



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

Case: S ECI 2021 00930

Filed on: 17/11/2021 05:30 PM

S ECI 2021 00930

BETWEEN:

ZOEY ANDERSON-VAUGHAN

Plaintiff

and

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

First Defendant

~~**ASTERON LIFE & SUPERANNUATION LIMITED (ACN 073 979 530)**~~

Second Defendant

DEFENCE TO THE FURTHER AMENDED STATEMENT OF CLAIM

Date of document:	13 August 2021 <u>17 November 2021</u>
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To the Plaintiff's Further Amended Statement of Claim filed on 18 October 2021 ~~2 August~~ 2021 ("**FASOC**") the First Defendant, AAI Limited (ACN 005 297 807) ("**AAI**"), and the Second Defendant, ~~Asteron Life and Superannuation Limited (ACN 073 979 530)~~ ("**SLSL**") TAL Life Limited (ACN 050 109 450) and the Third Defendant, MTA Insurance Limited (ACN 070 583 701) (together, the "**Defendants**") say as follows (adopting definitions used in the FASOC unless otherwise stated and without admission):

A. PARTIES AND GROUP MEMBERS

A.1. The Plaintiff

1 As to paragraph 1, they:

- (a) admit subparagraph 1(a);
- (b) do not admit subparagraphs 1(b) to 1(d);
- (c) ~~as to admit~~ subparagraph 1(e), ~~they:~~

~~(i) — say that section 12BC of the ASIC Act:~~

~~(A) — deems a person to be a ‘consumer’ only in relation to the acquisition of particular financial services, in circumstances where the given acquisition of financial services satisfies the criteria stipulated by the section; and~~

~~(B) — does not provide for a person being a ‘consumer’ at large and for all purposes; and~~

~~(ii) — are accordingly unable to plead to the allegation in its current state and, under cover of that objection, deny the allegations therein.~~

A.2. Representative proceeding

2 As to paragraph 2, they:

- (a) say that, given it is not alleged in the EASOC that the Plaintiff:
 - (i) is part of the Preconditions Subgroup; or
 - (ii) purchased any of the Add-On Insurance products other than CCI and GAP Insurance,

it is the case ~~that~~ that:

- (iii) the claims of the Plaintiff and all Group Members are not in respect of, and do not arise out of, the same, similar or related circumstances;
- (iv) the claims of the Plaintiff and all Group Members do not give rise to a substantial common question of law or fact; and
- (v) the Plaintiff has not validly commenced this proceeding as a representative proceeding pursuant to Part 4A of the *Supreme Court Act 1986* (Vic) in respect of the claims particular to:
 - (A) the Preconditions Subgroup Group Members; and
 - (B) Group Members who purchased Add-On Insurance products other than CCI and GAP Insurance;

- (b) by reason of the matters alleged in paragraph 2(a) above, deny the allegations contained therein; and
- (c) say further that the balance of this defence is subject to such denial.

3 As to paragraph 3, they:

- (a) refer to and repeat paragraph 2 above; and
- (b) otherwise deny the allegations therein.

4 As to paragraph 4, they:

- (a) refer to and repeat paragraph 2 above; and
- (b) otherwise deny the allegations therein.

A.3. The Defendants

5 They admit paragraph 5.

6 They admit paragraph 6, save that they deny that SLSL was the issuer of CCI from 1 July 2017.

6A They admit paragraph 6A.

6B They admit paragraph 6B.

B. REGULATORY CONTEXT

B.1. Entity Relationships

7 As to paragraph 7, they:

(a) as to subparagraph (a):

(i) ~~refer to and repeat paragraph 1(c) above;~~

(ii) ~~admit that MTAI was the product issuer in respect of the general insurance cover on the terms set out in applicable PDSs for the following Add-On Insurance products in the Period prior to 1 July 2015 as follows:~~

(A) ~~Loan Protection Insurance, Cash Benefit Insurance, Equity Insurance and Equity Plus Insurance throughout the Period prior to 1 July 2015;~~

(B) ~~Extended Warranty Insurance throughout the Period until 15 September 2009; and~~

(C) ~~Tyre and Rim Insurance between 1 June 2010 and 31 October 2013; and~~

(iii) ~~otherwise deny the subparagraph; and~~

(i) as to subparagraph 7(a)(i):

(A) admit that MTAI was the product issuer in respect of the general insurance cover on the terms set out in applicable PDSs for the following Add-On Insurance products in the Period prior to 1 July 2015 as follows:

1. Loan Protection Insurance, Cash Benefit Insurance, Equity Insurance and Equity Plus Insurance throughout the Period prior to 1 July 2015;
2. Extended Warranty Insurance throughout the Period until 15 September 2009; and
3. Tyre and Rim Insurance between 1 June 2010 and 31 October 2013; and

(B) otherwise deny the subparagraph;

(ii) admit subparagraph 7(a)(ii); and

(iii) admit subparagraph 7(a)(iii); and

- (b) admit as to subparagraph (b). say that MTAI has since 1 February 2004 and continues to hold an AFSL (No. 239912).

8 As to paragraph 8, they:

(a) as to sub-paragraph (a),:

~~(i) refer to and repeat paragraph 1(c) above;~~

~~(ii) admit that AAI was the product issuer in respect of the general insurance cover on the terms set out in applicable PDSs for the Add-On Insurance products in the Period after 1 July 2015, save that AAI did not issue the following products in the Period after 1 July 2015:~~

~~(A) (i) Extended Warranty Insurance; and~~

~~(B) (ii) Tyre & Rim Insurance; and~~

- (b) as to sub-paragraph (b), say that, after 30 June 2015, AAI authorised MTAI to enter into Add-On Insurance contracts on behalf of AAI as insurer;

(ba) as to subparagraph (ba):

- (i) say that, in the period after 1 July 2015, MTAI entered into certain Add-On Insurance contracts on behalf of AAI as insurer;
- (ii) say further that the nature of the binding authority provided to MTAI by AAI was to authorise MTAI to issue insurance policies on behalf of AAI;
- (iii) say further that MTAI was not an authorised representative of AAI or SLSL and so was not an “authorised licensee” for the purposes of s 916E of the Corporations Act; and
- (iv) otherwise deny the subparagraph; and

(c) as to sub-paragraph (c):

- ~~(i) say that the pleading is vague and embarrassing in that it does not specify the scope and nature of the agency or sub-agency alleged to have been authorised~~refer to and repeat subparagraph 8(b) above; and
- ~~(ii) under cover of that objection,~~ say further that:
 - (A) MTAI distributed the Add-On Insurance products by entering into distribution agreements with counterparties, which authorised those counterparties to provide authorised financial services on MTAI’s behalf as MTAI’s authorised representatives in accordance with the terms of those distribution agreements;
 - (B) some of those distribution agreements permitted MTAI’s authorised representatives to arrange for MTAI to enter

into Add-On Insurance contracts on behalf of AAI as insurer;

(C) when providing financial services as authorised representatives of MTAI, MTAI's authorised representatives were not acting on AAI's behalf; and

(D) AAI was aware of and consented to MTAI distributing the Add-On Insurance products in the manner described in sub-paragraphs (A) and (B) above; and

(d) otherwise deny paragraph 8.

9 As to paragraph 9, they:

(a) as to subparagraph (a),:

(i) ~~refer to and repeat paragraph 1(c) above;~~

(ii) ~~admit that SLSL was the product issuer in respect of the trauma and death cover on the terms set out in applicable CCI PDSs;~~

(b) as to sub-paragraph (b), say that SLSL authorised MTAI to enter into insurance contracts on behalf of SLSL as insurer;

(ba) as to subparagraph (ba);

(i) say that MTAI entered into certain Add-On Insurance contracts on behalf of SLSL as insurer;

(ii) say further that the nature of the binding authority provided to MTAI by SLSL was to authorise MTAI to issue insurance policies on behalf of SLSL;

(iii) say further that MTAI was not an authorised representative of AAI or SLSL and so was not an "authorised licensee" for the purposes of s 916E of the Corporations Act; and

(iv) otherwise deny the subparagraph;

(c) as to sub-paragraph (c):

(i) ~~say that the pleading is vague and embarrassing in that it does not specify the scope and nature of the agency or sub-agency alleged to have been authorised~~refer to and repeat subparagraph 9(b) above; and

(ii) ~~under cover of that objection,~~ say further that:

(A) MTAI distributed the Add-On Insurance products by entering into distribution agreements with counterparties, which authorised those counterparties to provide authorised financial services on MTAI's behalf as MTAI's authorised representatives in accordance with the terms of those distribution agreements;

(B) some of those distribution agreements permitted MTAI's authorised representatives to arrange for MTAI to enter into Add-On Insurance contracts on behalf of SLSL as insurer;

(C) when providing financial services as authorised representatives of MTAI, MTAI's authorised representatives were not acting on SLSL's behalf; and

(D) SLSL was aware of and consented to MTAI distributing the Add-On Insurance products in the manner described in sub-paragraphs (A) and (B) above; and

(d) otherwise deny paragraph 9.

10 As to paragraph 10, they:

- (a) refer to and repeat paragraphs ~~8~~ 7 to 9 above and 19 to 26 below;
- (b) admit that a purpose or effect of the distribution systems employed by MTAI was the generation of issuances of the Add-On Insurance;
- (c) otherwise admit subparagraph 10(a); and
- (d) otherwise deny paragraph 10.

10A As to paragraph 10A, they:

- (a) refer to and repeat paragraphs 7 to 10 above;
- (b) say that paragraph 10A of the FASOC misstates the effect of section 917C of the Corporations Act; and
- (c) deny the paragraph.

11 As to paragraph 11, they:

- (a) admit that MTAI was at certain times and as disclosed in the applicable PDS the issuer of certain of the Add-On Insurance products, and thereby and in relation to the products of which MTAI was the issuer:
 - (i) was, in trade or commerce, engaged in the provision of the financial service described by section 12BAB(1)(b) of the ASIC Act to the Plaintiff and the Group Members; and
 - (ii) provided a financial services within the meanings of sections 766A(1)(b) and 766C of the Corporations Act;
- (b) admit that MTAI was, under its AFSL, authorised to and did from time to time (through Dealers as its authorised representatives) provide general advice within the meaning of s 766B in relation to Add-On Insurance products and thereby and to the extent that such general advice was provided:

- (i) was, in trade or commerce, engaged in the provision of the financial service described by s 12BAB(1)(a) of the ASIC Act to the Plaintiff and the Group Members; and
- (ii) provided a financial service within the meaning of sections 766A(1)(a) and 766B of the Corporations Act;
- (c) refer to and repeat paragraphs 7(a)(ii) and 7(b) above and admit that to the extent MTAI at certain times distributed certain of the Add-On Insurance products, MTAI:
 - (i) was, in trade or commerce, engaged in the provision of the financial service described by s 12BAB(1)(b) of the ASIC Act to the Plaintiff and the Group Members; and
 - (ii) provided a financial service within the meaning of sections 766A(1)(b) and 766C of the Corporations Act;
- ~~(b)~~(d) refer to and repeat paragraphs 8-10 above; and
- ~~(e)~~(e) otherwise deny the allegations contained therein.

12 As to paragraph 12, they:

- (a) admit that AAI was at certain times and as disclosed in the applicable PDS the issuer of certain of the Add-On Insurance products, and thereby:
 - (i) was, in trade or commerce, engaged in the provision of the financial service described by section 12BAB(1)(b) of the ASIC Act to the Plaintiff and the Group Members; and
 - (ii) provided financial services within the meanings of sections 766A(1)(b) and 766C of the Corporations Act;
- (b) refer to and repeat paragraphs 8-10 above; and
- (c) otherwise deny the allegations contained therein.

13 As to paragraph ~~12~~13, they:

- (a) admit that SLSL was at certain times and as disclosed in the applicable PDS the issuer of certain of the Add-On Insurance products, and thereby:
 - (i) was, in trade or commerce, engaged in the provision of the financial service described by section 12BAB(1)(b) of the ASIC Act to the Plaintiff and the Group Members; and
 - (i) provided financial services within the meanings of sections 766A(1)(b) and 766C of the Corporations Act;
- (b) refer to and repeat paragraphs ~~8~~7-10 above; and
- (c) otherwise deny the allegations contained therein.

B.2. Add-On Insurance — Key Characteristics

14 ~~They admit~~ As to paragraph 14, they:-

- (a) admit subparagraph 14(a); and
- (b) deny subparagraph 14(b).

