



IN THE SUPREME COURT OF VICTORIA
COMMERCIAL COURT
GROUP PROCEEDINGS LIST

Case: S ECI 2024 05243
No. S ECI 2024 05243
Filed on: 26/06/2026 12:18 PM

B E T W E E N

~~TRACEY LEIGH HEPI AND OTHERS~~ GLENDAL WALKER

Plaintiff~~s~~

-and-

TOYOTA FINANCE AUSTRALIA LIMITED (ACN 002 435 181)

First Defendant

-and-

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

Second Defendant

DEFENCE TO THIRD FURTHER AMENDED STATEMENT OF CLAIM

(Amended pursuant to the orders made by Osborne J on 21 May 2026)

Date of Document:	5 November 2025 <u>26 June 2026</u>	Solicitors Code: 110456
Filed on behalf of:	The First Defendant	DX: 370 Sydney
Prepared by:	Clayton Utz	Tel: +61 2 9353 4371
	Level 15, 1 Blich Street	Ref: 81046417
	Sydney NSW 2000	Email: rmcinnes@claytonutz.com

As to the allegations in the ~~Plaintiffs'~~ Plaintiff's Third Further Amended Statement of Claim filed on 22 May 2026 ~~16 September 2025~~ (3FASOC), the First Defendant (**Toyota**) says as follows:

A. Unless otherwise stated, or the context otherwise requires, Toyota adopts the defined terms and the headings used in the 3FASOC, but does not admit any factual assertions contained in, or in any way implied by, any defined term or heading used in the 3FASOC and repeated in this Defence.

A. INTRODUCTION

A.1. The Group Members

1. As to paragraph 1, Toyota:

(a) says that the ~~Third~~ Plaintiff was not joined as a party to this proceeding until 15 September 2025 and did not become the sole representative plaintiff in this proceeding until 24 February 2026;

(b) says that ~~given~~:

~~(i) — the FASOC alleges that the First and Second Plaintiffs only have claims:~~

~~A. — pursuant to ss 76 and 77 of the Credit Code, under Part E.3 of the FASOC; and~~

~~B. — for monies had and received, or equitable restitution, for unilateral mistake, under Part E.6 of the FASOC; and~~

~~(ii) — the First and Second Plaintiffs' claims under Part E.6 of the FASOC are statute barred for the reasons pleaded in paragraphs ~~143(c)(iii), 143(c)(iii), 143(c)(iii), 144(b), 144(b), 144(b) and 145(c)(iii), 145(c)(iii), 145(c)(iii)~~ below; and~~

(iii) the 3FASOC does not allege that ~~any of~~ the Plaintiffs ~~are is~~ part of the Advised Group Members sub-group who have claims under Part E.4 of the 3FASOC and, by reason of that,

the claims of the Plaintiffs ~~s~~ and the Advised Group Members:

(iv) are not in respect of, and do not arise out of, the same, similar or related circumstances;

(v) further or alternatively to the previous sub-paragraph, do not give rise to a substantial common question of law or fact; and

~~(vi) — the First and Second Plaintiffs did not validly commence this proceeding as a group proceeding pursuant to Part 4A of the ~~Supreme Court Act 1986 (Vic)~~ in respect of the claims of:~~

~~A. — Group Members who have claims for Misleading Conduct under Part E.1 of the FASOC, Dealers' Unfair Conduct under Part E.2 of the FASOC, and unconscionable conduct under Part E.5 of the FASOC; and~~

~~B. — the Advised Group Members sub-group under Part E.4 of the ASOC; and~~

(c) by reason of the matters in sub-paragraphs s (a) to (b) above, denies that this proceeding was validly commenced by the Plaintiff as a group proceeding pursuant to Part 4A of the Supreme Court Act 1986 (Vic) on her own behalf and on behalf of Group Members, denies the allegations in paragraph 1 and says that the balance of this defence is subject to such denial; ~~and~~

(d) says further that the Toyota branded Finance Protection Insurance policy was not available, and therefore was not obtained through any "Dealer", for issue until prior to about 17 February 2014 and, once it ~~was~~ became available ~~for issue~~ from about 17 February 2014, it replaced the Payment Protection Insurance policy; and

(e) says further that prior to 1 January 2014 ADICA did not underwrite any of the "Add-on Insurance" products for Toyota and Toyota did not issue any of the Add-on Insurance products or provide general financial product advice on its own behalf in respect of the Add-on Insurance products, and the balance of this defence is subject to this plea.

Particulars

Toyota refers to and repeats the matters alleged in paragraphs 6(b)(vi) and 7A below.

2. As to paragraph 2, Toyota:

- (a) refers to and repeats paragraph 1 above; and
- (b) otherwise does not know and therefore cannot admit the allegations in paragraph 2.

A.2. The Defendants

3. As to paragraph 3, Toyota:

- (a) admits paragraphs 3(a)-(c) and (e) and says further that Toyota did not hold an Australian Financial Services Licence until 19 November 2013;

Particulars

Toyota did not hold an Australian Financial Services Licence prior to obtaining the Toyota AFSL, which has an effective date of 19 November 2013.

From 3 July 2006 to 20 November 2013 Toyota was an Australian financial services authorised representative for Aioi, with representative number 000270670.

- (b) as to paragraph 3(d), admits that it is and was at all material times the holder of the business names "Lexus Financial Services" and "Powertorque Finance", denies that it is and was the holder of and trading under the business name "Toyota Financial Australia", and says that it is and was at all material times the holder of the business name "Toyota Financial Services";
- (c) as to paragraph 3(f), admits that is and has been subject to the NCCP Act and Credit Code from their commencement dates, and otherwise denies the allegations; and

- (d) as to paragraph 3(g), it:
 - (i) denies that it was a person within the meaning of s 180A of the NCCP Act before 1 March 2013, as s 180A of the NCCP Act did not commence until 1 March 2013; and
 - (ii) otherwise admits the allegations.

A.3. Arrangements between Dealers and Toyota

4. As to paragraph 4, Toyota:

- (a) does not plead to paragraphs 4(a)-(c) and (e) as they do not make allegations against Toyota; and
- (b) as to paragraph 4(d), says that the allegation that ADICA is and at all material times was part of the same corporate group is:
 - (i) vague and embarrassing as the [3](#)FASOC does not specify what is meant by “part of the same corporate group” over the Relevant Period and, for that reason, Toyota does not know and therefore cannot admit the allegation; and
 - (ii) not a material fact in circumstances where the allegation does not arise further in the [3](#)FASOC and, for that reason, is liable to strike out, and under cover of that objection, it denies the allegation.

B. ARRANGEMENTS BETWEEN DEFENDANTS AND DEALERS

B.1. Arrangements between Dealers and Toyota

5. As to paragraph 5, Toyota:

- (a) admits that it entered into agreements with Dealers throughout the Relevant Period (**Dealer Agreements**), the full terms and effect of which it relies upon;

Particulars

The Dealer Agreements were in writing and included the following:

~~A.—Trade Agreement between “Broome Toyota & Norwest Holden” and Toyota dated 26 August 2010 (2010 Broome Toyota Dealer Agreement) [FFA.001.001.0007];~~

- B. Trade Agreement between “Brian Hilton Toyota” and Toyota dated 4 November 2010 (**2010 Brian Hilton Toyota Dealer Agreement**) [TFA.600.003.0007];
and
- C. Trade Agreement between “Brian Hilton Toyota” and Toyota dated 10 July 2013 (**2013 Brian Hilton Toyota Dealer Agreement**) [TFA.600.003.0009].

(b) says that:

- (i) the purpose of the Dealer Agreements was to facilitate the introduction of credit business by the Dealers to Toyota in respect of:
 - A. the provision of financial accommodation by Toyota to customers in connection with a contract for the purchase of a vehicle along with ancillary services which would be regulated by the NCCP Act and Credit Code (a **Regulated Car Loan**);
 - B. the provision of financial accommodation by Toyota to customers in connection with a contract for the purchase of a vehicle along with ancillary services which would not be regulated by the NCCP Act and Credit Code (an **Unregulated Car Loan**);
- (ii) pursuant to the Dealer Agreements, from time to time Toyota provided the Dealers with “Credit Procedures”, being procedures or instructions issued by Toyota for the services to be performed by the Dealers under their Dealer Agreements and other matters relevant to Toyota’s obligations under the “Credit Laws”, (**Credit Procedures**), the full terms and effect of which Toyota relies on;

Particulars

cl 4(d) and definition of “Credit Procedures” in cl 1.1 of the ~~2010 Broome Toyota Dealer Agreement~~, 2010 Brian Hilton Toyota Dealer Agreement and 2013 Brian Hilton Toyota Dealer Agreement.

The Credit Procedures were in writing and comprised the following documents:

- A. Retail Finance & Insurance Sales Guide

Version 1.0, dated 1 September 2013,
[TFA.001.001.0018];

Version 2.0, dated 1 August 2014,
[TFA.001.001.0015];

Version 3.0, dated 10 November 2015,
[TFA.001.001.0016];

Version 3.1, dated 8 February 2016,
[TFA.001.001.0017];

Version 4.0, dated 1 January 2017,
[TFA.001.001.0014];

Version 5.0, dated 1 July 2017,
[TFA.001.001.0013];

Version 6.0, dated August 2018,
[TFA.001.001.0011];

Version 7.0 dated May 2019,
[TFA.600.004.0020];

Version 8.0, dated September 2019,
[TFA.001.034.0353];

Version 9.0, dated March 2020,
[TFA.001.035.6144];

Version 10, dated October 2021
[TFA.600.004.0021];

(together, the **Retail Finance & Insurance Sales Guides**, and each a **Retail Finance Insurance Sales Guide**); and

B. Dealer Bulletins, as issued by Toyota to Dealers from time to time (**Dealer Bulletins**).

(iii) pursuant to the Dealer Agreements, Toyota appointed the Dealers as its agent for the following purposes:

A. to collect and verify “Know Your Customer” information in accordance with Toyota’s obligations under the *Anti-Money Laundering and Counter Terrorism Act 2006* (Cth);

Particulars

cll 3.3, 3.5(a) of the ~~2010 Broome Toyota Dealer Agreement~~, 2010 Brian Hilton Toyota Dealer Agreement and 2013 Brian Hilton Toyota Dealer Agreement.

B. to make enquiries of customers who were natural persons about the purpose for which credit was to be provided to them under the proposed contract, in accordance with the Credit Procedures;

Particulars

cll 3.1, 3.5(a) of the ~~2010-Broome Toyota Dealer Agreement,~~
2010 Brian Hilton Toyota Dealer Agreement and 2013 Brian
Hilton Toyota Dealer Agreement.

C. to do the following in relation to Regulated Car Loans, in accordance with
Toyota's Credit Procedures:

- 1) procure applications for finance and offers to enter into contracts for
Regulated Car Loans, and submit them to Toyota for Toyota's approval
or rejection;

Particulars

cll 3.2(a)(i), 3.4, 3.5(a) of the ~~2010-Broome Toyota Dealer
Agreement,~~ 2010 Brian Hilton Toyota Dealer Agreement and
2013 Brian Hilton Toyota Dealer Agreement.

- 2) provide each customer with a copy of the proposed contract for the
Regulated Car Loan to be entered into by the customer, provide the
customer with an adequate opportunity to read and take advice in relation
to it, and provide the customer with a copy of the contract after the
customer signs it; and

Particulars

cll 3.2(a)(ii), 3.4, 3.5(a) of the ~~2010-Broome Toyota Dealer
Agreement,~~ 2010 Brian Hilton Toyota Dealer Agreement and
2013 Brian Hilton Toyota Dealer Agreement.

- 3) where a guarantee was to be provided, provide the prospective guarantor
with a copy of the proposed guarantee and the proposed contract for the
Regulated Car Loan, provide the proposed guarantor with an adequate
opportunity to read and take advice in relation to the proposed contract
~~and,~~ and ensure that after signature of the guarantee the guarantor was
provided with a copy of the guarantee and the signed contract to keep;

Particulars

cll 3.2(a)(iii), 3.4, 3.5(a) of the ~~2010-Broome Toyota Dealer
Agreement,~~ 2010 Brian Hilton Toyota Dealer Agreement and
2013 Brian Hilton Toyota Dealer Agreement.

- (iv) pursuant to each Dealer Agreement, each Dealer party to the Dealer Agreement was
obliged to ensure, and it warranted that, all of the Dealer's employees, agents or

contractors authorised by the Dealer to perform some or all of the Dealer's obligations under the Dealer Agreement, were accredited by Toyota and that such accreditation had not been withdrawn by Toyota or expired or elapsed (**Dealer Personnel**);

Particulars

cl 6.4(a)(iii) and definition of "Personnel" in cl 1.1 of the ~~2010 Broome Toyota Dealer Agreement~~, 2010 Brian Hilton Toyota Dealer Agreement and 2013 Brian Hilton Toyota Dealer Agreement.

- (v) from time to time Toyota issued Dealers with internal policies concerning the accreditation, monitoring and supervision of Dealers and Dealer Personnel;

Particulars

The internal policies were in writing and comprised the following documents:

A. Monitoring and Supervision Policy

Version 1.0, dated 1 April 2014;

Version 2.0, dated 8 August 2014, [TFA.001.004.0053];

Version 3.0, dated 31 August 2015, [TFA.001.004.0054];

Version 4.0, dated 1 August 2016, [TFA.001.004.0055];

Version 5.0, dated 14 March 2017, [TFA.001.004.0056];

Version 6.0, dated 16 May 2017;

Version 6.1, dated 20 August 2018, [TFA.001.004.0057];

Version 7.0, dated 24 January 2020, [TFA.600.004.0026];

Version 8.0, dated 23 May 2021, [TFA.600.004.0027]; and

B. Accredited Person Policy

Version 1.0, dated 5 December 2012

Version 2.0, dated 9 September 2013, [TFA.001.004.0050]; and

C. Sales Accreditation Policy

Version 1.0, dated 23 December 2014;

Version 2.0, dated 23 April 2015;

Version 3.0, dated 13 April 2016,
[TFA.001.004.0051];

Version 4.0, dated 16 March 2017,
[TFA.001.004.0047];

Version 5.0, dated 21 May 2018,
[TFA.001.004.0049];

Version 6.0, dated 8 August 2019,
[TFA.600.004.0022];

Version 7.0, dated 29 July 2020,
[TFA.600.004.0023]; and

Version 8.0, dated 19 July 2021,
[TFA.600.004.0024].

- (vi) [from about 1 January 2014](#), Toyota entered into authorised representative agreements with some Dealers (**Authorised Dealers**), the full terms and effect of which it relies upon (each, an **Authorised Representative Agreement**, and together the **Authorised Representative Agreements**):

Particulars

The Authorised Representative Agreements were in writing and included:

~~A. the Authorised Representative Agreement between "Broome Toyota and Northwest Holden" and Toyota dated 1 January 2014 [TFA.001.020.0010] (**Broome Toyota Authorised Representative Agreement**); and~~

B. the Authorised Representative Agreement between [Houma Holdings Pty Ltd \(also known as "Brian Hilton Toyota Group"\)](#) and Toyota dated 1 January 2014 [TFA.600.005.0001] (**Brian Hilton Toyota Authorised Representative Agreement**).

- (vii) each Authorised Representative Agreement included terms:

- A. appointing the Dealer / Authorised Dealer named in the Authorised Representative Agreement as Toyota's agent for the following purposes:

- 1) to provide general financial product advice on general insurance products and life insurance products limited to consumer credit insurance; and

Particulars

CI 2.1, cl 2.3, definition of “Financial Services” in cl 1.1 and Schedule A, item 3 in ~~the Broome Toyota Authorised Representative Agreement [TFA.001.020.0010]~~ and Brian Hilton Toyota Authorised Representative Agreement [TFA.600.005.0001].

- 2) to arrange the issue of general insurance products and life insurance products limited to consumer credit insurance;

Particulars

CI 2.1, cl 2.3 and Schedule A, item 3 in ~~Broome Toyota Authorised Representative Agreement [TFA.001.020.0010]~~ and ~~the~~ Brian Hilton Toyota Authorised Representative Agreement [TFA.600.005.0001].

- B. requiring the Dealer / Authorised Dealer to comply with the obligations set out in Schedule B to the Authorised Representative Agreement, which obligations included:

- 1) before or at the time of providing any advice or services to a retail customer, providing the customer with a General Advice Warning, Financial Services Guide and all other information and retail Product Disclosure Statements;
- 2) taking all reasonable steps to ensure that all proposal forms are completed in full, read and understood by the customer before submission; and
- 3) complying with all of Toyota’s codes of practice, systems, policies and procedures as notified from time to time;

Particulars

CI 8.1, Schedule B under the heading “Transacting Business” and “Compliance” in ~~Broome Toyota Authorised Representative Agreement [TFA.001.020.0010]~~ and ~~the~~ Brian Hilton Toyota Authorised Representative Agreement [TFA.600.005.0001].

- C. prohibiting any employee or other person associated with the Dealer / Authorised Dealer from engaging in the conduct pleaded in sub-paragraph A above unless that individual was a person authorised to do so by the Dealer / Authorised Dealer by way of a notice of authorisation supplied by Toyota, which notice required the individual to comply with the terms and conditions attached to the notice (**Authorised Dealer Representative**);

Particulars

CII 7.1 and 7.2, definition of "Financial Services" in cl 1.1, Schedule D, and Schedule E items 1-3 in ~~the Broome Toyota Authorised Representative Agreement [TFA.001.020.0010]~~ and the Brian Hilton Toyota Authorised Representative Agreement [TFA.600.005.0001].

The notice of authorisations included:

- A. Brian Hilton Toyota Authorised Representative
Notice of Authority for Martin Heathcote
[TFA.600.003.0006]; ~~and~~

~~B. Broome Toyota Authorised Representative Notice of Authority for Andy Weir [TFA.001.020.0010 at .0021].~~

- (c) each Dealer / Authorised Dealer appointed as Toyota's agent under an Authorised Representative Agreements ~~in the Relevant Period~~ was an authorised representative of Toyota within the meaning of s 916A of the Corporations Act for the purpose of arranging the issue of Add-on Insurance to customers and providing general financial product advice on the Add-on Insurance in accordance with the Toyota AFSL;
- (d) each Authorised Dealer Representative ~~in the Relevant Period~~ was an authorised representative of Toyota pursuant to s 916B of the Corporations Act for the purpose of arranging the issue of Add-on Insurance to customers and providing general financial product advice on the Add-on Insurance in accordance with the Toyota AFSL; ~~and~~

(e) in respect of the period prior to 1 January 2014, it refers to and repeats paragraphs 1(e) above and 7A(b)-(c) below; and

~~(e)~~(f) otherwise denies the allegations.

6. As to paragraph 6, Toyota:

- (a) admits that during the Relevant Period Toyota implemented a process by which the Dealers and Dealer Personnel participated in the process of the offering and writing of Car Loans;
- (b) says the following in respect of the alleged features of the process as pleaded in sub-paragraph (a) above:
 - (i) as to paragraph 6(a), it does not know and therefore cannot admit the allegations;
 - (ii) as to paragraph 6(b), it says that the term “credit decision”, which is not defined and not particularised, is vague and embarrassing and, under cover of the objection, it denies the allegations and says that Dealer Personnel engaged in the following conduct in connection with Car Loan applications:
 - A. Dealer Personnel procured applications for finance and offers by customers to enter into contracts for Car Loans with Toyota, which applications and offers included the following information:
 - 1) the proposed loan amount;
 - 2) the proposed loan term;
 - 3) the annual percentage rate of interest payable under the proposed loan contract;
 - 4) the total amount of interest payable over the proposed loan term; and
 - 5) the stamp duty, fees and charges payable by the customer at the time of the draw down on the proposed loan;
 - B. Dealer Personnel submitted the customer’s Car Loan application and offer to Toyota, for approval or rejection, via Toyota’s finance application system called “ATLAS”;
 - C. until on or about 30 June 2018, Toyota set base rates of interest (**Base Rates**) and maximum rates of interest (**Maximum Rates**) for different types of Car Loans and notified Dealers of the Base Rates and Maximum Rates;

Particulars

Toyota notified Dealers of the Base Rates and Maximum Rates by way of email communications sent on a monthly basis by Toyota’s regional sales teams in each State and Territory.

- (iii) customers would negotiate and agree with Dealer Personnel a rate of interest to include in the customers' Car Loan application and offer to Toyota (the **Contract Rate**);
- (iv) for particular types of Car Loans, in some circumstances, where the Contract Rate was higher than the Base Rate, Toyota offered to pay to the Dealer, on whose behalf the Dealer Personnel submitted the Car Loan application, a payment calculated by reference to a number of factors specified in letters sent by Toyota to the Dealer on an annual basis (**Annual Review Document**), including but not limited to the difference between the Base Rate and the Contract Rate; and

Particulars

The Annual Review Documents were wholly in writing and included the following:

- A. Letter dated ~~20 May 2014~~ 18 April 2016 from Toyota to ~~Broome~~ Brian Hilton Toyota [TFA.600.004.0005~~TFA.001.013.0002~~];
- B. Letter dated ~~20 October 2015~~ 2 February 2017 from Toyota to ~~Broome~~ Brian Hilton Toyota [TFA.600.004.0006~~TFA.001.013.0003~~];
- C. Letter dated ~~9 September 2016~~ 20 March 2018 from Toyota to ~~Broome~~ Brian Hilton Toyota [TFA.600.004.0007~~TFA.001.013.0005~~];
- D. Letter dated ~~19 September 2017~~ 26 October 2018 from Toyota to ~~Broome~~ Brian Hilton Toyota [TFA.600.004.0008~~TFA.001.013.0006~~]; and
- E. Letter dated ~~16 April 2018~~ 11 February 2019 from Toyota to ~~Broome~~ Brian Hilton Toyota [TFA.600.004.0009~~TFA.001.013.0004~~];-
- F. Letter dated 4 February 2020 from Toyota to Brian Hilton Toyota [TFA.600.004.0010]; and
- E-G. Letter dated 4 January 2021 from Toyota to Brian Hilton Toyota [TFA.600.004.0014].

