

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT

No. S ECI



Case: S ECI 2024 05243

Filed on: 05/11/2025 05:32 PM

BETWEEN:

TRACEY LEIGH HEPI AND ERU MARTIN HEPI

Plaintiffs

and

TOYOTA FINANCE AUSTRALIA LIMITED (ACN 002 435 181)

First Defendant

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

Second Defendant

DEFENCE

Date of Document: 5 November 2025
Filed on behalf of: Second Defendant
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Unless otherwise stated, this Defence adopts the headings and defined terms used in the Further Amended Statement of Claim dated 16 September 2025 (**FASOC**), however in doing so, the Second Defendant (**ADICA**) does not thereby make any admissions.

In answer to the allegations in the FASOC, ADICA says as follows:

A. PRELIMINARY

A.1 *The Group Members*

1. As to paragraph 1, it:

- (a) says that the Third Plaintiff was not joined as a party to this proceeding until 15 September 2025;

Filed on behalf of (name & role of party)

Aioi Nissay Dowa Insurance Company Australia Pty Ltd, Second Defendant

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[Form approved 01/08/2011]

(b) says that given:

- (i) the FASOC only alleges that the First and Second Plaintiffs have claims against ADICA for monies had and received, or equitable restitution, for unilateral mistake, under Part E.6 of the FASOC;
- (ii) the First and Second Plaintiffs' claims under Part E.6 of the FASOC are statute barred for the reasons pleaded in paragraph 152 below; and
- (iii) the FASOC does not allege that any of the Plaintiffs are part of the Advised Group Members sub-group who have the claims alleged in Part E.4 of the FASOC,

it is the case that:

- (iv) the claims of the Plaintiffs and the Group Members are not in respect of, and do not arise out of, the same, similar or related circumstances;
- (v) further and in the alternative to the previous sub-paragraph, the claims of the Plaintiffs and the Group Members do not give rise to a substantial common question of law or fact; and
- (vi) accordingly:
 - (A) the First and Second Plaintiffs did not validly commence this proceeding as a representative proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) in respect of the claims of Group Members for Misleading Conduct, Dealers' Unfair Conduct, and unconscionable conduct under Part E.5 of the FASOC; and
 - (B) further and in the alternative, the Plaintiffs have not validly commenced this proceeding as a representative proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) in respect of the claims of the Advised Group Members sub-group;
- (c) denies that the Plaintiffs and the Group Members have suffered loss or damage, or are entitled to relief against it, by reason of the alleged conduct of ADICA pleaded in the FASOC; and

- (d) by reason of the matters in sub-paragraphs (b) and (c) above, denies the allegations in paragraph 1 and says further that the balance of this defence is subject to such denial.

2. It does not know and therefore does not admit the allegations in paragraph 2.

A.2 *The Defendants*

3. It does not plead to paragraph 3 as it contains no allegations against it.

4. As to paragraph 4, it:

- (a) denies sub-paragraph (d); and
- (b) otherwise admits the allegations in the paragraph.

B. ARRANGEMENTS BETWEEN DEFENDANTS AND DEALERS

B.1 *Arrangements between Dealers and Toyota*

5. As to paragraph 5, it:

- (a) denies that Toyota appointed the Dealers and Dealer Representatives to act as agents of ADICA and refers to and repeats paragraphs 8 and 9 below; and
- (b) otherwise does not know and therefore does not admit the allegations in the paragraph.

6. It does not know and therefore does not admit the allegations in paragraph 6.

7. It does not plead to paragraph 7 as it contains no allegations against it.

B.2 *Arrangements between Toyota and ADICA*

8. As to paragraph 8, it:

- (a) says that:
 - (i) on 1 January 2014, Toyota and ADICA entered into an Agency Agreement;

- (ii) under and on the terms of the Agency Agreement, ADICA appointed Toyota as its agent to provide Insurance Services (as defined in the Agency Agreement) on ADICA's behalf under Toyota's own AFSL;

Particulars

ADICA refers to clause 2.2 of the Agency Agreement.

Insurance Services was defined in the Agency Agreement as comprising the following services:

- Process Insurance Applications and decide whether to accept the Insurance Application and issue an Insurance Policy in accordance with the POS System;
- Bind ADICA by issuing an Insurance Policy on behalf of ADICA in accordance with the POS System;
- Issue Product Documentation to a Client;
- Produce reports relating to the Insurance Business; and
- Other administrative tasks and functions required to fulfil its obligations under this Agreement.

- (iii) under the terms of the Agency Agreement, Toyota was not authorised to provide advice of any kind on behalf of ADICA and acknowledged and agreed that it would only provide financial product advice in relation to the relevant insurance products on its own account and under its own AFSL;

Particulars

ADICA refers to clause 2.4 of the Agency Agreement.

- (iv) under the terms of the Agency Agreement, Toyota was authorised to engage a Representative (as defined), being a representative of Toyota, for the purposes of performing any or all Insurance Services or its obligations under the agreement without the prior consent of ADICA;

Particulars

ADICA refers to clause 6.1(a) of the Agency Agreement.

- (v) it will rely on the full terms and effect of the Agency Agreement at trial;
- (b) says further that, in the premises of the matters pleaded at sub-paragraph 8(a) above, neither Toyota nor the Dealers and Dealer Representatives were authorised representatives of ADICA within the meaning of the Corporations Act;
- (c) says further that from 1 January 2014 until 15 February 2014, ADICA was not the insurer of the life cover provided under the Payment Protection Insurance policy;

Particulars

ADICA refers to the Payment Protection Insurance product disclosure statement dated 1 January 2014.

- (d) says further that from about 16 February 2014 until 1 January 2017, ADICA was not the insurer of the Accidental Death and Funeral cover provided under the Finance Protection Insurance policy; and

Particulars

ADICA refers to the Finance Protection Insurance product disclosure statements issued during that period.

- (e) otherwise denies the allegations in the paragraph.

9. As to paragraph 9, it:

- (a) refers to and repeats paragraph 8 above;
- (b) denies that the Dealers and Dealer Representatives were agents of ADICA or representatives of ADICA within the meaning of s 910A of the Corporations Act;
- (c) denies that s 917C of the Corporations Act had any application to ADICA in the manner alleged;

- (d) further and in the alternative, says that if the Dealers and Dealer Representatives were representatives of ADICA (which is denied):
- (i) the Dealers and Dealer Representatives were also representatives of Toyota and were representatives of Toyota, but not ADICA, in respect of a particular class of financial service, being the provision of financial product advice relating to a general insurance product or a life risk insurance product within the meaning of the Corporations Act;
 - (ii) the Dealers' and Dealer Representatives' conduct in relation to the Add-on Insurance was conduct that related to the provision of financial product advice relating to a general insurance product; and
 - (iii) in the premises, Toyota is responsible for the Dealers' and Dealer Representatives' conduct in relation to the Add-on Insurance;

Particulars

Corporations Act s 917C(2); Corporations Regulations 2001 (Cth), reg 7.1.04F.

- (e) further and in the alternative, says that if:
- (i) the Dealers and Dealer Representatives were representatives of ADICA in relation to the Add-on Insurance (which is denied); and
 - (ii) the Dealers' and Dealer Representatives' conduct in relation to the Add-on Insurance was conduct in relation to the dealing in a financial product that is a general insurance product or a life risk insurance product within the meaning of the Corporations Act (which is denied):
- then:
- (iii) the Dealers and Dealer Representatives were also representatives of Toyota and were representatives of both Toyota and ADICA in respect of that particular class of financial service described in sub-paragraph 9(e)(ii) above;
 - (iv) the Dealers' and Dealer Representatives' conduct was within authority only in relation to Toyota; and

- (v) in the premises, Toyota is responsible for the Dealers' and Dealer Representatives' conduct in relation to the Add-on Insurance;

Particulars

Corporations Act s 917C(3); Corporations Regulations 2001 (Cth), reg 7.1.04F.

ADICA refers to paragraph 8 above and the particulars subjoined thereto.

Further particulars may be provided following discovery.

- (f) otherwise denies the allegations in the paragraph.

10. It admits the allegations in paragraph 10.

C. REGULATORY CONTEXT AND PRODUCT FEATURES

C.1 Financial products and provision of financial services

11. As to paragraph 11:

- (a) it says that the references to "advising on the Add-on Insurance products" in paragraph 11(c) and "the underwriting of benefits" in paragraph 11(f) are vague and embarrassing and are liable to be struck out;
- (b) under cover of that objection:
 - (i) insofar as the paragraph contains allegations against Toyota, it does not know and therefore does not admit the allegations;
 - (ii) it refers to and repeats paragraphs 8 and 9 above and 13 below;
 - (iii) it says that prior to the introduction of s 12BAB(1AA) of the ASIC Act on 26 October 2018, the issuing of Add-on Insurance products was not a financial service; and
- (c) it otherwise admits the allegations in the paragraph.