Particulars

During the Period, for the purposes of sections 12BAB(1)(b) of the ASIC Act and 766A(1)(b) of the Corporations Act, a person provided a financial service if their conduct constituted dealing in a financial product. Financial products, including the Add-On Insurance products, were not themselves capable of being a ‘financial service’ within the meaning of those sections.

15 As to paragraph 15, they:

- (a) as to subparagraph 15(a):

- (i) say that the Add-On Insurance products protected against the risks identified in the policy terms for each product on the terms disclosed in the applicable PDS and policy documents;
- (ii) rely on the terms of the applicable PDS and policy documents for their full force and effect; and
- (iii) otherwise deny the allegations therein;

Particulars

1. Annexure A to this defence is a schedule of the PDSs for CCI;
2. Annexure B to this defence is a schedule of the PDSs for GAP Insurance;
3. Annexure C to this defence is a schedule of the PDSs for Cash Benefit Insurance;
4. Annexure D to this defence is a schedule of the PDSs for Extended Warranty Insurance; and
5. Annexure E to this defence is a schedule of the PDSs for Tyre and Rim Insurance.

Further particulars may be provided following discovery.

- (b) as to subparagraph (b):
 - (i) refer to and repeat subparagraph 15(a) above; and
 - (ii) otherwise deny the allegations therein; and
- (c) as to subparagraph 15(c):
 - (i) in response to subparagraph 15(c)(i) say that the reference in the subparagraph to a “relatively low proportion of claims” is vague and embarrassing in that it does not stipulate in relation to what measure or comparator the “proportion” of claims payments to

premiums received is alleged to be low, and, under cover of that objection:

- (A) admit that the ratio of claim payments to premiums received was lower than for some other insurance products which insured against different risks and were distributed in different manners;
 - (B) deny that the ratio of claims payments to premiums received was lower than for other similar insurance products issued by other insurers distributed in a similar manner; and
 - (C) otherwise deny the allegation therein; and
- (ii) deny subparagraph 15(c)(ii) and say further that subparagraph 15(c)(ii) of the FASOC incorrectly assumes that the Claims Loss Ratio is an accurate and appropriate proxy for determining the value to the insureds of the Add-On Insurance products. In this regard, the Defendants:
- (A) say that, to have any meaning, the Claims Loss Ratio must be measured in a particular period and for a particular policy type;
 - (B) say that the Claims Loss Ratio does not recognise the costs, including of design, administration, issue and distribution, of the Add-On Insurance products;
 - (C) say that the Claims Loss Ratio does not indicate the value, or potential value, of an insurance product to a particular insured either prospectively or retrospectively;

(D) say that the Claims Loss Ratio does not account for the fundamental importance and value of the peace of mind afforded to insureds by the Add-On Insurance products; and

(E) say that, even discounting the inherent value of peace of mind, a Claims Loss Ratio which is greater than zero is not capable of supporting a conclusion that an Add-On Insurance policy was of “*no value*”.

B.3. Key Statutory Obligations

AFSL obligations

15A As to paragraph 15A, they:

- (a) rely on the terms of the AAI AFSL, SLSL AFSL and MTAI AFSL for their full force and effect;
- (b) say that the AAI AFSL at all material times authorised AAI to carry on a financial services business to do things including, in relation to retail and wholesale clients:
 - (i) provide financial product advice for financial products which were general insurance products; and
 - (ii) deal in a financial product by issuing, applying for, acquiring, varying or disposing of financial products which were general insurance products;
- (c) say that the SLSL AFSL at all material times authorised SLSL to carry on a financial services business to do things including, in relation to retail and wholesale clients:

- (i) provide financial product advice in relation to financial products which were, relevantly, life products; and
- (ii) deal in a financial product by issuing, applying for, acquiring, varying or disposing of financial products which were, relevantly, life products;
- (d) say that the MTAI AFSL at all material times to 26 April 2018 authorised MTAI to carry on a financial services business to do things including, in relation to retail clients:

 - (i) provide general financial product advice for financial products which were either general insurance products or particular life products; and
 - (ii) deal in a financial product by issuing, applying for, acquiring, varying or disposing of financial products which were general insurance products or particular life products;
- (e) say that the MTAI AFSL at all material times from 26 April 2018 authorised MTAI to carry on a financial services business to do things including, in relation to retail clients:

 - (i) provide general financial product advice for financial products which were general insurance products; and
 - (ii) deal in a financial product by arranging for another person to issue, apply for, acquire, vary or dispose of financial products which were general insurance products;
- (f) say that the MTAI AFSL at all material times did not authorise MTAI to provide financial product advice other than general financial product advice;

(g) refer to and repeat paragraphs 11 to 13 above; and

(h) otherwise deny the paragraph.

16 As to paragraph 16, they:

(a) as to subparagraph 16(a):

(i) admit that section 912A of the Corporations Act required the Defendants ~~and MTAI~~, as the holders of financial services licences, to comply with the requirements thereof in relation to the provision of financial services covered by their respective licences in respect of the Add-On Insurance products;

(ii) refer to and repeat paragraphs ~~7~~8-10 above; and

(iii) otherwise deny the allegations therein; and

(b) deny subparagraph 16(b).

17 As to paragraph 17, they:

(a) deny subparagraph 17(a);

(b) say that AAI and MTAI agreed to adopt each of:

(i) the 2006 General Insurance Code of Practice effective June 2006 to April 2010 (“**2006 GICOP**”);

(ii) the 2010 General Insurance Code of Practice effective 1 May 2010 to 30 June 2012 (“**2010 GICOP**”);

(iii) the 2012 General Insurance Code of Practice effective 1 July 2012 to 30 June 2014 (“**2012 GICOP**”); and

(iv) the 2014 General Insurance Code of Practice effective 1 July 2014 to 31 December 2019 (“**2014 GICOP**”);

- (c) say that from June 2006 to 30 June 2014, the General Insurance Code of Practice (as in force at the time) did not provide a customer, or anyone else, with any legal entitlement or right of action against AAI or MTAI;
- (d) say that from 1 July 2014 to 31 December 2019:
 - (i) by agreeing to the 2014 GICOP, AAI and MTAI entered into a contract with the Insurance Council of Australia (“ICA”) to abide by the 2014 GICOP; and
 - (ii) the 2014 GICOP did not create legal or other rights between either AAI or MTAI and any other person or entity other than the ICA;
- (e) say that from June 2006 to 30 June 2014, decisions of the Code Compliance Committee made pursuant to section 7 of the General Insurance Code of Practice (as in force at the time) were binding on AAI and MTAI;
- (f) say that from 1 July 2014 to 31 December 2019, decisions of the Code Governance Committee made pursuant to section 13 of the 2014 GICOP were binding on AAI and MTAI; and
- (g) otherwise deny the allegations therein.

18 As to paragraph 18, they:

- (a) refer to and repeat paragraphs 8-10, 16 and 17 above;
- (b) as to subparagraph 18(a)(i), say that:
 - (i) clause 2.3, 1 of the 2006 GICOP, 2010 GICOP and 2012 GICOP stated that: *“Our Employees and our Authorised Representatives will conduct their services in an honest, efficient, fair and transparent manner”*; and

- (ii) clause 4.4 of the 2014 GICOP stated that: *“Our sales process and the services of our Employees and our Authorised Representatives will be conducted in an efficient, honest, fair and transparent manner, in accordance with this section”*;
- (c) as to subparagraph 18(a)(ii), say that:
 - (i) clause 2.4, 4 of the 2006 GICOP, 2010 GICOP and 2012 GICOP stated that: *“Our Employees and our Authorised Representatives will not perform functions which do not match their expertise”*;
and
 - (ii) clause 5.1(b) of the 2014 GICOP stated that: *“When our Employees or Authorised Representatives are acting on our behalf, we will: only allow our Employees and our Authorised Representatives to provide services that match their expertise”*;
- (d) as to subparagraph 18(a)(iii), say that:
 - (i) clause 2.4, 5 of the 2006 GICOP, 2010 GICOP and 2012 GICOP stated that: *“Our Employees and our Authorised Representatives will receive adequate training to carry out their sales tasks and functions competent”*; and
 - (ii) clause 5.1(a) of the 2014 GICOP stated that: *“When our Employees or Authorised Representatives are acting on our behalf, we will: provide them with, or require them to receive, appropriate education and training to provide their services competently and to deal with you professionally, including training on this Code”*;
- (e) as to subparagraph 18(a)(iv), say that:

- (i) clause 2.4, 3 of the 2006 GICOP, 2010 GICOP and 2012 GICOP stated that: *“Our Authorised Representatives will inform you of the service they have been asked to provide and the identity of the insurer for whom they are acting”*; and
 - (ii) clause 5.3 of the 2014 GICOP stated that: *“When providing a service to you, our Authorised Representatives will inform you of the service they have been authorised to provide on our behalf, and our identity”*;
- (f) as to subparagraph 18(b), say that the 2006 GICOP, 2010 GICOP and 2012 GICOP stated:
- (i) in clause 2.4, 6 that: *“Training of our Employees and Authorised Representative will include: a) principles of general insurance and any relevant consumer protection law; b) product knowledge; and c) the requirements of this Code”*; and
 - (ii) in clause 2.4, 8 that: *“We will: a) measure the effectiveness of training by monitoring the performance of our Authorised Representatives and our Employees; and b) require additional or remedial training to address any identified deficiencies”*;
- (g) as to subparagraph 18(c), say that clause 5.1 of the 2014 GICOP stated that: *“When our Employees or Authorised Representatives are acting on our behalf, we will:*
- (a) *provide them with, or require them to receive, appropriate education and training to provide their services competently and to deal with you professionally, including training on this Code;*

- (b) *only allow our Employees and our Authorised Representatives to provide services that match their expertise;*
- (c) *measure the effectiveness of training by monitoring the performance of our Employees' and our Authorised Representatives' services;*
- (d) *provide or require appropriate education and training to correct any identified performance shortcomings in our Employees' or Authorised Representatives' services..."*
- (h) rely on the full terms and effect of the 2006 GICOP, 2010 GICOP, 2021 GICOP and 2014 GICOP; and
- (i) otherwise deny the allegations therein.

C. SALES OF ADD-ON INSURANCE

C.1. The Sales Systems

19 As to paragraph 19, they:

- (a) refer to and repeat paragraphs 8-10 above;
- (b) as to subparagraph 19(a), admit that MTAI provided training and instruction to Dealers in relation to the distribution of the Add-On Insurance products;
- (c) as to subparagraph (b), admit that Dealers were paid commissions by MTAI calculated by reference to:
 - (i) the issuance of the Add-On Insurance products; and
 - (ii) in some instances, the issuance of specified volumes of some Add-On Insurance products.
- (d) as to subparagraph (c):

- (i) admit that MTAI operated ~~an~~ electronic distribution systems which Dealers were able to access to arrange or obtain Add-On Insurance for customers;
- (ii) admit that MTAI operated ~~an~~ electronic sales systems through which Dealers could calculate their potential commission on each sale~~issuance~~ of Add-On Insurance; and
- (iii) admit that MTAI could monitor the volumes of sales~~issuances~~ of Add-On Insurance arranged by each Dealer;
- (e) admit subparagraph (d); ~~and~~
- (f) as to subparagraph (e), refer to and repeat paragraph 7 above;
- (g) say that the sales systems employed by MTAI developed from time to time and varied across particular Add-On Insurance products and Dealers; and
- ~~(f)~~(h) otherwise deny the allegations therein.

20 As to paragraph 20, they:

- (a) refer to and repeat paragraphs 10 and 11(b) above;
- (b) say that the allegation is confusing and embarrassing as s 766B refers only to a “recommendation or a statement of opinion or, a report of either of those things” and does not refer to other forms of “conduct”;
- (c) ~~under cover of that objection, admits that MTAI was, under its AFSL, authorised to and did from time to time (through Dealers as its authorised representatives) provide general advice within the meaning of s 766B in relation to Add-On Insurance products~~refer to and repeat subparagraph 11(b) above; and
- (d) otherwise deny the allegations therein.

21 As to paragraph 21, they:

- (a) as to paragraph 21 generally, say that the officers of MTAI (within the meaning of the Corporations Act), and each of them, did not have direct responsibility for the matters listed in subparagraphs 21(a) to (c);
- (b) as to subparagraphs 21(i)-(iii):
 - (i) admit that all officers of MTAI were aware of those matters except for the matter set out in 21(iii)(C)(2); and
 - (ii) admit that all officers of MTAI were aware that some customers, as employees, might have had income protection, total and permanent disability insurance and/or trauma and death insurance through membership of their superannuation funds; and
- (c) otherwise deny the allegations therein.

