



Rule 14.04

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

Case: S ECI 2024 04990

Filed on: 16/10/2025 02:11 PM

S ECI 2024 04990

BETWEEN

JONATHAN WONG

First Plaintiff

CONSTANTINOS DAGLAS

Second Plaintiff

and

HARVEY NORMAN HOLDINGS LTD (ACN 003 237 545)

First Defendant

YOOGALU PTY LTD (ACN 002 269 132)

Second Defendant

DEFENCE

Date of document: 16 October 2025
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To the extent headings used in the plaintiffs' consolidated statement of claim indorsed on the writ and dated 28 August 2025 (**Statement of Claim**) are adopted in this defence, that is for convenience and without any admission. Further, where capitalised terms are used but not defined, they are adopted from the Statement of Claim.

In answer to the Statement of Claim, the defendants say as follows:

A PARTIES AND GROUP MEMBERS

A.1 Plaintiffs

1 As to paragraph 1, the defendants:

- (a) admit the allegations in subparagraph (a); and
- (b) as to subparagraph (b):
 - (i) do not know and cannot admit the allegations insofar as they relate to s 3 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (the **ACL**); and
 - (ii) deny the allegations insofar as they relate to s 12BC of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) for the reasons outlined in paragraph 83 below.

2 As to paragraph 2, the defendants:

- (a) say that, on or about 29 April 2019, Mr Wong purchased from Nunavit Pty Ltd as trustee of the Nunavit No 2 Trust and trading as Harvey Norman AV/IT Nunawading (**Harvey Norman Nunawading**) for the total price of \$3,491:
 - (i) a Bosch oven with a contractual arrangement known as "**Product Care**" for a term of four years;
 - (ii) a Bosch cooktop with Product Care for a term of four years; and
 - (iii) a Bosch dishwasher with Product Care for a term of three years, (**Mr Wong's Purchase**);

- (b) say that Product Care can only be purchased in conjunction with a physical product and cannot be separately purchased;
- (c) say further that, in respect of each of the goods the subject of Mr Wong's Purchase, Mr Wong and Harvey Norman Nunawading entered into a Product Care contract, the terms of which were set out in the Product Care terms and conditions provided to Mr Wong;
- (d) do not know and cannot admit whether the terms and conditions of Product Care were contained in a brochure titled "Product Care - Electrical Product Care";
- (e) say further that Mr Wong collected the goods the subject of Mr Wong's Purchase on 18 May 2019;
- (f) say further that, on 6 February 2016, Mr Wong purchased a Euromaid 60cm Flat Box Canopy Rangehood with Product Care for a term of four years from a previous franchisee of the Harvey Norman Nunawading audiovisual and information technology store, being Nunawading Superstore Pty Ltd; and
- (g) otherwise deny the allegations.

3 As to paragraph 3, the defendants:

- (a) admit the allegations in subparagraph (a); and
- (b) as to subparagraph (b):
 - (i) do not know and cannot admit the allegations insofar as they relate to s 3 of the ACL; and

- (ii) deny the allegations insofar as they relate to s 12BC of the ASIC Act for the reasons outlined in paragraph 83 below.

4 As to paragraph 4, the defendants:

- (a) say that, on or about 12 November 2023, Mr Daglas agreed to purchase from Darwincenta Pty Ltd as trustee of the Darwincenta No 2 Trust and trading as Harvey Norman AV/IT Darwin (**Harvey Norman Darwin**), and paid a deposit for, the following goods:
 - (i) two Electrolux Steam Ovens without Product Care; and
 - (ii) an Electrolux Induction Hob without Product Care; and
- (b) otherwise deny the allegations.

5 As to paragraph 5, the defendants:

- (a) say that, on or about 13 January 2024, Mr Daglas:
 - (i) amended his order referred to in paragraph 4 above so that he purchased each of the goods with Product Care for a term of four years (**Mr Daglas' First Purchase**);
 - (ii) paid the amount owing for Mr Daglas' First Purchase, the total price of which was \$7,135;
- (b) refer to and repeat subparagraphs 2(b) and 4(a) above;
- (c) say further that, in respect of each of the goods the subject of Mr Daglas' First Purchase, the terms of the Product Care contract entered into between Mr Daglas and Harvey Norman Darwin were set out in the Product Care terms and conditions provided to Mr Daglas;

- (d) do not know and cannot admit whether the terms and conditions of Product Care were contained in a brochure titled “Product Care – Electrical – Effective 9 November 2023”;
- (e) say further that the goods the subject of Mr Daglas’ First Purchase were delivered to him on 16 February 2024;
- (f) say further that, on 11 February 2018, Mr Daglas purchased a Dyson Vacuum Cleaner with Product Care from Harvey Norman Darwin; and
- (g) otherwise deny the allegations.

6 As to paragraph 6, the defendants:

- (a) say that, on or about 12 March 2024, Mr Daglas agreed to purchase from Harvey Norman Darwin for the total price of \$2,960 an Electrolux fridge with Product Care for a term of three years (**Mr Daglas’ Second Purchase**) and paid a deposit for that purchase; and
- (b) otherwise deny the allegations.

7 As to paragraph 7, the defendants:

- (a) say that Mr Daglas made payments for Mr Daglas’ Second Purchase in instalments on 26 March 2024, 11 April 2024 and 23 April 2024;
- (b) say that, on or about 3 May 2024, Harvey Norman Darwin discounted the price payable for Mr Daglas’ Second Purchase to a total of \$2,748;
- (c) say that, on or about 3 May 2024, Mr Daglas paid the remaining amount owing for Mr Daglas’ Second Purchase;
- (d) refer to and repeat subparagraphs 2(b) and 6(a) above;

- (e) do not know and cannot admit whether the terms and conditions of Product Care were contained in a brochure titled “Product Care – Electrical – Effective 9 November 2023”;
- (f) say further that the good the subject of Mr Daglas’ Second Purchase was delivered to him on 8 May 2024; and
- (g) otherwise deny the allegations.

A.2 Group Members

8 As to paragraph 8, the defendants:

- (a) admit that the plaintiffs seek to bring this proceeding on behalf of the persons described in paragraph 8 and adopt the term “Group Member” to refer to those persons in this Defence (but, for the avoidance of doubt, deny that any person falls within that definition for the reasons outlined in subparagraph (d) below);
- (b) say that a person will only be a consumer for the purposes of and within the meaning of s 3 of the ACL if that person meets one or more of the conditions in s 3(1) and does not fall within any of the exceptions in s 3(2);
- (c) say that a person will only be a consumer for the purposes of s 12BC of the ASIC Act if they acquire “financial services” within the meaning of that section, which they do not by acquiring goods with Product Care (and the defendants refer to and repeat paragraph 83 below);
- (d) say that no person meets the requirement in subparagraph (c) and refer to and repeat paragraph 164 below; and

(e) otherwise deny the allegations.