- (v) as to paragraph 6(c), it:

- A. says that the allegations are embarrassing as the 3FASOC does not plead material facts or provide particulars concerning the “sales process for the automobile”, the identity or role of the “employee”, and who the “relevant” Group Members are; and
 - B. under cover of that objection, admits that Dealer Personnel had direct contact with the Plaintiffs and Group Members for the purpose of arranging Car Loans, and otherwise denies the allegations; and
- (vi) as to paragraph 6(d), it admits that from time to time ~~during the Relevant Period~~from about 1 January 2014, after receiving a customer’s consent, Authorised Dealer Representatives arranged for premiums for Add-on Insurance to be added to the customer’s Car Loan application and offer to Toyota, and ~~says that the~~ Authorised Dealer Representatives were contractually required to do so in accordance with the following process provided for in the Credit Procedures, including the Retail Finance & Insurance Sales Guide:
- A. if the customer provided the Authorised Dealer Representative with consent to receiving information about a Car Loan and Add-on Insurance products:
 - 1) the Authorised Dealer Representative asked the customer questions to understand the customer’s financial position, requirements and objectives in relation to the proposed Car Loan;
 - 2) the Authorised Dealer Representative explained to the customer the features and benefits of the different Car Loan and Add-on Insurance products the customer might be eligible for, and which were not unsuitable for the customer;
 - 3) the Authorised Dealer Representative issued the customer with the Credit Guide, the Financial Services Guide, Add-on Insurance Product Disclosure Statement (which included the applicable product terms and conditions) and, from about September 2018 onwards, the applicable Fast Facts Information Sheet, for any product the Authorised Dealer Representative intended to discuss with the customer, the full terms and effect of which Toyota relies on;

Particulars

The Credit Guide, Financial Services Guide, Fast Facts Information Sheets and Product Disclosure Statements were in writing. Particulars of the documents are set out in Annexure A to this defence.

The Fast Facts Information Sheets were introduced in about September 2018.

- 4) the Authorised Dealer Representative provided the customer with the general advice warning required by the Dealer Representative Agreement;
- B. the Authorised Dealer Representative answered any questions from the customer by providing factual information about the products being discussed with the customer to enable the customer to make a decision about the acquisition of a Car Loan and Add-on Insurance;
- C. the Authorised Dealer Representative did not offer any advice, opinion or recommendation as to the suitability of any product for the customer;
- D. the Authorised Dealer Representative did not give the customer any advice that took into account the customer's objectives, financial situation or needs as that is personal advice and the Authorised Dealer Representative was not authorised to provide such advice;
- E. the Authorised Dealer Representative provided the customer with sufficient time to read and understand the documents, referred to in sub-paragraph A(3) above, provided by the Authorised Dealer Representative to the customer;
- F. if requested by the customer, using Toyota's automated computer quoting system, the Authorised Dealer Representative prepared a quote for any Add-on Insurance product selected by the customer;

Particulars

The Add-on Insurance quote process included collecting customer details including whether the customer was a citizen or permanent resident of Australia in respect of Finance Protection Insurance.

- G. the Authorised Dealer Representative talked the customer through each Add-on Insurance product, the cover option selected by the customer, and the cost, and discussed how the customer would be paying for the premium;
- H. the Authorised Dealer Representative confirmed whether the customer wished to submit an application and offer for a Car Loan which included the Add-on Insurance;

- I. the Authorised Dealer Representative did not coerce or pressure any customer into applying for or purchasing any product or service offered by Toyota;
- J. if the customer wished to proceed to apply for a Car Loan and Add-on Insurance, the Authorised Dealer Representative:
 - 1) prepared and provided to the customer a “Contract Pack” comprising the “Loan Offer” document, a “Loan Contract Booklet”, a loan application form and “Direct Debit Request” form;
 - 2) gave the customer time to read the documents;
 - 3) explained the documents to the customer and answered any questions the customer had (to the extent that did not require the provision of personal advice to the customer);
 - 4) asked the customer to sign the Loan Offer, loan application form, Direct Debit Request form; and
 - 5) submitted the customer’s signed documents to Toyota, for Toyota to approve or reject;

Particulars

Particulars of the Plaintiff’s: “Loan Offer” document, “Loan Contract Booklet”, loan application forms and “Direct Debit Request” form are set out in Annexure B to this defence.

- K. if Toyota accepted the customer’s Car Loan application and offer, and the application and offer included Add-on Insurance, Toyota and/or the Dealer provided the customer with a welcome letter, Add-on Insurance policy schedule and Loan Offer document signed by Toyota.

Particulars

Particulars of the Plaintiff’s: welcome letters, Add-on Insurance policy schedules and signed Loan Offer documents are set out in Annexure B to this defence.

and, in respect of the period prior to 1 January 2014, it refers to and repeats paragraphs 1(e) above and 7A(b)-(c) below, admits that some Dealers arranged for premiums for Add-on Insurance to be added to some customers’ Car Loan applications and offers to Toyota and otherwise denies the allegations; and

(c) otherwise denies the allegations.

7. As to the allegations in paragraph 7, Toyota:
- (a) says that the terms “credit decisions” and “loan management”, which are not defined and are not particularised, are vague and embarrassing;
 - (b) refers to and repeats paragraph 6 above;
 - (c) admits that during the process by which Dealer Personnel participated in the process of the offering and writing of Car Loans during the Relevant Period, Toyota was solely responsible for all aspects of credit assessment, accepting or rejecting Car Loan applications, and the administration and servicing of Car Loans; and
 - (d) otherwise denies the allegations.

7A. As to the allegations in paragraph 7A, Toyota:

- (a) admits the allegations in paragraph 7(a) save in respect of the “Life” cover provided under the Payment Protection Insurance policy in the period from 1 January 2010 to 31 December 2013, for which it denies the allegations;

Particulars

Payment Protection Insurance Policy and Product
Disclosure Statement dated 1 June 2006 TIN015S (06/2006)
[TFA.001.027.0010], page 5.

Payment Protection Insurance Policy and Product
Disclosure Statement dated 1 March 2012 TIN012S
(03/2012), [HEP.002.002.0031], page 11.

- (b) says further that:

- (i) on or about 23 July 2006 Toyota entered into an Authorised Representative Agreement with Aioi (**Aioi Authorised Representative Agreement**) pursuant to which Toyota was:

A. appointed as an authorised representative of Aioi within the meaning of section 761A of the *Corporations Act* then in force at the time; and

B. authorised to provide general financial product advice about and arrange for a person to deal in Payment Protection Insurance, Finance Gap Insurance and Warranty Insurance on behalf of Aioi;

Particulars

The Authorised Representative Agreement is in writing [TFA.600.014.0013]. Toyota will rely on its full terms and effect at trial.

- (i) with effect from 23 July 2006, Toyota and Aioi were party to a Sales and Marketing Agreement, the full terms and effect of which Toyota will rely on at trial;

Particulars

The Sales and Marketing Agreement is in writing [TFA.001.069.0009].

- (ii) under the Sales and Marketing Agreement, Toyota agreed to:

- A. on behalf of Aioi, deal in and provide general financial product advice about Payment Protection Insurance, Finance Gap Insurance and Warranty Insurance underwritten by Aioi;
- B. use best endeavours to facilitate the Dealers' entry into "Insurance Distributor Agreements" with Aioi, under which Aioi would appoint the dealer as a "distributor" within the meaning of ASIC Class Order 05/1070 then in force at the time;

Particulars

Sales and Marketing Agreement [TFA.001.069.0009], cl 3.1(a)(ii), 3.2(a) and 8.1.

Further and better particulars may be provided following discovery and/or the filing and service of evidence.

- (c) on around 1 January 2014, Aioi terminated its Dealer "Insurance Distributor Agreements", referred to in sub-paragraph (iii)B above; and

Particulars

The mode of termination included a countersigned letter from Aioi to Brian Hilton Toyota headed "Insurance Distributor Agreement" [TFA.600.005.0001 at .0020].

Further and better particulars may be provided following discovery.

[\(d\) otherwise denies the allegations.](#)

B.2. Arrangements between Toyota and ADICA

8. As to paragraph 8, Toyota:

(a) admits paragraph 8(a) save in respect of the following Add-on Insurance coverage during the following periods, for which it denies the allegations;

(i) from 1 January 2014 to 15 February 2014, the “Life” cover provided under the Payment Protection Insurance policy; and

Particulars

Payment Protection Insurance Policy and Product
Disclosure Statement dated 1 March 2012 TIN012S
(03/2012), [HEP.002.002.0031], page 11.

(ii) from about 1 February 2014 to 31 December 2016, the Accidental Death and Funeral cover provided under the Finance Protection Insurance policy if the policy was more than 12 months; and

Particulars

Finance Protection Insurance Policy and Product Disclosure
Statement dated 1 February 2014 TIN014S (02/2014)
[TFA.001.009.3991], page 6.

(b) as to paragraph 8(b):

(i) admits that, pursuant to the Agency Agreement dated 1 January 2014 between Toyota and ADICA, it was appointed by ADICA as ADICA’s representative within the meaning of s 910A of the Corporations Act, and as ADICA’s agent, to issue Add-on Insurance products; and

Particulars

The Agency Agreement is in writing.

(ii) admits that the Agency Agreement was a binder within the meaning of s 761A of the Corporations Act; and

(iii) otherwise denies the allegations;

(c) admits paragraph 8(c), it refers to and repeats the admission in paragraphs 8(b)(i)-8(b)(ii) above and otherwise denies the allegations;

- (d) admits paragraph 8(d) in respect of the allegations concerning the issue of Add-on Insurance to customers, and denies the allegations in respect of the alleged Car Loan Process; and

Particulars

The authorisation was made by way of cl 6.1(a) of the Agency Agreement.

- (e) says that it relies on the full terms and effect of the Agency Agreement.
9. As to paragraph 9, Toyota does not admit the allegations and refers to and repeats paragraphs 8(b)-8(d) above.
10. Toyota admits paragraph 10.
11. As to paragraph 11, Toyota:
- (a) admits paragraph 11(a);
- (b) admits paragraph 11(b);
- (c) says that the allegations in paragraph 11(c) are embarrassing as the 3FASOC does not plead material facts or particularise “the advising on the Add-on Insurance products by Dealers and the Dealer Representatives” and, under cover of that objection, it:
- (i) admits that from about 1 January 2014 Toyota was, under the Toyota AFSL, authorised to and did from time to time through its Authorised Dealers / Authorised Dealer Representatives provide customers with general advice on the Add-on Insurance products within the meaning of s 766B of the Corporations Act, and that this advice was conduct in trade or commerce and constituted the provision of financial product advice and a financial service within the meaning of ss 766A(1) and 766B(1) of the Corporations Act; and
- (ii) says that prior to Toyota obtaining its AFSL on 19 November 2013, Toyota was not licensed to provide general financial product advice on its own behalf within the meaning of s 766B(1) of the Corporations Act then in force; and
- (iii) in respect of the period prior to 1 January 2014, refers to and repeats paragraphs 1(e) and 7A(b)-(c) above;
- ~~(ii)~~(iv) otherwise denies the allegations;
- (d) as to paragraph 11(d):

- (i) denies that the issuing Add-on Insurance products was a financial service within the meaning of s 12BAB of the ASOC Act prior to the introduction of s 12BAB(1AA) of the ASIC Act on 26 October 2018; ~~and~~
- (ii) refers to and repeats paragraphs 1(e), 5(b)(vi)-(vii), 5(c)-(f), 6(b)(vi) and 7A(b)-(c) above; and
- ~~(ii)(iii)~~ otherwise admits the allegations;
- (e) admits the allegations in paragraph 11(e) for the period from 1 January 2014 and otherwise denies the allegations by reason of the matters pleaded in paragraphs 1(e) and 7A(b)-(c) above; and
- (f) as to paragraph 11(f):
 - (i) refers to and repeats paragraphs 8(a) and 11(d)~~(e)~~ above;
 - (ii) admits that the issue of the Add-on Insurance on behalf of ADICA was in trade or commerce and constituted the provision of financial services within the meaning of s 12BAB of the ASIC Act from the introduction of s 12BAB(1AA) on 26 October 2018 and ss 766A and 766C of the Corporations Act; and
 - (iii) otherwise denies the allegations.

12. As to paragraph 12, Toyota:

- (a) refers to and repeats paragraphs 1(e) and 7A(b)-(c) above;
- (b) admits that, from 1 January 2014, the conduct of Authorised Dealers and Authorised Dealer Representatives in arranging the issue of Add-on Insurance to the Plaintiffs and Group Members, and providing general financial product advice on Add-on Insurance during the Relevant Period, was within the scope of their authority as Authorised Dealers and Authorised Dealer Representatives; and
- ~~12.(c)~~ otherwise denies the allegations.

13. As to paragraph 13, Toyota:

- (a) refers to and repeats paragraphs 1(e) and 7A(b)-(c) above;
- ~~(a)(b)~~ says that the allegations are embarrassing as the 3FASOC does not plead that Toyota was an “authorised representative” of ADICA;
- ~~(b)(c)~~ under cover of that objection, it:

- (i) says that Recital G of the Agency Agreement provides that the Agency Agreement does not constitute an authorisation for the purposes of s 916A of the Corporations Act, and that cl 2.4 of the Agency Agreement provides that Toyota acknowledges and agrees that it is not authorised to provide advice of any kind on behalf of ADICA and will only provide financial product advice in relation to the Add-on Insurance on its own account under the Toyota AFSL;
- (ii) refers to and repeats paragraph 8 above;
- (iii) admits the allegations in respect of Toyota's conduct as agent of ADICA; and
- (iv) denies the allegations in respect of Toyota's conduct as "authorised representative" of ADICA.

C.2. Statutory obligations

C.2.1 AFSL requirements

14. Toyota admits paragraph 14.

15. Toyota admits paragraph 15.

16. As to paragraph 16, Toyota:

- (a) says that the allegations are embarrassing as the [3](#)FASOC does not plead any material fact or particularise "the sale" of Add-on Insurance by Toyota or ADICA; and
- (b) under cover of that objection, admits that the Toyota AFSL and the ADICA AFSL required Toyota and ADICA, respectively, to comply with the provisions of s 912A of the Corporations Act, and otherwise denies the allegations.

17. As to paragraph 17, Toyota:

- (a) says that the allegations are embarrassing as the [3](#)FASOC does not plead any material fact or particularise "the sale" of Add-on Insurance by Toyota or ADICA; and
- (b) under cover of that objection, admits that the Toyota AFSL and the ADICA AFSL required Toyota and ADICA, respectively, to comply with the provisions of s 912A of the Corporations Act, and otherwise denies the allegations.

18. As to paragraph 18, Toyota:

- (a) says that the allegations are embarrassing as the [3](#)FASOC does not plead any material fact or particularise "the sale" of Add-on Insurance by Toyota, ADICA or Authorised Dealers / Authorised Dealer Representatives; and

- (b) under cover of that objection, it:
 - (i) says that Toyota, Authorised Dealers and Authorised Dealer Representatives were not authorised to provide personal advice and, if they gave personal advice, it was given outside their authority;
 - (ii) says that s 961 of the Corporations Act applies only to the provision of personal advice to Group Members who are a “retail client”;
 - (iii) denies that s 951G of the Corporations Act, which has been repealed, provided for the terms pleaded in paragraph 18(b); and
 - (iv) otherwise denies the allegations.

19. As to paragraph 19, Toyota:

- (a) says that:
 - (i) Toyota was authorised under the Toyota AFSL to provide general advice within the meaning of s 766B(1) of the Corporations Act;
 - (ii) from time to time Toyota’s Authorised Dealer Representatives provided such general advice in respect of Add-on Insurance; and
 - (iii) to the extent such general advice was provided it could reasonably be regarded as being intended to influence customers in making a decision in relation to the Add-on Insurance or their interests in Add-on Insurance within the meaning of s 766B(1) of the Corporations Act; and
- (b) otherwise denies the allegations.

C.2.2 Industry Codes of Practice

20. As to paragraph 20, Toyota:

- (a) admits the allegations in paragraph 20(a) and says that it will rely on the full terms and effect of the Codes; and
- (b) denies the allegations in paragraph 20(b) and says that the Codes are not a “voluntary industry code” within the meaning of s 51ACA of the *Competition and Consumer Act 2010* (Cth).

21. As to paragraph 21, Toyota admits the allegations in respect of Toyota, and denies the allegations in respect of Dealers and Dealer Representatives.

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

C.3.1 ASIC Reports

22. Toyota admits paragraph 22.
23. As to paragraph 23, Toyota admits that ASIC issued Report 361 on or about 31 July 2013, that Report 361 was commissioned by ASIC, produced by Susan Bell Research, and set out the results of research into consumers' experience with consumer credit insurance policies, and otherwise denies the allegations.
24. As to paragraph 24, Toyota admits that ASIC issued Report 470 on or about 29 February 2016, that the report summarises ASIC's analysis of consumer research on the experience of consumers who bought add-on insurance products when buying a vehicle through a dealership, and otherwise denies the allegations.
25. Toyota admits paragraph 25.
26. Toyota admits paragraph 26.
27. Toyota admits paragraph 27.
28. Toyota admits the allegations in paragraph 28 as to Toyota's awareness, and does not know and therefore cannot admit the allegations as to ADICA's awareness.

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

29. As to paragraph 29, Toyota:
 - (a) admits that the Add-on Insurance products had standard terms and conditions;
 - (b) says that the standard terms and conditions were set out in the Policy and Product Disclosure Statements for each Add-on Insurance product, and the Policy Schedule issued to each customer, and that Toyota relies on the full terms and effect of the Policy and Product Disclosure Statements, and Policy Schedules.

Particulars

The Policy Schedule for each customer was in writing.

Particulars of the Plaintiff's Policy Schedules are set out in Annexure B to this defence.

Particulars of the Policy and Product Disclosure Statements are set out in Annexure A to this defence.

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

30. Toyota admits paragraph 30.

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

31. As to paragraph 31, Toyota:

- (a) says that the allegations are vague and embarrassing as the alleged Insurance Benefits are pleaded at a high level and in summary form only; and
- (b) under cover of that objection, it:
 - (i) admits that the benefits of the Add-on Insurance included but were not limited to the Insurance Benefits; and
 - (ii) says that the Add-on Insurance conferred both economic and non-economic benefits on the Plaintiffs and Group Members, including entitlement to indemnity for a number of eventualities and peace of mind, and that it relies on the full terms and effect of the Policy and Product Disclosure Statements, and Policy Schedules.

C.3.5 Limits and exclusions

32. As to paragraph 32, Toyota:

- (a) admits that the Add-on Insurance products had terms and conditions governing eligibility, exclusions, exceptions and limits in respect of the coverage offered by the Add-on Insurance products to the Plaintiffs and Group Members, and says that those terms and conditions were in writing, in the:
 - (i) applicable Policy and Product Disclosure Statement; and
 - (ii) each Policy Schedule issued to the Plaintiffs and Group Members;

Particulars

The Policy and Product Disclosure Statements are listed in Annexure A to this defence.

The Plaintiffs' Policy Schedules are ~~are~~ is listed in Annexure B to this defence.

- (b) says that:
 - (i) those terms and conditions were, by way of the process pleaded paragraph 6(b)(vi) above:

- A. disclosed to the Plaintiff~~s~~ and Group Members by provision of the applicable Policy and Product Disclosure Statements for review before their entry into their Add-on Insurance;
- B. summarised, by reference to key information, in the Fast Facts Information Sheet provided to the ~~Third~~ Plaintiff~~s~~ and Group Members from September 2018, before entry into their Add-on Insurance; and
- C. referred to in the Policy Schedule for the Add-on Insurance which was issued to the Plaintiff~~s~~ and Group Members after their application and offer to enter into the Car Loan was accepted, which documents recorded that the Car Loan would finance the Add-on Insurance;

Particulars

The Policy and Product Disclosure Statements, and Fast Facts Information Sheets, are listed in Annexure A to this defence.

The Plaintiff~~s~~' Policy Schedules ~~are~~ is listed in Annexure B to this defence.