22 They deny paragraph 22.

23 As to paragraph 23, they:

- (a) refer to and repeat paragraph 19 above; and
- (b) otherwise deny the allegations therein.

C.2. Sales System deficiencies

24 As to paragraph 24, they:

- (a) admit subparagraph 24(a);
- (b) as to subparagraph 24(b), say that the amount of commission payable to the Dealer in respect of the Add-On Insurance products could be negotiated by the Plaintiff and Group Members and otherwise admit the subparagraph;
- (c) deny subparagraph 24(c);

- (d) as to subparagraph 24(d), say:
 - (i) that the allegations therein are embarrassing as the allegations are not accompanied by the requisite particulars pursuant to rule 13.10(3)(a) of the *Supreme Court (General Civil Procedure) Rules 2015* (Vic); and
 - (ii) under cover of that objection, deny the allegations therein;
- (e) deny subparagraph 24(e);

Particulars

Any interest and other charges which were paid by customers as a consequence of paying premiums for the Add-On Insurance through Finance are costs of Finance, and not costs of the Add-On Insurance.

- (f) as to subparagraph 24(f)(i):
 - (i) deny that CCI offered coverage that overlapped or was likely to overlap with other insurance coverage already held by consumers, the Plaintiff or employed Group Members;

Particulars

Although the Defendants are unaware of what, if any, other insurance was held by applicants for CCI, including the Plaintiff and employed Group Members, a correlation between a claim event (such as disablement, involuntary unemployment, trauma or death) under a CCI policy and a separate policy of insurance does not give rise to an overlap in coverage insofar as claims may be payable under both policies.

- (ii) deny that GAP Insurance offered coverage that overlapped or was likely to overlap with other insurance already held by consumers, the Plaintiff or employed Group Members;

Particulars

GAP Insurance protected policyholders from the risk that, if there was a total loss of their vehicle, they may be left owing money on their car loan. It protected against the risk that any comprehensive policy of insurance would be insufficient to do so, and therefore is insurance additional to, as opposed to overlapping with, comprehensive insurance.

- (iii) deny that Cash Benefit Insurance offered coverage that overlapped or was likely to overlap with other insurance already held by consumers, the Plaintiff or employed Group Members; and

Particulars

Cash Benefit Insurance would pay out a specified sum in the event that a comprehensively insured vehicle became a total loss and the comprehensive insurer paid made a total loss payout. Cash Benefit Insurance therefore operated in addition to, as opposed to overlapping with, comprehensive insurance.

- (iv) say that the PDSs for CCI, including the CCI PDS provided to the Plaintiff, GAP Insurance and Cash Benefit Insurance during the Period contained language to the effect that:

- (A) the information in the PDS was prepared without taking into account the customer's objectives, financial situation or needs;
- (B) that the customer should consider the appropriateness of the information in regard to the customer's own circumstances; and
- (C) that the purchase of the insurance was optional, and that the customer may have been able to arrange similar insurance through a different insurer.

Particulars

The Defendants repeat Particulars 1, 2 and 3 subjoined to paragraph 25(i) below.

- (g) as to subparagraph 24(f)(ii):
 - (i) do not understand what is meant by the phrase "unnecessary or largely unnecessary";
 - (ii) say that the allegation in subparagraph 24(f)(ii) is vague and embarrassing and liable to be struck out;
 - (iii) otherwise refer to and repeat subparagraph 24(f)(i) above; and
 - (iv) under cover of the above objections, deny the allegations therein;
- (h) say that the allegation in subparagraph 24(f)(iii) is insufficiently particularised, embarrassing and liable to be struck out and, under cover of that objection, do not admit the allegations therein;
- (i) as to subparagraph 24(g):
 - (i) refer to and repeat subparagraph 24(g)(i) above;

- (ii) say that the Extended Warranty Insurance protected against an insurable risk, despite the terms of the TPA or ACL; and

Particulars

The Extended Vehicle Warranty PDS with effective date 1 May 2006 contained the following disclosure at page 2:

This Warranty is issued by MTA, and not the manufacturer of your Vehicle, or the dealer who sold the Vehicle to you. This Warranty only commences when the Vehicle Manufacturer's Warranty or Dealer's Statutory Warranty expires. In most cases, this Warranty will cover the same items as your Vehicle Manufacturer's Warranty or Dealer's Statutory Warranty, but if you need to be sure, we ask you to ascertain this for yourself before you make any decision to purchase this Warranty.

- (iii) otherwise deny the allegations therein;
 - (j) deny subparagraph 24(h); and
 - (k) otherwise deny the allegations therein.
- 25 They deny paragraph 25, and:
- (a) say that the allegation that ~~MTA~~ and the Defendants failed to “adequately disclose” one or more of the matters listed in paragraph 25 of the FASOC is impermissibly vague and embarrassing in that it both fails to identify what was and was not disclosed and also fails to specify

the statutory (or other) measure by which the adequacy of any disclosure is said to be measured or such disclosure required;

- (b) refer to and rely upon the terms of the PDS and policy documents for each Add-On Insurance product;
- (c) as to subparagraph 25(a), refer to and repeat subparagraph 15(c) above;
- (d) deny subparagraph 25(b);
- (e) as to subparagraph 25(c) they:
 - (i) refer to and repeat paragraph 23 above;
 - (ii) say that the FSG provided to the Plaintiff by AP Motors disclosed that commissions would be paid to the Dealer;

Particulars

The A.P. Motors (No. 3) Pty Ltd Financial Services Guide dated 1 July 2015 at page 1 under the heading “How we are paid”.

- (iii) say that the CCI PDS provided to the Plaintiff in respect of her CCI policy disclosed that commissions would be paid to the Dealer;

Particulars

MTA Loan Protection Insurance PDS with effective date 1 July 2015 at page 7.

- (iv) say that a PDS for a consumer credit insurance product was required to include a statement of the commission paid or payable in relation to the provision of the consumer credit insurance product; and

Particulars

1. Corporations Act, s 1013D.
2. Corporations Regulations, rr 7.9.15D and 7.9.16.

(v) say that where a credit-related insurance contract was to be financed under a credit contract, credit providers were required to make disclosures to the Financed Group Members including a statement that commission is to be paid and, if ascertainable, the amount of commission expressed either as a monetary amount or a proportion of the premium;

Particulars

1. On and after 1 July 2010, credit providers were required to provide these disclosures, pursuant to s 17(15) of the *National Credit Code* (being Schedule 1 to the *National Consumer Credit Protection Act 2009* (Cth)) and reg 73 of the *National Consumer Credit Protection Regulations 2010* (Cth).
2. Between 1 June 2006 and 30 June 2010, credit providers were required to provide these disclosures, pursuant to s 15(N) of the *Consumer Credit Code* (being the Appendix to the *Consumer Credit (Queensland) Act 1994* (Qld)). The *Consumer Credit Code* and the *Consumer Credit Regulations 1995* (Qld) applied as law and regulations of:

- a. New South Wales (pursuant to ss 5(a) and 6(1)(a) of the *Consumer Credit (New South Wales) Act 1995* (NSW));
- b. Victoria (pursuant to ss 5(a) and 6(1)(a) of the *Consumer Credit (Victoria) Act 1995* (Vic));
- c. South Australia (pursuant to ss 5(a) and 6(1)(a) of the *Consumer Credit (South Australia) Act 1995* (SA));
- d. Western Australia (pursuant to ss 5(1) and 6(1) of the *Consumer Credit (Western Australia) Act 1996* (WA));
- e. Tasmania (pursuant to ss 5(1)(a) and 6(1)(a) of the *Consumer Credit (Tasmania) Act 1996* (Tas));
- f. Northern Territory (pursuant to ss 4(a) and 5(1)(a) of the *Consumer Credit (Northern Territory) Act 1995* (NT)); and
- g. Australian Capital Territory (pursuant to ss 4(a) and 5(1)(a) of the *Consumer Credit Act 1995* (ACT)),

(f) as to subparagraph 25(d), refer to and repeat subparagraph 24(e) above and the particulars thereto;

(g) as to subparagraph 25(e), refer to and repeat subparagraphs 24(f) above and 25(i) below and the particulars thereto;

- (h) as to subparagraph 25(f), refer to and repeat subparagraph 24(i) above;
- (i) as to subparagraph 25(g), ~~understand the reference in that subparagraph to “(i) and (iv) to (vi)” as being intended to be references to subparagraphs 25(a) and 25(d) to 25(f) of the ASOC and say that:~~
 - (i) a contract of insurance provides cover against the occurrence of specified adverse events, the occurrence and timing of which (if at all) is inherently uncertain and, in ordinary circumstances, unwelcomed by the insured;
 - (ii) it is a common feature of all insurance that, in circumstances where the risk insured against does not ultimately eventuate, then, in hindsight, the insured would typically have been better off financially had the insured not purchased insurance against the risk;
 - (iii) the insurance provided by the Add-On Insurance products conferred cover against a number of possible eventualities (**“Protections”**);
 - (iv) the Protections provided to the holders of the Add-On Insurance products conferred financial and non-financial benefits, including entitlement to indemnity and peace of mind;
 - (v) by reason of their acceptance of risk under the Add-On Insurance product policies, AAI, SLSL and MTAI were required, consistent with their prudential obligations and sound financial management, to retain capital to ensure they could meet the liabilities they incurred or may have incurred in the future under the Add-On Insurance policies and they did so;

- (vi) the terms and conditions of the Protections were set out in the PDS, policy document and policy schedule for each Add-On Insurance product issued;
- (vii) the Plaintiff and Group Members were best placed to determine whether they required, desired or would be likely to benefit from some or all of the Protections;
- (viii) the likelihood of prospective purchasers becoming entitled to claim under an Add-On Insurance policy would depend on their personal circumstances at the time of claim rather than (or in addition to) at the time of application for the policy; and
- (ix) the PDS for each Add-On Insurance product informed of the importance of reading and understanding the terms of the policy; and

Particulars

1. CCI

Loan Protection Insurance

The CCI (Loan Protection Insurance) PDSs effective from 17 October 2005, 1 November 2005, 1 June 2007 and 1 May 2009 included a summary of the cover provided in substantially the following terms:

The insurance provided under this PDS is to assist with your loan repayments in the event of any of the following circumstances occurring:

- *if you die;*

- *if you suffer a Traumatic Event and satisfy the definition of that Traumatic Event as contained in this PDS;*
- *if you become involuntarily unemployed; or*
- *if you are unable to work due to accident or sickness.*

Consumer Credit Insurance is a prescribed contract under the Insurance Contracts Regulations 1985. This means that the Regulation lists standard exclusions and conditions that apply to this type of policy. We have listed the standard exclusions that apply to your policy on page [X] of this PDS.

The exclusions in your policy that are different from the standard exclusions listed in the Insurance Contracts Regulations 1985 are highlighted and listed on pages [X] of this PDS.

Please ensure you read and understand the standard and non-standard exclusions relevant to the cover option(s) you choose.

Those PDSs contained the following additional information:

Before you buy Consumer Credit Insurance, you should be aware of the following:

- *to find out what the policy covers and does not cover, carefully read this PDS. This will help you*

to understand when the policy will cover your loan repayments and when it will not; and

- *you are not obliged to purchase the Consumer Credit Insurance and you may be able to arrange Consumer Credit Insurance through a different issuer.*

And further:

The insurance product described in this document is not a savings plan. The primary purpose is to provide a benefit. This benefit is measured by reference to your liability under the Finance Contract in the event of specified events or contingencies as detailed in this PDS and selected by you on the MTA Application/Certificate of Insurance occurring.

The CCI PDSs effective from 1 November 2010, 4 February 2011 and 20 March 2012 included a summary of the cover provided in the following terms:

Loan Protection Insurance is designed to assist you in meeting your Finance Contract repayments in the event of changes to your health, employment status or as a result of your death. The insurance under this PDS is to assist with your loan repayments in the event of any of the following circumstances occurring:

- *you are unable to work due to accident or sickness;*
- *you become involuntarily unemployed;*

- *you suffer a traumatic event and satisfy the definition of that traumatic event as contained in this PDS; or*
- *your death.*

Please Note: there are circumstances where a benefit may not be paid under your policy. Some circumstances are different from the standard exclusions listed in the Insurance Contracts Regulations 1985. Please ensure you read and understand those circumstances applicable to you. For more details, please refer to When we will not pay on pages [X].