9 The defendants refer to and repeat paragraph 8 above and deny the allegations in paragraph 9.

A.3 Defendants

10 The defendants admit the allegations in paragraph 10.

11 The defendants admit the allegations in paragraph 11.

B THE HARVEY NORMAN BUSINESS MODEL

B.1 Harvey Norman Retail Entities

12 As to paragraph 12, the defendants:

(a) say that the first defendant:

(i) does not conduct its own retail business in Australia;

(ii) does not have any employees; and

(iii) has the sole function of being the parent company of various subsidiary companies and listed on the Australian Securities Exchange; and

(b) otherwise deny the allegations.

13 As to paragraph 13, the defendants say that:

(a) a subsidiary of the first defendant, Harvey Norman Retailing Pty Ltd, owns the trademarks Harvey Norman®, Domayne®, and Joyce Mayne® and grants rights in relation to those trademarks to other subsidiaries of the first defendant;

- (b) subsidiaries of the first defendant own or lease shopping complexes branded with one of the Harvey Norman®, Domayne® or Joyce Mayne® trademarks (**Branded Complexes**);
- (c) subsidiaries of the first defendant (**Franchisors**) for each Branded Complex grant separate franchises (**Franchises**), in each case through a Franchise Agreement (**Franchise Agreement**), to independent franchisees (**Franchisees**) to:
 - (i) use the Harvey Norman®, Domayne® or Joyce Mayne® trademarks (as applicable) and other intellectual property; and
 - (ii) operate a retail business of the Franchise (**Franchised Business**);
- (d) within each Branded Complex, a number of Franchisees operate individual Franchised Businesses;
- (e) subsidiaries of the first defendant grant each Franchisee who operates a Franchised Business at each Branded Complex a licence to occupy part of the Branded Complex;
- (f) each of the Harvey Norman, Domayne and Joyce Mayne online Franchised Businesses are operated by a different Franchisee pursuant to individual Franchise Agreements. Three subsidiaries of the first defendant are the Franchisors for each of the Harvey Norman, Domayne and Joyce Mayne online Franchised Businesses respectively (**Websites**);

- (g) the Franchise Agreements in force during the Claim Period generally contained terms to the following effect:
 - (i) the Franchisee is required to conduct the Franchised Business as an independent business in the Franchisee's own name;
 - (ii) the Franchisee has the right to determine the prices charged for products by the Franchised Business and cannot be obliged to accept any guidance from the Franchisor as to suggested prices; and
 - (iii) nothing in the Franchise Agreement creates any agency relationship between the Franchisee and Franchisor;

Particulars

The terms of the Franchise Agreements varied over time.

- (h) by reason of the full terms and effect of each of the Franchise Agreements in force during the Claim Period, and the matters in subparagraphs (c) to (g) above, each "Harvey Norman Retail Entity" (as defined in paragraph 13 of the Statement of Claim) was an independent Franchisee;
- (i) the first defendant was not a party to any Franchise Agreement;
- (j) the first defendant does not control, or have any ownership interest in any of the Franchisees, or the Franchised Business of any Franchisee;
- (k) by reason of the matters pleaded in paragraph 12 above, as well as subparagraphs (i) and (j) immediately above, the defendants deny that the first defendant engaged in "retail operations"; and
- (l) they otherwise deny the allegations.

14 As to paragraph 14, the defendants:

- (a) admit that Franchisees across Australia (including Harvey Norman Nunawading and Harvey Norman Darwin) traded and operated from Branded Complexes, or sections of Branded Complexes, or the Websites, and otherwise deny subparagraph (a);
- (b) as to subparagraph (b):
 - (i) say that the Franchise Agreements in force during the Claim Period generally contained a term to the effect that a Franchisee was required to comply with all mandatory specifications, standards and operating procedures relating to the operation of their Harvey Norman Shop (as defined in the Franchise Agreement) as determined by the Franchisor from time to time, although some Franchise Agreements contained a term requiring the Franchisee to comply with such mandatory specifications, standards and operating procedures only where the Franchisor was acting reasonably; and
 - (ii) otherwise deny the allegations;

Particulars

The terms of the Franchise Agreements varied over time.

- (c) as to subparagraph (c), say that the Franchise Agreements in force during the Claim Period generally contained a term to the effect that a Franchisee was not permitted to offer any products for sale that had not been approved for sale by their Franchisor without prior written approval of their Franchisor;

Particulars

The terms of the Franchise Agreements varied over time.

- (d) as to subparagraph (d):
 - (i) deny that any Franchisee was ever required to sell Product Care to consumers; and
 - (ii) say that each Franchisee determined whether it sold goods with Product Care;
- (e) as to subparagraph (e), say that the Franchise Agreements in force during the Claim Period contained a term requiring a Franchisee to pay a "Continuing Franchise Fee" in respect of each "Accounting Period" which was calculated by reference to the Franchisee's gross revenue;
- (f) rely upon the full terms and effect of each Franchise Agreement entered into by or in effect with each Franchisee in the Claim Period; and
- (g) otherwise deny the allegations.

15 As to paragraph 15, the defendants:

- (a) say that during the Claim Period the Franchisor for Harvey Norman Darwin was H.N. Darwin Franchisor Pty Ltd;
- (b) say that during the Claim Period the Franchisor for Harvey Norman Nunawading was H.N. Nunawading Franchisor Pty Ltd; and
- (c) otherwise deny the allegations therein.

16 The defendants admit the allegations in paragraph 16 and say further that, during the Claim Period, David Matthew Ackery was also a director of the first defendant, H.N. Darwin Franchisor Pty Ltd and H.N. Nunawading Franchisor Pty Ltd.

17 The defendants refer to and repeat paragraphs 12 to 14 above (and paragraphs 15 and 16 above for Harvey Norman Darwin and Harvey Norman Nunawading) and paragraphs 24 to 25 below and deny the allegations in paragraph 17.

B.2 Yoogalu's involvement

18 As to paragraph 18, the defendants:

- (a) say that the first defendant had directors who were employed by the second defendant; and
- (b) otherwise deny the allegations.