- (ii) in accordance with the terms and conditions, the Plaintiff~~s~~' and Group Members' Add-on Insurance provided them with insurance coverage against a number of specified events, and that coverage conferred economic and non-economic benefits on the Plaintiff~~s~~ and Group Members, including entitlement to indemnity and peace of mind;
- (iii) the Plaintiff~~s~~ and Group Members agreed to the terms and conditions such that the terms and conditions did not "limit" or "significantly limit" the circumstances in which the Plaintiff~~s~~ and Group Members could obtain benefits under their Add-on Insurance;
- (iv) the circumstances in which the Plaintiff~~s~~ and Group Members were entitled to receive a payment or other economic benefit under their Add-on Insurance, upon the occurrence of a specified event, depended on their personal circumstances at the time of the event, and the facts concerning the event and their claim under the Add-on Insurance, such that the value of their entitlements under their Add-on Insurance during the term of their coverage can only be assessed on an individual basis, not a common basis, having regard to the individual Plaintiff~~s~~' and Group Members' specific circumstances and any claims made by them or, in the absence of claims, hypothetical claim events; and
- (v) Toyota's acceptance of the Plaintiff~~s~~' and Group Members' applications for Add-on Insurance, and issue of the Add-on Insurance to the Plaintiff~~s~~ and Group Members, was based on the personal information provided by the Plaintiff~~s~~ and Group Members

to the Authorised Dealer Representatives during the application process, Toyota relied on that personal information being fulsome and correct, and the Plaintiffs and Group Members knew or ought to have known that Toyota was relying on that personal information being fulsome and correct;

Particulars

~~The "Customer Application" signed by the First Plaintiff and dated 8 December 2017 [HEP.002.001.0002] stated, on page 5, that the First Plaintiff was a "Permanent resident".~~

~~The Finance Protection Insurance Policy Schedule issued to the First Plaintiff and dated 18 December 2017 [HEP.002.001.0007] stated, on page 2:~~

~~"Your information~~

~~Here are the responses to the questions we asked you when you applied for this insurance. Our agreement to insure you relies on the completeness, honesty and accuracy of the information you have given us. It's important you check that the information set out is correct and advise us immediately of any changes to your information or details. If the information you provide us is not honest, correct and complete, we may reduce or deny any claim you make, cancel your policy or treat your policy as if it never existed.~~

~~... 4. You [are] presently a citizen or permanent resident of Australia ..."~~

The Plaintiff's: and Group Members' knowledge, actual or constructive, arises from the terms of the Policy and Product Disclosure Statements provided to them, which are listed in Annexure A and ~~These Policy and Product Disclosure Statements~~ stated the following:

"When we agree to insure you, or to vary your policy, or to pay your claim, our decision relies on the accuracy of the information you give us. You must provide honest, correct and complete answers to the questions we ask you.

=

It is important that you tell us immediately of any changes that have occurred since your policy started, and if any of the information shown on your policy schedule, or any other notices you may receive from us from time to time is incorrect or incomplete.

=

If the information you provide us is not honest, correct and complete, we may reduce or deny any claim you make, cancel your policy or treat your policy as never having begun”.

First and Second Plaintiffs

~~A. The Supplementary Policy and Product Disclosure Statement dated 1 July 2016 for Finance Protection Insurance TIN014a (07/2016), accompanying the Policy and Product Disclosure Statement dated 1 February 2014 for Finance Protection Insurance TIN014S (02/2014), issued to the First and Second Plaintiffs on or about 15 December 2017 [TFA.001.004.0006], stated the following:~~

~~“Your promise to us~~

~~You must provide honest, correct and complete answers to the specific questions we ask, to enable us to decide whether to insure you or pay your claim. [page 4]~~

~~...~~

~~Your promise to us~~

~~When we agree to insure you, or vary your policy, or pay your claim, our decision relies on the accuracy of the information you give us. You must provide honest, correct and complete answers to the questions we ask you.~~

~~It is important that you tell us immediately of any changes that have occurred since your policy started, and if any of the information shown on your policy schedule or any other notices you may receive from us from time to time is incorrect or incomplete, or requires updating.~~

~~If the information you provide us is not honest, correct and complete, we may reduce or deny any claim you make, cancel your policy, or treat your policy as if it never existed. [page 8]~~

~~...~~

~~**What is not covered**~~

~~To make a claim under this policy you must provide us with honest, correct and complete information in a timely manner. Your failure to do this may result in us reducing or denying any claim you make. [page 12]";~~

B.—The Policy and Product Disclosure Statement dated 1 January 2014 for Finance Gap Insurance TIN009 (01/2014) [TFA.001.004.0007] issued to the First and Second Plaintiffs on or about 31 December 2019 stated the following:

~~**"Your promise to us**~~

~~You must provide honest, correct and complete answers to the specific questions we ask, to enable us to decide whether to insure you or pay your claim. [page 4]~~

~~...~~

~~**Your promise to us**~~

~~When we agree to insure you, or vary your policy, or pay your claim, our decision relies on the accuracy of the information you give us.~~

~~You must provide honest, correct and complete answers to the questions we ask you.~~

~~It is important that you tell us immediately of any changes that have occurred since your policy started, and if any of the information shown on your policy schedule or any other notices you may receive from us from time to time is incorrect or incomplete, or requires updating.~~

~~If the information you provide us is not honest, correct and complete, we may reduce or deny any claim you make, cancel your policy, or treat your policy as if it never existed. [page 7]~~

...

What is not covered

~~To make a claim under this policy you must provide us with honest, correct and complete information in a timely manner. Your failure to do this may result in us reducing or denying any claim you make. [page 11]".~~

Third Plaintiff

C. — The Product Disclosure Statement dated 1 January 2017 for Finance Protection Insurance TIN014 (01/2017) [TFA.001.004.0032] issued to the Third Plaintiff on or about 31 December 2019 stated the following:

~~Your promise to us~~

~~You must provide honest, correct and complete answers to the specific questions we ask, to enable us to decide whether to insure you or pay your claim. [page 6]~~

...

~~Your promise to us~~

~~When we agree to insure you, or vary your policy, or pay your claim, our decision relies on the accuracy of the~~

~~information you give us. You must provide honest, correct and complete answers to the questions we ask you.~~

~~It is important that you tell us immediately of any changes that have occurred since your policy started, and if any of the information shown on your policy schedule or any other notices you may receive from us from time to time is incorrect or incomplete, or requires updating.~~

~~If the information you provide us is not honest, correct and complete, we may reduce or deny any claim you make, cancel your policy, or treat your policy as if it never existed.~~
[page 13]

...

~~What is not covered~~

~~To make a claim under this policy you must provide us with honest, correct and complete information in a timely manner. Your failure to do this may result in us reducing or denying any claim you make. [page 20]";~~

~~D. — The Product Disclosure Statement dated 1 January 2014 for Finance Gap Insurance TIN009 (01/2014) [TFA.001.004.0007] issued to the Third Plaintiff on or about 31 December 2019 contained the same statements set out in sub-paragraph B of these particulars.~~

- (c) otherwise denies the allegations.

C.3.6 Claims ratio

33. As to paragraph 33, Toyota:

- (a) says that the allegations are vague and embarrassing as the alleged claims ratio for the Add-on Insurance during the Relevant Period is not specified or particularised, the terms “low” and “significantly lower” are not defined or particularised, and the “claims ratio of other types of consumer insurance” during the Relevant Period is not specified or particularised; and
- (b) under cover of that objection, denies the allegations and says further that:
- (i) the claims ratio for Add-on Insurance does not recognise the costs incurred by Toyota and ADICA in connection with issuing, administering, and processing claims in respect of, the Add-on Insurance;

- (ii) the claims loss ratio for Add-on Insurance does not indicate the value or benefit, or potential value or benefit, of the Add-on Insurance to the Plaintiffs or a particular Group Member, whether considered at the time of acquiring the Add-on Insurance or after the time of acquisition; and
- (iii) a component of value or benefit to individuals who are insured, including the Plaintiffs and Group Members, is the peace of mind associated with having the relevant product, which is not reflected in the claims ratio.

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

34. As to paragraph 34, Toyota:

- (a) refers to and repeats paragraph 31 above in respect of the allegations as to Insurance Benefits; and
- (b) says further that:
 - (i) as to paragraph 34(a):
 - A. the allegations are vague and embarrassing as the [3](#)FASOC does not specify or particularise what constitutes “overlap”; and
 - B. under cover of that objection, it denies the allegations and says that:
 - 1) the allegations do not distinguish between Add-on Insurance acquired by “some” Group Members” before acquiring their “other insurance coverage”, and Add-on Insurance acquired by “some” Group Members after acquiring their “other insurance coverage”; and
 - 2) a claim event or potential claim event (such as accidental death) which is covered by and compensable under one insurance policy may or may not be covered by and compensable under another insurance policy, the extent of coverage and any financial entitlement under the insurance policy or policies will not be known until the relevant event occurs and, once the event occurs, the coverage and financial entitlement will be determined by the personal circumstances of the policy holder at the time of the claim;
 - (c) as to paragraph 34(b):
 - (i) says that the allegations are vague and embarrassing and liable to strike out as:

- A. they roll up a number of distinct allegations and do not identify which of the distinct allegations is relied upon in respect of ~~each of~~ the Plaintiffs and in respect of Group Members;
- B. the meaning of the terms “unnecessary”, “largely unnecessary”, “no material benefit” and “unsuitable” rely upon particulars which refer to paragraphs 32 and 34(a) of the 3FASOC, in circumstances where:
 - 1) paragraph 32(c) of the 3FASOC alleges that “some Group Members”, not all Group Members, were excluded from one more benefits under their Add-on Insurance; and
 - 2) paragraph 34(a) of the 3FASOC alleges that the Insurance Benefits provided by the Add-on Insurance were likely to overlap with insurance coverage held by “some Group Members”, not all Group Members,

and paragraph 34(b) does not specify or particularise how, for those Group Members who are not the “some Group Members” referred to in paragraphs 32(c) and 34(a) of the 3FASOC, the Insurance Benefits provided by the Add-on Insurance were likely to be unnecessary or largely unnecessary, and/or confer no material benefit, and/or make the Add-on Insurance unsuitable for those Group Members; and
- (ii) under cover of that objection, it denies the allegations, refers to and repeats paragraph 34(b)(i)B above and says that:
 - A. an insurance policy provides the policy holder with insurance coverage against the occurrence of a specified adverse event or events, the occurrence and timing of which is inherently uncertain;
 - B. it is a common feature of an insurance policy that, in circumstances where the risk insured against does not ultimately eventuate, with hindsight, it could be said that the insured would have been better off financially had the insured not purchased insurance against the risk;
 - C. the Add-on Insurance provided insurance coverage against a number of specified events, and that coverage conferred financial and non-financial benefits on the Plaintiffs and Group Members, including entitlement to indemnity and peace of mind;
 - D. the likelihood of the Plaintiffs and Group Members having an entitlement in respect of a claim event under their Add-on Insurance and under separate insurance coverage can only be determined on an individual

basis, not a common basis, as it will depend on the claim event or potential claim and their personal circumstances at the time of the claim event or potential claim event;

(d) as to paragraph 34(c):

(i) says that the allegations are vague and embarrassing and liable to strike out as they do not specify or particularise:

A. what is meant by the term “equivalent policies”;

B. the basis on which it is alleged the Insurance Benefits provided by the Add-on Insurance had a “higher price” than the “equivalent policies” other than by reference to the premium for the Add-on Insurance being capitalised into the Car Loan; or

C. the basis on which it is alleged the Insurance Benefits provided by the Add-on Insurance had “lower coverage” than the “equivalent policies”:
and

(ii) under cover of that objection, refers to and repeats paragraph 34(c)(ii) above and denies the allegations.

35. As to paragraph 35, Toyota:

(a) denies the allegations;

(b) refers to and repeats paragraphs 22-27 and 31-34 above; and

(c) says further that:

(i) paragraph 33 of the [3FASOC](#) alleges that the claims ratio for the Add-on Insurance during the Relevant Period was “low”, not zero;

(ii) the claims ratio for the Add-on Insurance during the Relevant Period will be greater than zero provided at least \$1 was paid to the Plaintiffs and Group Members during the Relevant Period; and

(iii) if the claims ratio for the Add-on Insurance during the Relevant Period is greater than zero, there is no factual basis to allege that the Add-on Insurance products:

A. were of “no value to”; or

B. “conferred no benefit on”

the Plaintiffs or Group Members.

36. As to paragraph 36, Toyota:

- (a) refers to and repeats paragraphs 33-34 above; and
- (b) denies the allegations.

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. Toyota admits paragraph 37.

38. As to paragraph 38, Toyota:

- (a) admits that the Car Loans entered into with the Plaintiffs and Consumer Group Members were contracts under which credit was or may be provided (together, the **Consumer Car Loans**);
- (b) says that Consumer Car Loans that satisfied all of the following two criteria were credit contracts within the meaning of s 4 of the Credit Code and s 5 of the NCCP Act:
 - (i) the Consumer Car Loan was entered into on or after 1 April 2010; and
 - (ii) the Consumer Car Loan provided, or was intended to provide, credit wholly or predominantly for personal, domestic or household purposes; and
- (c) says that to the extent that any of the Consumer Car Loans were not wholly or predominately for personal, domestic or household purposes, they were not a credit contract within the meaning of section 4 of the Credit Code and section 5 of the NCCP Act; and
- (d) otherwise denies the allegations.

39. As to paragraph 39, Toyota:

- (a) admits that, during the Relevant Period, Dealer Personnel dealt directly with the Plaintiffs and Consumer Group Members during the course of, as part of, or incidentally to, the business of the Dealers, and otherwise denies the allegations in paragraph 39(a) in respect of "Dealers and/or Dealer Representatives";
- (b) does not know and therefore cannot admit the allegations in paragraph 39(b)(i) in respect of Dealer Personnel, and otherwise denies the allegations in respect of "Dealers and/or Dealer Representatives";

- (c) admits the allegations in paragraph 39(b)(ii) in respect of Dealer ~~P~~ersonnel, and otherwise denies the allegations in respect of “Dealers and/or Dealer Representatives”; and
- (d) denies the allegations in paragraphs 39(b)(iii)-(iv) and says that during the Relevant Period Toyota did not offer any “consumer lease” to customers wholly or predominantly for personal, domestic or household use.

40. As to paragraph 40, Toyota:

- (a) refers to and repeats paragraphs 38-39 above;
- (b) admits that:
 - (i) from 1 April 2010 to the end of the Relevant Period, Dealers and Dealer Personnel, when acting in their capacity as agents of Toyota, provided assistance to the Plaintiffs and Consumer Group Members who entered into Regulated Car Loans with Toyota;
 - (ii) those Regulated Car Loans were credit contracts within the meaning of s 4 of the Credit Code and s 5 of the NCCP Act; and
 - (iii) the assistance provided was credit assistance within the meaning of ss 7(a) and 8 of the NCCP Act; and
- (c) otherwise denies the allegations.

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

41. As to the allegations in paragraph 41, Toyota admits that Dealers carried on business in Australia during the Relevant Period.

42. As to the allegations in paragraph 42, Toyota admits that Dealers carried on business in this jurisdiction as defined in s 21(2) of the NCCP Act from 1 April 2010 to the end of the Relevant Period, and otherwise denies the allegations.

43. As to the allegations in paragraph 43, Toyota:

- (a) admits that from 1 April 2010 to the end of the Relevant Period, Dealers and Dealer Personnel, in the course of, or as part of, or incidentally to, the business carried on by Dealers in this jurisdiction, acted as an intermediary between Toyota and: (i) the Plaintiffs; and (ii) Consumer Group Members, wholly or partly for the purposes of securing a provision of credit for them under a Consumer Car Loan;
- (b) otherwise denies the allegations in paragraph 43(a); and

(c) refers to and repeats paragraph 39(d) above and denies the allegations in paragraph 43(b).

44. As to the allegations in paragraph 44, Toyota:

- (a) admits that, from 1 April 2010 to the end of the Relevant Period, Dealers and Dealer Personnel acted as an intermediary for the purposes of ss 7(b) and 9(a) of the NCCP Act;
- (b) refers to and repeats paragraph 43 above; and
- (c) otherwise denies the allegations.

45. As to the allegations in paragraph 45, Toyota:

- (a) admits that Dealers and Dealer Personnel 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 when providing the credit assistance referred to in paragraph 40(b) above;
- (b) says that pursuant to s 180A(8)(a) of the NCCP Act, s 180A does not apply to the conduct of the Dealers or the Dealer Personnel in respect of the Plaintiffs and Consumer Group Members by reason of their conduct as agents of Toyota, being a “credit provider under the credit contract to which the assistance relates” within the meaning of s 180A(8)(a);
- (c) refers to and repeats paragraphs 40 and 44 of this Defence; and
- (d) otherwise denies the allegations.

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

46. As to paragraph 46, Toyota:

- (a) says that the allegations in paragraph 46(a) are vague and embarrassing and, under cover of that objection:
 - (i) refers to and repeats paragraphs [1\(e\)](#), 6(b)(vi) and [7A\(b\)-\(c\)](#) above; and
 - (ii) ~~otherwise~~ denies the allegations; and
- (b) as to the allegations in paragraph 46(b), it refers to and repeats the admissions in paragraphs 47-50 below, and ~~otherwise~~ denies the allegations.

47. As to paragraph 47, Toyota:

- (a) admits paragraph 47(a);

- (b) denies paragraph 47(b) and says that the amount of credit owing under a Car Loan was at all times determined by the Plaintiffs' and Group Members' decision to finance the premium or premiums for their Add-on Insurance by way of their Car Loan;
- (c) denies paragraph 47(c) and says that interest accrued on the amount owing under each Car Loan pursuant to the terms of the Car Loan, and says that the premium for the Add-on Insurance was a component of the amount owing under each Car Loan upon which interest accrued.

48. As to paragraph 48, Toyota:

- (a) in respect of the period from 1 January 2014 onwards, admits the allegations in paragraph 48(a) that it was paid commissions by ADICA for the sale of Add-on Insurance, says that the terms and conditions governing the payment of commissions were set out in the Agency Agreement, ~~and~~ says further that Toyota disclosed to the Plaintiffs and Group Members its entitlement to be paid a commission in the Financial Services Guide and Loan Contract Booklet provided to the Plaintiffs and Group Members, the full terms and effect of which it relies upon, and denies the allegations in respect of the period prior to 1 January 2014 by reason of the matters pleaded in paragraphs 1(e) and 7A(b)-(c) above;

Particulars

The terms and conditions of the Agency Agreement governing commissions are in Items 1-2 of Schedule 1 [ADI.001.001.0004] and the Amendments to Schedules 1 and 2 of the Agency Agreement item 1 [ADI.001.001.0095].

Particulars of the Financial Services Guide are set out in Annexure A.

The disclosure of the commissions to the Plaintiffs was made by provision of the following documents to the Plaintiffs:

First and Second Plaintiffs

~~A. The Toyota Insurance Financial Services Guide dated 1 December 2016 TIN152S (12/2016) [TFA.001.021.1330], issued to the First and Second Plaintiffs on or about 18 December 2017, which stated the following:~~

~~“How we are paid~~

~~TFAL receives a commission on new business and renewals calculated as a percentage of the base premium (the premium less GST and other government taxes and charges), or a fixed dollar fee, or both for the insurance services provided to you.~~

~~The commission and fees are paid to us by the insurer. We may also receive a profit share commission from some insurers if we generate a certain amount of business. The amount of the profit share commission depends on the performance of the portfolio.”;~~

~~B. The Loan Contract Booklet (TFA064 (11/2016)) issued to the First and Second Plaintiffs on or about 18 December 2017 [TFA.001.004.0037] (**First and Second Plaintiffs’ Loan Contract Booklet**), which stated the following:~~

~~**“15.4 Commissions**~~

~~... (c) You agree to... us receiving commission or other remuneration from, any person in connection with this Contract.”;~~

Third Plaintiff

C. The Financial Services Guide dated 1 November 2018 TIN152S (11/2018), issued to the ~~Third~~ Plaintiff on or about 31 December 2019 [TFA.600.001.0053 at .0054], which ~~contained the same disclosure set out in subparagraph A of these particulars.~~ stated the following:

“How we are paid

TFAL receives a commission on new business and renewals calculated as a percentage of the base premium (the premium less GST and other government taxes and charges), or a fixed dollar fee, or both for the insurance services provided to you.

The commission and fees are paid to us by the insurer. We may also receive a profit share commission from some insurers if we generate a certain amount of business. The amount of the profit share commission depends on the performance of the portfolio.”; and

- D. The Loan Contract Booklet issued to the ~~Third~~ Plaintiff on or about 31 December 2019 [TFA.600.004.0003] (~~Third-Plaintiff’s Loan Contract Booklet~~), which ~~contained the same disclosure set out in sub-paragraph B of these particulars.~~stated the following:

“15.4 Commissions

... (c) You agree to... us receiving commission or other remuneration from, any person in connection with this Contract”;

- (b) as to paragraph 48(b):
- (i) admits that from 1 January 2014 Toyota paid Authorised Dealers a commission for the sale of Add-on Insurance;
 - (ii) says that from 1 January 2014 the payments were made in accordance with the terms of the Authorised Representative Agreements;
 - (iii) says further that Toyota disclosed to the ~~Plaintiffs~~ and Group Members that it would pay commissions to Authorised Dealers in connection with the Add-on Insurance in its Financial Services Guide, applicable Policy and Product Disclosure Statement, Loan Offer and Loan Contract Booklet, and
 - (iv) otherwise denies the allegations;

Particulars

The terms and conditions of the Authorised Representative Agreement governing commissions included cl 5.1 and item 4 of Schedule A of the Brian Hilton Broome-Toyota Authorised Representative Agreement [TFA.600.005.0001~~TFA.001.020.0010~~].