Those PDSs contained the following additional information:

Before you buy this insurance, please read this PDS carefully. This PDS contains information about what the policy covers as well as what it does not cover (please refer to When we will not pay on pages [X]). Any information contained in this PDS has been prepared without taking into account your particular objectives, financial situation or needs (unless Suncorp, or MTA, its authorised officers, employees or Authorised Representatives have previously advised otherwise). For that reason before acting on the information, you should consider the appropriateness of the information in regards to your own circumstances.

You are not obliged to purchase Loan Protection Insurance and you may choose to apply for and arrange

consumer credit insurance through a different insurer. If you decide to buy Loan Protection Insurance, you must answer all questions on the Application/Certificate of Insurance truthfully and accurately.

Loan Protection Insurance is not a savings plan. The primary purpose of this product is to provide a benefit under the terms and conditions of this policy. This benefit is measured by reference to your liability under the Finance Contract in the event of specified events or contingencies as detailed in this PDS and selected by you on the MTA Application/Certificate of Insurance occurring.

The CCI PDSs effective from 1 July 2013, 3 March 2014, 9 May 2014 and 1 July 2015 included a summary of the cover provided in the following terms:

Loan Protection Insurance is designed to assist you in meeting your Finance Contract repayments in the event of changes to your health, employment status or as a result of your death. The insurance under this PDS is to assist with your loan repayments in the event of any of the following circumstances occurring:

- you are unable to work due to sickness, illness or injury;*
- you become involuntarily unemployed;*

- *you suffer a traumatic event and satisfy the definition of that traumatic event as contained in this PDS; or*
- *your death.*

Please Note: there are circumstances where a benefit may not be paid under your policy. Some circumstances are different from the standard exclusions listed in the Insurance Contracts Regulations 1985. Please ensure you read and understand those circumstances applicable to you. For more details, please refer to When we will not pay on pages [X].

Those PDSs contained the following additional information:

Before you buy this insurance, please read this PDS carefully. This PDS contains information about what the policy covers as well as what it does not cover (please refer to When we will not pay on pages 5-6). Any information contained in this PDS has been prepared without taking into account your particular objectives, financial situation or needs (unless Suncorp, or MTA, its authorised officers, employees or Authorised Representatives have previously advised otherwise). For that reason before acting on the information, you should consider the appropriateness of the information in regards to your own circumstances.

You are not obliged to purchase Loan Protection Insurance and you may choose to apply for and arrange consumer credit insurance through a different insurer. If you decide to buy Loan Protection Insurance, you must answer all questions on the Application/ Certificate of Insurance truthfully and accurately.

Loan Protection Insurance is not a savings plan. The primary purpose of this product is to provide a benefit under the terms and conditions of this policy. This benefit is measured by reference to your liability under the Finance Contract in the event of specified events or contingencies as detailed in this PDS and selected by you on the MTA Application/Certificate of Insurance occurring.

The CCI PDS effective from 15 December 2015 included a summary of the cover provided in the following terms:

Loan Protection Insurance is designed to assist You in meeting the repayments under Your Loan to Your Credit Provider, in the event of any of the following circumstances occurring:

- You become Disabled and are unable to work because of Sickness, Injury or a medical condition;*
- You become Accidentally Injured and are unable to work because of Injury;*

- *You become Involuntarily Unemployed or You cease Your Usual Occupation to become a Full-Time Carer;*
- *Your death; or*
- *You suffer a Traumatic Event.*

Payments are made to Your Credit Provider, not You.

The Policy ends and all cover ceases before the expiry of the Period of Insurance in certain circumstances, please refer to Section 10.0 'When does cover stop?'.

That PDS contained the following additional information:

Loan Protection Insurance is not a savings plan. It is commonly referred to as consumer credit insurance. The primary purpose of this insurance is to provide Benefits under the provisions of the Policy. Benefits are measured by reference to Your liability under the Loan in the event of specified events or contingencies as set out in this PDS and selected by You at the time of application (for a summary only, please refer to Section 2.0 'About Loan Protection Insurance'). There are limitations on the Benefits payable (for a summary only, please refer to Section 3.0 'Summary of covers and benefits').

...

Please be aware that this PDS has been prepared without taking into account Your particular objectives, financial situation or needs. For that reason before buying this

insurance, You should consider the appropriateness of the information in relation to Your own circumstances.

You are not obliged to purchase this Loan Protection Insurance and You may choose to apply for and arrange consumer credit insurance through a different insurer.

The CCI PDS effective from 1 July 2017 included a summary of the cover provided in the following terms:

Depending on the cover You have selected, the purpose of LPI is to pay a Benefit if you are Disabled, Accidentally Injured, Involuntarily Unemployed, or become a Full-Time Carer.

Benefits are measured by reference to Your liability under the Loan in the event of specified events or contingencies as set out in this PDS and selected by You at the time of application. There are limitations on the Benefits We pay. For a summary of the covers and Benefits, please refer to Section 4.0 below.

LPI is also referred to as consumer credit insurance. The approval of Your Loan is not dependant on You purchasing LPI. You are not obliged to purchase LPI.

You may choose to apply for and arrange consumer credit insurance through a different insurer.

That PDS contained the following additional information:

This PDS is an important legal document that contains details of Your LPI if You purchase this product. Before

You decide to buy this product, You should read this PDS carefully to make sure You understand the extent of insurance cover provided by this product and any limitations, conditions or exclusions that may apply. This PDS has been prepared without taking into account Your particular objectives, financial situation or needs and there is a risk that LPI may not suit your particular objectives. For that reason, before buying this insurance, You should consider the appropriateness of the information having regard to Your own objectives, financial situation and needs.

Commercial Loan Protection Insurance

The CCI (Commercial Loan Protection Insurance) PDSs effective from 1 November 2010 and 4 February 2011 included a summary of the cover provided in the following terms:

Commercial Loan Protection Insurance is designed to assist you in meeting your Finance Contract repayments in the event of changes to your health, employment status or as a result of your death. The insurance under this PDS is to assist with your loan repayments in the event of any of the following circumstances occurring:

- you are unable to work due to accident or sickness;*
- you become involuntarily unemployed;*
- you suffer a traumatic event and satisfy the definition of that traumatic event as contained in this PDS; or*

- *your death.*

Please Note: there are circumstances where a benefit may not be paid under your policy. Some circumstances are different from the standard exclusions listed in the Insurance Contracts Regulations 1985. Please ensure you read and understand those circumstances applicable to you. For more details, please refer to When we will not pay on pages 9 to 11.

Those PDSs contained the following additional information:

Before you buy this insurance, please read this PDS carefully. This PDS contains information about what the policy covers as well as what it does not cover (please refer to When we will not pay on pages 9 to 11). Any information contained in this PDS has been prepared without taking into account your particular objectives, financial situation or needs (unless Suncorp, or MTA, its authorised officers, employees or Authorised Representatives have previously advised otherwise). For that reason before acting on the information, you should consider the appropriateness of the information in regards to your own circumstances.

You are not obliged to purchase Commercial Loan Protection Insurance and you may choose to apply for and arrange consumer credit insurance through a different issuer. If you decide to buy Commercial Loan

Protection Insurance, you must answer all questions on the Application/Certificate of Insurance truthfully and accurately.

Commercial Loan Protection Insurance is not a savings plan. The primary purpose of this product is to provide a benefit under the terms and conditions of this policy. This benefit is measured by reference to your liability under the Finance Contract in the event of specified events or contingencies as detailed in this PDS and selected by you on the MTA Application/ Certificate of Insurance occurring.

2. GAP Insurance

Equity Plus Insurance

The GAP Insurance (Equity Plus Insurance) PDSs effective from 1 February 2004, 1 June 2005, 1 October 2005, 1 December 2006, 1 May 2009 included a summary of the cover provided in substantially the following terms:

If your comprehensively insured vehicle is written off (declared a total loss) as a result of accident or theft, you may find that the payout from your comprehensive insurer when your claim is accepted is less than what you owe your credit provider for your vehicle.

If your vehicle is declared a total loss by your comprehensive insurer, Equity Plus Insurance (EPI) is a policy that will help you avoid having to pay any shortfall

between what your comprehensive insurer pays out and what you still owe your credit provider for your vehicle. Depending on the level of cover selected, this policy may also pay a range of expenses associated with the replacement of your vehicle.

Those PDSs contained the following additional information:

This Product Disclosure Statement has been prepared without taking into account any of your objectives, financial situation or needs. You should therefore consider this Product Disclosure Statement and the appropriateness of the product having regard to your own objectives, financial situation and needs before deciding whether to apply for Equity Plus Insurance. If you decide to apply for Equity Plus Insurance, you should carefully read and keep this Product Disclosure Statement and the Application/Certificate of Insurance with your important papers.

You should also be aware that in certain circumstances Standard Cover and Extra Cover may not be payable. For example, if the total loss payout from your comprehensive insurer fully covers your outstanding loan balance, Standard Cover and Extra Cover are not payable. In this circumstance, you may be eligible to receive a No Gap Benefit payment providing you fulfil all other terms and conditions of the policy.

The GAP Insurance (Equity Plus Insurance) PDS effective from 20 March 2012 included a summary of the cover provided in the following terms:

If your comprehensively insured vehicle is written off (declared a total loss) by your insurer as the result of a claim, you may find the payment from your comprehensive insurer is less than what you owe your credit provider.

Equity Plus Insurance (EPI) will assist you in paying any shortfall owing to the credit provider (subject to the conditions and limits in this policy).

That PDS contained the following additional information:

This Product Disclosure Statement has been prepared without taking into account any of your objectives, financial situation or needs. You should therefore consider this Product Disclosure Statement and the appropriateness of the product having regard to your own objectives, financial situation and needs before deciding whether to apply for Equity Plus Insurance. If you decide to apply for Equity Plus Insurance, you should carefully read and keep this Product Disclosure Statement and the Application/Certificate of Insurance with your important papers.

You should also be aware that in certain circumstances Standard Cover and Extra Cover may not be payable. For

example, if the total loss payout from your comprehensive insurer fully covers your outstanding loan balance, Standard Cover and Extra Cover are not payable. In this circumstance, you may be eligible to receive a No Gap Benefit payment providing you fulfil all other terms and conditions of the policy.

The GAP Insurance (Equity Plus Insurance) PDSs effective from 3 September 2012, 6 August 2013, 3 March 2014, 9 April 2014, 29 July 2014 and 1 July 2015 included a summary of the cover provided in the following terms:

If your comprehensively insured vehicle is written off (declared a total loss) by your insurer as a result of a claim, you may find the payment from your comprehensive insurer is less than what you owe your credit provider.

Equity Plus Insurance (EPI) will assist you to pay any shortfall owing to your credit provider (Subject to the terms and conditions of this policy).

This policy also assists you to pay a range of other expenses including on road costs associated with replacing your vehicle and extra benefits such as additional finance fees and charges, policy excesses etc.

These covers are called Replacement Costs and Extra Benefit Cover, for details of these options please refer to pages 3 and 4 of this Product Disclosure Statement.

If the total loss payment from the comprehensive insurer exceeds the outstanding balance due as at the date of the loss, this policy provides a No Gap Benefit of \$2,000, for details please refer to page 4 of this Product Disclosure Statement.

Those PDSs contained the following additional information:

This Product Disclosure Statement has been prepared without taking into account any of your objectives, financial situation or needs. You should therefore consider this Product Disclosure Statement and the appropriateness of the product having regard to your own objectives, financial situation and needs before deciding whether to apply for Equity Plus Insurance. If you decide to apply for Equity Plus Insurance, you should carefully read and keep this Product Disclosure Statement and the Application/Certificate of Insurance with your important papers.

You should also be aware that in certain circumstances Standard Cover and Replacement Costs may not be payable. For example, if the total loss payout from your comprehensive insurer fully covers your outstanding loan balance. In this circumstance, you may be eligible to receive a No Gap Benefit payment providing you fulfil all other terms and conditions of the policy.

The GAP Insurance (Equity Plus Insurance) PDS effective from 1 July 2017 included a summary of the cover provided in the following terms:

If Your Vehicle is declared a Total Loss as a result of an event occurring during the Period of Insurance and the comprehensive insurer of Your Vehicle makes a Total Loss Payout which does not fully repay the Loan Balance, We will pay the Gap Benefit to Your Credit Provider to help repay the Outstanding Balance under Your Finance Contract.

That PDS contained the following additional information:

This PDS is an important legal document that contains details of Your EPI if You purchase this product. Before You decide to buy this product, You should read this PDS carefully to make sure You understand the extent of insurance cover provided by this product and any limitations, conditions or exclusions that may apply.

This PDS has been prepared without taking into account Your particular objectives, financial situation or needs and there is a risk that EPI may not suit your particular objectives. For that reason, before buying this insurance, You should consider the appropriateness of the information having regard to Your own objectives, financial situation and needs.