19 As to paragraph 19, the defendants:

- (a) as to subparagraph (a):
 - (i) admit that the second defendant was involved in the planning, design and creation of Product Care prior to the Claim Period;
 - (ii) refer to and repeat subparagraph (b) below; and
 - (iii) otherwise deny the allegations;
- (b) as to subparagraph (b), say that:
 - (i) the Product Care Terms and Conditions, and any changes to those terms and conditions, were determined from time to time by the third party provider of Product Care (**Third Party Product Care Service Provider**);

- (ii) the Third Party Product Care Service Provider for Relevant Goods purchased between 18 September 2018 and 31 July 2022 was Brightside (as defined in paragraph 24 below);
- (iii) the Third Party Product Care Service Provider for Relevant Goods purchased between 1 August 2022 and 19 September 2024 was Assurant (as defined in paragraph 24 below);
- (iv) the second defendant generally reviewed and made recommendations from time to time in relation to the Product Care Terms and Conditions or potential changes to the Product Care Terms and Conditions;
- (v) the second defendant approved each version of the Product Care Terms and Conditions for printing;
- (vi) refer to and repeat paragraph 19(d)(ii) below;
- (vii) on 2 May 2017, the second defendant gave an undertaking to the Australian Competition and Consumer Commission (**ACCC**) that it would, inter alia:
 - (A) provide to Franchisees amended Product Care Terms and Conditions that included certain essential information specified in the undertaking outlining consumers' rights under the ACL and the differences between those rights and Product Care (the **Essential Information**); and

- (B) recommend that Franchisees use the amended Product Care Terms and Conditions;
- (viii) all versions of the Product Care Terms and Conditions during the Claim Period contained the Essential Information; and
- (ix) they otherwise deny the allegations;
- (c) as to subparagraph (c), the defendants:
 - (i) refer to and repeat subparagraph (d)(ii) below;
 - (ii) say that each Franchisee determined whether it sold goods with Product Care;
 - (iii) say further that if a Franchisee chose to sell Product Care the Franchisee entered into a service agreement with a Third Party Product Care Service Provider pursuant to which the Third Party Product Care Service Provider agreed, inter alia, to administer and discharge the obligations of the Franchisee to the customer under the Product Care Terms and Conditions; and
 - (iv) otherwise deny the allegations;
- (d) as to subparagraph (d), the defendants:
 - (i) deny that any Franchisee was directed to sell Product Care and refer to and repeat subparagraphs 14(d) and 19(c)(ii) above;
 - (ii) say that, after a Franchise Agreement was entered into, the Franchisor generally recommended, via the second defendant as its representative, to the Franchisee to enter into the service agreement

with the Third Party Product Care Service Provider, subject to the Franchisee first having the opportunity to obtain independent legal advice on that agreement;

(iii) refer to and repeat paragraph 19(e) below; and

(iv) otherwise deny the allegations;

(e) as to subparagraph (e), the defendants:

(i) admit that the second defendant provided recommendations regarding training in the Claim Period to Franchisees, their managers and sales staff in relation to consumer rights under the ACL, including with respect to the sale of Product Care;

(ii) say that, on two occasions in 2016, compliance officers of the second defendant attended workshops on consumer rights under the ACL with employees of Brightside with the title of Product Care Administrators; and

(iii) otherwise deny the allegations;

(f) as to subparagraph (f), the defendants:

(i) admit that the second defendant conducted compliance monitoring of Franchisees with respect to the sale of Product Care to consumers; and

(ii) otherwise deny the allegations; and

(g) as to subparagraph (g), the defendants:

- (i) admit that the second defendant reported to the ACCC concerning the training and compliance of Franchisees with respect to the sale of Product Care to consumers; and
- (ii) otherwise deny the allegations.

20 The defendants refer to and repeat paragraphs 12 to 16 and 19 above and deny the allegations in paragraph 20.

21 The defendants refer to and repeat paragraphs 12 to 13, 14(d), 17 and 18 to 20 above and deny the allegations in paragraph 21.

22 The defendants refer to and repeat paragraphs 17 to 20 above and deny the allegations in paragraph 22.

B.3 Product Care Sales Process

23 As to paragraph 23, the defendants:

- (a) refer to and repeat subparagraphs 14(d) and 19(c)(ii) above;
- (b) say further as to the “Sales Process” alleged in paragraph 23 of the Statement of Claim that:
 - (i) with respect to customers or potential customers who attended Branded Complexes, Franchisees and their staff determined whether to offer a customer or potential customer Product Care, having regard to the circumstances in which the Relevant Good was purchased;
 - (ii) where a customer sought to purchase a Relevant Good from the Websites in respect of which Product Care was available, they were

presented with an option to purchase the product with Product Care upon adding that good to their cart. The customer could click on a link to “learn more” about Product Care, which link directed the customer to an information page. The customer could also access the Product Care Terms and Conditions from that page;

- (iii) they do not know and cannot admit whether Franchisees sold products, or products with Product Care, over the telephone because this is at the discretion of individual franchisees;
 - (iv) Franchisees had absolute discretion with respect to the price at which they sold a Relevant Good with Product Care;
 - (v) from 23 May 2019 in respect of electrical Relevant Goods, and from 1 February 2020 in respect of computer Relevant Goods, in the event a customer purchased a Relevant Good with Product Care they were entitled to a 20-day cooling off period;
 - (vi) a significant proportion (approximately 83%) of customers who purchased a good with Product Care and made a claim and received a replacement product or store credit under Product Care became repeat purchasers of goods with Product Care;
 - (vii) none of the “Product Care Limitations” pleaded in paragraphs 36 to 42 of the Statement of Claim existed for the reasons outlined at paragraphs 36 to 42 below; and
- (c) otherwise deny the allegations therein.

B.4 Underwriting

24 As to paragraph 24, the defendants:

- (a) say that, until 31 July 2022, individual Franchisees entered into “Product Care and Extended Warranty Service Agreements” with PCASA Operations Pty Ltd ACN 163 004 055, South Pacific Warranty Services Ltd and ICF Holdings Pty Ltd ACN 115 419 844 (collectively known as “**Brightside**”). Dorni Pty Ltd ACN 002 263 872 (**Dorni**), a subsidiary of the first defendant, was also a party to the agreements. Pursuant to the agreements:
 - (i) PCASA Operations Pty Ltd provided Product Care administration services on behalf of the Franchisee;
 - (ii) South Pacific Warranty Services Ltd was required to discharge any obligations the Franchisee incurred under an agreement to provide Product Care to a customer;
 - (iii) the Franchisee paid PCASA Operations Pty Ltd and South Pacific Warranty Services Ltd a fee in exchange for the services referred to in (i) and (ii) above; and
 - (iv) ICF Holdings Pty Ltd agreed to guarantee the performance by each of PCASA Operations Pty Ltd and South Pacific Warranty Services to both the Franchisee and Dorni;
- (b) say that they rely on the full terms and effect of each Product Care and Extended Warranty Service Agreement in force during the Claim Period;

