's public release), ADICA knew or ought to have known that add-on insurance products sold to consumers by car dealers had the features referred to in paragraph 27(a) - 27(f).

Further particulars may be provided following discovery.

130. By reason of the matters referred to in paragraphs 5, 6, 7, 46 to 50, and 87 to 90 above (which included the Add-on Insurance Features and the Dealers' Add-on Insurance Conduct) and, further in respect of the Third Plaintiff paragraphs 78 to 82 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.

Particulars

In respect of the Third Plaintiff, the Plaintiffs refer to the particulars to paragraphs 78 to 82 above.

131. Further or alternatively, by reason of the matters referred to in paragraphs 5, 6, 7, 46 to 50, and 87 to 90 above (which included the Add-on Insurance Features and the Dealers' Add-on Insurance Conduct) and, further in respect of the Third Plaintiff paragraphs 78 to 82 above, in issuing the Add-on Insurance to the Third Plaintiff and Group Members, in circumstances where:
- (a) the Add-on Insurance products were entered into in the manner alleged in those paragraphs;
 - (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 Third Plaintiff and Group Members, as alleged in Section C.3 above;
 - (c) Toyota knew or should have known of the matters alleged in paragraphs 129 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.

132. By reason of paragraphs 5, 12 and 13, Toyota's unconscionable conduct alleged in respect of Add-on Insurance referred to in paragraph 131 above during the Relevant Period was engaged in also by ADICA.
133. Further or alternatively, in issuing the Add-on Insurance, ADICA 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.

Particulars

The Plaintiffs refer to the following paragraphs of this statement of claim: 4, 8, 9, 11(f), 12, 13, 32, 33, 34, 35, 36, 51, 87, 88, 91, 100.

134. Further or alternatively, in issuing Add-on Insurance, in circumstances where:
- (a) 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 Third Plaintiff and Group Members, as alleged in Section C.3 above;
 - (b) the Add-on Insurance products were sold by Toyota on behalf, and with the knowledge and authorisation, of ADICA; and, further or alternatively
 - (c) ADICA knew or should have known the matters alleged in paragraphs 46 to 49, 87 to 91 and 129 above,

ADICA 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 s 12CB(1) of the ASIC Act.

Particulars

The Plaintiffs refer to and repeat the particulars subjoined to paragraphs 128, 129 and 133.

135. By reason of the Defendants' unconscionable conduct, the Third Plaintiff and Group Members have suffered loss and damage.

Particulars

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

- a. the premiums paid, including any amounts paid for GST and stamp duty on the premiums; and, or alternatively
 - b. 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.
136. The Third Plaintiff and Group Members whose Add-on Insurance was issued, or entered into, during the six-year period prior to commencement of this proceeding:
- (a) 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) 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

137. Further or alternatively, the Plaintiffs and Group 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) 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;
 - (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;
- (b) for the Plaintiffs and some Group Members, that they were purchasing the Add-on Insurance;
- (c) 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;
- (d) 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);
- (e) that the Add-on Insurance did not have material financial value to them;
- (f) that the Add-on Insurance was unsuitable for them;
- (g) 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, being one or more of the matters pleaded at paragraph 95 above, that was relevant to their decision whether to acquire the Add-on Insurance and/or enter into the Car Loan;
- (h) that the Add-on Insurance would increase the amount of extra interest payable under the terms of the Car Loan, or the amount of extra interest payable, by virtue of the Add-on Insurance premium being added to the amount of credit provided under the Car Loan;
- (i) that there were lower levels of coverage of the Add-on Insurance products available that may be more suitable; further, or alternatively,
- (j) that a commission would be paid for the Add-on Insurance, or the amounts of the commissions payable for the Finance Gap Insurance, or Extended Warranty Insurance.

Particulars

The Plaintiffs refer to and repeat paragraph 61, 78, 87 and 96 above and the particulars thereto.

As to (a), the Plaintiffs refer to and repeat paragraphs 104, 105, 115, 116, 118, and 119.

As to (b) and (c), the Plaintiffs refer to and repeat paragraphs 87(a), 87(b), 87(c), 87(e), 88(a), 88(b), 88(c), 92, 94(a), 97, 104, 117, 128.

As to (d), (e), (f) and (g), the Plaintiffs refer to and repeat paragraphs 27, 32, 33, 34, 35, 36, 50, 51, 87(d), 87(f), 87(g), 87(h), 87(i), 87(j), 87(k), 87(l), 92, 94(c), 94(d), 94(e), 96, 97, 104, 117, 120, 128.

138. By reason of the matters pleaded in paragraphs 62 (in respect of the First and Second Plaintiffs only), 79 (in respect of the Third Plaintiff only) and 137, prior to applying for or entering into a Car Loan, the Plaintiffs and Group Members did not know one or more of the matters pleaded in paragraph 137 above, each of which constitute material information that would have been relevant to the decision of the Plaintiffs and Group Members whether to acquire the Add-on Insurance.