12. As to paragraph 12:

- (a) insofar as the paragraph contains allegations against Toyota, it does not know and therefore does not admit the allegations;
- (b) it refers to and repeats paragraphs 8 and 9 above and 13 below; and
- (c) it otherwise denies the allegations in the paragraph.

13. As to paragraph 13:

- (a) it says that the reference to the “conduct of Toyota during the Relevant Period in issuing the Add-on Insurance” is vague and embarrassing and is liable to be struck out;
- (b) under cover of that objection, it:
 - (i) refers to and repeats paragraphs 8 and 9 above;
 - (ii) denies that Toyota was an authorised representative of ADICA;
 - (iii) says that Toyota was an agent of ADICA only to the extent that the activities undertaken by Toyota were undertaken on behalf of ADICA and within the scope of its appointment as agent under the Agency Agreement; and
 - (iv) otherwise denies the allegations in the paragraph.

C.2 Statutory obligations

C.2.1 AFSL requirements

14. It does not plead to paragraph 14 as it contains no allegations against it.

15. As to paragraph 15, it:

- (a) refers to and repeats paragraphs 8, 9 and 13 above;
- (b) says further that any advice provided by Toyota, the Dealers and/or the Dealer Representative was not provided on behalf of ADICA; and
- (c) otherwise admits the allegations in the paragraph.

16. As to paragraph 16:

- (a) insofar as the paragraph contains allegations against Toyota, it does not plead to those allegations;
 - (b) it admits that ADICA as the holder of the ADICA AFSL was, at all material times, and from 29 November 2013, required to comply with obligations imposed on it by s 912A of the Corporations Act;
 - (c) it refers to and repeats paragraphs 8 and 9 above; and
 - (d) it otherwise denies the allegations in the paragraph.
17. As to paragraph 17, it:
- (a) says that the reference to “the sale” of Add-on Insurance by Toyota or ADICA is vague and embarrassing and is liable to be struck out;
 - (b) under cover of that objection, it:
 - (i) refers to and repeats paragraph 16 above; and
 - (ii) otherwise denies the allegations in the paragraph.
18. As to paragraph 18:
- (a) it refers to and repeats the objection in paragraph 17 above;
 - (b) under cover of that objection, it:
 - (i) refers to and repeats paragraphs 8, 9, 13 and 16 above; and
 - (ii) otherwise denies the allegations in the paragraph.
19. As to paragraph 19:
- (a) insofar as the paragraph contains allegations against Toyota, it does not know and therefore does not admit the allegations; and
 - (b) it otherwise denies the allegations in the paragraph.

C.2.2. Industry Codes of Practice

20. As to paragraph 20, it:

- (a) refers to and repeats paragraphs 8, 9 and 13 above;
- (b) admits sub-paragraph (a); and
- (c) otherwise denies the allegations in the paragraph.

21. As to paragraph 21, it:

- (a) refers to and repeats paragraphs 8, 9, 13 and 20 above;
- (b) denies that Toyota and/or the Dealers and/or the Dealer Representatives were authorised representatives of ADICA;
- (c) will rely on the full terms and effect of the Codes at trial; and
- (d) otherwise denies the allegations in the paragraph.

C.3 Absence of value, benefit and suitability of Add-on Insurance products*C.3.1. ASIC Reports*

22. As to paragraph 22, it:

- (a) admits that on or about 19 October 2011, ASIC issued Report 256;
- (b) will rely on the full terms and effect of Report 256 at trial; and
- (c) otherwise does not know and therefore does not admit the allegations in the paragraph.

23. As to paragraph 23, it:

- (a) admits that on or about 13 July 2013, ASIC issued Report 361;
- (b) will rely on the full terms and effect of Report 361 at trial; and
- (c) otherwise does not know and therefore does not admit the allegations in the paragraph.

24. As to paragraph 24, it:
 - (a) admits that on or about 29 February 2016, ASIC issued Report 470;
 - (b) will rely on the full terms and effect of Report 470 at trial; and
 - (c) otherwise does not know and therefore does not admit the allegations in the paragraph.
25. As to paragraph 25, it:
 - (a) admits that on or about 29 February 2016, ASIC issued Report 471;
 - (b) will rely on the full terms and effect of Report 471 at trial; and
 - (c) otherwise does not know and therefore does not admit the allegations in the paragraph.
26. As to paragraph 26, it:
 - (a) admits that ASIC requested data on sales, premiums, commissions, claims, pricing, over a three-year period (2013 to 2015) and information on sales processes from ADICA regarding add-on insurance products in about early 2016; and
 - (b) otherwise does not know and therefore does not admit the allegations in the paragraph.
27. As to paragraph 27, it:
 - (a) admits that in about September 2016, ASIC issued Report 492;
 - (b) will rely on the full terms and effect of Report 492 at trial; and
 - (c) otherwise does not know and therefore does not admit the allegations in the paragraph.
28. As to paragraph 28:
 - (a) insofar as the paragraph contains allegations against Toyota, it does not admit the allegations; and

- (b) it otherwise admits the allegations in the paragraph.

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

29. As to paragraph 29, it:

- (a) will rely on the full terms and effect of the PDSs at trial; and
- (b) otherwise admits the allegations in the paragraph.

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

30. As to paragraph 30, it:

- (a) admits the allegations insofar as they relate to ADICA; and
- (b) does not plead to the allegations against Toyota.

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

31. As to paragraph 31, it:

- (a) says that the life benefit and the involuntary unemployment benefit respectively referred to in sub-paragraphs 31(a)(i) and 31(a)(iv) were not underwritten by ADICA;
- (b) will rely on the full terms and effect of the PDSs and policy schedules at trial;
- (c) says that the benefits provided under the Add-on Insurance products included both economic and non-economic benefits, including entitlement to indemnity for a number of eventualities and peace of mind; and
- (d) otherwise admits the allegations in the paragraph.

C.3.5. Limits and exclusions

32. As to paragraph 32, it:

- (a) says that the Add-on Insurance products were subject to the eligibility criteria and other terms as set out in the relevant PDSs;
- (b) will rely on the full terms and effect of the PDSs at trial; and

- (c) otherwise denies the allegations in the paragraph.

C.3.6. Claims ratio

33. As to paragraph 33:

- (a) it says that sub-paragraph 33(a) is vague and embarrassing and liable to be struck out;
- (b) under cover of that objection, it:
 - (i) says the claims ratios for the Add-on Insurance varied throughout the Relevant Period;
 - (ii) otherwise denies the sub-paragraph;
- (c) as to sub-paragraph 33(b), it:
 - (i) says that to the extent the reference to “other types of consumer insurance” is a reference to:
 - (A) all other types of consumer insurance products, it denies the sub-paragraph;
 - (B) some other types of consumer insurance products, it admits that the claims ratio for the Add-on Insurance products was lower than some other types of consumer insurance products which insured against different risks and were distributed in different manners; and
 - (ii) otherwise denies the allegations in the sub-paragraph.

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

34. As to paragraph 34:

- (a) as to sub-paragraph 34(a), it:
 - (i) says that whether the Add-on Insurance conferred coverage that in fact overlapped with other insurance coverage held by the Plaintiffs and Group Members depends on the individual circumstances of each of the Plaintiffs and Group Members; and

- (ii) otherwise denies the allegations in the sub-paragraph;
 - (b) as to sub-paragraph 34(b), it:
 - (i) says the sub-paragraph is vague and embarrassing and liable to be struck out; and
 - (ii) under cover of that objection denies the allegations in the sub-paragraph;
 - (c) sub-paragraph 34(c), it:
 - (i) says the matters alleged in the sub-paragraph depend on all of the individual circumstances of each of the Plaintiffs and Group Members; and
 - (ii) otherwise denies the allegations in the sub-paragraph; and
 - (d) it says further that in certain circumstances ADICA determined to, and did, issue refunds and/or extend the cover offered to some Add-on Insurance policyholders.
35. As to paragraph 35:
- (a) it says that the paragraph is vague and embarrassing and liable to be struck out;
 - (b) under cover of that objection, it:
 - (i) refers to and repeats paragraphs 31 to 34 above; and
 - (ii) otherwise denies the allegations in the paragraph.
36. As to paragraph 36:
- (a) it says that the paragraph is vague and embarrassing and liable to be struck out;
 - (b) under cover of that objection, it:
 - (i) refers to and repeats paragraph 33 above; and

- (ii) otherwise denies the allegations in the paragraph.

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. As to paragraphs 37, it:

- (a) says that the FASOC does not allege any causes of action against ADICA arising under or in connection with the NCCP Act and, accordingly, to the extent paragraphs 37 to 45 do not contain allegations against it, ADICA does not plead to those paragraphs; and
- (b) otherwise does not know and therefore does not admit the allegations in the paragraph.

38. It refers to and repeats paragraph 37 above and otherwise does not know and therefore does not admit the allegations in paragraph 38.

39. It refers to and repeats paragraph 37 above and otherwise does not know and therefore does not admit the allegations in paragraph 39.