You are not required to purchase EPI and You have the option to apply for and arrange similar insurance with any insurer You choose.

Equity Insurance

The GAP Insurance (Equity Insurance) PDSs effective from 1 August 2012, 3 September 2012, 3 March 2014, 9 April 2014, 24 April 2014, 29 July 2014 and 1 July 2015 included a summary of the cover provided in the following terms:

If your comprehensively insured vehicle is written off (declared a total loss) by your insurer as the result of a claim, you may find the payment from your insurer is less than what you owe your credit provider.

Equity Insurance (EI) will assist you in paying any shortfall owing to the credit provider (subject to the terms and conditions in this policy).

Those PDSs contained the following additional information:

This Product Disclosure Statement has been prepared without taking into account any of your objectives, financial situation or needs. You should therefore consider this Product Disclosure Statement and the appropriateness of the product having regard to your own objectives, financial situation and needs before deciding whether to apply for Equity Insurance. If you decide to apply for Equity Insurance, you should carefully read and keep this Product Disclosure Statement and the

Application/Certificate of Insurance with your important papers.

You should also be aware that in certain circumstances Standard Cover and Replacement Costs may not be payable. For example, if the total loss payout from your comprehensive insurer fully covers your outstanding loan balance, Standard Cover and Replacement Costs are not payable. In this circumstance, you may be eligible to receive a No Gap Benefit payment providing you fulfil all other terms and conditions of the policy.

3. Cash Benefit Insurance

The Cash Benefit Insurance PDSs effective from 1 August 2005 and 1 December 2006 included a summary of the cover provided in the following terms:

If your comprehensively insured vehicle is written off (declared a total loss) as a result of accident or theft, you may find that the payout from your comprehensive insurer will not cover all costs incurred to replace the vehicle.

If your vehicle is declared a total loss by your insurer, Cash Benefit Insurance (CBI) is a policy that will help you reduce or eliminate any shortfall between what your comprehensive insurer pays out and what you require to replace your vehicle.

The Cash Benefit Insurance PDS effective from 1 October 2005 included a summary of the cover provided in the following terms:

If your comprehensive, TPPDF&T insured vehicle is written off (declared a total loss) as a result of accident or theft, you may find that the payout from your insurer will not cover all costs incurred to replace the vehicle. If your vehicle is declared a total loss by your insurer, Cash Benefit Insurance (CBI) is a policy that will help you avoid having to pay any shortfall between what your comprehensive, TPPDF&T insurer pays out and what you require to replace your vehicle.

The PDSs effective from 1 August 2005, 1 October 2005 and 1 December 2006 also contained the following additional information:

This Product Disclosure Statement has been prepared without taking into account any of your objectives, financial situation or needs. You should therefore consider this Product Disclosure Statement and the appropriateness of the product having regard to your own objectives, financial situation and needs before deciding whether to apply for Cash Benefit Insurance. If you decide to apply for Cash Benefit Insurance, you should carefully read and keep this Product Disclosure Statement and the Application/Certificate of Insurance with your important papers.

The Cash Benefit Insurance PDSs effective from 31 August 2009, 3 September 2012, 3 March 2014, 9 April 2014, 24 April 2014,

29 July 2014 and 1 July 2015 included a summary of the cover provided in the following terms:

Cash Benefit Insurance (CBI) is designed to pay the amount nominated on the Application/Certificate of Insurance in the event of your insurer settling a claim on your comprehensively insured vehicle as a total loss.

We will pay the nominated insured amount (subject to the conditions and limits in this policy) in one of three ways:

1) Payment to your credit provider to reduce or eliminate the balance owing.

2) Payment to your credit provider to settle the outstanding balance, with the remainder up to the sum insured paid to you.

3) Payment of the sum insured to you.

The PDSs contained the following additional information:

This Product Disclosure Statement has been prepared without taking into account any of your objectives, financial situation or needs. You should therefore consider this Product Disclosure Statement and the appropriateness of the product having regard to your own objectives, financial situation and needs before deciding whether to apply for Cash Benefit Insurance. If you decide to apply for Cash Benefit Insurance, you should carefully read and keep this Product Disclosure

Statement and the Application/Certificate of Insurance with your important papers.

4. Extended Vehicle Warranty Insurance

The Extended Vehicle Warranty Insurance PDS effective from 1 May 2006 included a summary of the cover provided in the following terms:

This Warranty provides Mechanical Breakdown cover, under which we will agree to repair any covered component of your Vehicle which suffers a Mechanical Breakdown due to unforeseen circumstances during the Warranty Period, providing the Premium has been paid.

This is not a repair and maintenance plan.

This Warranty is issued by MTA, and not the manufacturer of your Vehicle, or the dealer who sold the Vehicle to you. This Warranty only commences when the Vehicle Manufacturer's Warranty or Dealer's Statutory Warranty expires. In most cases, this Warranty will cover the same items as your Vehicle Manufacturer's Warranty or Dealer's Statutory Warranty, but if you need to be sure, we ask you to ascertain this for yourself before you make any decision to purchase this Warranty.

Further information on the terms and conditions which apply to this Warranty can be found in this PDS.

The PDS contained the following additional information:

The benefits of this Warranty include:

- *If your Vehicle suffers a Mechanical Breakdown during the Warranty Period and we authorise the applicable claim, we agree to pay for the repair or replacement of the covered components in accordance with the terms of this PDS.*

And further:

Before you purchase this Warranty, you should be aware of the following:

- *find out what this Warranty covers and what is excluded by carefully reading this PDS; and*
- *you are not obliged to purchase this Warranty and you may be able to obtain similar cover with a different insurer.*

If you decide to purchase this Warranty, you must answer all questions on the Application / Certificate of Insurance form correctly, truthfully and accurately.

5. Tyre and Rim Insurance

The Tyre and Rim Insurance PDSs effective from 20 March 2012 and 3 September 2012 included a summary of the cover provided in the following terms:

Tyre and Rim insurance is a policy designed to assist with the repair or replacement costs if your tyre/s are punctured, suffer a blowout, or are damaged by various road hazards such as potholes, roadside kerbs and road debris. It also provides cover for damage to wheel rims as

a result of the same hazards subject to policy terms and conditions.

Those PDSs contained the following additional information:

This Product Disclosure Statement has been prepared without taking into account any of your objectives, financial situation or needs. You should therefore consider this Product Disclosure Statement and the appropriateness of the product having regard to your own objectives, financial situation and needs before deciding whether to apply for Tyre and Rim Insurance. If you decide to apply for tyre and Rim Insurance, you should carefully read and keep this Product Disclosure Statement and the Application/Certificate of Insurance with your important papers.

- (j) in further answer to paragraph 25, say that:
 - (i) by signing her application for Loan Protection Insurance, the Plaintiff:
 - (A) acknowledged that she had received only general advice in relation to the product, which had not taken into account her personal or financial objectives, situation or needs;
 - (B) acknowledged that she had read the product disclosure statement prior to signing the application and agreed to be bound by its conditions; and

- (C) agreed that the application / certificate of insurance and the PDS were to be the basis of the contract between her and AAI and/or SLSL;

Particulars

Application / Certificate of Insurance for Loan Protection Insurance signed by the Plaintiff and dated 23 October 2015.

- (ii) by signing her applications for Equity Plus Insurance, the Plaintiff:

- (A) acknowledged that she had received only general advice in relation to the product, which had not taken into account her personal or financial objectives, situation or needs; and
- (B) acknowledged that she had read the product disclosure statement prior to signing the application and agreed to be bound by its terms and conditions; and

Particulars

Application / Certificate of Insurance for Equity Plus Insurance signed by the Plaintiff and dated 23 October 2015.

Application / Certificate of Insurance for Equity Plus Insurance signed by the Plaintiff and dated 28 October 2015.

- (iii) say that the FSG provided by AP Motors to the Plaintiff stated:

- (A) the fact that any financial product advice that AP Motors may have provided would be general only and would not take into consideration the Plaintiff's personal needs, objectives or financial situation; and
- (B) that the Plaintiff should therefore carefully read the relevant PDS and policy documentation provided before making a decision about a financial product.

Particulars

The A.P. Motors (No. 3) Pty Ltd Financial Services Guide dated 1 July 2015 and provided to the Plaintiff contained the following relevant statements under the heading "General Financial Product Advice" at page 1:

Any financial product advice we may provide to you will be general only and does not take into consideration your personal needs, objectives or financial situation. Therefore you should carefully read the relevant PDS and Policy documentation provided before making your decision about a financial product.

26 As to paragraph 26, they:

- (a) refer to and repeat paragraphs 87-10 and 25 above;
- (b) say that the alternative allegation that ~~MTAI~~ and the Defendants failed to have or implement an "adequate system" is impermissibly vague and embarrassing in that it is not an allegation relevant to any of the causes of action advanced and in that it fails to identify:

- (i) the statutory (or other) measure by which the adequacy of any system is said to be measured or such a system required; and
 - (ii) the respects in which the system implemented by any of MTAI or the Defendants is alleged to have been inadequate; and
 - (iii) the necessary features of any “adequate system” the Plaintiff alleges ought to have been, but was not, implemented; and
- (c) deny the allegations therein.

Particulars

In the absence of particulars from the plaintiff identifying the respects in which the system implemented by ~~MTAI~~ or the Defendants is alleged to have been inadequate or specifying what would have constituted an “adequate” system, the Defendants are unable to provide further particulars of their denial.

27 As to paragraph 27, they:

- (a) refer to and repeat paragraphs 22, 23, 25 and 26 above;
- (b) say that the alternative allegation that ~~MTAI~~ and the Defendants failed to take any “adequate step” is impermissibly vague and embarrassing in that it is not an allegation relevant to any of the causes of action advanced and in that it fails to identify:
 - (i) the statutory (or other) measure by which the adequacy of any step is said to be measured or such a step required; and
 - (ii) the respects in which the steps taken by any of MTAI or the Defendants are alleged to have been inadequate; and
 - (iii) what “adequate step” ought to have been taken, but is alleged not to have been taken; and

- (c) deny the paragraph.

Particulars

In the absence of particulars from the plaintiff identifying the “adequate steps” which the plaintiff alleges ought to have been, but were not, taken by MTAI and the Defendants, the Defendants are unable to provide further particulars of their denial.

D. PLAINTIFF'S PURCHASES ON 23 and 28 OCTOBER 2015

28 As to paragraph 28, ~~they admit the paragraph,~~ they admit that AP Motors and MTAI entered into:

- (a) ~~a Financial Services Distribution Agreement dated 13 November 2003;~~
and

Particulars

~~Financial Services Distribution Agreement between MTAI and AP Motors dated 13 November 2003~~

- (b) ~~a Financial Services Distribution Agreement dated 29 July 2014.~~

Particulars

~~Financial Services Distribution Agreements between MTAI and AP Motors dated 13 November 2003 and 29 July 2014~~

29 ~~They deny~~As to paragraph 29, ~~they~~and:

- (a) refer to paragraphs 8-10 and 28 above; and
(b) ~~admits~~ admits further that at all material times AP Motors while dealing with the Plaintiff was a representative of MTAI within the meaning of section 910A of the Corporations Act and an agent of MTAI on the terms, and to the extent, set out in the AP Motors Agreement; and
(c) otherwise deny the paragraph.