Particulars

The Plaintiffs refer to and repeat the particulars subjoined to paragraphs 87, 88, 92, 96, 101 and 104.

- a. In respect of the First and Second Plaintiffs, the Plaintiffs refer to and repeat the particulars to paragraphs 61 to 62 above. The First and Second Plaintiffs executed the Car Loan documentation that Broome Toyota provided to them without knowing or being informed that they were purchasing the Add-on Insurance and without knowing that they would not be eligible for coverage under the Add-on Insurance. But for the matters referred to in paragraphs 61 to 62 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.

- b. In respect of the Third Plaintiff, the Plaintiffs refer to and repeat the particulars to paragraphs 78 and 79 above. The Third Plaintiff entered into the Third Plaintiff's Car Loan with Add-on Insurance without her knowing that she was purchasing the Add-on Insurance. But for the matters referred to in paragraphs 78 and 79 above, the Third Plaintiff would not have agreed to pay the premiums for the Add-on Insurance, or for the premiums to be included in her loan, or acquired the Add-on Insurance.
- c. Delson Packer and Sarah Bell entered into a Car Loan through the Morayfield dealership in or around September 2019 did so under the mistaken belief that the Finance Gap Insurance had material financial value to them, that the Finance Gap Insurance was suitable for them, and that at the time they made the decision to acquire the Finance Gap Insurance, they had received all material information from the dealership that was relevant to their decision to purchase Finance Gap Insurance. But for the matters contained in paragraphs 88(d), 91(d), 92(c), 94(d) and 94(e) above (which constituted material information that was relevant to their decision to acquire Finance Gap Insurance), the Group Members would not have acquired the Finance Gap Insurance.

139. By reason of the matters pleaded in paragraphs 137 to 138, the Plaintiffs and Group Members:

- (a) paid Add-on Insurance premiums and interest on those premiums,

under one or more of the following causative mistaken beliefs:

- (b) 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 137;
- (c) 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.
- (d) for the Plaintiffs and some Group Members, that they had not purchased the Add-on Insurance;

for the remaining Group Members not referred to in (e):

- (e) that it was necessary to purchase, or they were liable to or required to pay for, the Add-on Insurance as a condition of obtaining the Car Loan;
- (f) 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);
- (g) that the Add-on Insurance had material financial value to them;
- (h) that the Add-on Insurance was suitable for them;
- (i) that the Add-on Insurance would not increase 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;
- (j) that they had acquired the suitable level of coverage of the Add-on Insurance; further or alternatively
- (k) that no commission would be paid for 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.

140. Each of the beliefs pleaded in paragraph 139(b) to 139(k) was a unilateral mistake.
141. The Plaintiffs and 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 139 and 140.
142. By reason of:
 - (a) the Add-on Insurance Features, Toyota:
 - (i) was aware, from those circumstances, of the matters pleaded in paragraphs 137, 138, 139, 140 and/or 141 above;
 - (ii) induced the matters pleaded in paragraphs 137, 138, 139, 140 and/or 141;
 - (iii) concealed the matters pleaded in paragraph 137 and, or alternatively,
 - (iv) chose to leave the Plaintiffs and 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 Group Members were acquiring the Add-on Insurance under one or more of the mistaken beliefs pleaded in paragraphs 139 above; and

- (ii) chose to leave the Plaintiffs and the 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.

Particulars

Toyota's knowledge was to be attributed to ADICA in circumstances where it acted as its agent.

ADICA's knowledge was also to be inferred from its participation in Report 492 which contained the findings set out in paragraph 27(a) to 27(c) above.

The Plaintiffs refer to and repeat the particulars subjoined to paragraph 28 above.

Further particulars may be provided after discovery.

- 143. By reason of the matters pleaded in paragraphs 141 and 142:
 - (a) the Plaintiffs and 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.
- 144. By reason of the matters pleaded in paragraphs 137 to 142 and/or 143, the interest paid under the Car Loans in respect of the insurance premiums are monies had and received by Toyota to the use of the Plaintiffs and Group Members, and Toyota is obliged to repay those sums to the Plaintiffs and Group Members.
- 145. Further or alternatively, by reason of the matters pleaded in paragraphs 141 to 142 and, or further or alternatively, 143,
 - (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 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 Group Members,

and one or both of the Defendants (as the case may be) are liable to make restitution of those respective sums to the Plaintiffs and Group Members.