40. It refers to and repeats paragraph 37 above and otherwise does not know and therefore does not admit the allegations in paragraph 40

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

41. It refers to and repeats paragraph 37 above and otherwise does not know and therefore does not admit the allegations in paragraph 41.

42. It refers to and repeats paragraph 37 above and otherwise does not know and therefore does not admit the allegations in paragraph 42.

43. It refers to and repeats paragraph 37 above and otherwise does not know and therefore does not admit the allegations in paragraph 43.

44. It refers to and repeats paragraph 37 above and otherwise does not know and therefore does not admit the allegations in paragraph 44.

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

45. It refers to and repeats paragraph 37 above and otherwise does not know and therefore does not admit the allegations in paragraph 45.

D.2 The Add-on Insurance process implemented by Toyota

46. As to paragraph 46:

- (a) it says that the reference to a “sales system” is vague and embarrassing and liable to be struck out; and
- (b) under cover of that objection it:
 - (i) admits the Plaintiffs and Group Members paid for one or more Add-on Insurance Products issued by Toyota in conjunction with their Car Loan;
 - (ii) refers to and repeats paragraphs 47 to 50 below; and
 - (iii) otherwise denies the allegations in the paragraph.

47. It admits the allegations in paragraph 47.

48. It admits the allegations in paragraph 48.

49. As to paragraph 49:

- (a) it says that the reference to “Toyota facilitat[ing] a system” is vague and embarrassing and liable to be struck out; and
- (b) under cover of that objection it:
 - (i) admits that Dealers and Dealer Representatives arranged the sale and issue of Add-on Insurance; and
 - (ii) otherwise it does not know and therefore does not admit the allegations in the paragraph.

50. As to paragraph 50:

- (a) insofar as the paragraph contains allegations against Toyota, it does not know and therefore does not admit the allegations in the paragraph;
- (b) it does not know and therefore does not admit the allegations in the sub-paragraph 50(a);
- (c) as to sub-paragraph 50(b):
 - (i) it says that the sub-paragraph is vague and embarrassing and liable to be struck out and under cover of that objection it:
 - (A) says that the matters alleged in the sub-paragraph depend on the individual circumstances of each of the Plaintiffs and Group Members; and
 - (B) otherwise denies the allegations in the sub-paragraph;
- (d) as to sub-paragraph 50(c):
 - (i) it says that sub-paragraph 50(c)(ii) is vague and embarrassing and liable to be struck out; and
 - (ii) under cover of that objection it:
 - (A) says to the extent the reference to "customers" is a reference to the Plaintiffs and Group Members, the matters alleged in the sub-paragraph depend on the individual circumstances of each of the Plaintiffs and Group Members; and
 - (B) otherwise denies the allegations in the sub-paragraph;
- (e) as to sub-paragraph 50(d), it:
 - (i) says:
 - (A) the policy terms were standard form and not negotiable;
 - (B) the premium was generated by the insurance and origination quotation system known as "BOS" after the input of customer data;

- (C) certain matters alleged in the sub-paragraph depend on the individual circumstances of each of the Plaintiffs and Group Members; and
 - (ii) otherwise denies the allegations in the sub-paragraph;
- (f) as to sub-paragraph 50(e):
 - (i) it refers to the matters in paragraph 50(e)(i) above; and
 - (ii) otherwise denies the allegations in the sub-paragraph;
- (g) as to sub-paragraph 50(f);
 - (i) it says that the sub-paragraph is vague and embarrassing and liable to be struck out; and
 - (ii) under cover of that objection, it:
 - (A) says that the matters alleged in the sub-paragraph depend on the individual circumstances of each of the Plaintiffs and Group Members; and
 - (B) otherwise denies the allegations in the sub-paragraph.

51. As to paragraph 51:

- (a) as to sub-paragraph 51(a):
 - (i) it says that the sub-paragraph is vague and embarrassing and liable to be struck out; and
 - (ii) under cover of that objection:
 - (A) insofar as the sub-paragraph contains allegations against Toyota, it does not know and therefore does not admit the allegations; and
 - (B) it admits the allegations made in the sub-paragraph against ADICA;
- (b) as to sub-paragraph 51(b), it:

- (i) refers to and repeats paragraph 48 above; and
- (ii) otherwise denies the allegations in the sub-paragraph.

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

52. As to paragraph 52, it:

- (a) admits sub-paragraph 52(a);
- (b) says that the First Plaintiff was a consumer with the meaning of s 12BC of the ASIC Act in relation to the issuing of Add-on Insurance products by the Defendants to the First Plaintiff;
- (c) denies that the First Plaintiff necessarily held life and total and permanent disablement cover by reason of the matters alleged in sub-paragraph 52(e); and
- (d) otherwise does not know and therefore does not admit the allegations in the paragraph.

53. As to paragraph 53, it:

- (a) admits sub-paragraph 53(a);
- (b) denies that the Second Plaintiff necessarily held life and total and permanent disablement cover by reason of the matters alleged in sub-paragraph 53(e); and
- (c) otherwise does not know and therefore does not admit the allegations in the paragraph.

54. It does not know and therefore does not admit the allegations in paragraph 54.

55. As to paragraph 55, it:

- (a) says that to the extent the paragraph alleges matters pertaining to the fact, nature and/or characterisation of the arrangements between Toyota and Broome Toyota, it does not know and therefore does not admit those allegations;
- (b) refers to and repeats paragraphs 8 and 9 above; and

- (c) otherwise denies the allegations in the paragraph.
56. It does not know and therefore does not admit the allegations in paragraph 56.
57. It does not know and therefore does not admit the allegations in paragraph 57.
58. It refers to and repeats sub-paragraph 50(b) above and otherwise does not know and therefore does not admit the allegations in paragraph 58.
59. It does not know and therefore does not admit the allegations in paragraph 59.
60. As to paragraph 60, it:
- (a) admits that on or around 18 December 2017 the First Plaintiff purchased the Add-on Insurance products described in sub-paragraph 60(f) for the premiums specified therein; and
 - (b) otherwise does not know and therefore does not admit the allegations in the paragraph.
61. As to paragraph 61, it:
- (a) refers to and repeats paragraphs 8, 9 and 13 above;
 - (b) says that:
 - (i) on or about 18 December 2017, the First Plaintiff received correspondence from Toyota Insurance enclosing the Policy Schedule, Policy and Product Disclosure Statement and Financial Services Guide;
 - (ii) on or about 19 December 2017, the First Plaintiff received correspondence from Toyota Insurance which, *inter alia*, confirmed the Finance Protection Insurance and Finance Gap Insurance policies, advised the First Plaintiff to refer to the relevant PDSs, and informed her that she could cancel the policies for a full refund within 21 days;
 - (iii) the relevant PDS for each policy:
 - (A) stated in the section entitled “Important information” that “you are not obliged to buy [the relevant insurance product], nor is

its purchase a condition of the finance contract you are entering into”, and “[i]f you choose to take out this type of insurance, you may do so with an insurer of your choice”;

(B) disclosed the terms, conditions and eligibility requirements under the policy;

(C) disclosed the extent of the cover provided under the policy; and

(D) disclosed the existence of cooling off rights and that the policy could otherwise be cancelled;

(iv) the Loan Offer document received and signed by the First and Second Plaintiffs:

(A) disclosed the amount of credit attributable to the two insurance policies;

(B) disclosed that commission is paid by Toyota to the Dealer and Dealer Representatives and, where ascertainable, the amount of that commission as a percentage of the premium;

(C) stated that “the person arranging this finance for you is acting as an agent for Toyota Finance, and therefore they are not acting in your interests or on your behalf. If you require advice on the credit contract, you should seek independent financial advice”;

(D) stated that “[y]ou **do not** have to take our consumer credit insurance unless you want to” and “[i]f you take out insurance, the credit provider cannot insist on any particular insurance company”;

(v) the Financial Services Guide received by the First Plaintiff:

(A) stated that “[i]f you are provided with advice, it is general in nature and does not take into account your objectives, needs or financial situation” and that “you should consider the appropriateness of the advice for your objectives, needs and financial situation”;

- (B) disclosed that Toyota provides the insurance as agent for ADICA, and that Toyota was acting *“for the insurer and not on your behalf”*; and
 - (C) disclosed that Toyota receives commissions and other payments from the insurer;
 - (vi) the Policy Schedule for the Finance Protection Insurance disclosed *“the responses to the questions we asked you when you applied for this insurance”*, which included:
 - (A) *“that you understand that any Illness or Injury, for which you have sought or received treatment from a registered medical practitioner or health professional within the 6 month period prior to the commencement of this policy, will be deemed a pre-existing condition and that claims in respect of the condition will not accepted”*;
 - (B) *“[y]ou are ... presently a citizen or permanent resident of Australia...”*;
 - (c) otherwise does not know and therefore does not admit the allegations in the paragraph.
62. As to paragraph 62, it:
- (a) refers to and repeats paragraphs 8, 9, 13 and 61 above; and
 - (b) otherwise does not know and therefore does not admit the allegations in the paragraph.
63. As to paragraph 63:
- (a) it does not know and therefore does not admit the allegations in sub-paragraph 63(a);
 - (b) as to sub-paragraph 63(b), it:
 - (i) refers to and repeats paragraphs 8, 9 and 13 above; and
 - (ii) otherwise denies the allegations in the sub-paragraph; and

- (c) it does not know and therefore does not admit the allegations in sub-paragraph 63(c).