- (c) say that, from 1 August 2022, individual Franchisees entered into “Product Care Service Agreements” with Virginia Surety Company, Inc (Australian Branch) ABN 63 080 339 957 and The Warranty Group Australasia Pty Ltd ABN 37 005 004 446 (collectively known as “**Assurant**”). Darni was also a party to the agreements. Pursuant to the agreements:
- (i) The Warranty Group Australasia Pty Ltd performed Product Care administration services and was required to discharge any obligations the Franchisee incurred under an agreement to provide Product Care on behalf of the Franchisee in exchange for a fee; and
 - (ii) Virginia Surety Company, Inc (Australian Branch) ABN 63 080 339 957 agreed to indemnify the Franchisee for:
 - (A) any liability of the Franchisee to pay an “Adjustment Fee” to The Warranty Group Australasia Pty Ltd; and
 - (B) for any loss arising from the non-performance of The Warranty Group Australasia Pty Ltd of its obligations under the Product Care Service Agreement;
- (d) say that they rely on the full terms and effect of each Product Care Service Agreement in force during the Claim Period;
- (e) say that Franchisees were not required by the first defendant or the second defendant to enter into Product Care and Extended Warranty Service Agreements or Product Care Service Agreements;

- (f) say that, although Derni was a party to each Product Care and Extended Warranty Service Agreement and Product Care Service Agreement, it was only a party to those agreements for the sole purpose of protecting the rights and entitlements of Derni in relation to a security interest Derni holds over all present and after-acquired property of the Franchisee (created pursuant to the terms and conditions of either a fixed and floating charge or a general security deed); and
- (g) otherwise deny the allegations.

25 As to paragraph 25, the defendants:

- (a) refer to and repeat paragraph 24 above; and
- (b) otherwise deny the allegations.

C PRODUCT CARE AND THE AUSTRALIAN CONSUMER LAW

C.1 Terms and Conditions

26 As to paragraph 26, the defendants:

- (a) admit that, during the Claim Period, the terms and conditions of Product Care were contained within the brochures pleaded in subparagraphs A1(b) to (h) and A2(b) to (f) of Schedule A to the Statement of Claim;
- (b) say that the brochures pleaded in subparagraphs A1(a) and A2(a) of Schedule A to the Statement of Claim predated the Claim Period and say that, to the extent the plaintiffs purport to make any claim based on those brochures on the basis that they were provided to consumers before the

beginning of the Claim Period, those claims are out of time and statute-barred;

Particulars

ACL, s 236(2); ASIC Act, s 12GF(2); *Corporations Act 2001* (Cth), s 1041I(2).

- (c) say that the Product Care brochure that contained the terms and conditions for computers between 9 November 2023 and 19 September 2024 was entitled “Product Care – Computers – Effective 9 November 2023”; and
- (d) otherwise deny the allegations.

27 As to paragraph 27, the defendants:

- (a) admit that pursuant to the Product Care Terms and Conditions referred to in paragraphs 26(a) and (b) above, the term of Product Care commenced on the expiry of the manufacturer’s warranty of the good with which Product Care was purchased;
- (b) say that the term of Product Care operated for the period of time chosen by the consumer (being one, two, three, or four years, depending on the minimum and maximum terms offered in relation to the Relevant Goods) unless the consumer received a replacement, store credit or cash settlement under Product Care during this period, at which point their Product Care would end (**Product Care Term**); and
- (c) otherwise deny the allegations.

28 As to paragraph 28, the defendants:

- (a) admit that the condition in subparagraph (a) existed during the Claim Period;
- (b) as to subparagraph (b), the defendants:
 - (i) admit that the Product Care Terms and Conditions from 1 June 2021 until the end of the Claim Period for electrical products and from 1 July 2021 until the end of the Claim Period for computer products contained a condition that the failure to operate arose from a latent fault; and
 - (ii) otherwise deny the allegations therein;
- (c) admit that the condition in subparagraph (c) existed during the Claim Period; and
- (d) refer to and rely on the full terms and effect of Product Care as it existed from time to time; and
- (e) otherwise deny the allegations.

C.2 Australian Consumer Law

29 The defendants admit the allegations in paragraph 29.

30 The defendants admit the allegations in paragraph 30 and say further that the Relevant Goods may also be of acceptable quality by reason of s 54(4), (5), (6) or (7) of the ACL.

31 As to paragraph 31, the defendants:

- (a) say that, between 18 September 2018 and 17 December 2020:
 - (i) s 260 of the ACL provided that a failure to comply with the Statutory Guarantee was a major failure if one or more of the matters pleaded in subparagraphs 31(a) to (c) of the Statement of Claim were satisfied;
 - (ii) s 260 of the ACL did not, during that period, deem a failure to comply with the Statutory Guarantee that met the circumstances in subparagraph 31(d) of the Statement of Claim to be a major failure;
- (b) say that, from 18 December 2020 to the end of the Claim Period, s 260 of the ACL provided that a failure to comply with the Statutory Guarantee was a major failure if one or more of the matters pleaded in subparagraphs 31(a) to (d) of the Statement of Claim were satisfied; and
- (c) otherwise deny the allegations.

32 As to paragraph 32, the defendants:

- (a) say that, pursuant to s 259 of the ACL, even if a failure to comply with the Statutory Guarantee in respect of the Relevant Goods was a major failure, the consumer could not, and had no discretion to, give notice to the supplier (being a Franchisee) that the consumer rejects the Relevant Goods and of the ground or grounds for the rejection in accordance with s 259(3)(a) of the ACL ("**Rejection Notice**") if the consumer was not entitled to give the supplier a Rejection Notice under s 262 of the ACL;

- (b) say that, under section 262 of the ACL, the consumer was not entitled to give the supplier a Rejection Notice in any of the following circumstances:
- (i) if the “**Rejection Period**” (as defined in section 262(2) of the ACL) for the Relevant Goods has ended;
 - (ii) if the Relevant Goods have been lost, destroyed or disposed of by the consumer;
 - (iii) if the goods were damaged after being delivered to the consumer for reasons not related to their state or condition at the time of supply; or
 - (iv) if the goods have been attached to, or incorporated in, any real or personal property and they cannot be detached or isolated without damaging them;
- (c) say that, pursuant to s 262(2) of the ACL, the Rejection Period for the Relevant Goods was the period from the time of supply to the consumer within which it would be reasonable to expect the relevant failure to comply with the Statutory Guarantee to become apparent having regard to:
- (i) the type of goods the Relevant Goods were;
 - (ii) the use to which a consumer is likely to put the Relevant Goods;
 - (iii) the length of time for which it is reasonable for the Relevant Goods to be used; and
 - (iv) the amount of use to which it is reasonable for them to be put before such a failure becomes apparent;