F. COMMON QUESTIONS OF LAW OR FACT

F.1. The arrangements between Toyota and Dealers

146. 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

147. Did ADICA appoint Toyota as its representative within the meaning of s 910A (now s 9) of the Corporations Act, or agent, to issue, and provide general advice on, the Add-on Insurance and/or to issue the Add-on Insurance on behalf of ADICA under the Binder Agreement?

148. Were the Dealers and Dealer Representatives:

- (a) representatives of ADICA within the meaning of s 910A (now s 9) of the Corporations Act by acting on behalf of ADICA in arranging the issue of Add-on Insurance,
- (b) representatives of more than one AFSL,

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

F.3. Regulatory Context

149. By reason of the matters pleaded in this statement of claim, did Dealers and/or Dealer Representatives provide credit assistance to the Plaintiffs and Consumer Group Members within the meaning of ss 7(a) and 8 of the NCCP Act?

150. 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?
151. By reason of the matters pleaded in this statement of claim, did Dealers and/or Dealer Representatives provide a credit service to the Plaintiffs and Consumer Group Members within the meaning of ss 7 and 180A(1)(a) of the NCCP Act?

F.4. The Add-on Insurance

152. Did the Add-on Insurance have the Insurance Benefits pleaded in paragraph 31?
153. Did the Add-on Insurance have the limits and exclusions pleaded in paragraph 32?
154. Did the Add-on Insurance have the features pleaded in paragraph 35?
155. Did Toyota benefit from the issue of the Add-on Insurance by reason of the matters pleaded in paragraph 90?

F.5. The Car Loan Process implemented by Toyota

156. Did the Add-on Insurance sales system include the Add-on Insurance Features pleaded in paragraphs 46 to 50?
157. Did the Add-on Insurance Failures arise?
158. Did the Dealers' Add-on Insurance Conduct arise?
159. Did the Dealer and Dealer Representatives obtain the Plaintiffs' and Group Members' Personal Information when arranging a Car Loan?
160. Was Toyota, or ought Toyota have been, aware of the matters pleaded in paragraph 50?

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

161. By reason of the matters pleaded in this statement of claim, did the Third Plaintiff and 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 Third Plaintiff and Group Members?

162. Was the conduct of Toyota in failing to disclose the matters alleged in paragraphs 92 to 95 or one or more of them to the Third Plaintiff and 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?
163. Was the conduct of Toyota pleaded in paragraph 97 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?
164. By reason of Toyota's conduct pleaded in paragraphs to 97, did Toyota contravene:
 - (a) s 1041H of the Corporations Act; and, or alternatively,
 - (b) s 12DA(1) of the ASIC Act?
165. Was the conduct pleaded in paragraphs 88(a) to 91(d), paragraphs 92(b) to 92(c) and paragraphs 93 to 98, by reason of s 12GH of the ASIC Act and s 769B of the Corporations Act, also engaged in by ADICA?
166. What are the principles governing the quantification of loss or damage (if any) suffered by the Third Plaintiff and 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

167. 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?
168. By reason of the matters pleaded in this statement of claim, are the Third Plaintiff and Consumer Group Members entitled to claim a remedy against the Dealers pursuant to s 180A of the NCCP Act?
169. 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?
170. 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?
171. Was the Dealers' Unfair Conduct conduct on which the Third Plaintiff and Consumer Group Members could reasonably be expected to rely within the meaning of s 74(b) of the NCCP Act?
172. Was the Dealers' Unfair Conduct conduct on which the Third Plaintiff and Consumer Group Members did rely in good faith within the meaning of s 74(c) of the NCCP Act?
173. By reason of the matters pleaded in this statement of claim, is Toyota responsible for the Dealers' Unfair Conduct?
174. By reason of s 77 of the NCCP Act, is Toyota liable to the Third Plaintiff and Consumer Group Members in relation to any loss or damage suffered by the Third Plaintiff and Consumer Group Members as a result of the Dealers' Unfair Conduct?

175. By reason of s 78(1) of the NCCP Act, do the Third Plaintiff and Consumer Group Members have the same remedies against Toyota that the Consumer Group Members have against the Dealers?
176. By reason of the matters pleaded in this statement of claim, are the Third Plaintiff and Consumer Group Members entitled to an order against Toyota under s 180A(2) of the NCCP Act that it:
- (a) pay to the Third Plaintiff and 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?
177. By reason of the matters pleaded in this statement of claim, were the Plaintiffs' Car Loans and the Consumer Car Loans unjust transactions within the meaning of s 76 of the Credit Code?
178. By reason of the matters pleaded in this statement of claim, should the Plaintiffs' Car Loans and 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 Plaintiffs and Consumer Group Members an amount equal to the whole of their costs of their Add-on Insurance; and,
 - (b) requiring Toyota to pay the Plaintiffs and Consumer Group Members interest on the sums payable under (a) above?