64. As to paragraph 64, it:

- (a) refers to and repeats paragraphs 61 above and 129 below; and
- (b) otherwise denies the allegations in the paragraph.

65. As to paragraph 65, it:

- (a) admits that the Second Plaintiff was not a named policy-holder on the policy schedule;
- (b) says that liability under the First and Second Plaintiffs' Car Loan was joint and several; and
- (c) otherwise denies the allegations in the paragraph.

66. As to paragraph 66, it:

- (a) refers to and repeats paragraph 65(a) above; and
- (b) otherwise does not know and therefore does not admit the allegations in the paragraph.

67. As to paragraph 67, it:

- (a) says:
 - (i) the First Plaintiff's Finance Protection Insurance lapsed in December 2023;
 - (ii) refers to and repeats paragraph 65(a) above; and
- (b) otherwise denies the allegations in the paragraph.

68. As to paragraph 68, it:

- (a) refers to and repeats paragraph 65(a) above; and
- (b) otherwise admits the allegations in the paragraph.

69. As to paragraph 69, it:

- (a) refers to and repeats paragraph 65(a) above;
- (b) admits that the First Plaintiff paid \$2,640 in respect of the premiums for her Add-on Insurance; and
- (c) otherwise does not know and therefore does not admit the allegations in the paragraph.

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

70. As to paragraph 70, it:

- (a) admits sub-paragraph 70(a);
- (b) says that the Third Plaintiff was a consumer with the meaning of s 12BC of the ASIC Act in relation to the issuing of Add-on Insurance products by the Defendants to the Third Plaintiff;
- (c) denies that the Third Plaintiff necessarily held life and total and permanent disablement cover by reason of the matters alleged in sub-paragraphs 70(d) and 70(e); and
- (d) otherwise does not know and therefore does not admit the allegations in the paragraph.

71. It does not know and therefore does not admit the allegations in paragraph 71.

72. As to paragraph 72, it:

- (a) says that to the extent the paragraph alleges matters pertaining to the fact, nature and/or characterisation of the arrangements between Toyota and Brian Hilton Toyota, it does not know and therefore does not admit those allegations;
- (b) refers to and repeats paragraphs 8, 9 and 13 above; and
- (c) otherwise denies the allegations in the paragraph.

73. It does not know and therefore does not admit the allegations in paragraph 73.

74. It does not know and therefore does not admit the allegations in paragraph 74.
75. It refers to and repeats sub-paragraph 50(b) above and otherwise does not know and therefore does not admit the allegations in paragraph 75.
76. It does not know and therefore does not admit the allegations in paragraph 76.
77. As to paragraph 77, it:
- (a) admits the allegations in sub-paragraph 77(f); and
 - (b) otherwise, does not know and therefore does not admit the allegations in the paragraph.
78. As to paragraph 78, it:
- (a) refers to and repeats paragraphs 8, 9 and 13 above;
 - (b) says that:
 - (i) the relevant PDS for each policy:
 - (A) stated in the section entitled “Important information” that “you are not obliged to buy [the relevant insurance product], nor is its purchase a condition of the finance contract you are entering into”, and “[i]f you choose to take out this type of insurance, you may do so with an insurer of your choice”;
 - (B) disclosed the terms, conditions and eligibility requirements under the policy;
 - (C) disclosed the extent of the cover provided under the policy;
 - (D) disclosed the existence of cooling off rights and that the policy could otherwise be cancelled;
 - (ii) the Loan Offer document received and signed by the Third Plaintiffs:
 - (A) disclosed the amount of credit attributable to the two insurance policies;

- (B) disclosed that commission is paid by Toyota to the Dealer and Dealer Representatives and, where ascertainable, the amount of that commission as a percentage of the premium;
 - (C) stated that “the person arranging this finance for you is acting as an agent for Toyota Finance, and therefore they are not acting in your interests or on your behalf. If you require advice on the credit contract, you should seek independent financial advice”;
 - (D) stated that “[y]ou **do not** have to take our consumer credit insurance unless you want to” and “[i]f you take out insurance, the credit provider cannot insist on any particular insurance company”;
- (iii) on or about 2 January 2020, the Third Plaintiff received correspondence from Toyota Insurance which, *inter alia*, confirmed the Finance Protection Insurance and Finance Gap Insurance policies, advised the Third Plaintiff to refer to the relevant PDSs, and informed her that she could cancel the policies for a full refund within 21 days;
- (c) otherwise does not know and therefore does not admit the allegations in the paragraph.

79. As to paragraph 79, it:

- (a) refers to and repeats paragraphs 8, 9, 13 and 78 above; and
- (b) otherwise does not know and therefore does not admit the allegations in the paragraph.

80. As to paragraph 80:

- (a) it does not know and therefore does not admit the allegations in sub-paragraph 80(a);
- (b) as to sub-paragraph 80(b), it:
 - (i) refers to and repeats paragraphs 8 and 9 above;
 - (ii) otherwise denies the allegations in the sub-paragraph; and

- (c) it does not know and therefore does not admit the allegations in sub-paragraph 80(c).

81. As to paragraph 81, it:

- (a) refers to and repeats paragraphs 78 above and 129 below; and
- (b) otherwise denies the allegations in the paragraph.

82. It denies the allegations in paragraph 82.

83. As to paragraph 83, it:

- (a) admits that on or around 25 January 2021, the Third Plaintiff's insurance policies were cancelled at the request of the Third Plaintiff; and
- (b) otherwise denies the allegations in the paragraph.

84. It admits the allegations in paragraph 84.

85. As to paragraph 85, it:

- (a) admits that the Third Plaintiff paid \$1,190 in respect of the premiums for her Add-on Insurance; and
- (b) otherwise does not know and therefore does not admit the allegations in the paragraph.

86. It admits the allegations in paragraph 86.

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

87. As to paragraph 87, it:

- (a) refers to and repeats paragraphs 8, 9, 13, 61 and 78 above;
- (b) says that, beyond the matters pleaded in paragraphs 61 and 78 above as they apply to the Plaintiffs and *mutatis mutandis* to the Group Members, the extent to which the matters pleaded in paragraph 87 are accurate depends on the individual circumstances of the Plaintiffs and the Group Members including the circumstances in which they acquired the relevant Add-on Insurance products;

- (c) refers to and relies upon the terms of the PDSs and policy schedules for each Add-on Insurance product which set out the terms and conditions of the cover provided; and
- (d) otherwise does not know and therefore does not admit the allegations in the paragraph.

88. As to paragraph 88:

- (a) it says that the entire paragraph is embarrassing as it contains contradictory and irreconcilable allegations and is liable to be struck out;
- (b) further and in the alternative, it says sub-paragraph 88(d)(iv) is vague and embarrassing and is liable to be struck out; and
- (c) under cover of those objections, it:
 - (i) says that the matters alleged in the paragraph depend on the individual circumstances of each of the Plaintiffs and the Group Members;
 - (ii) refers to and repeats paragraphs 8, 9, 13, 61, 78 and 87 above and 129 below; and
 - (iii) otherwise does not know and therefore does not admit the allegations in the paragraph.

D.6 Toyota did not have in place adequate controls

89. As to paragraph 89, it:

- (a) refers to and repeats paragraphs 8, 9, 13 and 88 above; and
- (b) otherwise denies the allegations in the paragraph.

90. As to paragraph 90, it:

- (a) says that from the period between 1 February 2014 to 31 December 2016, Finance Protection Insurance included cover for accidental death and thereafter Finance Protection Insurance did not include cover for accidental death;

- (b) says further that the coverage provided by the Finance Protection Insurance and the Finance Gap Insurance was subject to the terms of the relevant policy and was otherwise up to the maximum amount of cover chosen by the policyholder; and
- (c) otherwise denies the allegations in the paragraph.

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

91. As to paragraph 91, it:

- (a) refers to and repeats paragraphs 8, 9, 13, 46 to 50 and 87 to 89 above;
- (b) admits that ADICA knew the matters alleged in paragraphs 46(a), 47, 48(a) and 49(b); and
- (c) otherwise denies the allegations in the paragraph.

E. THE CONTRAVENING CONDUCT

E.1 Misleading or deceptive conduct

92. As to paragraph 92, it:

- (a) says that the matters alleged in the paragraph depend on the individual circumstances of each of the Third Plaintiff and the Group Members;
- (b) refers to and repeats paragraph 8, 9, 13, 78 and 87 above; and
- (c) otherwise denies the allegations in the paragraph.