The amount of the commissions was revised on and from 1 January 2017 by way of a dealer bulletin [TFA.001.029.0857].

Particulars of the Financial Services Guide, and applicable Policy and Product Disclosure Statement, are in Annexure A.

The disclosure of the commissions to the Plaintiffs was made by provision of the following documents to the Plaintiffs:

First and Second Plaintiffs

~~A. The Financial Services Guide dated 1 December 2016 TIN152S (12/2016) [TFA.001.021.1330], issued to the First and Second Plaintiffs on or about 18 December 2017, which stated the following:~~

~~**“How we are paid**~~

~~... TFAL remunerates your motor dealer for their role in arranging your insurance. This is paid out of the commission paid by the insurer. Your motor dealer receives a flat fee, a commission calculated as a percentage of the premium you pay (excluding taxes and charges), or a combination of both, depending on the policy you choose and its features.”;~~

~~B. The Policy and Product Disclosure Statement dated 1 January 2014 for Finance Gap Insurance TIN009 (01/2014) [TFA.001.004.0007], issued to the First and Second Plaintiffs on or about 15 December 2017, which stated the following on page 5:~~

~~**“Payments we make to our Intermediaries**~~

~~We will pay commissions and fees to our Intermediaries out of your premium. These amounts will affect the amount of your premium.”;~~

~~C. The Policy and Product Disclosure Statement dated 4 February 2014 for Finance Protection Insurance [TFA.001.004.0006], issued to the First and Second Plaintiffs on or about 15 December 2017, which stated the following on page 5:~~

~~**“Payments we make to our Intermediaries**~~

~~We will pay commissions and fees to our Intermediaries out of your premium. These amounts will affect the amount of your premium.~~

~~...~~

~~Where the sale of this policy is regulated by the National Credit Code, a commission of up to twenty percent (20%) of the net premium (total premium minus government charges), is paid to the seller on retail sales.”;~~

~~D. The Policy and Product Disclosure Statement dated 4 January 2017 for Finance Protection Insurance TIN014 (01/2017) [TFA.001.004.0032], issued to the First and Second Plaintiffs on or about 18 December 2017, which stated the following on pages 7-8:~~

~~**“Payments we make to our Intermediaries**~~

~~We will pay commissions and fees to our Intermediaries out of your premium.~~

~~...~~

~~A commission of up to twenty percent (20%) of the net premium (total premium minus government charges), is paid to the seller on retail sales.”~~

~~E. The Loan Offer issued to and signed by the First and Second Plaintiffs on or about 18 December 2017 [TFA.001.002.0001], which stated the following:~~

“INSURANCE:

You have told the Credit Provider that you propose to enter into the following insurance contract which are to be financed under this Contract.

Credit Related Insurance:

Insurance Type	Name of Insurer	Insurance Product Name	Amount Payable to Insurer \$	Commission as a % of the Premium
Consumer Credit Insurance	Toyota Insurance	Finance Protection Insurance	\$1,680.00	20.0%

Where no percentage is specified in the last column above, the Credit Provider is not aware that the commission is presently ascertainable.

Other Insurance:

Insurance Type	Name of Insurer	Insurance Product Name	Amount Payable to Insurer \$
Gap Insurance	Toyota Insurance	Finance Gap Insurance	\$960.00”

~~F. The First and Second Plaintiffs’ Loan Contract Booklet [TFA.001.004.0037], issued to the First and Second Plaintiffs on or about 18 December 2017, which stated the following:~~

“15.4 Commissions

~~... (c) You agree to us paying commission or other remuneration to... any person in connection with this Contract.”;~~

Third Plaintiff

A. The Financial Services Guide dated 1 November 2018 TIN152S (11/2018) [TFA.600.001.0053 at .0054], issued to the ~~Third~~ Plaintiff on or about 31 December 2019, which stated the following:

“How we are paid

... TFAL remunerates your motor dealer for their role in arranging your insurance. This is paid out of the commission paid by the insurer.

Your motor dealer receives a flat fee, a commission calculated as a percentage of the premium you pay (excluding taxes and charges), or a combination of both, depending on the policy you choose and its features. ...

Our Representatives receive soft dollar commissions from TFAL and insurers from time to time. This may include, but is not limited to, conferences, travel, sponsorships, and other gifts. You can ask for more information about the remuneration within a reasonable period after receiving this FSG and before any insurance services described in this FSG are provided to you, unless agreed otherwise.”;

- B. The Policy and Product Disclosure Statement dated 1 January 2017 for Finance Protection Insurance TIN014 (01/2017) [TFA.001.004.0032], issued to the ~~Third~~ Plaintiff on or about 31 December 2019, which stated the following on page 8:

“Payments we make to our Intermediaries

We will pay commissions and fees to our Intermediaries out of your premium. [at page 7]

Commission

A commission of up to twenty percent (20%) of the net premium (total premium minus government charges) is paid to the seller on sales.”;

- C. The Policy and Product Disclosure Statement dated 1 January 2014 for Finance Gap Insurance TIN009 (01/2014) [TFA.001.004.0007], issued to the ~~Third~~ Plaintiff on or about 31 December 2019, which stated the following on page 5:

“Payments we make to our intermediaries

We will pay commissions and fees to our Intermediaries out of your premium. These

amounts will affect the amount of your premium.”;

- D. The Loan Offer issued to and signed by the ~~Third~~ Plaintiff on or about 31 December 2019 [TFA.600.001.0026], which stated the following on page 4:

“INSURANCE

Insurance Type	Name of Insurer	Product Name	Amount Payable to Insurer (\$)	Commission as a % of the amount payable to the Insurer
Consumer Credit Insurance	Toyota Insurance	Finance Protection Insurance	\$925.00	20%
Gap Insurance	Toyota Insurance	Finance Gap Insurance	\$265.00	N/A

Where no percentage or N/A is specified in the last column above, the Credit Provider is not aware that the commission is presently ascertainable.”; and

- E. The ~~Third~~-Plaintiff’s Loan Contract Booklet [[TFA.600.004.0003](#)~~HEP.002.002.0013~~], issued to the ~~Third~~-Plaintiff by email on 29 December 2019 [HEP.002.002.0012], which stated the following:

“15.4 Commissions

... (c) You agree to us paying commission or other remuneration to... any person in connection with this Contract.”;

(c) as to paragraph 48(c);

(i) admits that, from 1 January 2014, some Authorised Dealer Representatives were paid a commission for the sale of Add-on Insurance; ~~during the Relevant Period~~,

(ii) says that the commission arrangements referred to in sub-paragraph (i) above were disclosed to the Plaintiffs and Group Members in the Financial Services Guide provided to them; and

~~(c)(iii)~~ otherwise denies the allegations.

Particulars

First and Second Plaintiffs

~~A. The Financial Services Guide dated 1 December 2016 TIN152S (12/2016) [TFA.001.021.1330], issued to the First and Second Plaintiffs on or about 18 December 2017, stated the following:~~

~~“... If your salesperson is employed by a Contractor, the motor dealer pays a proportion of the commission they receive to the Contractor.~~

~~Your salesperson is paid a salary by their employer, and may receive a performance bonus if they achieve certain performance targets. The employer may, at their discretion, pay to your salesperson a proportion of the commission they receive. The salesperson may also participate in a rewards point programme, where they receive ‘reward points’ to acquire goods or services.~~

~~Our Representatives receive soft dollar commissions from TFAL and insurers from time to time. This may include, but is not limited to, conferences, travel, sponsorships, and other gifts. You can ask for more information about the remuneration within a reasonable period after receiving this FSG and before any insurance services described in this FSG are provided to you, unless agreed otherwise.”;~~

Third Plaintiff

The disclosure of the commissions to the Plaintiff was made by provision of the following documents to the Plaintiffs:

The commission arrangements were disclosed to the Plaintiff by tThe Financial Services Guide dated 1 November 2018 TIN152S (11/2018), issued to the

~~Third~~ Plaintiff on or about 31 December 2019 [TFA.600.001.0053 at .0054], ~~included the same statement set out in sub-paragraph A of these particulars~~.which stated the following:

“... If your salesperson is employed by a Contractor, the motor dealer pays a proportion of the commission they receive to the Contractor.

Your salesperson is paid a salary by their employer, and may receive a performance bonus if they achieve certain performance targets. The employer may, at their discretion, pay to your salesperson a proportion of the commission they receive. The salesperson may also participate in a rewards point programme, where they receive ‘reward points’ to acquire goods or services.

Our Representatives receive soft dollar commissions from TFAL and insurers from time to time. This may include, but is not limited to, conferences, travel, sponsorships, and other gifts. You can ask for more information about the remuneration within a reasonable period after receiving this FSG and before any insurance services described in this FSG are provided to you, unless agreed otherwise.”

49. As to paragraph 49, Toyota:

- (a) refers to and repeats paragraph 6(b)(vi) above;
- (b) for the period from 1 January 2014, admits that Dealers, through Authorised Dealer Representatives, arranged the sale and issue of Add-on Insurance to the Plaintiffs and Group Members ~~during the Relevant Period~~; and
- (c) otherwise denies the allegations.

50. As to paragraph 50, Toyota:

- (a) admits that it was or ought to have been aware, and it was a fact, that Dealers and Dealer Personnel, during the Relevant Period, obtained the Personal Information from customers

who submitted an application for finance and offer to enter into a Car Loan, and otherwise denies the allegations in paragraph 50(a);

- (b) says that the allegations in paragraph 50(b) are embarrassing as the 3FASOC does not specify or particularise the terms “substantial proportion” and “overlap” and, under cover of that objection, Toyota refers to and repeats paragraph 34(a) above and denies the allegations in paragraph 50(b);
- (c) says that the allegations in paragraph 50(c) are embarrassing as the 3FASOC does not define or particularise the term “Toyota Dealership” and, under cover of that objection, denies the allegations and says that the purpose and primary purpose of a customer who attended a Dealer in the Relevant Period to buy an automobile, and the likelihood of the customer considering whether they needed Add-on Insurance and researching the options available for Add-on Insurance, will vary between each customer and can only be determined on an individual basis;
- (d) as to paragraph 50(d):
 - (i) ~~refers to and repeats paragraph 6(b)(vi) above,~~ refers to and repeats the admission in paragraph 29 above, and admits that the wording of the standard terms and conditions of the Add-on Insurance could not be negotiated;
 - (ii) in respect of the period from 1 January 2014 onwards, refers to and repeats paragraph 6(b)(vi) above and says that the Plaintiffs and Group Members were given an opportunity to consider the terms and conditions of the Add-on Insurance available to them before applying for the Car Loan and one or more Add-on Insurance products; and
 - (iii) otherwise denies the allegations;
- (e) as to paragraph 50(e):
 - (i) refers to and repeats sub-paragraphs (d)(i)-(iii) above; and
 - (ii) denies the allegations;
- (f) as to paragraph 50(f):
 - (i) says that the allegations in paragraph 50(f) are embarrassing as the 3FASOC does not specify or particularise the term “substantial proportion”; and
 - (ii) under cover of that objection, denies the allegations.

51. As to paragraph 51, Toyota:

- (a) says that the allegations in paragraph 51(a) are embarrassing as the 3FASOC does not specify or particularise the terms “substantial revenue” or “significant profit” and, under cover of that objection, it denies the allegations; and
- (b) as to the allegations in paragraph 51(b), refers to and repeats paragraphs 1(e), 6(b)(vi), 7A(b)-(c) and 48 above and denies the allegations.

~~D.3.—The First and Second Plaintiffs’ Add-on Insurance~~

~~52.—As to paragraph 52, Toyota:~~

- ~~(a)—admits the allegations in paragraphs 52(a)-(b);~~
- ~~(b)—does not know and therefore cannot admit the allegations in paragraphs 52(c)-(f) and says that paragraph 52(f) is embarrassing as neither it nor paragraph 52(e) plead or particularise the basis on which unspecified insurance obtained through membership of GESB provided the First Plaintiff with “life and total and permanent disablement” since around September 2009.~~

~~53.—As to paragraph 53, Toyota:~~

- ~~(a)—admits the allegations in paragraphs 53(a)-(b);~~
- ~~(b)—does not know and therefore cannot admit the allegations in paragraphs 53(c)-(f) and says that paragraph 53(f) is embarrassing as neither it nor paragraph 53(e) plead or particularise the basis on which unspecified insurance obtained through membership of an unnamed superannuation fund provided the Second Plaintiff with “life and total and permanent disablement” since around September 2009.~~

~~54.—Toyota admits paragraph 54 and says that the Broome Dealer Agreement is the 2010 Broome Toyota Dealer Agreement defined in the particulars to paragraph 5(a)5(a)5(a) above.~~

~~55.—As to paragraph 55, Toyota:~~

- ~~(a)—admits that Broome Toyota was a Dealer at all material times in its dealings with the First and Second Plaintiffs;~~
- ~~(b)—admits that Broome Toyota acted as agent of Toyota when engaging in the conduct pleaded in paragraph 5(b)(iii)5(b)(iii)5(b)(iii) above in respect of the First and Second Plaintiffs;~~
- ~~(c)—admits that Broome Toyota was an Authorised Dealer at all material times in its dealings with the First and Second Plaintiffs;~~
- ~~(d)—admits that Broome Toyota was an authorised representative of Toyota within the meaning of s 916A(1) of the Corporations Act, and within the meaning of s 761A of the Corporations~~

~~Act up until 20 October 2023 when s 761 was repealed and replaced by the *Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023 (Cth)*, at all material times when dealing with the First and Second Plaintiffs in respect of the following conduct:~~

~~(i) providing general financial product advice on Add-on Insurance products; and~~

~~(ii) arranging the issue of the Add-on Insurance products; and~~

~~(e) otherwise denies the allegations.~~

~~56. As to paragraph 56, Toyota:~~

~~(a) admits the allegation that the First and Second Plaintiffs attended Broome Toyota in or about early December 2017 and otherwise does not know and therefore cannot admit the allegations in paragraph 56(a);~~

~~(b) admits the allegations in paragraph 56(b);~~

~~(c) admits the allegations in paragraph 56(c); and~~

~~(d) denies the allegations in paragraphs 56(d)-(e); and~~

~~(e) says that:~~

~~(i) the First Plaintiff attended Broome Toyota on 4 December 2017 and signed a Loan Car/Test Drive Form;~~

Particulars

~~Loan Car/Test Drive Form signed by the First Plaintiff and dated 4 December 2017 [TFA.001.004.0011 at .0012].~~

~~(ii) on or about 8 December 2017 the First Plaintiff completed and signed a Customer Application form for a Car Loan for a 2012 Holden Colorado (registration BM26161) which stated that the First Plaintiff was a “Permanent resident” and, in doing so, represented to Toyota that the First Plaintiff was a permanent resident of Australia;~~

Particulars

~~Customer Application form signed and dated 8 December 2017 by the First Plaintiff [HEP.002.001.0002].~~

~~(iii) when the First and Second Plaintiffs attended Broome Toyota in or about early December 2017 they discussed Add-on Insurance with an Authorised Dealer Representative;~~

~~(iv) on 15 December 2017 Broome Toyota sent an email to the First and Second Plaintiffs attaching Policy and Product Disclosure Statements for Finance Protection Insurance, Finance Gap Insurance and Extended Warranty Insurance;~~

Particulars

~~Email dated 15 December 2017 from Andy Weir of Broome Toyota to the First and Second Plaintiffs [TFA.001.004.0004], attaching, among other things, the following documents:~~

~~A. Factory Approved Extended Warranty Insurance Policy and Product Disclosure Statement dated 1 January 2014 TIN013S (11/2014) [TFA.001.004.0005];~~

~~B. Finance Protection Insurance Policy Supplementary Product Disclosure Statement dated 1 July 2016 TIN014a (07/2016) [TFA.001.004.0006], and Finance Protection Insurance Policy and Product Disclosure Statement dated 1 February 2014 TIN014S (02/2014) [TFA.001.004.0006]; and~~

~~C. Finance Gap Insurance Policy and Product Disclosure Statement dated 1 January 2014 TIN009S (01/2014) [TFA.001.004.0007].~~

~~(v) the Finance Protection Insurance Policy and Product Disclosure Statement dated 1 February 2014 TIN014S (02/2014) [TFA.001.004.0006], which was sent to the First and Second Plaintiffs by Broome Toyota on 15 December 2017 [TFA.001.004.0004], stated the following:~~

~~A. "Eligibility~~

~~To be eligible to apply for this insurance you must be applying for a new finance contract on your vehicle, be a citizen or permanent resident of Australia and meet the age and employment criteria at the commencement date.~~

~~The Toyota Insurance Finance Protection policy is a consumer credit insurance product and you are not obliged to buy it, nor is its purchase a condition of the finance contract you are entering into. If you choose to take out this type of insurance, you may do so with an insurer of your choice." (page 4); and~~

~~B. “Age, residency and employment criteria~~

~~To be eligible to apply for this insurance, at the commencement date you must be:~~

~~...~~

~~• a citizen or permanent resident of Australia; ...” (page 7);~~

~~(vi) the Finance Protection Insurance Policy Supplementary Product Disclosure Statement dated 1 July 2016 TIN014a (07/2016), which accompanied the Finance Protection Insurance Policy and Product Disclosure Statement dated 1 February 2014 TIN014S (02/2014) [TFA.001.004.0006], sent to the First and Second Plaintiffs by Broome Toyota on 15 December 2017 [TFA.001.004.0004], stated the following:~~

~~“Risks~~

~~“There are risks associated with choosing insurance cover that you need to consider.~~

~~You may select an insurance product that does not meet your needs so you should make sure that you read this PDS to understand what is and isn't covered. You should also make sure you understand whether you need this insurance.~~

~~This depends on your personal circumstances and financial objectives. Please consider whether this product is right for you and consult a financial adviser, if required.~~

~~For insurance policies purchased in conjunction with financing agreements through motor dealers, such as this policy, some of the things to consider include:~~

~~–insurance purchased this way is often more expensive than similar cover purchased through other methods.~~

~~–the types and levels of insurance provided may not be appropriate for you, especially if you have no dependants or already have insurance cover sufficient to meet your liabilities through other policies.~~

~~–including the premium for insurance as part of the financed amount increases the real cost of the insurance due to the interest payable on the financed amount. Please consider if this product is right for you.”~~

~~(vii) the Finance Gap Insurance Policy and Product Disclosure Statement TIN009S (01/2014) dated 1 January 2014 [TFA.001.004.0007], sent to the First and Second Plaintiffs by Broome Toyota on 15 December 2017, stated the following:~~

~~A. “Please read this document carefully to make sure it provides you with the insurance cover you require. If you do not understand the protection this insurance provides, please contact us.” (page 3);~~

~~B. “To be eligible to apply for this insurance you must have a finance contract on your vehicle and comprehensive motor vehicle insurance covering the vehicle.” (page 4);~~

~~C. “The amount of your premium will be set out in your policy schedule. We calculate your premium by taking into account a variety of factors including the following:~~

~~• Key pricing factors for the cover option selected ...” (page 4);~~

~~D. “We will pay commissions and fees to our Intermediaries out of your premium. These amounts will affect the amount of your premium.” (page 5);~~

~~E. “The table below summarises the cover provided, depending on the cover option you have selected.~~

~~**This table is a guide only. For a full explanation of the cover available please carefully read each section of this document.**~~

Cover	Option 1	Option 2	Option 3	Option 4	See page
Pays any outstanding loan balance following a total loss claim being paid on your motor vehicle	Up to \$30,000	Up to \$15,000	Up to \$10,000	Up to \$10,000	9
Pays extra costs associated with your purchase of a replacement vehicle following a total loss	Up to \$4,000	Up to \$4,000	Up to \$2,000	Up to \$1,000	10”

~~(page 6);~~

~~F. **“Eligibility**~~

~~...To be eligible for cover and entitled to claim benefits, you must have a finance contract on your vehicle, and your vehicle must be covered by a comprehensive motor vehicle insurance policy.” (page 6);~~

~~G. —“Levels of cover~~

~~Depending on your needs, you may choose one of four cover options available. The following table shows the maximum amounts we will pay for each cover option, subject to the policy terms and conditions.~~

Cover Option	Outstanding loan balance	Extra costs
1	Up to \$30,000	Up to \$4,000
2	Up to \$15,000	Up to \$4,000
3	Up to \$10,000	Up to \$2,000
4	Up to \$10,000	Up to \$1,000”

~~(page 9);~~

~~H. —“Cancelling your policy~~

~~21-day Cooling off period~~

~~If you cancel your policy within 21 days of its purchase date you will receive a full refund, provided you have not lodged a claim. ...~~

~~Cancellation after 21 days~~

~~By you~~

~~You may also cancel this policy at any time after 21 days of its commencement date by requesting us to do so.” (page 13); and~~

~~I. —“When your policy ends~~

~~This policy will end at the earliest of the following:~~

~~...~~

~~• the date upon which your vehicle is no longer covered by comprehensive motor vehicle insurance; ...”. (page 13); and~~

~~(viii) — between 15 and 18 December 2017 the First Plaintiff and the Second Plaintiff informed Broome Toyota that they wanted to purchase Finance Protection Insurance~~

~~and Finance Gap Insurance but not Extended Warranty Insurance and, as a result, Extended Warranty Insurance was removed from their Car Loan application.~~