F.8. The inappropriate personal advice

179. Did the conduct referred to in paragraphs 120 to 125 contravene s 961L of the Corporations Act?
180. Did the conduct pleaded in paragraphs 120 to 125 contravene ss 961B and 961J of the Corporations Act?

F.9. The unconscionable conduct

181. Did the conduct referred to in paragraphs 5, 6, 7, 46 to 50, and 87 to 90 and, paragraphs 78 to 82, contravene s 12CB of the ASIC Act?

182. Did the conduct pleaded in paragraphs 5, 6, 7, 46 to 50, and 87 to 90, and 78 to 82 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?
183. 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

184. 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 139 and 140 above?
185. By reason of the Add-on Insurance Failures:
- (a) was Toyota aware, from those circumstances, of the matters pleaded in paragraphs 137, 138, 139, 140 and/or 141 above?
 - (b) did Toyota induce the matters pleaded in paragraphs 137, 138, 139, 140 and/or 141 above?
 - (c) did Toyota conceal the matters pleaded in paragraph 137 above?
 - (d) did Toyota choose to leave the Plaintiffs and Group members under one of more of the mistaken beliefs?
186. If the Plaintiffs and Group Members are found to have been mistaken as pleaded and the answer to Question is yes, are the Plaintiffs and Group Members entitled to an order setting aside their Add-on Insurance?
187. By reason of the matters pleaded in paragraphs 137 to 142 and/or 143 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 Group Members, such that Toyota is obliged to repay those sums to the Plaintiffs and Group Members?
188. Further or alternatively, by reason of the matters pleaded in paragraphs 141 to 142 and/or 143 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 Group Members such that it would be unconscionable for Toyota to retain that interest?

189. Further or alternatively, by reason of the Add-on Insurance Failures:

(a) was ADICA aware that circumstances existed which indicated that the Plaintiffs and Group Members were acquiring the Add-on Insurance under one or more of the mistaken beliefs pleaded in paragraph 139 above?

(b) did ADICA choose to leave the Plaintiffs and Group Members under those mistaken beliefs?

190. If the Plaintiffs and Group Members are found to have been mistaken, are the Add-on Insurance policies issued by ADICA to the Plaintiffs and Group Members liable to be set aside for unilateral mistake?

191. Are the premiums paid on the Add-on Insurance monies had and received by ADICA to the use of the Plaintiffs and Group Members, such that ADICA is obliged to repay those sums to the Plaintiffs and Group Members?

192. Further or alternatively, by reason of the matters pleaded in paragraphs 141 to 142 and/or 143 above, was ADICA unjustly enriched by the receipt of the Add-on Insurance premiums at the expense of the Plaintiffs and 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 Plaintiffs and 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 Plaintiffs and 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 Third Plaintiff and 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 Third Plaintiff and 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 Third Plaintiff and 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 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, 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 Plaintiffs and Group Members are entitled;
 - (b) the First Defendant, all of the damages pleaded above to which the Plaintiffs and Consumer Group Members are entitled;
 - (c) the Defendants, all of the damages pleaded above to which the Advised Group Members are entitled; and/or
- 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 Advised Group Members are entitled; and/or

J. Costs.

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

Dated: 16 September 2025

P Collinson KC

E Dias

.....

Signed by Andrew Paull

Solicitor for the Plaintiffs

SCHEDULE 1 – DEFINED TERMS

Defined Term	Defined in Paragraph
Add-on Insurance	1
Add-on Insurance Failures	87
Add-on Insurance Features	46
ADICA	1
ADICA AFSL	4
Advice	120
Advised Group Members	120
APRA	34
ASIC Act	3
Base Rate	6
Binder Agreement	8
Brian Hilton Toyota	71
Brian Hilton Toyota Dealer Agreement	71
Broome Dealer Agreement	54
Broome Toyota	54
Car Loan	1
Car Loan Process	6
CCI	25
Codes	20
Colorado	56
Consumer Car Loans	38
Consumer Group Members	37
Contract Rate	6
Corolla	73
Corporations Act	1
Credit Code	3
Dealer Agreements	5
Dealer Representatives	5
Dealers	5
Dealers' Add-on Insurance Conduct	88
Dealers' Unfair Conduct	105
Extended Warranty Insurance	1

Defined Term	Defined in Paragraph
Finance Gap Insurance	1
Finance Protection Insurance	1
Flex Commission	6
General Advice Warning	61
GESB	34
Group Members	1
Insurance Benefits	31
Misleading Conduct	98
NCCP Act	3
PDSs	29
Personal Information	50
Relevant Period	1
Report 256	22
Report 361	23
Report 470	24
Report 471	25
Report 492	26
Report 622	33
Supreme Court Act	1
Toyota	1
Toyota AFSL	3
TPD	34