93. As to paragraph 93:

- (a) it says that the paragraph is vague and embarrassing and is accordingly liable to be struck out;
- (b) under cover of that objection, it:
 - (i) says that the matters alleged in the paragraph depend on the individual circumstances of each of the Third Plaintiff and the Group Members;

- (ii) refers to and repeats paragraphs 8, 9, 13, 78 and 87 above; and
- (iii) otherwise denies the allegations in the paragraph.

94. As to paragraph 94:

- (a) it says that the entire paragraph is embarrassing as it contains contradictory and irreconcilable allegations and is accordingly liable to be struck out;
- (b) under cover of that objection, it:
 - (i) says that the matters alleged in the paragraph depend on all of the individual circumstances of each of the Third Plaintiff and the Group Members;
 - (ii) refers to and repeats paragraph 8, 9, 13, 61, 78 and 87 above;
- (c) further and in the alternative, as to sub-paragraphs 94(c), 94(d) and 94(e), it says that, if made (which is not admitted), the alleged representations were statements of opinion held by the Dealers and/or the Dealer Representatives; and
- (d) otherwise does not know and therefore does not admit the allegations in the paragraph.

95. As to paragraph 95, it:

- (a) admits sub-paragraph 95(a);
- (b) says that sub-paragraph 95(d):
 - (i) is vague and embarrassing and is accordingly liable to be struck out;
 - (ii) under cover of that objection, denies the allegations in the sub-paragraph;
- (c) refers to and repeats paragraph 129 below; and
- (d) otherwise denies the allegations in the paragraph.

96. As to paragraph 96, it:
- (a) says that the matters alleged in the paragraph depend on the individual circumstances of each of the Third Plaintiff and the Group Members;
 - (b) refers to and repeats paragraphs 8, 9, 13, 78, 87, 92, 93 and 95 above; and
 - (c) otherwise does not know and therefore does not admit the allegations in the paragraph.
97. As to paragraph 97, it:
- (a) says that the matters alleged in the paragraph depend on the individual circumstances of each of the Third Plaintiff and the Group Members;
 - (b) refers to and repeats paragraphs 8, 9, 13, 92, 93 and 95 above; and
 - (c) otherwise does not know and therefore does not admit the allegations in the paragraph.
98. As to paragraph 98, it:
- (a) refers to and repeats paragraphs 92 to 97 above and 101 below; and
 - (b) otherwise denies the allegations in the paragraph.
99. As to paragraph 99, it:
- (a) refers to and repeats paragraphs 8, 9 and 13 above; and
 - (b) otherwise does not plead to the paragraph as it contains no allegations against it.
100. As to paragraph 100, it:
- (a) refers to and repeats paragraphs 8, 9, 13, 78, 87, 94 to 98 above; and
 - (b) otherwise denies the allegations in the paragraph.
101. As to paragraph 101:
- (a) it says that the pleading is vague and embarrassing in that it does not specify or identify:

- (i) which of the innumerable matters said to constitute the “Misleading Conduct” was relied upon by the Third Plaintiff; and the Group Members; and
 - (ii) how any alleged reliance related to the relevant conduct;
- (b) under cover of that objection, it:
- (i) says that the matters alleged in the paragraph depend on the individual circumstances of each of the Plaintiffs and the Group Members;
 - (ii) says further that at all material times the sale of Add-on Insurance products occurred in circumstances where the Third Plaintiff and the Group Members were afforded a cooling off period of 21 days from the commencement of the relevant Add-on Insurance policy during which the insured could, if they had not already done so, and among other things:
 - (A) read the PDS, supplementary PDS, Financial Services Guide and policy documents;
 - (B) obtain personal advice on the suitability of the Add-on Insurance products;
 - (C) consider the protection offered by the relevant Add-on Insurance product having regard to their personal circumstances;
 - (D) unilaterally cancel the policy and obtain a full refund of the premiums and tax paid;

Particulars

Corporations Act s 1019B; *Corporations Regulations*
2001 (Cth), reg 7.9.67.

- (iii) refers to and repeats paragraphs 8, 9, 13, 61, 78, 87, 92 to 97 above; and
- (iv) otherwise denies the allegations in the paragraph.

102. As to paragraph 102, it:

- (a) denies that the Third Plaintiff and the Group Members suffered the loss or damage claimed or at all;
- (b) further and in the alternative, says that to the extent the Third Plaintiff and the Group Members suffered loss or damage (which is denied):
 - (i) such loss or damage was caused or contributed to by the failure of the Third Plaintiff and the Group Members to take reasonable care;

Particulars

ADICA refers to and repeats paragraphs 61, 78 and 87 above. It is to be inferred that the Third Plaintiff and any such Group Members paid no regard to the relevant disclosures (mandated or otherwise) which were made for their benefit and would have otherwise alerted them to the matters alleged not to have been disclosed.

- (ii) such loss or damage was caused or contributed to by the failure of the Third Plaintiff and the Group Members to:

- (A) cancel the relevant Add-on Insurance policy during any applicable cooling off period;

Particulars

To the extent that it was a term of an Add-on Insurance policy that the Third Plaintiff or a Group Member had a cooling off period after the purchase of the relevant Add-on Insurance policy to request that it be cancelled, the Third Plaintiff and Group Members had the opportunity to read the PDS and/or policy document in respect of the product, to obtain personal advice, to make inquiries to determine whether other insurers offered similar insurance on more favourable terms and, if so or if they otherwise desired to do so, to request the

cancellation of the Add-on Insurance product for a full refund.

- (B) further and in the alternative, cancel the relevant Add-on Insurance policy and claim a refund as provided for in the relevant PDS and/or policy documents (as applicable);
- (C) further and in the alternative, cancel the relevant Add-on Insurance policy and/or claim a refund after receipt of communications from Toyota Insurance reminding them of the existence of cover;

Particulars

For example, with respect to the First Plaintiff, noting that the First Plaintiff does not claim in her own right:

- 1 Letter dated 18 December 2018 from Toyota Insurance to the First Plaintiff in respect of her Finance Protection Insurance policy;
- 2 Letter dated 18 December 2019 from Toyota Insurance to the First Plaintiff in respect of her Finance Protection Insurance policy;
- 3 Letter dated 18 December 2020 from Toyota Insurance to the First Plaintiff in respect of her Finance Protection Insurance policy;
- 4 Letter dated 18 December 2021 from Toyota Insurance to the First Plaintiff in respect of her Finance Protection Insurance policy;
- 5 Letter dated 18 December 2022 from Toyota Insurance to the First Plaintiff in respect of her Finance Protection Insurance policy;

- 6 Letter dated 18 December 2018 from Toyota Insurance to the First Plaintiff in respect of her Finance Gap Insurance policy;
- 7 Letter dated 18 December 2019 from Toyota Insurance to the First Plaintiff in respect of her Finance Gap Insurance policy;
- 8 Letter dated 18 December 2020 from Toyota Insurance to the First Plaintiff in respect of her Finance Gap Insurance policy;
- 9 Letter dated 18 December 2021 from Toyota Insurance to the First Plaintiff in respect of her Finance Gap Insurance policy;
- 10 Letter dated 18 December 2022 from Toyota Insurance to the First Plaintiff in respect of her Finance Gap Insurance policy.

With respect to the Third Plaintiff:

- 1 Letter dated 31 December 2020 from Toyota Insurance to the Third Plaintiff in respect of her Finance Protection Insurance policy;
- 2 Letter dated 31 December 2020 from Toyota Insurance to the Third Plaintiff in respect of her Finance Gap Insurance policy.

(iii) the quantum of any such loss or damage is reduced and damages are not payable to the Third Plaintiff and the Group Members to the extent the Third Plaintiff and the Group Members have received:

- (A) refunds paid to the Third Plaintiff and Group Members as a result of the early cancellation of their Add-on Insurance policies;
- (B) payments pursuant to any remediation programs undertaken in respect of the Add-on Insurance products;

(C) amounts or the benefit of any claims paid by the Defendants;

(D) benefits referable to the existence of a potential right to indemnity during the currency of the Add-on Insurance policy.

Particulars

The Third Plaintiff received a refund of \$598.36 on or around 27 January 2021 as a result of her request for the early cancellation of her Add-on Insurance policies.

103. It denies the allegations in paragraph 103.

E.2 Unfair conduct

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

104. As to paragraphs 104, it:

(a) says that the FASOC does not allege any causes of action against ADICA arising under or in connection with the NCCP Act and, accordingly to the extent paragraphs 104 to 116 do not contain allegations against ADICA, it does not plead to those paragraphs; and

(b) otherwise denies the allegations in the paragraph.

105. As to paragraph 105, it:

(a) refers to and repeats paragraph 104 above; and

(b) otherwise does not know and therefore does not admit the allegations in the paragraph.

E.2.2. Consequences of the Dealers' Unfair Conduct

106. As to paragraph 106, it:

(a) refers to and repeats paragraph 104 above; and

(b) otherwise denies the allegations in the paragraph.

107. As to paragraph 107, it:

- (a) refers to and repeats paragraph 104 above; and
- (b) otherwise denies the allegations in the paragraph.