- 30 They do not admit paragraph 30.
- 31 As to paragraph 31, they:
- (a) do not admit subparagraph 31(a);
 - (b) as to subparagraph 31(b):
 - (i) admit that the Plaintiff applied for Equity Plus Insurance in relation to:
 - (A) a Toyota Corolla sedan; and
 - (B) a Ford Ranger utility; and
 - (ii) otherwise do not admit the subparagraph; and
 - (c) do not admit subparagraph 31(c).
- 32 They do not admit paragraph 32.
- 33 They do not admit paragraph 33.
- 34 They do not admit paragraph 34 except insofar as, as to sub-paragraphs 34(d) and (e), they refer to and rely upon paragraph 25(j) above.
- 35 They do not admit paragraph 35, except insofar as they:
- (a) as to subparagraph 38(a), say that a “Net amount financed” of \$16,997 and an “Origination Fee” of \$770 are listed in the First St George Loan as payable to AP Motors;
 - (b) as to subparagraph 35(b), admit that the total cost in respect of:
 - (i) the CCI policy applied for in relation to the First St George Loan was \$3,886.28; and
 - (ii) the GAP Insurance applied for in relation to the Corolla was \$2,135.00;
 - (c) as to subparagraph 35(c), admit that a \$399 establishment fee and a \$6.80 registration of security interest fee are listed in the First St George Loan;

- (d) as to subparagraph 35(d):
- (i) say that the Plaintiff's Application/Certificate of Insurance for CCI in respect of the First St George Loan stated:
- (A) the repayments in relation to the First St George Loan as being regular monthly payments in the amount of \$439.68 monthly;
- (B) that the principal amount of the First St George Loan was \$23,867.19; and
- (C) that the term of the First St George Loan was 84 months; and

Particulars

CCI Application/Certificate of Insurance for policy number 0003156791

- (ii) say that the First St George Loan stated that:
- (A) the loan amount was repayable over 182 fortnightly payments of \$214.83;
- (B) the annual interest rate was 14%; and
- (C) the total estimated interest charges payable were \$14,016.48;

Particulars

St George Loan Contract number 96544048 dated by the Plaintiff on 23 October 2015

(e) as to subparagraph 35(e):

- (i) say that the pleading is vague and embarrassing in that it does not specify the nature of the conduct or reliance to which it relates;

(ii) say further that the allegation that the Plaintiff relied in good faith upon the conduct of MTAI in relation to the purchase of the Plaintiff's First Add-On Insurance Products is inconsistent with the Plaintiff's apparent allegations at paragraphs 34(d) and 37(d) of the FASOC that she purchased those products unknowingly; and

(iii) under cover of those objections, deny the subparagraph.

36 They do not admit paragraph 36.

37 They do not admit paragraph 37 except insofar as, as to sub-paragraphs 37(c) and (d), they refer to and rely upon paragraph 25(j) above.

38 They do not admit paragraph 38, except insofar as they:

- (a) as to subparagraph 38(a), admit that a "Net amount financed" of \$28,485 and an "Origination Fee" of \$770 are listed in the Second St George Loan as payable to AP Motors;
- (b) as to subparagraph 38(b), admit that the total cost in respect of the GAP Insurance applied for in relation to the Ranger was \$2,135.00;
- (c) as to subparagraph 38(c), admit that a \$399 establishment fee and a \$6.80 registration of security interest fee are listed in the Second St George Loan; and
- (d) as to subparagraph 38(d), say that the Second St George Loan stated that:
 - (i) the loan amount was repayable over 182 fortnightly payments of \$297.89;
 - (ii) the annual interest rate was 16.1%; and
 - (iii) the total estimated interest charges payable were \$21,531.68;

Particulars

St George Loan Contract number 96580254 dated by the Plaintiff
on 28 October 2015

(e) as to subparagraph 38(e):

(i) say that the pleading is vague and embarrassing in that it does not specify the nature of the conduct or reliance to which it relates;

(ii) say further that the allegation that the Plaintiff relied in good faith upon the conduct of MTAI in relation to the purchase of the Plaintiff's Second Add-On Insurance Products is inconsistent with the Plaintiff's apparent allegations at paragraphs 34(d) and 37(d) of the FASOC that she purchased those products unknowingly; and

(iii) under cover of that objection, deny the subparagraph.

39 As to paragraph 39:

(a) they deny the paragraph;

(b) refer to and repeat paragraph 25(j) above and 47(b) below; and

(c) say further that:

(i) the allegation that AP Motors made a recommendation or a statement of opinion to the Plaintiff concerning the Plaintiff's First and Second Add-On Insurance Products is inconsistent with the Plaintiff's apparent allegations at paragraphs 34(d) and 37(d) of the FASOC that she purchased those products unknowingly;

(ii) the Plaintiff received a PDS for each of the Add-On Insurance products that she purchased; and

Particulars

1. MTA Loan Protection Insurance PDS with effective date 1 July 2015. The PDS contained relevant statements including the following:

- a. at page 2:

“Before you buy this insurance, please read this PDS carefully. This PDS contains information about what the policy covers as well as what it does not cover (please refer to When we will not pay on pages 5 to 6. Any information contained in this PDS has been prepared without taking into account your particular objectives, financial situation or needs (unless Suncorp, or MTA, its authorised officers, employees or Authorised Representatives have previously advised otherwise). For that reason before acting on the information, you should consider the appropriateness of the information in regards to your own circumstances.

You are not obliged to purchase Loan Protection Insurance and you may choose to apply for and arrange consumer credit insurance through a different insurer.”

- b. at page 7:

“You should be aware of the following risks in relation to this product:

- your policy may not suit your needs;*
- the cover provided under the contract may not fully cover your Finance Contract amount in the event of a claim; or*
- you may not be paid a benefit if in the event of a claim you are subject to one of the exclusions (please refer to When we won't pay on page 5 to 6).*

It is important your policy meets your needs both now and in the future. You may need to seek assistance from an adviser if the terms are not consistent with your needs or they do not suit your personal circumstances.”

2. Equity Plus Insurance PDS with effective date 1 July 2015. The PDS contained relevant statements including the following at pages 2 to 3:

“This Product Disclosure Statement has been prepared without taking into account any of your objectives, financial situation or needs. You should therefore consider this Product Disclosure Statement and the appropriateness of the product having regard to your own objectives, financial situation and needs before deciding whether to

apply for Equity Plus Insurance. If you decide to apply for Equity Plus Insurance, you should carefully read and keep this Product Disclosure Statement and the Application/Certificate of Insurance with your important papers. You should also be aware that in certain circumstances Standard Cover and Replacement Costs may not be payable. For example, if the total loss payout from your comprehensive insurer fully covers your outstanding loan balance. In this circumstance, you may be eligible to receive a No Gap Benefit payment providing you fulfil all other terms and conditions of the policy.”

(iii) the Plaintiff received an FSG from AP Motors.

Particulars

A.P. Motors (No. 3) Pty Ltd Financial Services Guide dated 1 July 2015. The FSG contained the following relevant statement at page 1 under the heading “General Financial Product Advice”:

“Any financial product advice we may provide to you will be general only and does not take into consideration your personal needs, objectives or financial situation.

Therefore you should carefully read the relevant PDS and Policy documentation provided before making your decision about a financial product.

40 As to paragraph 40, they:

- (a) as to subparagraph 40(a), admit that AP Motors acted within the scope of its ~~apparent~~ actual authority as ~~authorised~~ representative and agent of MTAI in arranging the issuance of the Plaintiff's First and Second Add-On Insurance Products to the Plaintiff;
- (b) say that subparagraph 40(b) is impermissibly vague and embarrassing and, under cover of that objection, deny the allegations therein;
- (c) as to subparagraph 40(c), refer to and repeat paragraph 39 above and the particulars thereto and deny the subparagraph;
- (d) as to subparagraph 40(d), refer to and repeat paragraphs 25 and 26 above and otherwise do not admit the subparagraph;
- (e) do not admit subparagraph 40(e); and
- (f) otherwise deny the allegations therein.

E. PURCHASES OF ADD-ON INSURANCE PRODUCTS BY GROUP MEMBERS

41 As to paragraph 41, they:

- (a) refer to and repeat paragraphs 2 and 29 above;
- (b) admit subparagraph 41(a);
- (c) admit the Dealers were representatives of MTAI and agents of MTAI on the terms, and to the extent, set out in their respective Dealer Agreements; and
- (d) otherwise deny the paragraph.

42 As to paragraph 42, they:

- (a) admit the chapeau to the paragraph;
- (b) admit subparagraph 42(a); ~~and~~
- (c) do not admit subparagraph 42(b); and

(d) as to subparagraph 42(c):

(i) say that the pleading is vague and embarrassing in that it does not specify the nature of the conduct or reliance to which it relates;

(ii) say further that the allegation that Group Members relied in good faith upon the conduct of MTAI in relation to the purchase of the Add-On Insurance products is inconsistent with the apparent allegation at paragraphs 73(d)(i) and 74 of the FASOC that certain Group Members purchased those products unknowingly;

(iii) say further that the allegations therein depend on the individual circumstances in which each Group Member agreed to purchase the relevant Add-On Insurance products; and

(iv) under cover of those objections, do not admit the subparagraph.

43 They do not admit paragraph 43.

44 As to paragraph 44, they:

(a) admit that certain consumers financed the purchase of the Add-On Insurance using Finance;

(b) admit that interest and other charges in respect of the Finance may have been charged as agreed between the parties to any relevant Finance agreement;

(c) refer to and repeat subparagraph 24(e) above; and

(d) otherwise do not admit the paragraph.

45 As to paragraph 45, they:

(a) admit that at least some of the Group Members provided to the Dealers information as to:

(i) the Group Member's income, assets and liabilities; and

- (ii) whether the Group Member was an employee with a regular income;
 - (b) say further that the nature and extent of the Personal Circumstances Information (if any) provided by a Group Member to a Dealer is liable to differ as between each Group Member; and
 - (c) otherwise do not admit paragraph 45.
- 46 As to paragraph 46, they:
- (a) do not admit subparagraph 46(a)(i);
 - (b) refer to and repeat paragraphs 24(f) and 25(i) above;
 - (c) say further that the matters which each Dealer knew or ought to have known is liable to differ as between each Group Member depending upon the Personal Circumstances Information (if any) disclosed by each Group Member; and
 - (d) otherwise deny the paragraph.
- 47 As to paragraph 47, they refer to and repeat paragraphs 45 and 46 above and
- (a) deny subparagraph 47(a);
 - (b) as to subparagraph 47(b):
 - (i) deny the allegations therein;
 - (ii) say that a reasonable person who attended a car dealership for the purpose of buying or leasing a car would generally not expect a Dealer to have considered the matters alleged in subparagraph 47(b) in the absence of an express statement to the contrary;
 - (iii) say that, to the extent Dealers provided oral general advice to the Plaintiff or Group Members in respect of the Add-On Insurance products, an oral general advice warning to the following effect

was required to be provided to retail clients: “that the advice is general and the advice may not be appropriate to the client”;

Particulars

Corporations Act, s 949A(2); ASIC Class Order [CO 05/1195] effective 6 December 2005; ASIC Corporations (General Advice Warning) Instrument 2015/540 (Cth) dated 18 August 2015.

It is not alleged in the FASOC that this oral general advice warning was not provided to the Plaintiff or Group Members.

- (iv) say that, by offering to arrange the issuance of a financial product to the person, Dealers were required to provide:
 - (A) a PDS to retail clients at or before the time the Dealer offered to issue the Add-On Insurance product; and

Particulars

Corporations Act s 1012B

- (B) an FSG before the Dealer provided a financial service to a retail client,

Particulars

Corporations Act ss 941B(1), 941D

and rely on the terms of the PDSs and FSG for their full force and effect; and

- (v) refer to and repeat paragraph 25(j) above and the particulars thereto.

48 As to paragraph 48, they:

- (a) admit each Dealer, in arranging the issuance of the Add-On Insurance or providing general advice to the Group Members, was acting within the scope of its ~~apparent~~ actual authority as a representative and agent of MTAI;
- (b) say that subparagraph 48(b) is impermissibly vague and embarrassing and, under cover of that objection, deny the allegations therein;
- (c) deny subparagraph 48(c);
- (d) as to subparagraph 48(d):
 - (i) refer to and repeat paragraphs 25, 26 and 46(d) above; and
 - (ii) say that the extent to which:
 - (A) each Group Member was or was not informed of the Cautionary Matters; and
 - (B) the Cautionary Matters had or would have had relevance to a particular Group Member, depends on all of the individual circumstances of each Group Member and in which each Group Member acquired the relevant Add-On Insurance products; and
 - (iii) otherwise do not admit subparagraph 48(d);
- (e) as to subparagraph 48(e):
 - (i) do not admit the paragraph; and
 - (ii) say that the allegation therein depends on the individual circumstances in which each Group Member agreed to purchase an Add-On Insurance product; and
- (f) otherwise deny the allegations therein.

F. PERSONAL ADVICE CONTRAVENTIONS

49 They deny paragraph 49.

50 As to paragraph 50, they:

- (a) refer to and repeat paragraphs 25 to 27 above; and
- (b) deny the allegations therein.

51 They deny paragraph 51.

52 As to paragraph 52, they:

- (a) deny the paragraph;
- (b) say that any cost incurred by the Plaintiff or Group Members as a result of paying for the Add-On Insurance under Finance was a cost of the Finance and not a cost of the Add-On Insurance; and
- (c) say that the allegation therein depends on the individual circumstances of the Plaintiff and each Group Member.

53 They deny paragraph 53.

54 As to paragraph 54, they:

- (a) refer to and repeat paragraphs 52 and 53;
- (b) deny that the Plaintiff and Group Members are entitled to the recovery of profits as alleged or at all; and
- (c) otherwise deny the allegations therein.