- (d) say that, after the Rejection Period has ended, the remedies that may be available to the consumer under the ACL if there is a failure to comply with the Statutory Guarantee are:
- (i) if the failure was a major failure – compensation under s 259(3)(b) of the ACL for any reduction in the value of the Relevant Goods below the price paid or payable by the consumer for the Relevant Goods;
 - (ii) if the failure was not a major failure – requiring the supplier to remedy the failure by, at the supplier’s election, (A) repairing the Relevant Goods, (B) replacing the Relevant Goods with goods of an identical type or (C) refunding to the consumer the money or value of other consideration paid or provided by the consumer for the Relevant Goods, in accordance with ss 259(2)(a) and 261 of the ACL;
or
 - (iii) if the failure was not a major failure and the supplier refused or failed to comply with a requirement by the consumer to remedy the failure within a reasonable period of time – to have the failure remedied and, by action against the supplier, recover all reasonable costs incurred by the consumer in having the failure so remedied in accordance with s 259(2)(b) of the ACL;
- (e) say that, even if the failure to comply with the Statutory Guarantee was a major failure, the compensation recoverable by a consumer under s 259(3)(b) of the ACL may be less than the full price paid or payable for the Relevant

Goods and less than the cost to the consumer to purchase a new replacement for the Relevant Goods; and

(f) otherwise deny the allegations.

33 As to paragraph 33, the defendants:

(a) refer to and repeat paragraph 32 above;

(b) say that if the consumer was not entitled to give the supplier a Rejection Notice under s 262 of the ACL:

(i) the consumer could not reject the Relevant Goods; and

(ii) the supplier was not required to give the consumer, at the consumer's election, a refund under s 263(3)(a) of the ACL or a replacement of the Relevant Goods under s 263(3)(b) of the ACL;

(c) say that, if the consumer was entitled to give the supplier a Rejection Notice and did so:

(i) pursuant to s 263(2) of the ACL, the consumer was required to return the Relevant Goods to the supplier, unless s 263(2)(a) or (b) applied; and

(ii) pursuant to s 263(6) of the ACL, property in the Relevant Goods reverts in the supplier (if that property had previously passed to the consumer); and

(d) otherwise deny the allegations in paragraph 33.

34 As to paragraph 34, the defendants say that:

- (a) a failure to operate does not necessarily constitute a failure to comply with the Statutory Guarantee;
- (b) a failure to comply with the Statutory Guarantee does not necessarily constitute a major failure;
- (c) whether a Relevant Good fails to comply with the Statutory Guarantee is to be determined by reference to s 54(2) and (3) of the ACL and, if applicable, s 54(4), (5), (6) and (7) of the ACL. The defendants repeat paragraph 30 above;
- (d) whether the Relevant Goods are of acceptable quality is determined under s 54(2) of the ACL by reference to what a reasonable customer fully acquainted with the state and condition of the Relevant Good (including any hidden defects) would regard as acceptable at the time of supply having regard to the matters set out in s 54(3) of the ACL;
- (e) whether any failure of a Relevant Good to comply with the Statutory Guarantee is a “major failure” is to be determined by considering whether the failure falls within the definition of major failure in s 260 of the ACL (as in force at the relevant time). The defendants repeat paragraph 31 above;
- (f) the ACL does not provide that a failure of a Relevant Good to operate within a particular timeframe, beginning at the time of acquisition of the Relevant Good by the consumer, constitutes a failure to comply with the Statutory Guarantee or a major failure. It does not provide protection for consumers by reference to the “Acceptable Operational Life” of a Relevant Good;

- (g) pursuant to s 262 of the ACL, a customer is not entitled to reject Relevant Goods the subject of a major failure to comply with the Statutory Guarantee in certain circumstances including if the Rejection Period has ended, if the Relevant Goods are damaged after delivery (for reasons unrelated to their state or condition at the time of delivery) or if the Relevant Goods are attached to real or personal property and cannot be detached without damaging them. The defendants refer to and repeat paragraph 32 above;
- (h) the Rejection Period for the Relevant Good is not the period of time for which a reasonable consumer would consider it acceptable for the Relevant Good to operate (with or without any repairs to the Relevant Good);
- (i) if a Relevant Good failed to comply with the Statutory Guarantee (whether or not that failure was a major failure) at the time of supply, the consumer may still be entitled, after the Rejection Period has ended, to the remedies referred to in paragraph 32(d) above, which include (at the supplier's election) the supplier repairing the Relevant Good in accordance with s 261(b) of the ACL;
- (j) assessing whether a Relevant Good failed to comply with the Statutory Guarantee at the time of supply, whether any such failure is a major failure and, if so, whether the consumer is entitled to reject the Relevant Good (including when the Rejection Period for the Relevant Good relating to that major failure ends) requires multi-factorial analysis dependent on the individual circumstances of each case, such that a consumer cannot know at the time of acquiring a Relevant Good whether they will be entitled to reject

the Relevant Good or to any other remedy under the ACL in the event their Relevant Good fails to operate at any particular time after the consumer acquired their Relevant Good; and

(k) they otherwise deny the allegations.

35 As to paragraph 35, the defendants:

(a) refer to and repeat paragraphs 30 to 34 above;

(b) say that a failure to operate of the Relevant Goods at any particular time after the consumer acquired their Relevant Goods does not necessarily mean that:

(i) the failure to operate constitutes a failure to comply with the Statutory Guarantee;

(ii) any failure to comply with the Statutory Guarantee constitutes a major failure; or

(iii) even if a failure to operate constitutes a failure to comply with the Statutory Guarantee and constitutes a major failure, the consumer is entitled to a refund or a replacement of the Relevant Goods under s 263(4) of the ACL because the consumer might not be entitled to give the supplier a Rejection Notice under s 262 of the ACL (including because the Rejection Period has ended or because the Relevant Goods have been damaged after delivery);

(c) say that, because the questions of whether a Relevant Good failed to comply with the Statutory Guarantee at the time of supply, whether any such failure

is a major failure and, if so, whether the consumer is entitled to reject the Relevant Good (including when the Rejection Period for the Relevant Good relating to that particular failure ends) are each dependent on a multi-factorial analysis that will depend on the individual circumstances of each case, a consumer cannot know whether at any particular time after the consumer acquired their Relevant Good they will be entitled to a refund or replacement of a Relevant Good, at their discretion, under the ACL; and

- (d) otherwise deny the allegations.