108. As to paragraph 108, it:

- (a) refers to and repeats paragraph 104 above; and
- (b) otherwise does not know and therefore does not admit the allegations in the paragraph.

109. As to paragraph 109, it:

- (a) refers to and repeats paragraph 104 above; and
- (b) otherwise does not know and therefore does not admit the allegations in the paragraph.

110. As to paragraph 110, it:

- (a) refers to and repeats paragraph 104 above; and
- (b) otherwise does not know and therefore does not admit the allegations in the paragraph.

111. At to paragraph 111, it:

- (a) refers to and repeats paragraph 104 above; and
- (b) otherwise denies the allegations in the paragraph.

112. As to paragraph 112, it:

- (a) refers to and repeats paragraph 104 above;
- (b) says that the matters alleged in the paragraph depend on all of the individual circumstances of each of the Plaintiffs and the Group Members; and
- (c) otherwise does not know and therefore does not admit the allegations in the paragraph.

113. As to paragraph 113, it:

- (a) refers to and repeats paragraphs 104, 110, 111 and 112 above; and
- (b) otherwise does not know and therefore does not admit the allegations in the paragraph.

114. As to paragraph 114, it:

- (a) refers to and repeats paragraph 104 above; and
- (b) otherwise denies the allegations in the paragraph.

115. As to paragraph 115, it:

- (a) refers to and repeats paragraphs 104 and 114 above; and
- (b) otherwise does not know and therefore does not admit the allegations in the paragraph.

116. As to paragraph 116, it:

- (a) refers to and repeats paragraphs 104 and 114 above; and
- (b) otherwise does not know and therefore does not admit the allegations in the paragraph.

E.3 Unjust Transactions

117. As to paragraphs 117, it:

- (a) says that the FASOC does not allege any causes of action against ADICA arising under or in connection with the Credit Code and, accordingly, to the extent paragraphs 117 to 119 do not contain allegations against ADICA, it does not plead to those paragraphs; and
- (b) otherwise denies the allegations in the paragraph.

118. As to paragraph 118, it:

- (a) refers to and repeats paragraph 117 above; and
- (b) otherwise denies the allegations in the paragraph.

119. As to paragraph 119, it:

- (a) refers to and repeats paragraph 117 above; and
- (b) otherwise denies the allegations in the paragraph.

E.4 Inappropriate personal advice

120. As to paragraph 120, it:

- (a) refers to and repeats paragraph 1, 8, 9, 13, 61, 78 and 87 above;
- (b) says that any allegation that a Dealer or a Dealer Representative made a recommendation or stated an opinion to an Advised Group Member in connection with an Add-on Insurance product is inconsistent with the Plaintiffs' apparent allegations at paragraphs 79(a), 88(c) and 93 that the Group Member purchased the product unknowingly; and
- (c) otherwise denies the allegations in the paragraph.

121. As to paragraph 121:

- (a) it refers to and repeats paragraph 8, 9, 13, 61, 78, 87 and 120 above;
- (b) insofar as the paragraph contains allegations against Toyota, it does not know and therefore does not admit the allegations; and
- (c) it otherwise denies the allegations in the paragraph.

122. As to paragraph 122:

- (a) it refers to and repeats paragraph 8, 9, 13, 32 to 34, 47 61, 78, 87 to 89 and 120 above;
- (b) insofar as the paragraph contains allegations against Toyota, it does not know and therefore does not admit the allegations; and
- (c) it otherwise denies the allegations in the paragraph.

123. As to paragraph 123:

- (a) it refers to and repeats paragraph 8, 9, 13, 32 to 34, 37, 61, 78, 87 and 120 above;
- (b) insofar as the paragraph contains allegations against Toyota, it does not know and therefore does not admit the allegations; and
- (c) it otherwise denies the allegations in the paragraph.

124. As to paragraph 124:

- (a) it refers to and repeats paragraph 8, 9, 13, 61, 78, 87 and 120 above;
- (b) insofar as the paragraph contains allegations against Toyota, it does not know and therefore does not admit the allegations; and
- (c) it otherwise denies the allegations in the paragraph.

125. As to paragraph 125:

- (a) it refers to and repeats paragraph 8, 9, 13, 61, 78, 87 and 120 above;
- (b) insofar as the paragraph contains allegations against Toyota, it does not know and therefore does not admit the allegations; and
- (c) it otherwise denies the allegations in the paragraph.

126. As to paragraph 126, it:

- (a) refers to and repeats paragraph 8, 9, 13, 61, 78, 87, 102 and 120 above; and
- (b) otherwise denies the allegations in the paragraph.

127. As to paragraph 127, it:

- (a) refers to and repeats paragraph 8, 9 and 13 above; and
- (b) otherwise denies the allegations in the paragraph.

E.5 Unconscionable conduct

128. As to paragraph 128:

- (a) insofar as the paragraph contains allegations against Toyota, it does not admit the allegations;
- (b) as to sub-paragraph 128(b), it:
 - (i) refers to and repeats paragraphs 8, 9, 13, 46 to 50 and 87 to 90 above;
 - (ii) admits that ADICA knew the matters alleged in paragraphs 46(a), 47, 48(a) and 49(b); and
 - (iii) otherwise denies the allegations in the sub-paragraph;
- (c) as to sub-paragraph 128(c), it:
 - (i) refers to and repeats sub-paragraphs 50(d) and 50(e) above; and
 - (ii) otherwise denies the allegations in the sub-paragraph;
- (d) otherwise denies the allegations in the paragraph.

129. As to paragraph 129:

- (a) it says that the paragraph is vague and embarrassing and liable to be struck out;
- (b) under cover of that objection:
 - (i) insofar as the paragraph contains allegations against Toyota, it does not know and therefore does not admit the allegations;
 - (ii) it otherwise denies the allegations in the paragraph and says further that:
 - (A) the Add-on Insurance products had material financial value for and conferred material benefits on the Third Plaintiff and Group Members;

Particulars

A contract of insurance constitutes, in return for the payment of a premium from the insured, the provision of protection by the insurer against a possible eventuality, the occurrence and timing of which (if at all) is inherently uncertain.

The insurance provided by the Add-on Insurance products conferred protection against a number of possible eventualities (**Protections**). Those Protections provided to the holders of Add-on Insurance products conferred financial and non-financial benefits, including entitlement to indemnity, risk transfer from the insured to the insurer, and peace of mind for the insured. It does not follow that because a holder did not make a claim under the policy, the policy offered no value to or conferred no benefit on that person. It is in the nature of insurance, that protection is offered against risks which never eventuate. Further, the value each insured ascribes to the Protections depends on and will vary according to their individual circumstances.

By reason of its acceptance of risk under the Add-on Insurance product policies, ADICA was required, consistent with its prudential obligations and sound financial management, to retain capital to ensure it could meet the liabilities it incurred or may incur in the future under the policies and it did so.

The reliance on claims ratios is misconceived. Claims ratios are not determinative of the value or benefit of an insurance product to a particular insured, either prospectively or retrospectively,

nor are they determinative of the profitability of a particular product to the insurer.

The reliance on the possibility that the Third Plaintiff and Group Members held separate insurance policies, including for life and total permanent disability insurance, is also misconceived. While the benefits conferred by such insurance policies may be enlivened upon the occurrence of the same or similar events as those relating to the Add-on Insurance products, it does not mean that the products “overlapped”, that the policies covered the risks, or that the holders of Add-on Insurance products could not obtain benefits from both policies concurrently.

(B) the suitability of the Add-on Insurance products to the Third Plaintiff and Group Members depends on the individual circumstances of each of the Third Plaintiff and Group Members.

130. As to paragraph 130:

- (a) it says that the pleading is vague and embarrassing in that the matters referred to in paragraphs 5 to 7, 46 to 50, 78 to 82 and 87 to 90 above constitute innumerable combinations and permutations of conduct, circumstances and knowledge, without specifying which of those combinations and permutations are said to be unconscionable;
- (b) under cover of that objection:
 - (i) insofar as the paragraph contains allegations against Toyota, it does not know and therefore does not admit the allegations;
 - (ii) it refers to and repeats paragraphs 5, 8, 9, 13, 78 to 82, 87 to 90 and 130 above;
 - (iii) it says that prior to the introduction of s 12BAB(1AA) of the ASIC Act on 26 October 2018, the conduct alleged was not in connection with

the supply or possible supply of financial services to a person, or the acquisition or possible acquisition of financial services from a person; and

- (iv) it otherwise denies the allegations in the paragraph.

131. As to paragraph 131:

- (a) it refers to and repeats the objection in paragraph 130 above;
- (b) under cover of that objection:
 - (i) insofar as the paragraph contains allegations against Toyota, it does not know and therefore does not admit the allegations;
 - (ii) it refers to and repeats paragraphs 5, 8, 9, 13, 22 to 36, 78 to 82, 87 to 90, 129 and 130 above; and
 - (iii) it otherwise denies the allegations in the paragraph.