G. MISLEADING CONDUCT

G.1. Material non-disclosures

55 As to paragraph 55, they:

- (a) refer to and repeat paragraphs 87-10, 16-18, 21, 22, 24 to 26, 40(a), 46, 47 and 48(a) above; and
- (b) deny the allegations therein.

56 As to paragraph 56, they:

- (a) refer to and repeat paragraph 55 above; and
- (b) deny the allegations therein.

57 As to paragraph 57, they:

- (a) refer to and repeat paragraph 55 above;
- (b) say that the allegation that ~~MTAI~~ and the Defendants failed to ensure that “adequate” disclosure was provided as alleged in paragraph 57 is impermissibly vague and embarrassing; and
- (c) deny the allegations therein.

58 As to paragraph 58, they:

- (a) say that the allegation is embarrassing in that it does not specify any respect in which customers were or were liable to be misled or deceived;
- (b) refer to paragraphs 55 to 57 above; and
- (c) deny paragraph 58.

59 As to paragraph 59, they:

- (a) refer to and repeat paragraph 58 above; and
- (b) deny the allegations therein.

G.2. Misleading representations by Dealers as agents for MTAI, AAI and SLSL

60 As to paragraph 60, they:

- (a) refer to and repeat paragraphs 14(b) and 55 to 59 above;
- (b) deny the allegations therein; and
- (c) say further, in the alternative, that prior to the introduction of s 12BAB(1AA) of the ASIC Act on 26 October 2018, the representations alleged did not concern financial services being of a particular standard, quality or value.

61 As to paragraph 61, they:

- (a) refer to and repeat paragraph 60 above; and
- (b) deny the paragraph.

62 As to paragraph 62, they:

- (a) refer to and repeat paragraphs 60 and 61 above;
- (b) say further that the reference to “Division 7” of the Corporations Act is ambiguous and embarrassing; and
- ~~(b)~~(c) deny the allegations therein.

63 They deny paragraph 63.

64 They deny paragraph 64.

64A They deny paragraph 64A.

65 As to paragraph 65, they:

- (a) refer to and repeat paragraphs 64 and 64A above; and
- (b) deny the allegations therein.

G.3. False or misleading representations — Preconditions Subgroup

66 As to paragraph 66, they:

- (a) say that the allegations therein are embarrassing as:
 - (i) the Plaintiff is not alleged to be part of the Preconditions Subgroup; and
 - (ii) the allegations are tantamount to fraud, but are not accompanied by the requisite particulars pursuant to rule 13.10(3)(a) of the *Supreme Court (General Civil Procedure) Rules 2015 (Vic)*; and
- (b) under cover of those objections, deny the allegations therein.

67 As to paragraph 67, they:

- (a) refer to and repeat paragraphs 87-10 and 66 above; and

(b) deny the allegations therein.

68 As to paragraph 68, they:

(a) refer to and repeat paragraph 67 above; and

(b) deny the allegations therein.

69 As to paragraph 69, they:

(a) refer to and repeat paragraph 68 above;

(b) deny the allegations therein; and

(c) say further, in the alternative, that prior to the introduction of s 12BAB(1AA) of the ASIC Act on 26 October 2018, the representations alleged did not concern the need for financial services or financial services being of a particular standard, quality or value.

70 They deny paragraph 70.

71 They deny paragraph 71.

G.4. Loss and Damage

72 As to paragraph 72, they:

(a) deny that the Plaintiff and Group Members suffered the loss or damage claimed, or any relevant loss or damage;

(b) further and in the alternative say that, to the extent that the Plaintiff and the Group Members suffered loss or damage (which is denied), such loss or damage was caused or contributed to by the failure of the Plaintiff and the Group members to take reasonable care;

Particulars

The Defendants refer to and repeat paragraphs 24, 25 and 47 above, and the particulars thereto. It is to be inferred that the Plaintiff and any such Group Members paid no regard to the

relevant mandated disclosures, which were made for their benefit and would have otherwise alerted them to matters alleged not to have been disclosed.

- (c) further and in the alternative say that, to the extent that the Plaintiff and the Group Members suffered loss or damage (which is denied), the quantum of any such loss or damage is reduced and damages are not payable to the Plaintiff and the Group Members to the extent that the Plaintiff and the Group Members have received:
- (i) payments pursuant to any remediation programs the Defendants or MTAI or any of them undertake or have undertaken in respect of the Add-On Insurance Products;
 - (ii) amounts or the benefit of any claims paid by the Defendants or either of them; and/or
 - (iii) benefits referable to the existence of a potential right to indemnity during the currency of the Add-On Insurance product policy;
- (d) further or in the alternative say that, to the extent that the Plaintiff and the Group Members suffered loss or damage (which is denied), such loss or damage was caused or contributed to by the Plaintiff and the Group Members' failure to:
- (i) cancel the relevant Add-On Insurance product policy during the cooling off period; and

Particulars

To the extent that it was a term of an Add-On Insurance Product that the Plaintiff or a Group Member had a cooling off period of between 14 and 30 days after the

purchase of the relevant Add-On Insurance Product to request that it be cancelled, the Plaintiff and Group Members had the opportunity to read the PDS and policy document in respect of the product, to make inquiries to determine whether other insurers offered similar insurance on more favourable terms and, if so or if they otherwise desired to do so, to request the cancellation of the product.

(ii) further and in the alternative, cancel their Add-On Insurance product policy and claim a refund as provided for in the relevant PDS and product documents;

(e) further or in the alternative, say that whether any given Group Member acquired Add-On Insurance products “by reason of” the conduct and/or contraventions alleged depends on the individual circumstances of each Group Member; and

(f) otherwise deny the paragraph.

H. MONEY HAD AND RECEIVED

73 As to paragraph 73, they:

(a) refer to and repeat paragraphs 15(c), 24, 25, 46, 46A, 49 to 58, 60 to 64 and 66 to 70 above; and

(b) deny the allegations therein.

74 As to paragraph 74, they do not admit the state of mind of the Plaintiff or Group Members.

75 As to paragraph 75, they:

(a) refer to and repeat paragraph 73 above; and

(b) deny the allegations therein.

76 As to paragraph 76, they:

(a) refer to and repeat paragraphs 73 to 75; and

(b) deny the allegations therein.

77 As to paragraph 77, they:

(a) refer to and repeat paragraph 76 above and accordingly deny that the Group Members (or any of them) were affected by the mistake alleged, or any relevant mistake, at the time of purchasing an Add-On Insurance product;

(b) further or in the alternative (and without admission), deny that the mistake alleged, or any relevant mistake, which may have affected the Group Members (or any of them) was causative of their decision to purchase an Add-On Insurance product;

(c) further or in the alternative (and without admission), do not admit that the Group Members did not discover any mistake in the periods specified in subparagraphs 77(a) and 77(b) as alleged;

(d) further or in the alternative (and without admission), say that the Group Members could have with reasonable diligence, at any time contemporaneous with or following purchase of an Add-On Insurance product:

(i) discovered that they purchased the Add-On Insurance product;

Particulars

Purchasers of Add-On Insurance products were provided with a certificate of insurance, a copy of the applicable PDS and FSG, and details of the type of Add-On

Insurance and the cost of the Add-On Insurance product were listed in the relevant loan agreements (as applicable) between Group Members and Finance providers.

- (ii) determined whether or not it was a precondition to Finance that they purchase insurance such as the Add-On Insurance products (or any of them), including by making appropriate inquiries with the relevant Finance provider;

Particulars

Group Members could have obtained this information by contacting their Finance provider or by reviewing any Finance documentation or terms.

- (iii) determined that (or whether) the Add-On Insurance products had material financial value to them in light of their personal circumstances and understanding of value; and

Particulars

All necessary information to make this determination was included in the disclosure material made available to purchasers of Add-On Insurance products, including the PDS and policy documents.

- (iv) assessed whether the Add-On Insurance products were suitable for them.

Particulars

The Defendants refer to and repeat the particulars to paragraph 77(c)(iii) above.

78 As to paragraph 78, they:

- (a) deny the allegations therein; and
- (b) further or alternatively, say that the allegations therein are embarrassing as the allegations are, but are not accompanied by the requisite particulars pursuant to rule 13.10(3)(a) of the Supreme Court (General Civil Procedure) Rules 2015 (Vic).

79 They deny paragraph 79.

80 They deny paragraph 80.

81 They deny paragraph 81.

82 As to paragraph 82, they:

- (a) deny the allegations contained therein;
- (b) further and in the alternative say that if, which is denied, the premiums are money had and received by MTAI, AAI and SLSL to the use of the Plaintiff and Group Members, MTAI, AAI and SLSL are not obliged to repay any sums to the Plaintiff and Group Members to the extent that the Plaintiff and Group Members have received:
 - (i) payments pursuant to any remediation programs undertaken in respect of the Add-On Insurance products;
 - (ii) amounts or the benefit of any claims paid by MTAI, AAI and/or SLSL; and/or
 - (iii) protection under the Add-On Insurance policies;
- (c) further and in the alternative say that if, which is denied, the premiums are monies had and received by MTAI, AAI and SLSL to the use of the Plaintiff and Group Members, such loss or damage was caused or contributed to by the Plaintiff's and the Group Members' failure to

cancel their Add-On Insurance policy and claim a refund as provided for in the relevant PDS and policy document; and

- (d) further and in the alternative say that if, which is denied, the premiums are monies had and received by MTAI, AAI and SLSL to the use of the Plaintiff and Group Members, such loss or damage was caused or contributed to by the Plaintiff's and Group Members' failure to cancel the relevant Add-On Insurance policy during the cooling off period as provided for in the relevant PDS.

Change of position

82A In further answer to paragraphs 73 to 82 of the FASOC, they say that:

- (a) the Defendants ~~and MTAI~~, acting in good faith, relied to their detriment on the payment of premiums pleaded by incurring expenditure and/or other disadvantageous consequences that the Defendants would not have otherwise incurred; and

Particulars

1. In reliance upon the payment of the premiums, AAI and/or SLSL and/or MTAI have discharged their obligations under the Add-On Insurance products either completely (in respect of those policies which have come to an end) or in part (in respect of those policies which continue to be on foot).
2. In reliance upon the payment of a premium by the Plaintiff in respect of the CCI policy purchased by the Plaintiff, which policy is current for the period 23 October 2015 to 23 October 2022, AAI and SLSL ~~the Defendants~~

have partially performed their obligations under the policy and continue to perform the balance of their obligations under the policy.

3. In reliance upon the payment of a premium by the Plaintiff in respect of the GAP Insurance policy purchased by the Plaintiff in respect of the Corolla, which policy is current for the period 23 October 2015 to 23 October 2022, AAI has partially performed its obligations under the policy and continues to perform the balance of its obligations under the policy.
4. In reliance upon the payment of a premium by the Plaintiff in respect of the GAP Insurance purchased by the Plaintiff in respect of the Ranger, which policy is current for the period 28 October 2015 to 28 October 2022, AAI has partially performed its obligations under the policy and continues to perform the balance of its obligations under the policy.
5. In reliance on the payment of premiums, AAI, SLSL and MTAI (as applicable) accepted the risk of paying claims made under the Add-On Insurance policies purchased by the Plaintiff and Group Members.
6. In reliance on the payment of the premiums, AAI and/or SLSL and/or MTAI paid some claims made under the Add-On Insurance policies purchased by Group Members.

6A. In reliance on the payment of the premiums, the Defendants entered into reinsurance arrangements.

7. By reason of their acceptance of risk under the Add-On Insurance product policies, AAI, SLSL and MTAI were required, consistent with their prudential obligations and sound financial management, to retain capital to ensure they could meet the liabilities they incurred or might incur in the future under the Add-On Insurance policies, and they did so.
8. During the Period, MTAI received the premium payments on a regular basis and in reliance thereon:
 - (a) MTAI paid a portion of the premium payments to SLSL and to Dealers by way of commission;
 - (b) as a consequence of having received the premium payments, MTAI, AAI and SLSL continued to make expenditures for the purpose of their respective businesses comprising the manufacture, issue and/or distribution of the Add-On Insurance products;
 - (c) MTAI took the premium payments into account in estimating, calculating and directing profits, including annual profits; and
 - (d) MTAI and SLSL paid tax in relation to the Add-On Insurance products.

- (b) by reason of the change of position pleaded at subparagraph 82A(a) above, it would be inequitable in all the circumstances to require the Defendants to repay the premiums in whole or in part.