The benefits Product Care conferred on consumers beyond their rights under the ACL

35A During the Claim Period, Product Care conferred benefits (the **Product Care Benefits**) on Group Members that they did not have under the ACL, including:

- (a) the provision of a remedy where the Group Member was not entitled to any remedy under the ACL, because:
 - (i) the ACL did not entitle the Group Member to any remedy where the Relevant Good was of acceptable quality (as that term is used in s 54 of the ACL) at the time of supply;
 - (ii) by contrast, Product Care provided a remedy if (subject to the Product Care Terms and Conditions) the Relevant Good failed to operate during the Product Care Term; and
 - (iii) further, between 18 September 2018 and 31 May 2021 (in respect of Relevant Goods covered by the Product Care – Electrical Terms and Conditions) and 18 September 2018 and 30 June 2021 (in respect of Relevant Goods covered by the Product Care – Computer Terms and

Conditions) there was no requirement under Product Care that the failure to operate be due to any latent fault, such that, in contrast to the ACL, Product Care entitled the Group Member (subject to the Product Care Terms and Conditions) to a remedy for a failure to operate due to a fault that arose after the time of supply of the Relevant Good,

(the **Wider Coverage Benefit**);

- (b) an entitlement to a replacement of a Relevant Good that had failed to operate, or alternatively a replacement, store credit or cash settlement, in circumstances where the Group Member would not be entitled to a replacement, or alternatively a replacement, store credit or cash settlement under the ACL, where:
 - (i) the failure of the Relevant Good to operate did not constitute a major failure to comply with the Statutory Guarantee, because in those circumstances:
 - A. the supplier could, pursuant to s 261 of the ACL, remedy that failure by repairing or replacing the Relevant Good or providing a refund at the supplier's discretion; and
 - B. by contrast, Product Care provided (subject to the Product Care Terms and Conditions) an entitlement to a replacement, or alternatively a replacement, store credit or cash settlement; and
 - (ii) the failure of the Relevant Good to operate constituted a major failure to comply with the Statutory Guarantee but the Group Member was

not entitled to reject the Relevant Good under s 262 of the ACL
(including where the Rejection Period had ended, or the Relevant
Good was damaged after it was acquired by the Group Member)
because in those circumstances:

- A. the Group Member was not entitled under s 263(4) of the ACL
to a replacement or refund in respect of the Relevant Good; and
- B. by contrast, Product Care provided an entitlement to a
replacement, or alternatively a replacement, store credit or cash
settlement, of the Relevant Good during the Product Care Term
(subject to the Product Care Terms and Conditions),

((i) and (ii) above together, the **Remedy Benefits**);

(c) certainty as to:

- (i) the period during which the Group Member was entitled to a remedy
under Product Care (the **Temporal Certainty Benefit**);
- (ii) the types of failure in respect of which consumers were entitled to a
remedy under Product Care (the **Certainty of Coverage Benefit**); and
- (iii) the remedy to which consumers were entitled under Product Care
(the **Certainty of Remedy Benefit**),

(together, the **Certainty Benefits**)

in circumstances where consumers did not have such certainty under the
ACL, or alternatively where there was less certainty regarding those matters
under the ACL;

- (d) the ability for the Group Member under the Product Care Terms and Conditions to transfer their rights and entitlements under Product Care to another person when the Group Member sold the Relevant Good to that other person, when there was no ability of the Group Member to transfer their rights and entitlements under the Statutory Guarantee under the ACL to another person (the **Transfer Benefit**);
- (e) for electronic products only, access to a dedicated support team to assist with troubleshooting and advice with respect to Relevant Goods, and to assist with processing Product Care claims (the **Support Line Benefit**); and
- (f) discount vouchers and vouchers for services (the **Discount and Service Benefits**), as set out in Schedule 1.

C.3 Product Care Limitations

C.3.1 *No substantive protection throughout duration of term*

36 The defendants:

- (a) refer to and repeat paragraphs 32 and 34 to 35A above;
- (b) say that, subject to the Product Care Terms and Conditions, a Group Member was entitled to a remedy under Product Care if the Relevant Goods failed to operate as a result of an Eligible Fault in the period of time that was:
 - (i) either (1) after the Rejection Period had ended or (2) before the Rejection Period had ended but the Group Member was not entitled to a replacement product under the ACL;

(ii) after the expiry of the manufacturer's warranty of the Relevant Goods;
and

(iii) before the end of the Product Care Term; and

(c) otherwise deny the allegations in paragraph 36.

37 The defendants refer to and repeat paragraphs 34 to 36 above and deny the allegations in paragraph 37.

38 The defendants refer to and repeat paragraphs 34 to 37 above and deny the allegations in paragraph 38.

C.3.2 Inability to make an informed decision

39 The defendants repeat paragraphs 34 to 38 above and deny the allegations in paragraph 39.

40 The defendants refer to and repeat paragraph 39 above and deny the allegations in paragraph 40.

C.3.3 The remedies available under Product Care were less advantageous than the remedies under the Statutory Guarantee

41 As to paragraph 41, the defendants say that:

(a) in the event a customer was entitled to a remedy under Product Care, a customer was generally entitled to a one-off replacement (to the nearest equivalent) of the Relevant Good:

(i) unless the Eligible Fault was with an Essential Accessory; or

(ii) the customer had a Product Care Repair Plan or a Product Care Coffee Plan;

- (b) where the Franchisee could not offer a suitable replacement, a customer was offered a store credit or a cash settlement;
- (c) to the extent the Product Care Terms and Conditions stated that Franchisees had discretion to give customers a store credit or cash settlement instead of a replacement, that discretion was not relied on where the customer wanted a replacement good and a suitable replacement was available;
- (d) where the Eligible Fault was with an Essential Accessory, the Franchisee had discretion to replace the Essential Accessory only, in which case Product Care coverage would continue for the remainder of the Product Care Term;
- (e) where a customer had a Product Care Repair Plan or a Product Care Coffee Plan they were entitled to a replacement if the Relevant Good had an Eligible Fault and had been repaired on two occasions in the Product Care Term;
- (f) the consumer was not entitled under Product Care to have the value of the replacement good plus freight (if any) exceed the value of the original purchase price;
- (g) many of the Product Care Terms and Conditions used in the Claim Period included a voucher for free local delivery that could be used in the event that Product Care did not cover the cost of freight;

Particulars

Schedule 2 - Vouchers for free local delivery in the relevant Product Care Terms and Conditions Brochures.

- (h) they refer to the full terms and effect of the Product Care Terms and Conditions as they existed from time to time; and
- (i) they otherwise deny the allegations.