132. As to paragraph 132:

- (a) it refers to and repeats the objection in paragraph 130 above;
- (b) under cover of that objection, it:
 - (i) refers to and repeats paragraphs 5, 8, 9, 12, 13, 78 to 82, 87 to 90, 129 and 130 above; and
 - (ii) otherwise denies the allegations in the paragraph.

133. As to paragraph 133:

- (a) it says that the pleading is vague and embarrassing in that it does not identify with any specificity the conduct which is said to be unconscionable, beyond referring to the issuing of the Add-on Insurance;
- (b) under cover of that objection, it:
 - (i) refers to and repeats paragraphs 8, 9, 13, 87, 91 and 101 above; and
 - (ii) otherwise denies the allegations in the paragraph.

134. As to paragraph 134:

- (a) it refers to and repeats the objection in paragraph 133 above;
- (b) under cover of that objection, it:
 - (i) refers to and repeats paragraphs 8, 9, 13, 22 to 36, 87 to 91, 101, 128 and 129 above; and
 - (ii) otherwise denies the allegations in the paragraph.

135. As to paragraph 135, it:

- (a) refers to and repeats paragraph 102 above; and
- (b) denies that the Third Plaintiff and the Group Members suffered the loss or damage claimed or at all.

136. It denies the allegations in paragraph 136.

E.6 Money had and received, and unjust enrichment

137. As to paragraph 137:

- (a) it says that the entire paragraph is embarrassing as it contains innumerable contradictory and irreconcilable allegations and is liable to be struck out;
- (b) under cover of that objection, it:
 - (i) refers to and repeats paragraphs 8, 9, 13, 61, 78, 87 and 129 above;
 - (ii) says that the matters about which the Plaintiffs and Group Members were or were not informed depend on the individual circumstances of each of the Plaintiffs and Group Members; and
 - (iii) otherwise denies the in the paragraph.

138. As to paragraph 138:

- (a) it refers to and repeats the objection in paragraph 137 above;
- (b) under cover of that objection, it:

- (i) refers to and repeats paragraphs 8, 9, 13, 62, 79, 87, 101 and 129 above;
- (ii) says that the information which would have been material to the decisions of the Plaintiffs and Group Members to purchase Add-on Insurance products depends on the individual circumstances of each of the Plaintiffs and Group Members; and
- (iii) otherwise denies the allegations in the sub-paragraph.

139. As to paragraph 139, it:

- (a) refers to and repeats paragraphs 8, 9, 13, 61, 78, 87, 101, 102, 129, 137 and 138 above;
- (b) does not know and therefore does not admit the states of mind of the Plaintiffs or the Group Members; and
- (c) otherwise denies the allegations in the paragraph.

140. As to paragraph 140, it:

- (a) refers to and repeats paragraph 139 above;
- (b) admits that the beliefs pleaded in sub-paragraphs 139(e), 139(i) and 139(k), if held, were incorrect; and
- (c) otherwise denies the allegations in the paragraph.

141. As to paragraph 141:

- (a) it says that the pleading is vague and embarrassing in that it does not specify which of the matters alleged in paragraph 139 is said to be causative of the Plaintiffs' and the Group Members' decision to purchase the Add-on Insurance;
- (b) under cover of that objection, it:
 - (i) says that the matters alleged in the paragraph depend on the individual circumstances of each of the Plaintiffs and the Group Members;

- (ii) refers to and repeats paragraphs 139 and 140 above; and
- (iii) otherwise denies the allegations in the paragraph.

142. As to paragraph 142:

- (a) insofar as the paragraph contains allegations against Toyota, it does not know and therefore does not admit the allegations;
- (b) it refers to and repeats paragraph 137 to 141 above; and
- (c) it otherwise denies the allegations in the paragraph.

143. It denies the allegations in paragraph 143.

144. As to paragraph 144:

- (a) insofar as the paragraph contains allegations against Toyota, it does not know and therefore does not admit the allegations; and
- (b) otherwise denies the allegations in the paragraph.

145. As to paragraph 145:

- (a) insofar as the paragraph contains allegations against Toyota, it does not know and therefore does not admit the allegations;
- (b) it says that ADICA was not the insurer and accordingly did not receive the insurance premiums in respect of the:
 - (i) Accidental Death and Funeral cover provided under the Finance Protection Insurance policy from about 1 February 2014 until 1 January 2017;
 - (ii) life cover provided under the Payment Protection Insurance policy from 1 January 2014 until 15 February 2014;
- (c) further and in the alternative, it says that if (which is denied) the insurance premiums are monies had and received by ADICA to the use of the Plaintiffs and the Group Members:

- (i) ADICA is not obliged to repay any sums to the Plaintiffs and the Group Members to the extent that the Plaintiffs and the Group Members have received:
 - (A) refunds from the early cancellation of the Add-on Insurance policies;
 - (B) payments pursuant to any remediation programs undertaken by Toyota or ADICA in respect of the Add-on Insurance products;
 - (C) amounts or the benefit of any claims paid by Toyota and/or ADICA; and/or
 - (D) the Protections;
- (ii) such loss or damage was caused or contributed to by the Plaintiffs' and the Group Members' failure to cancel their Add-on Insurance policies and claim a refund as provided for in the relevant PDS and policy document;
- (iii) such loss or damage was caused or contributed to by the Plaintiffs' and the Group Members' failure to cancel the relevant policies and/or claim a refund after receipt of communications from Toyota Insurance reminding them of the existence of cover;

Particulars

ADICA refers to and repeats the particulars
subjoined to paragraph 102(b)(ii)(C) above.

- (iv) such loss or damage was caused or contributed to by the Plaintiffs' and the Group Members' failure to cancel the relevant Add-on Insurance policies during the cooling off period;

Particulars

ADICA refers to and repeats the particulars
subjoined to paragraph 102(b)(ii)(A) above.

- (d) otherwise denies the allegations in the paragraph.

Change of position

145A In further answer to paragraphs 137 to 145, it says that:

- (a) ADICA, acting in good faith and without knowledge of the mistaken beliefs alleged to be held by the Plaintiffs and Groups Members in paragraph 139, relied to its detriment on the payment of the premiums pleaded by incurring expenditure and/or other disadvantageous consequences that it would not have otherwise incurred; and

Particulars

In reliance upon the payment of the premiums, ADICA:

- 1 has discharged its obligations under the Add-on Insurance policies either completely (in respect of those policies which have come to an end, including those of the First and Third Plaintiffs) or in part (in respect of those policies which continue);
- 2 accepted the risk of paying claims made under the Add-on Insurance policies purchased by the Plaintiffs and Group Members;
- 3 paid some claims made under the Add-on Insurance policies purchased by the Group Members; and
- 4 entered into and gave effect to the Agency Agreement, between ADICA and Toyota, and paid a portion of those payments to Toyota by way of commission.

During the Relevant Period, ADICA:

- 1 retained capital to ensure it could meet the liabilities it incurred or might incur in the future under the Add-on Insurance policies, consistent with its acceptance of the risk under those

policies and as it was required to do pursuant to its prudential obligations and sound financial management;

- 2 as a consequence of having received the premiums, continued to make expenditures for the purpose of its business of underwriting and issuing the Add-on Insurance products;
- 3 changed prices for some Add-on Insurance as a result of actuarial analysis of the historical performance of Add-on Insurance, including the premiums received;
- 4 took the premium payments into account in estimating, calculating and directing annual profits; and
- 5 paid tax on those profits.

- (b) by reason of the change of position pleaded in sub-paragraph 145A(a) above, it would be inequitable in all the circumstances to require ADICA to repay the premiums in whole or in part.

Consideration

145B In further answer to paragraphs 137 to 145 and in the alternative, it says that:

- (a) it gave good consideration to the Plaintiffs and each Group Member from whom it received the payment of a premium for an Add-on Insurance products;

Particulars

ADICA refers to and repeats the particulars subjoined to paragraph 145A(a) above.

- (b) by reason of the provision of good consideration pleaded in subparagraph 145B(a) above, ADICA is not obliged to repay to the Plaintiffs and the Group Members the premium payments received by them.

Election

145C In further answer to paragraphs 137 to 145 and in the alternative, it says that to the extent that the Plaintiffs and/or Group Members have made claims on Add-on Insurance policies that they purchased:

- (a) the making of such claims constitutes unequivocal words or conduct by which they have elected to take the benefit of those policies; and
- (b) they are not entitled to the repayment of the premiums paid in respect of those policies.

Delay

145D In further answer to paragraphs 137 to 145 and in the alternative, it says that:

- (a) any such cause of action may or could with reasonable diligence have been discovered by the Plaintiffs and Group Members at the time of, or in the alternative immediately after, or in the alternative within a period of 21 days (depending upon the terms of the relevant Add-on Insurance policy) from the date of, the purchase of the relevant Add-on Insurance product, or at any time following the purchase; and

Particulars

ADICA refers to and repeats:

- 1 paragraph 101(b) above;
- 2 the particulars subjoined to 102(b)(ii)(A);
- 3 the particulars subjoined to 102(b)(ii)(C).
- (b) by reason of the delay of the Applicant and Group Members in commencing these proceedings and the matters pleaded in sub-paragraph (a) above, it would be inequitable in all the circumstances to require ADICA to repay the premiums in whole or in part.