Particulars

~~That the information was provided by the First and Second Plaintiffs to Broome Toyota is inferred from the email dated 18 December 2017 from Andy Weir of Broome Toyota to Toyota [TFA.001.004.0010] and the fact the First and Second Plaintiffs' Car Loan Offer and Application, defined in the particulars to paragraph ~~565656(e)(e)(x)(x)(x)~~ below, did not refer to Extended Warranty Insurance but did refer to Finance Protection Insurance and Finance Gap Insurance.~~

~~(ix) — on or about early 18 December 2017 the First and Second Plaintiffs traded in their Mitsubishi Pajero Sport GLX for \$30,000;~~

Particulars

~~Retail Tax Invoice dated 18 December 2017 [TFA.001.002.0001 at .0007].~~

~~(x) — on or about early 18 December 2017 the First and Second Plaintiffs signed a Car Loan application and offer to enter into their Car Loan with Toyota, by which they applied to borrow the amount of \$10,123.63 from Toyota in order to discharge their existing loan contract with Volkswagen Financial Services (Contract Number 389349), which had financed the purchase of the Mitsubishi Pajero Sport GLX, of which \$40,123.62 remained outstanding at the time;~~

Particulars

~~The First and Second Plaintiffs' application and offer to enter into the Car Loan was wholly in writing, contained in the document titled "Loan Offer — Consumer Fixed Rate Loan" dated and signed by the First and Second Plaintiffs on 18 December 2017 [TFA.001.002.0001] at [.0003] to [.0006] **(First and Second Plaintiffs' Loan Offer and Application)**, which was accompanied by the First and Second Plaintiffs' Loan Contract Booklet TFA064 [TFA.001.004.0037].~~

~~Page 1 of the First and Second Plaintiffs' Loan Offer and Application refers to "Additional finance to discharge debt" in the sum of \$10,123.63.~~

~~The Retail Tax Invoice dated 18 December 2017 [TFA.001.002.0001 at .0007] refers to the “Finance Payout” of \$40,123.63.~~

~~Volkswagen Financial Services Payout Advice dated 18 December 2017 [TFA.001.002.0001 at .0008] refers to the “Payout Amount” of \$40,123.63;~~

~~(xi) page 4 of the offer section of the First and Second Plaintiffs’ Loan Offer and Application stated the following:~~

~~A. “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”;~~

~~B. “you each acknowledge that you...have received from the Supplier a copy of this Schedule, a copy of the Credit Guide, and a copy of the Consumer Fixed Rate Loan Contract Booklet TFA064 (11/2016)”;~~

~~C. “BEFORE YOU SIGN~~

~~* READ THIS CONTRACT DOCUMENT so that you know exactly what contract you are entering into and what you will have to do under the contract.~~

~~* You should also read the information statement: “THINGS YOU SHOULD KNOW ABOUT YOUR PROPOSED CREDIT CONTRACT.~~

~~...~~

~~* Do not sign this contract document if there is anything you do not understand”;~~ and

~~D. “You do not have to take out consumer credit insurance unless you want to...If you take out insurance, the credit provider cannot insist on any particular insurance company”;~~

~~(xii) prior to the First and Second Plaintiffs signing the First and Second Plaintiffs’ Loan Offer and Application, the First and Second Plaintiffs were provided with the following documents disclosing the terms of the Add-on Insurance, the full terms and effect of which Toyota relies upon:~~

~~A. Finance Gap Insurance Policy and Product Disclosure Statement TIN009S (01/2014) dated 1 January 2014 [TFA.001.004.0007]; and~~

~~B. Finance Protection Insurance Policy and Supplementary Product Disclosure Statement dated 1 July 2016 TIN014a (07/2016), and Finance Protection Insurance Policy and Product Disclosure Statement dated 1 February 2014 TIN014S (02/2014) [TFA.001.004.0006].~~

Particulars

~~The documents were emailed to the First and Second Plaintiffs by Andy Weir of Broome Toyota on 15 December 2017 [TFA.001.004.0004].~~

~~(xiii) the Finance Protection Insurance Policy and Supplementary Product Disclosure Statement TIN014a (07/2016) dated 1 July 2016, and Finance Protection Insurance Policy and Product Disclosure Statement dated 1 February 2014 TIN014S (02/2014) [TFA.001.004.0006] stated the following:~~

~~A. "This Toyota Insurance Finance Protection policy has been designed to provide a choice of two levels of protection for your vehicle finance." (page 3);~~

~~B. "This PDS provides general information only, without taking into account your personal circumstances. Please read this document carefully to make sure it provides you with the insurance cover you require. If you do not understand the protection this insurance provides, please contact us." (page 3);~~

~~C. "You need to be aware of the risks for which you are not covered and the benefit limits under this policy. Please carefully read the sections 'What is covered' and 'What is not covered'." (page 4);~~

~~D. "We will pay commissions and fees to our Intermediaries out of your premium"; (page 5);~~

~~E. "Where the sale of this Policy is regulated by the National Credit Code, a commission of up to twenty percent (20%) of the net premium (total premium minus government charges), is paid to the seller on sales." (page 5); and~~

~~F. "To be eligible to apply for this insurance, at the commencement date you must be: ... a citizen or permanent resident of Australia..." (pages 4 and 7).~~

~~(xiv) the Finance Protection Insurance Policy Schedule dated 18 December 2017, which was issued to the First Plaintiff on or about 18 December 2017 [HEP.002.001.0007], stated the following on page 2~~

~~"Your information~~

~~Here are the responses to the questions we asked you when you applied for this insurance. Our agreement to insure you relies on the completeness, honesty and accuracy of the information you have given us. It's important you check that the information set out is correct and advise us immediately of any changes to your information or details. If the information you provide us is not honest, correct and complete, we may reduce or deny any claim you make, cancel your policy or treat your policy as if it never existed.~~

~~... 4. You [are] presently a citizen or permanent resident of Australia ..."~~

~~57. — Toyota admits paragraph 57.~~

~~58. — Toyota admits paragraph 58.~~

~~59. — As to paragraph 59, Toyota:~~

- ~~(a) — admits that 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;~~
- ~~(b) — denies that the premiums were included without the First and Second Plaintiffs' knowledge;~~
- ~~(c) — refers to and repeats paragraph [56\(c\)\(iii\)](#) [56\(c\)\(ii\)](#) [56\(c\)\(ii\)](#) [56\(c\)\(xiii\)](#) [56\(c\)\(xiii\)](#) [56\(c\)\(xiii\)](#) above; and~~
- ~~(d) — says further that the First and Second Plaintiffs' Loan Offer and Application expressly referred to the First and Second Plaintiffs' Add-on Insurance;~~

Particulars

~~The Add-on Insurance was referred to on page 3 of the offer section of the First and Second Plaintiffs' Loan Offer and Application, and page 1 of the application section of the First and Second Plaintiffs' Loan Offer and Application [TFA.001.002.0001 at .0003 to .0006].~~

~~60. — Toyota admits paragraph 60.~~

~~61. — As to paragraph 61, Toyota:~~

- (a) — says that the allegations in paragraph 61(a) are embarrassing as the FASOC does not make any allegations as to the provision of consent or agreement by a customer in respect of requiring Add-on Insurance and, under cover of that objection, it:
- (i) — says that it does not know whether or not the First and Second Plaintiffs “required” Add-on Insurance;
 - (ii) — says further that Authorised Dealer Representatives were not required to obtain customers’ informed consent or agreement that they “required” the Add-on Insurance in order to assist the customers to apply for Add-on Insurance;
 - (iii) — refers to and repeats paragraphs ~~6(b)(vi)6(b)(vi)6(b)(vi), 56(e)(ii)56(e)(ii)56(e)(ii)-56(e)(xiii)56(e)(xiii)56(e)(xiii)~~ and ~~595959~~ above; and
 - (iv) — denies the allegations;
- (b) — denies paragraph 61(b), and refers to and repeats paragraphs ~~6(b)(vi)6(b)(vi)6(b)(vi), 56(e)(ii)56(e)(ii)56(e)(ii) 56(e)(xiii)56(e)(xiii)56(e)(xiii)~~ and ~~595959~~ above;
- (c) — denies paragraph 61(c), refers to and repeats paragraphs ~~6(b)(vi)6(b)(vi)6(b)(vi), 19(a)(i)19(a)(i)19(a)(i), 56(e)(ii)56(e)(ii)56(e)(ii) 56(e)(xiii)56(e)(xiii)56(e)(xiii)~~ and ~~595959~~ above, and says that Toyota was not authorised under the Toyota AFSL to provide the First and Second Plaintiffs with personal advice;
- (d) — as to paragraph 61(d):
- (i) — denies the allegations;
 - (ii) — refers to and repeats paragraphs ~~6(b)(vi)6(b)(vi)6(b)(vi), 56(e)(ii)56(e)(ii)56(e)(ii)-56(e)(xiii)56(e)(xiii)56(e)(xiii)~~ and ~~59(d)59(d)59(d)~~ above;
 - (iii) — says that the First and Second Plaintiffs ought to have taken reasonable care to ensure that:
 - A. — the First Plaintiff knew whether or not she was a permanent resident of Australia, as indicated by the First Plaintiff on the Customer Application form pleaded in paragraph ~~56(e)(ii)56(e)(ii)56(e)(ii)~~ above;
 - B. — they were fully informed of the terms and conditions of the Finance Gap Insurance and Finance Protection Insurance and the suitability of the products for them; and
 - (iv) — says further that Toyota was not authorised under the Toyota AFSL to provide the First and Second Plaintiffs with personal advice;

~~(e) — denies paragraph 61(e), refers to and repeats paragraph [56\(e\)\(ii\)](#)~~56(e)(ii)~~~~56(e)(ii)~~
[56\(e\)\(xiii\)](#)~~56(e)(xiii)~~~~56(e)(xiii)~~ above and says that:~~

~~(i) — the First and Second Plaintiffs' Loan Contract Booklet [TFA.001.004.0037] included the following terms:~~

~~**“INSURANCE**~~

~~**10. Do I have to take out insurance?**~~

~~Your credit provider can insist you take out or pay the cost of types of insurance specifically allowed by law. These are compulsory third party personal injury insurance, mortgage indemnity insurance or insurance over property covered by any mortgage. Otherwise, you can decide if you want to take out insurance or not. If you take out insurance, the credit provider can not insist that you use any particular insurance company.~~

~~**11. Will I get details of my insurance cover?**~~

~~Yes, if you have taken out insurance over mortgaged property or consumer credit insurance and the premium is financed by your credit provider. In that case the insurer must give you a copy of the policy within 14 days after the insurer has accepted the insurance proposal.~~

~~Also, if you acquire an interest in any such insurance policy which is taken out by your credit provider then, within 14 days of that happening, your credit provider must ensure you have a written notice of the particulars of that insurance.~~

~~You can always ask the insurer for details of your insurance contract. If you ask in writing, your insurer must give you a statement containing all the provisions of the contract.~~

~~**12. If the insurer does not accept my proposal, will I be told?**~~

~~Yes, if the insurance was to be financed by the credit contract. The insurer will inform you if the proposal is rejected.~~

~~**13. In that case, what happens to the premiums?**~~

~~Your credit provider must give you a refund or credit unless the insurance is to be arranged with another insurer.~~

~~**14. What happens if my credit contract ends before any insurance contract over mortgaged property?**~~

~~You can end the insurance contract and get a proportionate rebate of any premium from the insurer.”;~~

- ~~(f) — denies paragraph 61(f), and refers to and repeats paragraphs [6\(b\)\(vi\)](#)[6\(b\)\(vi\)](#)[6\(b\)\(vi\)](#), [56\(e\)\(ii\)](#)[56\(e\)\(ii\)](#)[56\(e\)\(ii\)](#) [56\(e\)\(xiii\)](#)[56\(e\)\(xiii\)](#)[56\(e\)\(xiii\)](#) and [595959](#) above;~~
- ~~(g) — denies paragraph 61(g), and refers to and repeats paragraphs [6\(b\)\(vi\)](#)[6\(b\)\(vi\)](#)[6\(b\)\(vi\)](#), [56\(e\)\(ii\)](#)[56\(e\)\(ii\)](#)[56\(e\)\(ii\)](#) [56\(e\)\(xiii\)](#)[56\(e\)\(xiii\)](#)[56\(e\)\(xiii\)](#) and [595959](#) above;~~
- ~~(h) — denies paragraph 61(h), and refers to and repeats paragraphs [6\(b\)\(vi\)](#)[6\(b\)\(vi\)](#)[6\(b\)\(vi\)](#) [56\(e\)\(ii\)](#)[56\(e\)\(ii\)](#)[56\(e\)\(ii\)](#) [56\(e\)\(xiii\)](#)[56\(e\)\(xiii\)](#)[56\(e\)\(xiii\)](#) and [595959](#) above;~~
- ~~(i) — as to paragraph 61(i), admits the allegations and says:~~
- ~~(i) — it disclosed the amount of interest payable on the total amount owing under the Car Loan;~~
 - ~~(ii) — the premium for the Add-on Insurance was a component of the amount owing under the First and Second Plaintiffs' Car Loan upon which interest accrued; and~~
 - ~~(iii) — Toyota did not have any obligation to disclose the specific interest payable in respect of the premium which was financed by the Car Loan;~~
- ~~(j) — as to paragraph 61(j), denies the allegations and says the payment of commissions, and the amount of the commissions, were disclosed to the First and Second Plaintiffs;~~

Particulars

~~Toyota refers to and repeats the particulars to paragraphs [48\(a\)](#)[48\(a\)](#)[48\(a\)](#) [48\(c\)](#)[48\(c\)](#)[48\(c\)](#) above in respect of the First and Second Plaintiffs.~~

- ~~(k) — denies paragraph 61(k), and refers to and repeats paragraphs [6\(b\)\(vi\)](#)[6\(b\)\(vi\)](#)[6\(b\)\(vi\)](#) and [56\(e\)\(ii\)](#)[56\(e\)\(ii\)](#)[56\(e\)\(ii\)](#) [56\(e\)\(xiii\)](#)[56\(e\)\(xiii\)](#)[56\(e\)\(xiii\)](#) above; and~~
- ~~(l) — as to paragraph 61(l):~~
- ~~(i) — says that the allegations are embarrassing and liable to strike out as they are premised on an unstated allegation that the First and Second Plaintiffs were provided with personal advice which is inconsistent with the allegations in paragraphs 61(a)–(k) of the FASOC, which are allegations that the First and Second Plaintiff were not aware of the Add-on Insurance, and were not given any personal advice about the Add-on Insurance; and~~
 - ~~(ii) — under cover of that objection, admits that the First and Second Plaintiffs were not given a statement of advice under s 946A of the Corporations Act.~~

~~62. As to paragraph 62, Toyota refers to and repeats paragraph [616161](#) above and denies the allegations.~~

~~63. As to paragraph 63, Toyota:~~

- ~~(a) admits that in selling the First and Second Plaintiffs Add-on Insurance Broome Toyota was acting within the scope of its authorised as an Authorised Dealer and agent of Toyota;~~
- ~~(b) admits that Broome Toyota obtained a commission for the sale of Add-on Insurance to the First and Second Plaintiffs; and~~
- ~~(c) otherwise denies the allegations.~~

~~64. As to paragraph 64, Toyota:~~

- ~~(a) refers to and repeats paragraphs [323232](#), [56\(e\)\(ii\)](#)~~56(e)(ii)~~[56\(e\)\(ii\)](#), [56\(e\)\(xiii\)](#)~~56(e)(xiii)~~[56\(e\)\(xiii\)](#) and [595959](#) above;~~
- ~~(b) says that the First and Second Plaintiffs were informed that the Add-on Insurance products were included in their Car Loan application;~~
- ~~(c) denies that the First and Second Plaintiffs did not benefit from the Add-on Insurance products on account of the matters alleged in paragraphs 64(a) (c) of the FASOC;~~
- ~~(d) says that from on or about 21 January 2017 Toyota removed life insurance coverage from its Finance Protection Insurance product such that the holding of an insurance policy which provided for life insurance or “TPD” benefits, by the First and Second Plaintiffs, or any Group Member whose Add-on Insurance policy was issued after 21 January 2017, is not a material fact in this proceeding;~~

Particulars

~~Toyota gave Authorised Dealers notice of the removal of the life insurance coverage from its Finance Protection Insurance product by Dealer Bulletin dated 1 December 2016 [TFA.001.010.6112] and 12 January 2017 [TFA.001.010.6584].~~

- ~~(e) by reason of the matters pleaded in sub-paragraphs (a) to (d) above, denies the allegations in paragraph 64; and~~
- ~~(f) says, in the alternative, that if the First and Second Plaintiffs did not know the Add-on Insurance products were included in their Car Loan application then, by reason of the matters pleaded in paragraphs [6\(b\)\(vi\)](#)~~6(b)(vi)~~[6\(b\)\(vi\)](#) and [73\(b\)](#)~~73(b)~~[73\(b\)](#) above, Toyota reasonably and honestly assumed that the First and Second Plaintiffs knew their Car Loan~~

~~application included Add-on insurance products, Toyota relied on that assumption in accepting the First and Second Plaintiffs' offer to enter into the Car Loan which provided for Add-on Insurance, and entering into that Car Loan, the First and Second Plaintiffs knew or intended that Toyota would so rely, and it would be unconscionable for the First and Second Plaintiffs to depart from the assumption.~~

~~65. — As to paragraph 65, Toyota denies the allegations and says that the Second Plaintiff derived benefits through his relationship with the First Plaintiff.~~

~~66. — As to paragraph 66, Toyota:~~

~~(a) — does not know and therefore cannot admit the allegation that the First and Second Plaintiffs' comprehensive cover for the Colorado lapsed within about the first year of acquiring the Add-on Insurance, and whether the Finance Gap Insurance ceased at that time; and~~

~~(b) — even if the Finance Gap Insurance ceased at the time of the First and Second Plaintiffs' comprehensive cover for the Colorado lapsing, denies that the First and Second Plaintiffs obtained no benefit under the Finance Gap Insurance by reason of the fact that, the First and Second Plaintiffs obtained financial and non-financial benefits up until its lapse, comprising entitlement to indemnity and peace of mind.~~

~~67. — As to paragraph 67, Toyota admits that the First and Second Plaintiffs' Car Loan terminated on 27 April 2023 and that, in accordance with the terms and conditions of the Finance Protection Insurance, the Finance Protection Insurance also terminated on 27 April 2023.~~

~~68. — Toyota admits paragraph 68.~~

~~69. — As to paragraph 69, Toyota:~~

~~(a) — admits that the First Plaintiff paid a premium of \$2,640 for Add-on Insurance;~~

~~(b) — says that:~~

~~(i) — the premium was financed by the First and Second Plaintiffs' Car Loan;~~

~~(ii) — interest was charged on the total amount owing under the Car Loan, and that the premium for the Add-on Insurance was a component of the total amount owing under the Car Loan;~~

~~(iii) — interest accrued on the total amount owing under the First and Second Plaintiffs' Car Loan pursuant to the terms of the Car Loan; and~~

~~(c) — otherwise denies the allegations.~~

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

70. As to paragraph 70, Toyota:

- (a) admits the allegations in paragraphs 70(a)-(b);
- (b) does not know and therefore cannot admit paragraphs 70(c)-(e);
- (c) says that:
 - (i) paragraph 70(f) is embarrassing as it incorrectly refers to “sub-paragraph (e) and (f) above” and neither it nor sub-paragraphs 70(d)-(e) plead or particularise the basis on which unspecified insurance obtained through membership of “HESTA” (which is an undefined term) provided the ~~Third~~ Plaintiff with “life and total and permanent disablement insurance” during the Relevant Period; and
 - (ii) under cover of that objection:
 - A. it does not know and therefore cannot admit paragraphs 70(f); and
 - B. says further that from on or about 21 January 2017 Toyota removed life insurance coverage from its Finance Protection Insurance product such that the holding of an insurance policy which provided for life insurance benefits, by the ~~Third~~ Plaintiff or any Group Member whose Add-on Insurance policy was issued after 21 January 2017, is not a material fact in this proceeding.

Particulars

Toyota gave Authorised Dealers notice of the removal of the life insurance coverage from its Finance Protection Insurance product by Dealer Bulletin dated 1 December 2016 [TFA.001.010.6112] and 12 January 2017 [TFA.001.010.6584].

71. Toyota admits paragraph 71 and says that the Brian Hilton Toyota Dealer Agreement is the 2013 Brian Hilton Dealer Agreement defined in the particulars to paragraph 5(a) above.

72. As to paragraph 72, Toyota:

- (a) admits that Brian Hilton Toyota was, by reason of the Brian Hilton Toyota Dealer Agreement and the Brian Hilton Toyota Authorised Representative Agreement;
 - (i) an Authorised Dealer;
 - (ii) an agent of Toyota; and

- (iii) an authorised representative of Toyota within the meaning of s 916A(1) of the Corporations Act, and within the meaning of s 761A of the Corporations Act up until 20 October 2023 when s 761 was repealed and replaced by the *Treasury Laws Amendment (2023 Law Improvement Package No. 1) Act 2023* (Cth), at all material times when dealing with the Third Plaintiff in respect of the following conduct:
 - A. providing general financial product advice on Add-on Insurance products; and
 - B. arranging the issue of the Add-on Insurance products;
- (b) admits that Brian Hilton Toyota acted as agent of Toyota when engaging in the conduct pleaded in paragraph 5(b)(iii) above in respect of the ~~Third~~-Plaintiff; and
- (c) otherwise denies the allegations.