42 As to paragraph 42, the defendants:

- (a) refer to and repeat subparagraph 28(c) above and say that, to the extent the plaintiffs compare the remedies available for a major failure under the ACL with the remedies available under Product Care, that comparison is inutile because Product Care only provides a remedy in circumstances where the consumer is not entitled to a replacement of the Relevant Goods under the ACL;
- (b) refer to and repeat paragraphs 29 to 35A above;
- (c) deny that the remedies under Product Care were discretionary in favour of Franchisees and refer to and repeat paragraph 41 above;
- (d) say that the replacement good offered was the nearest equivalent with the same or better features and technology as the Relevant Good, although at the time of replacement (which could be years after the consumer purchased the Relevant Good) the replacement good may have a lower retail price than that paid by the consumer for the Relevant Good;
- (e) say that, in the event the customer was offered a store credit or cash refund this was for the amount of the original purchase price unless:
 - (i) for Relevant Goods purchased before 31 July 2022, the original purchase price was over \$400 and a replacement good could be

sourced for less than the original purchase price, in which case the value of the store credit or cash refund was the value of the replacement good;

- (ii) for Relevant Goods purchased from 1 August 2022, the original purchase price was over \$500 and a replacement good could be sourced for less than the original purchase price, in which case the value of the store credit or cash refund was the value of the replacement good;

- (f) as to subparagraph (c), admit that there was no entitlement of the consumer under Product Care to payment of an amount representing compensation for any reduction in value of the Relevant Goods below the price paid for the Relevant Goods; and

- (g) otherwise deny the allegations.

43 The defendants refer to and repeat paragraphs 36 to 42 above and deny the allegations in paragraph 43.

D ACQUISITIONS OF PRODUCT CARE BY PLAINTIFFS AND GROUP MEMBERS

D.1 Mr Wong

D.1.1 Mr Wong's purchase of Product Care

44 The defendants do not know and cannot admit the allegations in paragraph 44.

45 As to paragraph 45, the defendants:

- (a) deny that the first defendant or the second defendant ever offered Product Care for sale to Mr Wong;
- (b) refer to and repeat paragraphs 2(c), 17, 21 and 22 above;
- (c) say further that, if Harvey Norman Nunawading offered Product Care to Mr Wong, it did so in the course of conducting its Franchised Business as an independent Franchisee and not on behalf of the first defendant or the second defendant;
- (d) do not know and cannot admit whether Harvey Norman Nunawading offered Product Care for sale to Mr Wong, nor the purpose for which any such offer was made; and
- (e) otherwise deny the allegations.

46 As to paragraph 46, the defendants:

- (a) refer to and repeat paragraphs 2(b) and 23(b)(iv) above; and
- (b) otherwise deny the allegations.

47 As to paragraph 47, the defendants:

- (a) deny that the first defendant or the second defendant provided the Product Care Terms and Conditions to Mr Wong;
- (b) say further that, if Harvey Norman Nunawading did so, it did so in the course of conducting its Franchised Business as an independent Franchisee and not on behalf of either the first defendant or the second defendant;
- (c) refer to and repeat paragraphs 17, 21 and 22 above;

- (d) do not know and cannot admit whether Harvey Norman Nunawading provided a copy of the Product Care Terms and Conditions to Mr Wong, nor when it was provided; and
- (e) otherwise deny the allegations.

48 As to paragraph 48, the defendants:

- (a) say that Product Care did not have any of the limitations pleaded in paragraphs 36 to 42 of the Statement of Claim;
- (b) refer to and repeat paragraphs 17, 21, 22, 36 to 42 above;
- (c) do not know what the salesperson employed by Harvey Norman Nunawading who sold Relevant Goods with Product Care to Mr Wong said or did not say to Mr Wong about Product Care;
- (d) say further that anything said or done by the salesperson employed by Harvey Norman Nunawading in the course of selling Relevant Goods with Product Care to Mr Wong was done on behalf of Harvey Norman Nunawading in the course of conducting its Franchised Business as an independent Franchisee, and not on behalf of either the first defendant or the second defendant; and
- (e) otherwise deny the allegations.

49 The defendants refer to and repeat paragraphs 23 and 44 to 48 above and deny the allegations in paragraph 49.

D.1.2 Mr Wong's Product Care

50 The defendants do not know and cannot admit the allegations in paragraph 50.

51 As to paragraph 51, the defendants:

- (a) say that the Product Care Term for Mr Wong's Purchase:
 - (i) commenced on 18 May 2021 for each of the goods purchased;
 - (ii) ended on 17 May 2025 for the Bosch Oven and Bosch Cooktop; and
 - (iii) ended on 17 May 2024 for the Bosch Dishwasher; and
- (b) otherwise deny the allegations.

D.1.3 Mr Wong's protection under the Australian Consumer Law

52 As to paragraph 52, the defendants:

- (a) admit that Mr Wong's Purchase was in trade and commerce;
- (b) deny that the first defendant or the second defendant supplied the goods the subject of Mr Wong's Purchase to him for the purposes of s 54(1) of the ACL or otherwise;
- (c) admit that Harvey Norman Nunawading supplied the goods the subject of Mr Wong's Purchase to him for the purposes of s 54(1) of the ACL; and
- (d) otherwise deny the allegations.

53 As to paragraph 53, the defendants:

- (a) refer to and repeat paragraphs 1(b) and 52 above;
- (b) say further that, to the extent Mr Wong had the entitlements relating to the Statutory Guarantee under the ACL, his entitlements were those pleaded in paragraphs 29 to 35 above in relation to Mr Wong's Purchase; and
- (c) otherwise deny the allegations.

D.1.4 Mr Wong's Product Care limitations

54 The defendants refer to and repeat paragraphs 36 to 53 above and deny the allegations in paragraph 54.

D.2 Mr Daglas

D.2.1 Mr Daglas' purchase of Product Care – Daglas First Purchase

55 The defendants do not know and cannot admit the allegations in paragraph 55.

56 As to paragraph 56, the defendants:

- (a) deny that the first defendant or the second defendant ever offered Product Care to Mr Daglas;
- (b) refer to and repeat paragraphs 5(c), 17, 21 and 22 above;
- (c) say further that, if Harvey Norman Darwin offered Product Care to Mr Daglas on or around 13 November 2023, it did so in the course of conducting its Franchised Business as an independent Franchisee and not on behalf of either the first defendant or the second defendant;
- (d) do not know and cannot admit whether Harvey Norman Darwin offered Product Care for sale to Mr Daglas on 13 November 2023, nor the purpose for which any such offer was made;
- (e) say that the allegation in subparagraph (b) is embarrassing; and
- (f) otherwise deny the allegations.