F. COMMON QUESTIONS

146. As to paragraphs 146 to 192, it:

- (a) does not admit that the questions set out in the paragraphs and framed as common questions of law or fact:
 - (i) involve common issues of law or fact; or
 - (ii) insofar as they do, that those questions are common with respect to all Group Members; and
- (b) otherwise does not plead to those paragraphs which do not contain any allegations against it.

G. DEFENCES AND OTHER ISSUES

147. Further and in the alternative, the following paragraphs 148 to 156 are raised by ADICA in further answer to the whole of the FASOC.

G.1 Limitations

148. If, which is denied, the Plaintiffs or any Group Member has a cause of action sounding in relief pursuant to s 12GF of the ASIC Act on the basis of matters alleged in the FASOC, any such cause of action that accrued before 2 October 2018 is not maintainable by operation of s 12GF(2) of the ASIC Act.

Particulars

The Writ and General Indorsement were filed by the First and Second Plaintiffs on 2 October 2024.

149. If, which is denied, the Plaintiffs or any Group Member has a cause of action sounding in relief pursuant to s 12GM of the ASIC Act on the basis of matters alleged in the FASOC, any such cause of action that accrued before 2 October 2018 is not maintainable by operation of s 12GM(5) of the ASIC Act.

Particulars

The Writ and General Indorsement were filed by the First and Second Plaintiffs on 2 October 2024.

150. If, which is denied, the Plaintiffs or any Group Member has a cause of action sounding in relief pursuant to s 1041I of the Corporations Act on the basis of matters

alleged in the FASOC, any such cause of action that accrued before 2 October 2018 is not maintainable by operation of s 1041I(2) of the Corporations Act.

Particulars

The Writ and General Indorsement were filed by the First and Second Plaintiffs on 2 October 2024.

151. If, which is denied, the Plaintiffs or any Group Member has a cause of action sounding in relief pursuant to s 961M of the Corporations Act on the basis of matters alleged in the FASOC, any such cause of action that accrued before 2 October 2018 is not maintainable by operation of s 961M(6) of the Corporations Act.

Particulars

The Writ and General Indorsement were filed by the First and Second Plaintiffs on 2 October 2024.

152. If, which is denied, the Plaintiffs and/or any Group Member has a claim for monies had and received by ADICA to the use of the Plaintiffs and/or the Group Members on the basis of the matters pleaded in the FASOC:

- (a) any such cause of action that is governed by the law of:
 - (i) New South Wales and arose before 2 October 2018, or was first discovered by the Third Plaintiff and/or any Group Member or may with reasonable diligence have been discovered by the person before that date, is not maintainable by reason of ss 14 and/or 56 of the *Limitation Act 1969* (NSW);
 - (ii) Victoria and arose before 2 October 2018, or was first discovered by any Group Member or may with reasonable diligence have been discovered by the person before that date, is not maintainable by reason of ss 5 and/or 27 of the *Limitation of Actions Act 1958* (Vic);
 - (iii) Queensland and arose before 2 October 2018, or was first discovered by any Group Member or may with reasonable diligence have been discovered by the person before that date, is not maintainable by reason of ss 10 and/or 38 of the *Limitation of Actions Act 1974* (Qld);

- (iv) Tasmania and arose before 2 October 2018, or was first discovered by any Group Member or may with reasonable diligence have been discovered by the person before that date, is not maintainable by reason of ss 4 and/or 32 of the *Limitation Act 1974* (Tas);
- (v) South Australia and arose before 2 October 2018, is not maintainable by reason of s 38 of the *Limitation of Actions Act 1936* (SA);
- (vi) Western Australia and arose before 2 October 2018, including the causes of action of the First and Second Plaintiffs, is not maintainable by reason of s 13 of the *Limitation Act 2005* (WA);
- (vii) the Northern Territory and arose before 2 October 2018, or was first discovered by any Group Member or may with reasonable diligence have been discovered by the person before that date, is not maintainable by reason of s 12 and/or 43 of the *Limitation Act 1981* (NT); or
- (viii) the Australian Capital Territory and arose before 2 October 2018, or was first discovered by any Group Member or may with reasonable diligence have been discovered by the person before that date, is not maintainable by reason of ss 11 and/or 34 of the *Limitation Act 1985* (ACT);

Particulars

The Writ and General Indorsement were filed by the First and Second Plaintiffs on 2 October 2024.

- (b) any such mistake or related cause of action may or could with reasonable diligence have been discovered by the Plaintiffs and/or any Group Member at the time of, or in the alternative immediately after, or in the alternative within a period of 21 days (depending upon the terms of the relevant Add-on Insurance policy) from the date of the purchase of the relevant Add-on Insurance product(s), or in the alternative at any time following the purchase of the Add-on Insurance product(s).

G.2 *Proportionate liability*

153. For the purposes of this proportionate liability defence only, if, which is denied, the Plaintiffs or any Group Member suffered loss or damage that was caused by the actions of ADICA as alleged in the FASOC, ADICA says that, by reason of the matters so adopted:

- (a) the claims under:
 - (i) s 1041H of the Corporations Act are apportionable claims within the meaning of s 1041L of the Corporations Act; and
 - (ii) s 12DA of the ASIC Act are apportionable claims within the meaning of s 12GP of the ASIC Act;
- (b) in respect of the First and Second Plaintiffs, Broome Toyota is a person whose acts or omissions caused the loss that is the subject of their claims against ADICA pleaded in the FASOC;
- (c) in respect of the Third Plaintiff, Brian Hilton Toyota is a person whose acts or omissions caused the loss that is the subject of her claims against ADICA pleaded in the FASOC;
- (d) in respect of the Group Members, Dealers and Dealer Representatives are persons whose acts or omissions caused the loss that is the subject of the Group Members' claims against the Respondents pleaded in the FASOC;

Particulars to (b) and (c)

ADICA had no direct interaction with the Plaintiffs or the Group Members with respect to entry into the Add-on Insurance products.

The Dealers and Dealer Representatives were acting as the agents of Toyota as alleged in paragraphs 5, 8, 9 and 13 above.

The Dealers and Dealer Representatives obtained financial benefits from arranging the sale of Add-on Insurance products as alleged in sub-paragraphs 48(b) and 48(c).

Insofar as any misleading conduct occurred (which is denied), it occurred in the interaction between the Dealers and Dealer Representatives and the Plaintiffs and Group Members, as alleged in Section E.1.

Further particulars may be supplied after discovery or subpoenas.

- (e) Toyota and ADICA are concurrent wrongdoers; and
- (f) the liability of Toyota and ADICA in relation to each of the 'Plaintiffs' and/or Group Members' claims pleaded in the FASOC is limited pursuant to:
 - (i) s 1041N of the Corporations Act, in respect of claims under s 1041H of the Corporations Act; and
 - (ii) s 12GR of the ASIC Act, in respect of claims under s 12DA of the ASIC Act.

G.3 Contribution

154. For the purposes of this contribution defence only, if, which is denied, the Plaintiffs or any Group Member suffered loss or damage that was caused by the actions of ADICA in contravention of s 12DA of the ASIC Act and/or s 1041H of the Corporations Act as alleged in the FASOC, ADICA says that, by reason of the matters so adopted:

- (a) the Plaintiffs' and/or Group Members' loss or damage (if any) was suffered partly as a result of their failure to take reasonable care; and

Particulars

ADICA refers to and repeats paragraph 102(b) above.

- (b) by reason of s 12GF(1B) of the ASIC Act and/or s 1041I(1B) of the Corporations Act, any amount of loss or damage that the Plaintiffs and/or Group Members may recover should be reduced to the extent the Court thinks just and equitable having regard to their respective share in the responsibility for the loss or damage.

G.4 Taxes

155. In response to the whole of the FASOC, to the extent that the Plaintiffs and/or Group Members were entitled to claim input tax credits in respect of goods and services tax paid on premiums for Add-on Insurance products, any entitlement to compensation or other relief (which is denied) is to be reduced by the amount of the input tax credits to which they were entitled.
156. In response to the whole of the FASOC, to the extent that the Plaintiffs and/or Group Members claimed tax deductions or otherwise reduced their taxable income in respect of any amounts they paid referable to the Add-on Insurance products, any entitlement to compensation or other relief (which is denied) is to be reduced by the amount of the tax deduction or tax benefit so derived.

H RELIEF

157. As to the relief sought, it denies that the Plaintiffs and Group Members are entitled to any part of the relief sought by reason of the matters pleaded in this Defence.

Sam Rosewarne
Caryn Van Proctor
Jacob Waller

Date: 5 November 2025

DLA Piper Australia

Signed by DLA Piper Australia
Solicitors for the Second Defendant