Consideration

82B In further answer to paragraphs 73 to 82 of the FASOC and in the alternative, they say that:

- (a) the Defendants ~~and MTAI~~ gave good consideration to the Plaintiff and each Group Member from whom they received the payment of a premium for an Add-On Insurance product; and
- (b) by reason of the provision of good consideration pleaded in subparagraph 82B(a) above, the Defendants are not obliged to repay the Plaintiff and the Group Members the premium payments received by them.

Election

82C In further answer to paragraphs 73 to 82 of the FASOC and in the alternative, they say that, to the extent that the Plaintiff and/or Group Members have made claims on Add-On Insurance Product policies that they purchased:

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

82D In further answer to paragraphs 73 to 82 of the FASOC and in the alternative, they say that:

- (a) any such cause of action may or could with reasonable diligence have been discovered by the Plaintiff and Group Members at the time of, or in the alternative immediately after, or in the alternative within a period of

14 to 30 days (depending upon the terms of the relevant Add-On Insurance product) from the date of, the purchase of the relevant Add-On Insurance product; and

- (b) by reason of the delay of the Plaintiff and Group Members in commencing these proceedings and the matters pleaded in subparagraph 82D(a) above, together with the matters pleaded at paragraph 69A above, it would be inequitable in all the circumstances to require the Defendants to repay the premiums in whole or part.

I. COMMON QUESTIONS OF LAW OR FACT

83 As to paragraph 83, they:

- (a) do not admit that the questions set out in the paragraph and framed as common questions of law or fact:
- (i) involve common issues of fact or law; or
 - (ii) insofar as they do, that those questions are common with respect to all Group Members; and
- (b) otherwise do not plead to paragraph 83, which does not include any allegations against them.

J. RELIEF

84 As to paragraph 84, they:

- (a) deny that the Plaintiff and Group Members, or any of them, are entitled to any part of the relief sought for the reasons set out in this Defence and further say, in response to subparagraph (g) thereof, that the Plaintiff and Group Members are not entitled to interest from such date to the extent that they were eligible to participate in any remediation programs the Defendants ~~or MTA~~ undertake or undertook in respect of the Add-On

Insurance products, or to the extent they were entitled to cancel their policy, but did not do so;

(b) as to the relief claimed in paragraph 84(c) say that:

(i) if, which is denied, any Group Member has a cause of action sounding in relief pursuant to section 12GF of the ASIC Act on the basis of matters alleged in the FASOC, any such cause of action that accrued before:

(A) 30 March 2015, in relation to causes of action against either

AAI or SLSL; or

(B) 17 October 2015, in relation to causes of action against

MTAI,

is not maintainable by operation of section 12GF(2);

(ii) relief under s 12GM(1) of the ASIC Act may not be granted in respect of Group Members, none of whom are parties to a proceeding instituted under Part 2, Division 2 of the ASIC Act; and

(iii) if, which is denied, any Group Member has a cause of action sounding in relief pursuant to section 1041I of the Corporations Act on the basis of matters alleged in the FASOC, any such cause of action that accrued before:

(A) 30 March 2015, in relation to causes of action against

either AAI or SLSL; or

(B) 17 October 2015, in relation to causes of action against

MTAI,

is not maintainable by operation of section 1041I(2) of the Corporations Act;

- (c) as to the relief claimed in paragraph 84(d) say that:
- (i) if, which is denied, any Group Member has a cause of action sounding in relief pursuant to section 961M of the Corporations Act on the basis of matters alleged in the FASOC, any such cause of action that relates to a contravention occurring before:
- (A) 30 March 2015, in relation to causes of action against either AAI or SLSL; or
- (B) 17 October 2015, in relation to causes of action against MTAI,
- is not maintainable by operation of section 961M(6) of the Corporations Act; and
- (ii) if, which is denied, any Dealer contravened s 961B or s 961J of the Corporations Act, the Defendants are not responsible licensees in relation to any such contravention for the purposes of s 961M; and
- (d) say that, if, which is denied, any Group Member has a claim in mistake, the Defendants intend to rely in defence of each Group Member's claim on any applicable statutory limitation period as may be available in defence of that claim depending upon when and where the claim arose and (where applicable) when that claim was discovered or was discoverable with reasonable diligence.

Particulars

The statutory limitation periods referred to include, without limitation:

Limitation of Actions Act 1958 (Vic) ss 5 and 27; Limitation Act 1969 (NSW) ss 14 and 56; Limitation of Actions Act 1974 (Qld) ss 10 and 38; Limitation Act 1974 (Tas) ss 4 and 32; Limitation of Actions Act 1936 (SA); Limitation Act 2005 (WA); Limitation Act 1981 (NT); Limitation Act 1985 (ACT).

Dated: ~~13 August~~ 17 November 2021

David Thomas SC

Jennifer Findlay

Hugh Atkin

King + Wood Mallesons

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King & Wood Mallesons
Solicitors for the Defendants

SCHEDULE OF PARTIES

ZOEY ANDERSON-VAUGHAN	Plaintiff
And	
AAI LIMITED (ACN 005 297 807)	First Defendant
TAL LIFE LIMITED (ACN 050 109 450)	Second Defendant
MTA INSURANCE PTY LTD (ACN 070 583 701)	Third Defendant

Annexure A – PDSs for Loan Protection Insurance

Loan Protection Insurance

#	Document ID	Document date	Document title
1	SUN.0001.1010.0855	17/10/2005	Product Disclosure Statement Australian Motorcycle Insurance Consumer Credit Insurance Product Features Booklet
2	SUN.0001.1010.0235	01/11/2005	Product Disclosure Statement M.T.Q. Consumer Credit Insurance Product Features Booklet
3	SUN.0001.1010.0271	01/06/2007	Product Disclosure Statement MTA Consumer Credit Insurance Product Features Booklet
4	SUN.0001.1010.0307	01/05/2009	Product Disclosure Statement MTA Loan Protection Insurance Product Features Booklet
5	SUN.0001.1010.0363	01/11/2010	Product Disclosure Statement MTA Loan Protection Insurance Product Features Booklet
6	SUN.0001.1010.0419	04/02/2011	Product Disclosure Statement MTA Loan Protection Insurance Product Features Booklet
7	SUN.0001.1010.0974	04/02/2011	Product Disclosure Statement Honda Loan Protection Insurance Product Features Booklet
8	SUN.0001.1010.0747	20/03/2012	Product Disclosure Statement MTA Loan Protection Insurance Product Features Booklet
9	SUN.0001.1010.0461	01/07/2013	Product Disclosure Statement MTA Loan Protection Insurance Product Features Booklet
10	SUN.0001.1010.0475	03/03/2014	Product Disclosure Statement MTA Loan Protection Insurance Product Features Booklet

#	Document ID	Document date	Document title
11	SUN.0001.1010.0489	09/05/2014	Product Disclosure Statement MTA Loan Protection Insurance Product Features Booklet
12	SUN.0001.1010.0541	01/07/2015	Product Disclosure Statement MTA Loan Protection Insurance Product Features Booklet
13	SUN.0001.1010.0503	15/12/2015	Product Disclosure Statement MTA Loan Protection Insurance
14	SUN.0001.1010.0523	01/07/2017	Product Disclosure Statement MTA Loan Protection Insurance

Commercial Loan Protection Insurance

#	Document ID	Document date	Document title
1	SUN.0001.1010.0335	01/11/2010	Product Disclosure Statement MTA Commercial Loan Protection Insurance Product Features Booklet
2	SUN.0001.1010.0391	04/02/2011	Product Disclosure Statement MTA Commercial Loan Protection Insurance Product Features Booklet
3	SUN.0001.1010.0946	04/02/2011	Product Disclosure Statement Honda Commercial Loan Protection Insurance Product Features Booklet

Annexure B – PDSs for GAP Insurance

Equity Plus Insurance

#	Document ID	Document date	Document title
1	SUN.0001.1010.0175	01/02/2004	Equity Plus Insurance Product Disclosure Statement
2	SUN.0001.1010.0190	01/06/2005	Equity Plus Insurance Product Disclosure Statement
3	SUN.0001.1010.0903	01/10/2005	AMI Equity Plus Insurance Product Disclosure Statement
4	SUN.0001.1010.0084	01/12/2006	Equity Plus Insurance Product Disclosure Statement
5	SUN.0001.1010.0069	01/05/2009	Equity Plus Insurance Product Disclosure Statement
6	SUN.0001.1010.0931	01/05/2009	Honda Equity Plus Insurance Product Disclosure Statement
7	SUN.0001.1010.0134	20/03/2012	MTA Insurance Limited Equity Plus Insurance Product Disclosure Statement
8	SUN.0001.1010.0099	03/09/2012	MTA Insurance Limited Equity Plus Insurance Product Disclosure Statement
9	SUN.0001.1010.0113	06/08/2013	MTA Insurance Limited Equity Plus Insurance Product Disclosure Statement
10	SUN.0001.1010.0106	03/03/2014	MTA Insurance Limited Equity Plus Insurance Product Disclosure Statement
11	SUN.0001.1010.0120	09/04/2014	MTA Insurance Limited Equity Plus Insurance Product Disclosure Statement
12	SUN.0001.1010.0140	24/04/2014	MTA Insurance Limited Equity Plus Insurance Product Disclosure Statement
13	SUN.0001.1010.0147	29/07/2014	MTA Insurance Limited Equity Plus Insurance Product Disclosure Statement

#	Document ID	Document date	Document title
14	SUN.0001.1550.7754	01/07/2015	MTA Equity Plus Insurance Product Disclosure Statement
15	SUN.0001.1010.0161	01/07/2017	MTA Equity Plus Insurance Product Disclosure Statement

Equity Insurance

#	Document ID	Document date	Document title
1	SUN.0001.1010.0589	01/08/2012	MTA Insurance Limited Equity Insurance Product Disclosure Statement
2	SUN.0001.1010.0211	03/09/2012	MTA Insurance Limited Equity Insurance Product Disclosure Statement
3	SUN.0001.1010.0205	03/03/2014	MTA Insurance Limited Equity Insurance Product Disclosure Statement
4	SUN.0001.1010.0217	09/04/2014	MTA Insurance Limited Equity Insurance Product Disclosure Statement
5	SUN.0001.1010.0223	24/04/2014	MTA Insurance Limited Equity Insurance Product Disclosure Statement
6	SUN.0001.1010.0229	29/07/2014	MTA Insurance Limited Equity Insurance Product Disclosure Statement
7	SUN.0001.1700.2336 <u>SUN.0001.1550.7744</u>	01/07/2015	MTA Equity Insurance Product Disclosure Statement

Annexure C – PDSs for Cash Benefit Insurance

#	Document ID	Document date	Document title
1	SUN.0001.1010.0057	01/08/2005	Cash Benefit Insurance Product Disclosure Statement
2	SUN.0001.1010.0855	01/10/2005	AMI Cash Benefit Insurance Product Disclosure Statement
3	SUN.0001.1010.0595	01/12/2006	Cash Benefit Insurance Product Disclosure Statement
4	SUN.0001.1010.0037	31/08/2009	Cash Benefit Insurance Product Disclosure Statement
5	SUN.0001.1010.0919	31/08/2009	Honda Cash Benefit Insurance Product Disclosure Statement
6	SUN.0001.1010.0001	03/09/2012	MTA Insurance Limited Cash Benefit Insurance Product Disclosure Statement
7	SUN.0001.1010.0017	03/03/2014	MTA Insurance Limited Cash Benefit Insurance Product Disclosure Statement
8	SUN.0001.1010.0022	09/04/2014	MTA Insurance Limited Cash Benefit Insurance Product Disclosure Statement
9	SUN.0001.1010.0027	24/04/2014	MTA Insurance Limited Cash Benefit Insurance Product Disclosure Statement
10	SUN.0001.1010.0032	29/07/2014	MTA Insurance Limited Cash Benefit Insurance Product Disclosure Statement
11	SUN.0001.1010.0048	01/07/2015	MTA Cash Benefit Insurance Product Disclosure Statement

Annexure D – PDSs for Extended Vehicle Warranty Insurance

#	Document ID	Document date	Document title
1	SUN.0001.1010.0568	01/05/2006	Extended Vehicle Warranty Product Disclosure Statement

Annexure E – PDSs for Tyre and Rim Insurance

#	Document ID	Document date	Document title
1	SUN.0001.1010.0562	20 March 2012	MTA Insurance Limited Tyre and Rim Insurance Product Disclosure Statement
2	SUN.0001.1010.0556	3 September 2012	MTA Insurance Limited Tyre and Rim Insurance Product Disclosure Statement