73. ~~At~~As to paragraph 73, Toyota:

- (a) admits the allegations;
- (b) says that:
 - (i) the ~~Third~~-Plaintiff attended Brian Hilton Toyota on or about 28 December 2019, paid a deposit of \$500 for the purchase of a Corolla Hatch CV Ascent Sport and completed and signed a Privacy Statement and Consent form;

Particulars

Brian Hilton Motor Group receipt no. 390590 dated 28 December 2019 [HEP.002.002.0010 at .0001 to .0002].

Privacy Statement and Consent form signed by the ~~Third~~ Plaintiff and dated 28 December 2019 [TFA.600.001.0032].

- (ii) on 29 December 2019, the ~~Third~~-Plaintiff received an email from Toyota Financial Services which attached a copy of the Consumer Fixed Rate Loan Contract Booklet;

Particulars

Email from Toyota Financial Services on 29 December 2019 [HEP.002.002.0012], attaching a copy of the Consumer Fixed Rate Loan Contract Booklet TFA064 (04/2019) [HEP.002.002.0013].

- (iii) the ~~Third~~-Plaintiff applied for a Regulated Car Loan, and made an offer to enter into a Regulated Car Loan with Toyota on or about 31 December 2019, which application and offer was accepted by Toyota on or about 2 January 2020;

Particulars

The application and offer was wholly in writing, comprising the following:

- A. customer application form dated and completed by the ~~Third~~-Plaintiff on or about 31 December 2019 [TFA.600.001.0026 at .006 to .0011]; and
 - B. document titled "Loan Offer – Consumer Fixed Rate Loan" dated and signed by the ~~Third~~-Plaintiff on or about 31 December 2019 [TFA.600.001.0026 at .0001 to .0005] (**~~Third~~-Plaintiffs' Loan Offer and Application**), which was accompanied by the ~~Third~~ Plaintiff's Loan Contract Booklet [TFA.600.004.0003].
- (iv) the ~~Third~~-Plaintiffs' Loan Offer and Application expressly referred to the ~~Third~~-Plaintiff's Add-on Insurance;

Particulars

The Add-on Insurance was referred to on page 4 of the offer section of the ~~Third~~-Plaintiffs' Loan Offer and Application and page 2 of the application section of the ~~Third~~-Plaintiffs' Loan Offer and Application.

Page 2 of the application section of the ~~Third~~-Plaintiffs' Loan Offer and Application stated the following:

"Insurance Products:

"Finance Protection Insurance: \$925.00

Finance Gap Insurance: \$265.00".

Pages 4-5 of the offer section of the ~~Third~~-Plaintiffs' Loan Offer and Application stated the following:

- A. "THE PERSON ARRANGING THIS FINANCE FOR YOU IS ACTING AS AN AGENT FOR THE CREDIT

PROVIDER, 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”;

- B. “By signing below, you acknowledge that you...have received a copy of this Schedule, a copy of the Credit Guide, and a copy of the Consumer Fixed Rate Loan Contract Booklet TFA064 (04/2019) and you...agree to be bound by all the terms and conditions in these documents”;
- C. “You have told the Credit Provider that you propose to enter into the following insurance contract(s) which are to be financed under this Contract:

Insurance Type	Name of Insurer	Product Name	Amount Payable to Insurer (\$)	Commission as a % of amount payable to the Insurer
Consumer Credit Insurance	Toyota Insurance	Finance Protection Insurance	\$925.00	20%
Gap Insurance	Toyota Insurance	Finance Gap Insurance	\$265.00	N/A”;

D. “BEFORE YOU SIGN

- **READ THIS CONTRACT DOCUMENT** so that you know exactly what contract you are entering into and what you will have to do under the contract.

- You should also read the information statement: “THINGS YOU SHOULD KNOW ABOUT YOUR PROPOSED CREDIT CONTRACT”.

...

- **Do not sign** this contract document if there is anything you do not understand”; and

E. “You do not have to take out consumer credit insurance unless you want to...If you take out insurance, the credit provider cannot insist on any particular insurance company”;

(v) the ~~Third~~ Plaintiff's Loan Contract Booklet included the following terms:

“INSURANCE

10. Do I have to take out insurance?

Your credit provider can insist you take out or pay the cost of types of insurance specifically allowed by law. These are compulsory third party personal injury insurance, mortgage indemnity insurance or insurance over property covered by any mortgage. Otherwise, you can decide if you want to take out insurance or not. If you take out insurance, the credit provider can not insist that you use any particular insurance company.

11. Will I get details of my insurance cover?

Yes, if you have taken out insurance over mortgaged property or consumer credit insurance and the premium is financed by your credit provider. In that case the insurer must give you a copy of the policy within 14 days after the insurer has accepted the insurance proposal.

Also, if you acquire an interest in any such insurance policy which is taken out by your credit provider then, within 14 days of that happening, your credit provider must ensure you have a written notice of the particulars of that insurance.

You can always ask the insurer for details of your insurance contract. If you ask in writing, your insurer must give you a statement containing all the provisions of the contract.

12. If the insurer does not accept my proposal, will I be told?

Yes, if the insurance was to be financed by the credit contract. The insurer will inform you if the proposal is rejected.

13. In that case, what happens to the premiums?

Your credit provider must give you a refund or credit unless the insurance is to be arranged with another insurer.

14. What happens if my credit contract ends before any insurance contract over mortgaged property?

You can end the insurance contract and get a proportionate rebate of any premium from the insurer.”;

- (vi) the Policy Product Disclosure Statement dated 1 January 2017 for Finance Protection Insurance TIN014 (01/2017), issued to the ~~Third~~-Plaintiff on or about 31 December 2019, contained the following terms:

“The purpose of this insurance and consumer credit insurance generally

This policy provides finance protection insurance which assists you to make your finance contract repayments if you are unable to work due to injury or illness, or if you become involuntarily redundant. In these circumstances you may elect to terminate your finance contract and hand back your vehicle to your financier.

The amount payable in the event of a claim is directly linked to the amount of the repayments and the total amount owing on the finance contract at the time a claim is made, but is always limited to the maximum cover amount as shown on your policy schedule.

It is important that you read the PDS carefully to understand the extent of cover provided and its limitations.

Eligibility

To be eligible to apply for this insurance you must be applying for a new finance contract on your vehicle, be a citizen or permanent resident of Australia and meet the age and employment criteria at the commencement date.

The Toyota Insurance Finance Protection policy is a consumer credit insurance product and you are not obliged to buy it, nor is its purchase a condition of the finance contract you are entering into. If you choose to take out this type of insurance, you may do so with an insurer of your choice.”; and

- (c) says further that at the time of the ~~Third~~-Plaintiff attending Brian Hilton Toyota and offering to buy the Corolla, the ~~Third~~-Plaintiff had previously purchased a vehicle from Brian Hilton Toyota pursuant to a Car Loan between her and Toyota and that the Car Loan did not finance any Add-on Insurance product.

Particulars

The Car Loan was wholly in writing, contained in the document titled “Loan Offer –Fixed Rate Loan” dated and signed by the ~~Third~~-Plaintiff on or about 25 February 2016 [TFA.600.001.0036] which accompanied the Consumer Fixed Rate Loan Contract Booklet TFA064 (01/2013).

74. Toyota admits paragraph 74 and says that the ~~Third~~ Plaintiff completed her purchase of the Corolla on 31 December 2019.
75. Toyota admits paragraph 75.
76. As to paragraph 76, Toyota:
- (a) admits that the ~~Third~~ Plaintiffs' 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;
 - (b) refers to and repeats paragraph 73(b) above; and
 - (c) denies that the premiums were included without the ~~Third~~ Plaintiff's knowledge.
77. Toyota admits paragraph 77.
78. As to paragraph 78, Toyota:
- (a) says that the allegations in paragraph 78(a) are embarrassing as the 3FASOC does not make any allegations as to the provision of informed consent or agreement by a customer in respect of requiring Add-on Insurance and, under cover of that objection, it:
 - (i) says that it does not know whether or not the ~~Third~~ Plaintiff "required" Add-on Insurance;
 - (ii) says further that Authorised Dealer Representatives were not required to obtain customers' informed consent or agreement that they "required" the Add-on Insurance in order to assist the customers to apply for Add-on Insurance;
 - (iii) refers to and repeats paragraphs 6(b)(vi), 73(b) and 76(b)-76(c) above; and
 - (iv) denies the allegations;
 - (b) denies paragraph 78(b) and refers to and repeats paragraphs 6(b)(vi), 73(b) and 76 above;
 - (c) denies paragraph 78(c), refers to and repeats paragraphs 6(b)(vi), 19(a)(i), 73(b) and 76 above, and says that Toyota was not authorised under the Toyota AFSL to provide the ~~Third~~ Plaintiff with personal advice;
 - (d) denies paragraph 78(d), refers to and repeats paragraphs 6(b)(vi) and 73(b) above, says that the ~~Third~~ Plaintiff ought to have taken reasonable care to ensure that she was fully informed of the terms and conditions of the Finance Gap Insurance and Finance Protection Insurance and the suitability of the products for her, and says further that Toyota was not authorised under the Toyota AFSL to provide the ~~Third~~ Plaintiff with personal advice;

- (e) denies paragraph 78(e) and refers to and repeats paragraphs 73(b)-(c) above;
- (f) denies paragraph 78(f), and refers to and repeats paragraphs 6(b)(vi), 73(b) and 76 above;
- (g) denies paragraph 78(g), and refers to and repeats paragraphs 6(b)(vi), 73(b) and 76 above;
- (h) denies paragraph 78(h), and refers to and repeats paragraphs 6(b)(vi), 73(b) and 76 above;
- (i) as to paragraph 78(i), admits the allegations and says:
 - (i) it disclosed the amount of interest payable on the total amount owing under the Car Loan;
 - (ii) the premium for the Add-on Insurance was a component of the amount owing under each Car Loan upon which interest accrued; and
 - (iii) Toyota did not have any obligation to disclose the specific interest payable in respect of the premium which was financed by the Car Loan;
- (j) as to paragraph 78(j), denies the allegations and says the payment of commissions, and the amount of the commissions, were disclosed to the ~~Third~~-Plaintiff;

Particulars

Toyota refers to and repeats the particulars to paragraphs 48(a)-48(c) above in respect of the ~~Third~~-Plaintiff.

- (k) denies paragraph 78(k) and refers to and repeats paragraphs 6(b)(vi), 73(b) and 76 above;
 - (l) as to paragraph 78(l):
 - (i) says that the allegations are embarrassing and liable to strike out as they are premised on an unstated allegation that the ~~Third~~-Plaintiff was provided with personal advice which is inconsistent with the allegations in paragraphs 78(a)-(k), which are allegations that the ~~Third~~-Plaintiff was not aware of the Add-on Insurance, and was not given any personal advice about the Add-on Insurance; and
 - (ii) under cover of that objection, admits that the ~~Third~~-Plaintiff was not given a statement of advice under s 946A of the Corporations Act.
79. As to paragraph 79, Toyota refers to and repeats paragraph 78 above and denies the allegations.
80. As to paragraph 80, Toyota:
- (a) admits that in selling the ~~Third~~-Plaintiff Add-on Insurance Brian Hilton Toyota was acting within the scope of its ~~authorised~~-[authority](#) as an Authorised Dealer and agent of Toyota;

- (b) admits that Brian Hilton Toyota obtained a commission for the sale of Add-on Insurance to the ~~Third~~-Plaintiff; and
- (c) otherwise denies the allegations.

81. As to paragraph 81, Toyota:

- (a) refers to and repeats paragraphs 73(b) and 76 above and says that the ~~Third~~-Plaintiff was informed that, and as a consequence knew that, the Add-on Insurance products were included in her Car Loan application;
- (b) says that it does not know and therefore cannot admit whether the ~~Third~~-Plaintiff had “a number of pre-existing conditions”;
- (c) denies that the ~~Third~~-Plaintiff did not benefit from the Add-on Insurance products by reason of the matters alleged in paragraphs 81(a)-(d) of the [3](#)FASOC; and
- (d) by reason of the matters pleaded in sub-paragraphs (a)-(c) above, denies the allegations in paragraph 81.

82. As to paragraph 82, Toyota:

- (a) denies the allegations; and
- (b) says, in the alternative, that if the ~~Third~~-Plaintiff did not know she was sold Add-on Insurance until around December 2020 or January 2021, by reason of the matters pleaded in paragraphs 6(b)(vi) and 73(b) above, Toyota reasonably and honestly assumed that the ~~Third~~-Plaintiff knew she was sold Add-on Insurance, Toyota relied on that assumption in accepting the ~~Third~~-Plaintiff's offer to enter into the Car Loan which provided for Add-on Insurance, and entering into that Car Loan, the ~~Third~~-Plaintiff knew or intended that Toyota would so rely, and it would be unconscionable for the ~~Third~~-Plaintiff to depart from the assumption.

83. Toyota admits paragraph 83.

84. Toyota admits paragraph 84.

85. Toyota admits paragraph 85:

- (a) admits that the ~~First~~-Plaintiff paid a premium of \$1,190 for Add-on Insurance;
- (b) says that:
 - (i) the premium was financed by the ~~Third~~-Plaintiff's Car Loan;

- (ii) interest was charged on the total amount owing under the Car Loan, and that the premium for the Add-on Insurance was a component of the total amount owing under the Car Loan;
 - (iii) interest accrued on the total amount owing under the ~~Third~~ Plaintiff's Car Loan pursuant to the terms of the Car Loan; and
- (c) otherwise denies the allegations.
86. Toyota admits paragraph 86 and says further that the ~~Third~~ Plaintiff's Add-on Insurance policies were terminated at the ~~Third~~ Plaintiff's request on or about 25 January 2021 and on 29 January 2021 pro-rata refunds were paid to the ~~Third~~ Plaintiff, and were applied to the ~~Third~~ Plaintiff's Car Loan.

Particulars

The refunds, in the sums of \$102.82 and \$495.54, were notified in writing by Toyota to the ~~Third~~ Plaintiff by letters dated 25 January 2021 [ADI.001.001.0041] and [ADI.001.001.0036].

D.5. The Plaintiff's² and Group Members' Add-on Insurance Circumstances

87. As to paragraph 87, Toyota:
- (a) says that the allegations are embarrassing and liable to strike out as they impermissibly roll up a number of distinct allegations, which include allegations that are inconsistent with each other, such that Toyota does not know which allegation or combination of allegations are made in respect of ~~each~~ the Plaintiff and each Group Member or subset of Group Members; and
 - (b) under cover of that objection, refers to and repeats paragraphs ~~64 and~~ 78 above, denies the allegations and says that it will rely on the full terms and effect of the Credit Guide, Financial Services Guide, Fast Facts Information Sheets and Product Disclosure Statements set out in Annexure A to this defence, and Group Members' Policy Schedules, Loan Contract Booklets, and Car Loan application and offer documents.
88. As to paragraph 88, Toyota:
- (a) says that the allegations are embarrassing and liable to strike out as they impermissibly roll up a number of distinct allegations, which include allegations that are inconsistent with each other, such that Toyota does not know which allegation or combination of allegations are made in respect of ~~each~~ the Plaintiff and each Group Member or subset of Group Members; and

- (b) under cover of that objection:
- (i) in respect of the period from 1 January 2014 onwards, says that Authorised Representatives sold Add-on Insurance by following the procedure pleaded in paragraph 6(b)(vi)~~6(b)(vi)~~ above;
- (ii) refers to and repeats paragraphs 34~~34~~, 50~~50, 64~~ and 78~~78~~ above; ~~and~~
- ~~(ii)~~(iii) refers to and repeats paragraphs 7A(b)-(c) above; and
- ~~(iii)~~(iv) otherwise denies the allegations.

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

89. As to paragraph 89, Toyota:

- (a) refers to and repeats paragraphs ~~62~~, 1(e), 7A(b)-(c), 79 and 88 above; and
- (b) denies the allegations.

90. As to paragraph 90, Toyota:

- (a) denies the allegations; and
- (b) says that during the Relevant Period, Toyota was not assured the repayment of any balance outstanding owed under the Car Loan in the event of the death or accidental death of a policy holder because:
- (i) from 1 January 2010 to 31 January 2014, the coverage in relation to death was limited to a maximum of \$100,000, such that the repayment of any amount owing under the Car Loan in excess of \$100,000 was not assured;

Particulars

The Policy and Product Disclosure Statement dated 1 June 2006 for Payment Protection Insurance TIN015S (06/2006) [TFA.001.027.0010], which remained in force until 29 February 2012, stated:

“... In the unfortunate event of death, we’ll pay, subject to other claims made on the policy, the balance outstanding on your finance contract to a maximum of \$100,000. [page 3]

...

Life

If you die, we will pay the balance outstanding on your finance contract as at the date of death to your financier, up to a maximum of \$100,000.” [page 9]

The Policy and Product Disclosure Statement dated 1 March 2012 for Payment Protection Insurance TIN0125 (03/2012) [HEP.002.002.0031], which remained in force until 31 January 2014, stated:

“... In the unfortunate event of death, we’ll pay, subject to other claims made on the policy, the balance outstanding on your finance contract to a maximum of \$100,000. [page 3]

...

Life

If you die, we will pay the balance outstanding on your finance contract as at the date of death to your financier, up to a maximum of \$100,000.” [page 9]

- (ii) from 1 February 2014 to 31 December 2016, the coverage in relation to accidental death was limited to the maximum cover amount as shown on the policy holder's policy schedule, such that the repayment of any amount owing under the Car Loan in excess of the maximum cover amount shown on the policy schedule was not assured; and

Particulars

The Policy and Product Disclosure Statement dated 1 February 2014 for Finance Protection Insurance TIN014S (02/2014) [TFA.001.009.3991] stated:

“Accidental Death

In the event of your accidental death during the period of cover, we will pay the finance contract payout amount to the financier as at the date of death, less any amount in arrears in excess of 90 days, up to the maximum cover amount as shown on the policy schedule.

This amount is not reduced by claims made under other sections during the period of cover.” [page 10]

- (iii) from 1 January 2017, there was no coverage in relation to death or accidental death,

Particulars

The Policy and Product Disclosure Statement dated 1 January 2017 for Finance Protection Insurance TIN014 (01/2017) [TFA.001.004.0032] describes the benefits of Finance Protection Insurance, and does not refer to coverage for death or accidental death.

The Policy and Product Disclosure Statement dated 1 January 2017 for Finance Protection Insurance TIN014 (01/2017) [TFA.001.004.0032] applied to the Plaintiff's Finance Protection Insurance policies.

- (c) says further that the Finance Gap Insurance did not assure Toyota the repayment of the balance outstanding under the Car Loan during the Relevant Period 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, by reason of the following matters:
- (i) throughout the Relevant Period, each Policy and Product Disclosure Statement for Finance Gap Insurance provided that, in the event the vehicle the subject of the Car Loan 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, the insurer would pay the outstanding loan balance and extra costs up to the maximum amount of the cover option selected by the policy holder shown on the policy schedule, which amount was not always equal to the outstanding loan balance;

Particulars

The Product Disclosure Statement dated 1 June 2006 for Finance Gap Insurance TIN014S (06/2006) [TFA.001.027.0009], which remained in force until 31 December 2013, stated the following on page 7:

“What you are covered for

In the event that your vehicle is stolen and not recovered, or damaged beyond repair, and your Insurer agrees to pay your claim as a total loss under your Comprehensive Motor Vehicle Insurance, we will pay:

- any outstanding loan balance that may occur and;
- extra costs

up to the maximum amounts of the cover option that you have selected and which is shown on your policy schedule, in accordance with the following table:

Cover Option	Outstanding loan balance	Extra costs
1	Up to \$30,000	Up to \$4,000
2	Up to \$15,000	Up to \$4,000
3	Up to \$10,000	Up to \$2,000
4	Up to \$10,000	Up to \$1,000"

The Product Disclosure Statement dated 1 January 2014 for Finance Gap Insurance TIN009S (01/2014) [TFA.001.004.0007], which remained in force until 5 October 2021, stated the following on pages 9-10:

“Levels of cover

Depending on your needs, you may choose one of our cover options available. The following table shows the maximum amounts we will pay for each cover option, subject to the policy terms and conditions.

Cover Option	Outstanding loan balance	Extra costs
1	Up to \$30,000	Up to \$4,000
2	Up to \$15,000	Up to \$4,000
3	Up to \$10,000	Up to \$2,000
4	Up to \$10,000	Up to \$1,000

What we will pay

Provided we have agreed to insure you and you have paid the premium, we will insure you for the cover you have selected and which is shown on your policy schedule, subject to the terms and conditions of this policy.

In the event that your vehicle is stolen and not recovered, or damaged beyond repair, and your comprehensive motor vehicle insurer agrees to pay

your claim as a total loss under your comprehensive motor vehicle insurance, we will pay:

- any outstanding loan balance that may occur; and
- extra costs, up to the maximum amounts of the cover option that you have selected and which is shown on your policy schedule, in accordance with the above table.

Outstanding loan balance

We will pay (to your financier) the outstanding loan balance remaining after a total loss claim has been paid on your vehicle, up to the limit of cover chosen as shown on your policy schedule”.

~~The Policy Schedule issued to the First Plaintiff in respect of Finance Gap Insurance stipulated that the cover for the outstanding loan balance was up to \$30,000 and for extra costs was up to \$4,000 [TFA.001.002.0001 at .0024], and the total loan amount under the First and Second Plaintiffs' Car Loan was \$47,760.43 on or around 18 December 2017.~~

The Policy Schedule issued to the ~~Third~~ Plaintiff in respect of Finance Gap Insurance stipulated that the cover for outstanding loan balance was up to \$10,000 and for extra costs up to \$1,000 [TFA.600.001.0022], and the total loan amount under the ~~Third~~ Plaintiff's Car Loan was \$25,371 on or around 2 January 2020.

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, Toyota admits that ADICA knew or ought to have known that Toyota and its Authorised Dealers and Authorised Dealer Representatives were selling Add-on Insurance, refers to and repeats paragraphs 46-50 and 87-89 above, and otherwise denies the allegations.

E. THE CONTRAVENING CONDUCT

E.1. Misleading or deceptive conduct

92. As to paragraph 92, Toyota:

- (a) refers to and repeats paragraphs 32, 34-35 and 47-48 above;
- (b) says that the matters alleged in paragraphs 92(b)-(c) were disclosed to the ~~Third~~ Plaintiff and Group Members [in respect of the period from at least 1 January 2014](#);

Particulars

Toyota refers to and repeats paragraphs 32(b)(i) and 73(b)(iv)-73(b)(vi) above.

- (c) says that only the ~~Third~~ Plaintiff and Group Members were in a position to know whether the Add-on Insurance was “unsuitable” or “of no material value” to them; and
 - (d) by reason of the matters pleaded in sub-paragraphs (a)-(c), denies the allegations.
93. As to paragraph 93, Toyota refers to and repeats paragraphs 6(b)(vi), 78 and 87-89 above and denies the allegations.
94. As to paragraph 94, Toyota:
- (a) says that the allegations are embarrassing and liable to strike out because they impermissibly roll up a number of distinct allegations, which include allegations that are inconsistent with each other, such that Toyota does not know which allegation or combination of allegations are made in respect of the ~~Third~~ Plaintiff and each Group Member or subset of Group Members and it cannot plead substantively to the allegations; and
 - (b) under cover of that objection:
 - (i) says further that the allegations as to the making of a representation or representations are embarrassing and liable to strike out as the ~~3~~FASOC does not plead or particularise how the alleged representation or representations to the ~~Third~~ Plaintiff and Group Members were made, including by silence, in writing, orally, or by some other conduct; and
 - (ii) under cover of that further objection, denies the allegations by reason of the matters in paragraphs 6(b)(vi), 32, 34-35, 87-88 and 93 above.
95. As to paragraph 95, Toyota:
- (a) admits paragraph 95(a);
 - (b) as to paragraph 95(b), refers to and repeats paragraphs 31-32 above and denies the allegations;

- (c) as to paragraph 95(c), refers to and repeats paragraphs 31-34 above and denies the allegations;
 - (d) as to paragraph 95(d), says that the allegations are vague and embarrassing as the term “not suitable” is not defined or particularised and, under cover of that objection, refers to and repeats paragraphs 31-34 and 87 above, and denies the allegations.
96. As to paragraph 96, Toyota refers to and repeats paragraphs [7A\(b\)-\(c\)](#), 78, 92-93 and 95 above and, by reason of the matters pleaded in those paragraphs, denies ~~paragraph 97~~ [the allegations](#).
97. As to paragraph 97, Toyota refers to and repeats paragraph 96 above and denies the allegations.
98. As to paragraph 98, Toyota refers to and repeats paragraphs 92-97 above and denies the allegations.
99. As to paragraph 99, Toyota refers to and repeats paragraphs 94 and 97-98 above and denies the allegation.
100. As to paragraph 100, Toyota:
- (a) admits that the following conduct of Authorised Dealers and Authorised Dealer Representatives was conduct within the scope of their actual or apparent authority as agents of Toyota within the meaning of s 12GH of the ASIC Act and s 769B of the Corporations Act:
 - (i) providing general financial product advice on Add-on Insurance products; and
 - (ii) arranging the issue of the Add-on Insurance products; and
 - (b) admits that Toyota’s arranging of the issue of the Add-on Insurance products was conduct within the scope of its actual or apparent authority as agent of ADICA within the meaning of within the meaning of s 12GH of the ASIC Act and s 769B of the Corporations Act; and
 - (c) otherwise denies the allegations by reason of the matters pleaded in paragraphs 8-9, 13 and 94-98 above.
101. As to paragraph 101, Toyota denies the allegations and refers to and repeats paragraphs 92 to 99 above.
102. As to paragraph 102, Toyota:
- (a) refers to and repeats paragraphs 92-101 above; and
 - (b) denies the allegations.
103. As to paragraph 103, Toyota:

- (a) refers to and repeats paragraphs 92-102 above;
- (b) denies the allegations; and
- (c) says that if, which is denied, the ~~Third~~ Plaintiff or Group Members have a cause of action sounding in relief under s 1041I of the Corporations Act, or ss 12GF(1) or 12GM(1) of the ASIC Act:
 - (i) the loss or damage suffered by the ~~Third~~ Plaintiff and Group Members was at least partly if not wholly the result of their respective failures to take reasonable care, Toyota did not intend to and did not fraudulently cause the loss of damage, and the damages that they may recover in relation to the loss or damage are, pursuant to s 12GF(1B) of the ASIC Act, to be reduced to the extent that the Court considers just and equitable having regard to their shares in the responsibility for the loss and damages:

Particulars

Reasonable care to avoid the alleged loss or damage required the ~~Third~~ Plaintiff and each Group Member to review one or more of the following documents provided to them prior to and following the issue of, or entry into, their Add-on Insurance:

- A. Financial Services Guide;
- B. PDS for their Add-on Insurance products(s);
- C. Loan Schedule;
- D. Loan Contract Booklet.

Such a review would have informed the ~~Third~~ Plaintiff and Group Members of the following matters:

- i. they were being issued or entering into Add-on Insurance;
- ii. they were not required to be issued or to enter into Add-on Insurance as part of their Car Loan;
- iii. the premium for the Add-on Insurance was to be financed by their Car Loan, such that the total amount of credit owing under the Car Loan included

the premium and interest would accrue on that total amount of credit;

- iv. a commission was to be paid to Toyota by the insurer, including ADICA, in connection with the Add-on Insurance;
- v. a commission was paid by Toyota to those Dealers who were Authorised Representatives in connection with the Add-on Insurance;
- vi. a commission or other benefit might be paid by Authorised Dealers to Authorised Dealer Representatives in connection with the Add-on Insurance;
- vii. the terms and conditions of their insurance coverage under the Add-on Insurance, including any exclusions or limitations on coverage which might be applicable to them in certain circumstances;
- viii. they could take as much time as they needed to review and take advice on any of the documents provided to them;
- ix. any advice provided to them in relation to the Add-on Insurance by Toyota, the Authorised Dealer or the Authorised Dealer Representative did not take into account their individual objectives, financial situation or needs, and that they needed to personally consider those matters when deciding whether or not to obtain the Add-on Insurance.

So informed, the ~~Third~~ Plaintiff and Group Members could have elected to exercise their right to cancel their Add-on Insurance during any applicable cooling off period pursuant to the terms and conditions of their Add-on Insurance, as set out in the Policy and Product Disclosure Statements listed in Annexure A to this defence (including the Policy and Product Disclosure Statements issued to the ~~Third~~ Plaintiff, as listed in Annexure B to this defence), alternatively pursuant to s 1019B of the *Corporations Act*, reg 7.9.67 of the *Corporations Regulations 2001* (Cth).

Reasonable care to avoid the alleged loss or damage also required the ~~Third~~-Plaintiff and each Group Member to cancel the relevant Add-on Insurance policy, and claim any available refund, a reasonable time after their receipt of communications from Toyota informing them of their Add-on Insurance, such as the letters dated 31 December 2020 from Toyota to the ~~Third~~-Plaintiff which are referred to in Annexure B to this defence

- (ii) the claims under Part E.1 of the [3](#)FASOC are “apportionable claims” within the meaning of s 1041L of the Corporations Act and s 12GP of the ASIC Act;
- (iii) the ~~Third~~-Plaintiff and each Group Member are each a “concurrent wrongdoer” within the meaning of ss 1041L(1) and (4) of the Corporations Act and ss 12GP(1) and (4) of the ASIC Act as they failed to take reasonable care to avoid their loss or damage, and that failure caused, in part or wholly, their loss or damage; and

Particulars

Toyota refers to and repeats the particulars to paragraph 103(c)(i) above.

- (iv) further or alternatively, if, which is denied, the ~~Third~~-Plaintiff and Group Members suffered loss or damage caused by the conduct of Toyota alleged in Part E.1 of the [3](#)FASOC, ~~Adica~~-[ADICA](#) is a “concurrent wrongdoer” within the meaning of ss 1041L(1) and (4) of the Corporations Act and ss 12GP(1) and (4) of the ASIC Act as its acts or omissions caused, in part or wholly, the ~~Third~~-Plaintiff’s and Group Members’ damage or loss; and

Particulars

Toyota makes this alternative allegation solely on the basis that the allegations made against [ADICA](#) ~~Adica~~ in the [3](#)FASOC are found by the Court to be correct, in which case Toyota relies upon the allegations made against ADICA in the [3](#)FASOC.

- (v) Toyota’s liability to the ~~Third~~-Plaintiff and to the Group Members is limited to an amount reflecting the proportion of the damage or loss claimed that the Court considers is just having regard to the extent of Toyota’s responsibility for that damage or loss in accordance with:

A. s 1041N and s 1041L of the Corporations Act; and

- B. s 12GR and s 12GP of the ASIC Act;
- (vi) further or alternatively, in respect of any liability arising by reason of any contravention of s 1041H of the Corporations Act Toyota ought to be relieved from that that liability pursuant to ss 1041(1), 1041(4) and s 1317S of the Corporations Act on the basis that:
 - A. Toyota acted honestly; and
 - B. having regard to all the circumstances of the case, Toyota ought fairly to be excused from the contraventions.
- (vii) further or alternatively, Group Members who entered into a Car Loan in the Northern Territory prior to 2 October 2021 are not entitled to any relief under s 12GF(1) or 12GM(1) of the ASIC Act as their claims are statute barred by s 12(1)(d) of the *Limitation Act 1981* (NT).

E.2.Unfair Conduct

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

104. As to paragraph 104, Toyota:

- (a) says that the allegations are non sensical, embarrassing and liable to strike out as:
 - (i) they plead that the Add-on Insurance Features include the Add-on Insurance Failures, but the Add-on Insurance Features pleaded in paragraph 46 of the [3FASOC](#) do not include any pleading referring to, or otherwise referable to, the Add-on Insurance Failures alleged in paragraph 87 of the [3FASOC](#);
 - (ii) the particulars rely on the Add-on Insurance Features “and/or” the Dealers’ Add-on Insurance Conduct alleged in paragraph 88 of the [3FASOC](#) but do not refer to the Add-on Insurance Failures; and
- (b) under cover of that objection, denies the allegations and refers to and repeats paragraphs 46 and 87-88 above.

105. As to paragraph 105, Toyota:

- (a) refers to and repeats paragraph 88 above and denies the allegation of the Add-on Insurance Conduct;
- (b) it refers to and repeats paragraph 45(a)-45(b) above and denies that s 180A of the NCCP Act applies to the alleged conduct of the Dealers / Dealer Representatives / Authorised

Dealer Representatives in respect of the Add-on Insurance Conduct / Dealers' Unfair Conduct; and

- (c) in the alternative to sub-paragraphs (a)-(b), denies that the Add-on Insurance Conduct / Dealers' Unfair Conduct is unfair within the meaning of s 180A(1)(b) of the NCCP Act.

E.2.2 Consequences of the Dealers' Unfair Conduct

106. Toyota denies paragraph 106.

107. As to paragraph 107, Toyota:

- (a) Toyota refers to and repeats paragraphs 104-105 above and denies the allegations; and
- (b) says further that the following Consumer Group Members are not entitled to claim a remedy pursuant to s 180A of the NCCP Act:
- (i) Consumer Group Members who entered into their Car Loan prior to 1 March 2013 as s 180A of the NCCP Act did not commence operation until 1 March 2013;
 - (ii) further or in the alternative to sub-paragraph (i), Consumer Group Members who entered into their Car Loan prior to 2 October 2018 (2 October 2018 being 6 years before the commencement of this proceeding) as their claims are statute barred by reason of s 180A(5) of the NCCP Act;
 - (iii) further or in the alternative to sub-paragraphs (i)-(ii):
 - A. Consumer Group Members who entered into a Car Loan in the Australian Capital Territory (**ACT**) prior to 2 October 2018 as their claims are statute barred by s 11(1) of the *Limitation Act 1985* (ACT);
 - B. Consumer Group Members who entered into a Car Loan in New South Wales prior to 2 October 2018 as their claims are statute barred by s 14(1)(d) of the *Limitation Act 1969* (NSW);
 - C. Consumer Group Members who entered into a Car Loan in the Northern Territory prior to 2 October 2021 as their claims are statute barred by s 12(1)(d) of the *Limitation Act 1981* (NT);
 - D. Consumer Group Members who entered into a Car Loan in Queensland prior to 2 October 2018 as their claims are statute barred by s 10(1)(d) of the *Limitation of Actions Act 1974* (Qld);

- E. Consumer Group Members who entered into a Car Loan in South Australia prior to 2 October 2018 as their claims are statute barred by s 35(1)(b) of the *Limitation of Actions Act 1936* (SA);
- F. Consumer Group Members who entered into a Car Loan in Tasmania prior to 2 October 2018 as their claims are statute barred by s 4(1)(d) of the *Limitation Act 1974* (Tas);
- G. Consumer Group Members who entered into a Car Loan in Victoria prior to 2 October 2018 as their claims are statute barred by s 5(1)(d) of the *Limitation of Actions Act 1958* (Vic);
- H. Consumer Group Members who entered into a Car Loan in Western Australia prior to 2 October 2018 as their claims are statute barred by s 13(1) of the *Limitation Act 2005* (WA).

108. As to paragraph 108, Toyota:

- (a) admits that Authorised Dealers and Authorised Dealer Representatives acted on behalf of Toyota in doing the following in respect of the Plaintiffs and Group Members during the Relevant Period [from 1 January 2014](#):
 - (i) providing general financial product advice on Add-on Insurance products; and
 - (ii) arranging the issue of the Add-on Insurance products; and
- (b) admits that Dealers and Dealer Personnel acted on behalf of Toyota, and provided a credit service to the Plaintiffs and Consumer Group ~~Periods~~[Members](#), from 1 April 2010 to the end of the Relevant Period when providing assistance to the Plaintiffs and Consumer Group Members who entered into Regulated Car Loans with Toyota; and
- (c) otherwise denies the allegations.

109. Toyota refers to and repeats paragraph 108 above and denies paragraph 109.

110. Toyota refers to and repeats paragraph 45 above and denies paragraph 110.

111. Toyota refers to and repeats paragraphs 104-109 above and denies paragraph 111.

112. Toyota refers to and repeats paragraphs 78-79 and 104-109 above and denies paragraph 112.

113. Toyota refers to and repeats paragraphs 110-112 above and denies paragraph 113.

114. Toyota refers to and repeats paragraph 105 above and denies paragraph 114.

115. Toyota refers to and repeats paragraph 114 above and denies paragraph 115.

116. Toyota denies paragraph 116 by reason of the matters pleaded in paragraphs 104-115 above.

E.3. Unjust Transactions

117. As to paragraph 117, Toyota;

- (a) says that the allegations are non sensical, embarrassing and liable to strike out as:
 - (i) they plead that the Add-on Insurance Features include the Add-on Insurance Failures, but the Add-on Insurance Features pleaded in paragraph 46 of the [3](#)FASOC do not include any pleading referring to, or otherwise referable to, the Add-on Insurance Failures pleaded in paragraph 87 of the [3](#)FASOC;
 - (ii) the particulars rely on the Add-on Insurance Features “and/or” the Dealers’ Add-on Insurance Conduct alleged in paragraph 88 of the [3](#)FASOC but do not refer to the Add-on Insurance Failures; and
- (b) under cover of that objection, denies the allegations and refers to and repeats paragraphs 87-88 above.

118. Toyota refers to and repeats paragraph 117 above and denies paragraph 118.

119. As to paragraph 119, Toyota:

- (a) denies the allegations; and
- (b) says further that the following Consumer Group Members are not entitled to have their Consumer Car Loan reopened, or to any order under s 77 of the Credit Code:
 - (i) Consumer Group Members whose Car Loan was rescinded, discharged or otherwise came to an end prior to 2 October 2022 as their claims are statute barred by s 80(1) of the Credit Code;
 - (ii) further or in the alternative to sub-paragraph (i):
 - A. Consumer Group Members who entered into a Car Loan in the ACT prior to 2 October 2018 as their claims are statute barred by s 11(1) of the *Limitation Act 1985* (ACT);
 - B. Consumer Group Members who entered into a Car Loan in New South Wales prior to 2 October 2018 as their claims are statute barred by s 14(1)(d) of the *Limitation Act 1969* (NSW);

- C. Consumer Group Members who entered into a Car Loan in the Northern Territory prior to 2 October 2021 as their claims are statute barred by s 12(1)(d) of the *Limitation Act 1981* (NT);
- D. Consumer Group Members who entered into a Car Loan in Queensland prior to 2 October 2018 as their claims are statute barred by s 10(1)(d) of the *Limitation of Actions Act 1974* (Qld);
- E. Consumer Group Members who entered into a Car Loan in South Australia prior to 2 October 2018 as their claims are statute barred by s 35(1)(b) of the *Limitation of Actions Act 1936* (SA);
- F. Consumer Group Members who entered into a Car Loan in Tasmania prior to 2 October 2018 as their claims are statute barred by s 4(1)(d) of the *Limitation Act 1974* (Tas);
- G. Consumer Group Members who entered into a Car Loan in Victoria prior to 2 October 2018 as their claims are statute barred by s 5(1)(d) of the *Limitation Act 1958* (Vic);⁵⁷
- ~~H. the First and Second Plaintiffs, and Consumer Group Members who entered into a Car Loan in Western Australia prior to 2 October 2018 as their claims are statute barred by s 13(1) of the *Limitation Act 2005* (WA).~~

Particulars

~~The First and Second Plaintiffs entered into their Car Loan, and Add-on Insurance contracts, on 18 December 2017,~~

E.4. Inappropriate personal advice

120. As to paragraph 120, Toyota:

- (a) denies the allegations; and
- (b) says that:
 - (i) neither Toyota nor Authorised Dealer Representatives were authorised to give personal advice to Group Members; and
 - (ii) whether any Group Members were provided with personal advice can only be determined on an individual basis, and cannot be determined on a common basis.

121. As to paragraph 121, Toyota:

- (a) refers to and repeats paragraph 120 above; and
 - (b) denies the allegations.
122. As to paragraph 122, Toyota denies the allegations by reason of paragraph 120-121 above.
123. Toyota denies paragraph 123.
124. Toyota denies paragraph 124.
125. As to paragraph 125, Toyota:
- (a) refers to and repeats paragraph 120 above;
 - (b) denies the allegations; and
 - (c) says that the Dealers / Dealer Representatives / Authorised Dealer Representatives did not have a duty to give priority to the interests of the Advised Group Members.
126. As to paragraph 126, Toyota:
- (a) refers to and repeats paragraphs 123 and 125 above;
 - (b) denies the allegations;
 - (c) says further that ss 961B, 961G and 961J of the Corporations Act apply only to the provision of personal advice to a retail customer, and are therefore irrelevant to Group Members who entered into an Unregulated Car Loan and Group Members who received general advice and not personal advice; and
 - (d) further or in the alternative to sub-paragraphs (a)-(c), if, which is denied, any Group Member has a cause of action sounding in relief pursuant to s 961M of the Corporations Act, Group Members who entered into their Car Loan before 2 October 2018 are not entitled to any relief as their claims are statute barred by reason of s 961M(6) of the Corporations Act.
127. Toyota refers to and repeats paragraphs 120-126 above and denies the allegations.

E.5. Unconscionable conduct

128. As to paragraph 128, Toyota:
- (a) refers to and repeats paragraphs 46-50 and 87-90 above; and
 - (b) denies the allegations.-

Particulars

Toyota did not have actual knowledge or constructive knowledge, including by reason of the matters pleaded in paragraphs 5(b)(ii)-5(b)(vii) above. Further particulars may be provided following discovery and the filing and service of evidence.

129. As to paragraph 129, Toyota:

- (a) refers to and repeats paragraphs 31-35 above; and
- (b) denies the allegations.

130. Toyota denies paragraph 130.

131. Toyota denies paragraph 131.

132. As to paragraph 132, Toyota:

- (a) refers to and repeats paragraphs [7A\(b\)-\(c\)](#), 5, 12, 13 and 130-131 above; and
- (b) denies the allegations.

133. Toyota denies paragraph 133.

134. Toyota denies paragraph 134.

135. Toyota denies paragraph 135

136. As to paragraph 136, Toyota:

- (a) denies the allegations; and
- (b) says that if, which is denied, Group Members have a cause of action sounding in relief under ss 12GF(1) or 12GM(1) of the ASIC Act, then:
 - (i) the claims under Part E.5 of the [3](#)FASOC are “apportionable claims” within the meaning of s 12GP of the ASIC Act; and
 - (ii) the ~~Third~~ Plaintiff and each Group Member are each a “concurrent wrongdoer” within the meaning of ss 12GP(1) and (4) of the ASIC Act as they failed to take reasonable care to avoid their loss or damage, and that failure caused, in part or wholly, their loss or damage; and

Particulars

Toyota refers to and repeats the particulars to paragraph 103(c)(i) above.

- (iii) Toyota's liability to the ~~Third~~ Plaintiff and to the Group Members is limited to an amount reflecting the proportion of the damage or loss claimed that the Court considers is just having regard to the extent of Toyota's responsibility for that damage or loss in accordance with s 12GR and s 12GP of the ASIC Act; and
- (iv) further or alternatively, Consumer Group Members who entered into a Car Loan in the Northern Territory prior to 2 October 2021 are not entitled to any relief under s 12GF(1) or 12GM(1) of the ASIC Act as their claims are statute barred by s 12(1)(d) of the *Limitation Act 1981* (NT).

E.6 Money had and received, and unjust enrichment

137. As to paragraph 137, Toyota:

- (a) says that the allegations are embarrassing and liable to strike out as they impermissibly roll up a number of distinct allegations, which include allegations that are inconsistent with each other, such that Toyota does not know which allegation or combination of allegations are made in respect of ~~each~~ the Plaintiff and each Group Member or subset of Group Members, and it cannot plead substantively to it; and
- (b) under cover of that objection, denies the allegations, including by reason of its denial of the Dealers' Conduct in paragraph 105 above and the matters pleaded in paragraphs 106-116 above; and
- (c) refers to and repeats paragraphs 32- 36, ~~61-62~~, 78-79 and 87-88 above.

138. As to paragraph 138, Toyota:

- (a) says that the allegations are embarrassing and liable to strike out as they impermissibly roll up a number of distinct allegations, which include allegations that are inconsistent with each other, such that Toyota does not know which allegation or combination of allegations are made in respect of ~~each~~ the Plaintiff and each Group Member or subset of Group Members, and it cannot plead substantively to it; and
- (b) under cover of that objection, it denies the allegations.

139. As to paragraph 139, Toyota:

- (a) says that the allegations are embarrassing and liable to strike out as they:
 - (i) impermissibly roll up a number of distinct allegations, which include allegations that are inconsistent with each other, such that Toyota does not know which allegation or

combination of allegations are made in respect of ~~each~~ the Plaintiff and each Group Member or subset of Group Members, and it cannot plead substantively to it; and

(ii) there is a referencing error in the words that appear above paragraph 139(e);

(b) under cover of that objection, denies the allegations.

140. As to paragraph 140, Toyota:

(a) refers to and repeats paragraphs 137-139 above and denies the allegations; and

(b) in the alternative to sub-paragraph (a), in respect of the alleged mistakes pleaded in paragraphs 139(a)-(c) and (f)-(h) and (j), says that to the extent the mistaken beliefs were held the mistakes were mutual mistakes, and it denies that they were unilateral mistakes.

141. As to paragraph 141, Toyota:

(a) refers to and repeats paragraphs 7A(b)-(c) and 137-140 above;

(b) denies the allegations; and

(c) says further that each Group Member became liable to pay the amount owing under their Car Loan to Toyota, which included an amount referable to the premium, and Toyota financed the premium by payment to the insurance underwriter ~~ADIGA~~.

142. As to paragraph 142, Toyota refers to and repeats paragraphs 137-140 above and denies the allegations in paragraph 142.

143. As to paragraph 143, Toyota:

(a) refers to and repeats paragraphs 137-142 above;

(b) denies the allegations; and

(c) further or in the alternative, says that:

Terminated Add-on Insurance contracts cannot be rescinded or set aside

(i) the Plaintiff~~s~~ and Group Members whose Add-on Insurance contracts have terminated or otherwise been discharged are not entitled to and cannot rescind their Add-on Insurance contracts, and they are not entitled to an order setting aside their Add-on insurance contracts, as contracts that have been fully performed and discharged cannot be rescinded;

Particulars

The ~~First and Second Plaintiffs' Add-on Insurance was terminated in April 2023, and the Third Plaintiff's~~ Add-on Insurance policies were terminated on or about 25 January 2021.

Election

- (ii) Group Members who engaged in the following conduct are not entitled to the relief pleaded in paragraph 143 of the 3FASOC as the conduct constitutes an unequivocal election to take the benefit of their Add-on Insurance, and Toyota provided good consideration:
- A. electing not to terminate their Add-on Insurance prior to the end of its term after learning of the existence of their Add-on Insurance; or
 - B. the making of any claim under their Add-on Insurance;

Statutory limitations

~~(iii) the First and Second Plaintiffs are not entitled to an order declaring their Add-on Insurance contracts void, or to an order that their Add-on Insurance contracts be set aside for unilateral mistake, as their claims are statute barred pursuant to s 13(1) and/or s 27 of the Limitation Act 2005 (WA);~~

Particulars

~~The First and Second Plaintiffs entered into their Car Loan, and Add-on Insurance contracts, on 18 December 2017, and they first discovered, or with reasonable diligence could have discovered, their alleged mistake before 2 October 2018 or, alternatively, before 2 October 2021, including by reason of the following letters sent by Toyota to them:~~

~~A. Finance Protection Insurance Reminder Letter dated 18 December 2018 [ADI.001.001.0098];~~

~~B. Finance Gap Insurance Reminder Letter dated 18 December 2018 [ADI.001.001.0105];~~

~~C. Finance Protection Insurance Reminder Letter dated 18 December 2019 [ADI.001.001.0099];~~

~~D. Finance Gap Insurance Reminder Letter dated 18 December 2019 [ADI.001.001.0106];~~

~~E.—Finance Protection Insurance Reminder Letter dated
18 December 2020 [ADI.001.001.0100];~~

~~F.—Finance Gap Insurance Reminder Letter dated 18
December 2020 [ADI.001.001.0107].~~

(iv) the following Group Members, are not entitled to the relief pleaded in paragraph 143 of the 3FASOC:

- A. Group Members who entered into a Car Loan prior to 2 October 2018 in states and territories other than the Northern Territory;
- B. Group Members who entered into a Car Loan in states and territories other than Western Australia and the Northern Territory and who first discovered their alleged mistake, or may with reasonable diligence have discovered their alleged mistake, before 2 October 2018;
- C. Group Members who entered into a Car Loan in Western Australia and who first discovered their alleged mistake, or may with reasonable diligence have discovered their alleged mistake, before 2 October 2018, or alternatively before 2 October 2021;
- D. Group Members who entered into a Car Loan in the Northern Territory prior to 2 October 2021;
- E. Group Members who entered into a Car Loan in the Northern Territory and who first discovered their alleged mistake, or may with reasonable diligence have discovered their alleged mistake, before 2 October 2021;

as their claims are statute barred by reason of the following provisions:

- 1) ss 11(1) and/or 34 of the *Limitation Act* 1985 (ACT);
- 2) ss 14(1) and/or 23 and/or 56 of the *Limitation Act 1969* (NSW);
- 3) ss 12(1) and/or 43 of the *Limitation Act 1981* (NT).
- 4) ss 10(1) and/or 10(6) and/or 38 of the *Limitation of Actions Act 1974* (Qld);
- 5) ss 35(a) and/or 38(1) of the *Limitation of Actions Act 1936* (SA);
- 6) ss 4(1) and/or 9 and/or 32 of the *Limitation Act 1974* (Tas);

7) ss 5(1)(a) and/or 5(8) and/or 27 of the *Limitation of Actions Act 1958* (Vic);

8) ss 13(1) and/or 27 of the *Limitation Act 2005* (WA).

144. As to paragraph 144, Toyota:

(a) denies the allegation by reason of the matters pleaded in paragraphs 137-143 above;

~~(b) — says that the First and Second Plaintiffs' claims for monies had and received are statute barred pursuant to s 13(1) and/or s 27 of the *Limitation Act 2005* (WA);~~

Particulars

~~Toyota refers to and repeats the particulars to paragraph [143\(c\)\(iii\)](#) ~~143(c)(iii)~~ ~~143(c)(iii)~~ above.~~

(c) says that any cause of action for monies had and received by the following Group Members is statute barred:

- (i) Group Members who entered into a Car Loan prior to 2 October 2018 in states and territories other than the Northern Territory;
- (ii) Group Members who entered into a Car Loan in states and territories other than Western Australia and the Northern Territory and who first discovered their alleged mistake, or may with reasonable diligence have discovered their alleged mistake, before 2 October 2018;
- (iii) Group Members who entered into a Car Loan in Western Australia and who first discovered their alleged mistake, or may with reasonable diligence have discovered their alleged mistake, before 2 October 2018, or alternatively before 2 October 2021;
- (iv) Group Members who entered into a Car Loan in the Northern Territory prior to 2 October 2021;
- (v) Group Members who entered into a Car Loan in the Northern Territory and who first discovered their alleged mistake, or may with reasonable diligence have discovered their alleged mistake, before 2 October 2021;

by reason of the following provisions:

- A. ss 5(1)(a) and/or 5(8) and/or 27 of the *Limitation of Actions Act 1958* (Vic);
- B. ss 14(1) and/or 23 and/or 56 of the *Limitation Act 1969* (NSW);
- C. ss 11(1) and/or 34 of the *Limitation Act* 1985 (ACT);

- D. ss 12(1) and/or 43 of the *Limitation Act 1981* (NT);
- E. ss 10(1) and/or 10(6) and/or 38 of the *Limitation of Actions Act 1974* (Qld);
- F. ss 35(a) and/or 38(1) of the *Limitation of Actions Act 1936* (SA);
- G. ss 4(1) and/or 9 and/or 32 of the *Limitation Act 1974* (Tas); and
- H. ss 13(1) and/or 27 of the *Limitation Act 2005* (WA).

~~(d) — says that Toyota is not liable to make restitution to the First and Second Plaintiffs by reason of the matters pleaded in sub-paragraph (b) above;~~

- (e) says that Toyota is not liable to make restitution to the Group Members referred to in sub-paragraph (c)(i)-(v) above, by reason of the matters pleaded in sub-paragraph (c)A-E above;
- (f) further or in the alternative to sub-paragraphs (a)-(e) above, says that if, which is denied, the interest paid under the Car Loans in respect of Add-on Insurance premiums are monies had and received by Toyota:

- A. Toyota is not obliged to repay those sums to ~~any~~ the Plaintiff or Group Member who made a claim under their Add-on Insurance and received any amount or other economic benefit by reason of that claim;
- B. it would be inequitable in all the circumstances to require Toyota to repay the interest as Toyota, acting in good faith and without knowledge of the alleged mistaken beliefs, relied on the Add-on Insurance contracts by financing the premiums and paying commissions to the Authorised Dealers, and it would suffer detriment if required to repay the interest paid under the Car Loans.

145. As to paragraph 145, Toyota:

- (a) refers to and repeats paragraphs 141-144 above;
- (b) denies the allegations; and
- (c) says further that:
 - (i) Toyota financed the payment of the premiums, pursuant to the terms and conditions of the Group Members' Car Loans and, in the premises, the premiums are not monies had and received by it and it has not been unjustly enriched by the receipt of the premiums;
 - (ii) Toyota is entitled to rely on the equitable doctrine of laches due to the Plaintiff's¹ and Group Members delays in bringing their claims; and

~~(iii) — Toyota is not liable to make restitution to the First and Second Plaintiffs as their claim is statute barred pursuant to s 13(1) and/or s 27 of the Limitation Act 2005 (WA);~~

Particulars

~~Toyota refers to and repeats the particulars to paragraph [143\(c\)\(iii\)](#) ~~143(c)(iii)~~ ~~143(c)(iii)~~ above.~~

(iv) Toyota is not liable to make restitution to the Group Members referred to in ~~sub-~~ paragraph [144\(c\)\(i\)-\(v\)](#) above, by reason of the matters pleaded in ~~sub-~~ paragraphs [144](#) (c)A-E above.

F. COMMON QUESTIONS OF LAW OR FACT

146. As to paragraphs 146 to 192, Toyota does not admit that the questions set out in the paragraphs and framed as common question of law or fact:

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

G. RELIEF

147. As to the relief sought, Toyota 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.

Date: ~~5 November 2025~~ [26 June 2026](#)

K FOLEY

L O’RORKE



Clayton Utz
Solicitors for the First Defendant

ANNEXURE A

Date	Document	Document ID
<i>Credit Guides</i>		
1 June 2014	Toyota Finance Credit Guide, number TFA067 (06/2014)	TFA.600.005.0003
1 November 2018	Toyota Finance Credit Guide, number TFA067 (11/2018)	TFA.001.001.0173
<i>Financial Services Guides</i>		
1 January 2014	Toyota Insurance Financial Services Guide, number TIN152S (01/2014)	TFA.001.009.3728
6 April 2016	Toyota Insurance Financial Services Guide, number TIN152S (04/2016)	TFA.001.021.1331
1 December 2016	Toyota Insurance Financial Services Guide, number TIN152S (12/2016)	TFA.001.021.1330
1 November 2018	Toyota Insurance Financial Services Guide, number TIN152S (11/2018)	TFA.001.021.1329
<i>Product Disclosure Statements</i>		
1 June 2006	Toyota Insurance Payment Protection Insurance Policy and Product Disclosure Statement, number TIN015S (06/2006)	TFA.001.027.0010
1 June 2006	Toyota Insurance Finance Gap Insurance Policy and Product Disclosure Statement, number TIN014S (06/2006)	TFA.001.027.0009
1 June 2006	Toyota Insurance Factory Approved Extended Warranty Insurance Policy and Product Disclosure Statement, number TIN019s (06/2006)	TFA.001.027.0011
1 September 2009	Toyota Insurance Payment Protection Insurance Supplementary Product Disclosure Statement, number TIN015a (09/2009)	TFA.001.008.3927
1 September 2009	Toyota Insurance Finance Gap Insurance Supplementary Product Disclosure Statement, number TIN014a (09/2009)	TFA.001.008.3926
1 September 2009	Toyota Insurance Factory Approved Extended Warranty Insurance Supplementary Product Disclosure Statement, number TIN019a (09/2009)	TFA.001.008.3928
1 September 2009	Toyota Insurance Extended Warranty Insurance Supplementary Product Disclosure Statement, number TIN020a (09/2009)	TFA.001.008.3929
1 January 2012	Toyota Insurance Factory Approved Extended Warranty Insurance Supplementary Product Disclosure Statement, number TIN013S	TFA.001.008.7390
1 January 2012	Toyota Insurance Extended Warranty Insurance Supplementary Product Disclosure Statement, number TIN016S	TFA.001.008.7391

Date	Document	Document ID
1 March 2012	Toyota Insurance Payment Protection Insurance Policy and Product Disclosure Statement, number TIN012	HEP.002.002.0031
1 March 2012	Toyota Insurance Finance Gap Insurance Policy and Product Disclosure Statement, number TIN009	HEP.002.002.0029
1 January 2014	Toyota Insurance Factory Approved Extended Warranty Insurance Policy and Product Disclosure Statement, number TIN013 (01/2014)	TFA.001.004.0005
1 January 2014	Toyota Insurance Extended Warranty Insurance Policy and Product Disclosure Statement, number TIN016 (01/2014)	TFA.001.021.1333
1 January 2014	Toyota Insurance Finance Gap Insurance Policy and Product Disclosure Statement, number TIN009 (01/2014)	TFA.001.004.0007
1 February 2014	Toyota Insurance Finance Protection Insurance Policy and Product Disclosure Guide, number LIN0014S (02/2014)	TFA.001.009.3991
1 July 2016	Toyota Insurance Finance Protection Insurance Supplementary Product Disclosure Statement, number TIN014a (07/2026)	TFA.001.004.0006
1 January 2017	Toyota Insurance Finance Protection Insurance Policy and Product Disclosure Statement, number TIN014D (01/2017)	TFA.001.004.0032
25 January 2021	Toyota Insurance Finance Protection Insurance Supplementary Product Disclosure Statement, number TIN207 (01/2021)	TFA.001.027.0001
28 January 2021	Toyota Insurance Finance Gap Insurance Supplementary Product Disclosure Statement, number TIN214 (01/2021)	TFA.001.027.0003
19 February 2021	Toyota Insurance Extended Warranty Insurance and Factory Approved Extended Warranty Insurance Supplementary Product Disclosure Statement, number TIN208 (02/2021)	TFA.001.027.0002
Fast Facts Information Sheets		
1 July 2018	Fast Facts Information Sheet for Finance Gap Insurance, number TIN196_08/18	TFA.001.021.1345
1 July 2018	Fast Facts Information Sheet for Finance Protection Insurance, number TFS1744_07/18	TFA.001.021.1346
1 July 2018	Fast Facts Information Sheet for Extended Warranty Insurance, number TFS1744_07/18	TFA.001.021.1343
1 July 2018	Fast Facts Information Sheet for Factory Approved Extended Warranty Insurance, number TFS1744_07/18	TFA.001.021.1344

ANNEXURE B

Date	Document	Document ID
<i>First and Second Plaintiffs</i>		
1 January 2014	Finance Gap Insurance Policy and Product Disclosure Statement TIN009S (01/2014)	TFA.001.004.0007
1 January 2017	Finance Protection Insurance Policy and Product Disclosure Statement TIN014 (01/2017)	TFA.001.004.0032
1 November 2016	The Contract Booklet applicable to the First and Second Plaintiff's loan contract (being the Consumer Fixed Rate Loan Contract Booklet TFA064 (11/2016))	TFA.001.004.0037
8 December 2017	Privacy Statement and Consent	TFA.001.002.0004 at .0012 to .0017
8 December 2017	Loan Application — Consumer Fixed Rate Loan	HEP.002.001.0002
18 December 2017	Direct Debit Request	TFA.001.002.0004 at .0029
18 December 2017	Loan Offer — Consumer Fixed Rate Loan	TFA.001.002.0004 at .0003 to .0006
18 December 2017	Finance Protection Insurance Policy Schedule	HEP.002.001.0007 at .0005 to .0006
18 December 2017	Finance Gap Insurance Policy Schedule	HEP.002.001.0007 at .0003 to .0004
19 December 2017	Finance Protection Insurance Welcome Letter	ADI.001.001.0097
19 December 2017	Finance Gap Insurance Welcome Letter	ADI.001.001.0104
18 December 2018	Finance Protection Insurance Reminder Letter	ADI.001.001.0098
18 December 2018	Finance Gap Insurance Reminder Letter	ADI.001.001.0105
18 December 2019	Finance Protection Insurance Reminder Letter	ADI.001.001.0099
18 December 2019	Finance Gap Insurance Reminder Letter	ADI.001.001.0106
18 December 2020	Finance Protection Insurance Reminder Letter	ADI.001.001.0100
18 December 2020	Finance Gap Insurance Reminder Letter	ADI.001.001.0107
18 December 2021	Finance Protection Insurance Reminder Letter	ADI.001.001.0101
18 December 2021	Finance Gap Insurance Reminder Letter	ADI.001.001.0108

Date	Document	Document ID
18 December 2022	Finance Protection Insurance Reminder Letter	ADI.001.001.0102
18 December 2022	Finance Gap Insurance Reminder Letter	ADI.001.001.0109
Third Plaintiff		
1 January 2014	The PDS applicable to the Third Plaintiff's Finance Gap Insurance policy at inception (being the PDS dated 1 January 2014 for Finance Gap Insurance TIN009 (01/2014))	TFA.001.004.0007
1 January 2017	Finance Protection Insurance Policy and Disclosure Statement TIN014 (01/2017)	TFA.001.004.0032
1 April 2019	The Contract Booklet applicable to the Third Plaintiff's loan contract (being the Consumer Fixed Rate Loan Contract Booklet Standard Terms and Conditions TFA064 (04/2019))	TFA.600.004.0003
28 December 2019	Privacy Statement and Consent	TFA.600.001.0032
28 December 2019	Brian Hilton Motor Group receipt no 390590	HEP.002.002.0010 at .0001 to .0002
29 December 2019	Email from Toyota Financial Services to the Third Plaintiff enclosing Loan Contract Booklet	HEP.002.002.0012 (email) HEP.002.002.0013 (Loan Contract Booklet)
31 December 2019	Vehicle Tax Invoice 1306720	TFA.600.001.0027
31 December 2019	Direct Debit Request	TFA.600.001.0025 at .0012 to .0013
31 December 2019	Loan Application – Consumer Fixed Rate Loan	TFA.600.001.0026 at .0006 to .0011
31 December 2019	Loan Offer – Consumer Fixed Rate Loan	TFA.600.001.0026 at .0001 to .0005
31 December 2019	Policy Schedule for Finance Protection Insurance and Finance Gap Insurance	TFA.600.001.0022
31 December 2019	Welcome Letter, enclosing FSG and PDS information	TFA.600.001.0053
2 January 2020	Finance Protection Insurance Welcome Letter	ADI.001.001.0038
2 January 2020	Finance Gap Insurance Welcome Letter	ADI.001.001.0043
31 December 2020	Finance Protection Insurance Reminder Letter	ADI.001.001.0037
31 December 2020	Finance Gap Insurance Reminder Letter	ADI.001.001.0042