57 The defendants do not know and cannot admit the allegations in paragraph 57.

58 As to paragraph 58, the defendants:

- (a) deny that the first defendant or the second defendant ever offered Product Care for sale to Mr Daglas;
- (b) refer to and repeat paragraphs 2(c), 17, 21 and 22 above;
- (c) say further that, if Harvey Norman Darwin offered Product Care to Mr Daglas in December 2023, it did so in the course of conducting its Franchised Business as an independent Franchisee and not on behalf of either the first defendant or the second defendant;
- (d) do not know and cannot admit whether Harvey Norman Darwin offered Product Care for sale to Mr Daglas in December 2023, nor the purpose for which any such offer was made; and
- (e) otherwise deny the allegations.

59 As to paragraph 59, the defendants:

- (a) refer to and repeat paragraphs 2(b) and 23(b)(iv) above; and
- (b) otherwise deny the allegations.

60 As to paragraph 60, the defendants:

- (a) deny that the first defendant or the second defendant provided the Product Care Terms and Conditions to Mr Daglas;
- (b) say further that, if Harvey Norman Darwin did so, it did so in the course of conducting its Franchised Business as an independent Franchisee and not on behalf of either the first defendant or the second defendant;
- (c) refer to and repeat paragraphs 17, 21 and 22 above;

- (d) do not know and cannot admit whether Harvey Norman Darwin provided a copy of the Product Care Terms and Conditions to Mr Douglas, nor when it was provided; and
- (e) otherwise deny the allegations.

61 As to paragraph 61, the defendants:

- (a) say that Product Care did not have any of the limitations pleaded in paragraphs 36 to 42 of the Statement of Claim;
- (b) refer to and repeat paragraphs 17, 21, 22 and 36 to 42 above;
- (c) do not know what the salesperson employed by Harvey Norman Darwin who sold Relevant Goods with Product Care to Mr Douglas said or did not say to Mr Douglas about Product Care;
- (d) say further that anything said or done by the salesperson employed by Harvey Norman Darwin in the course of selling Relevant Goods with Product Care to Mr Douglas was done on behalf of Harvey Norman Darwin in the course of conducting its Franchised Business as an independent Franchisee, and not on behalf of either the first defendant or the second defendant; and
- (e) otherwise deny the allegations.

62 The defendants refer to and repeat paragraphs 23 and 55 to 60 above and deny the allegations in paragraph 62.

D.2.2 Mr Douglas' purchase of Product Care – Douglas Second Purchase

63 The defendants do not know and cannot admit the allegations in paragraph 63.

64 As to paragraph 64, the defendants:

- (a) deny that the first defendant or the second defendant ever offered Product Care to Mr Douglas;
- (b) refer to and repeat paragraphs 5(c), 17, 21 and 22 above;
- (c) say further that, if Harvey Norman Darwin offered Product Care to Mr Douglas on or around 12 March 2024, it did so in the course of conducting its Franchised Business as an independent Franchisee and not on behalf of either the first defendant or the second defendant;
- (d) do not know and cannot admit whether Harvey Norman Darwin offered Product Care to Mr Douglas on 12 March 2024, nor the purpose for which any such offer was made; and
- (e) otherwise deny the allegations.

65 As to paragraph 65, the defendants:

- (a) refer to and repeat paragraphs 2(b) and 23(b)(iv) above; and
- (b) otherwise deny the allegations.

66 As to paragraph 66, the defendants:

- (a) deny that the first defendant or the second defendant provided the Product Care Terms and Conditions to Mr Douglas and say further that, if Harvey Norman Darwin did so, it did so in the course of conducting its Franchised Business as an independent Franchisee and not on behalf of either the first defendant or the second defendant;
- (b) refer to and repeat paragraphs 17, 21 and 22 above;

- (c) do not know and cannot admit whether Harvey Norman Darwin provided a copy of the Product Care Terms and Conditions to Mr Daglas, nor when it was provided; and
- (d) otherwise deny the allegations.

67 As to paragraph 67, the defendants:

- (a) say that Product Care did not have any of the limitations pleaded in paragraphs 36 to 42 of the Statement of Claim;
- (b) refer to and repeat paragraphs 17, 21, 22 and 36 to 42 above;
- (c) do not know what the salesperson employed by Harvey Norman Darwin who sold Relevant Goods with Product Care to Mr Daglas said or did not say to Mr Daglas about Product Care;
- (d) say further that anything said or done by the salesperson employed by Harvey Norman Darwin in the course of selling Relevant Goods with Product Care to Mr Daglas was done on behalf of Harvey Norman Darwin in the course of conducting its Franchised Business as an independent Franchisee, and not on behalf of either the first defendant or the second defendant; and
- (e) otherwise deny the allegations.

68 The defendants refer to and repeat paragraphs 23 and 63 to 66 above and deny the allegations in paragraph 68.

D.2.3 Mr Douglas' Product Care

69 As to paragraph 69, the defendants:

- (a) refer to and repeat paragraph 5(d) above; and
- (b) otherwise deny the allegations.

70 As to paragraph 70, the defendants:

- (a) say that the Product Care Term for Mr Douglas' First Purchase:
 - (i) will commence on 16 February 2026 (being the date of expiry of the manufacturer's 24-month warranty on the Relevant Goods comprising Mr Douglas' First Purchase, which manufacturer's warranty commenced on the date the goods the subject of Mr Douglas' First Purchase were delivered); and
 - (ii) will end on 15 February 2030 unless Mr Douglas receives a replacement, store credit or cash settlement under Product Care during this period, at which point his Product Care Term for the replaced good would end; and
- (b) otherwise deny the allegations.

71 As to paragraph 71, the defendants:

- (a) say that the Product Care Term for Mr Douglas' Second Purchase:
 - (i) will commence on 8 May 2026 (being the date of expiry of the manufacturer's 24-month warranty on the Relevant Good comprising Mr Douglas' Second Purchase, which manufacturer's warranty

commenced on the date the good the subject of Mr Douglas' Second Purchase was delivered); and

- (ii) will end on 7 May 2029 unless Mr Douglas receives a replacement, store credit or cash settlement under Product Care during this period, at which point his Product Care Term for the replaced good would end; and

- (b) otherwise deny the allegations.

D.2.4 Mr Douglas' protection under the Australian Consumer Law

72 As to paragraph 72, the defendants:

- (a) admit that Mr Douglas' First Purchase and Mr Douglas' Second Purchase were in trade and commerce;
- (b) deny that the first defendant or the second defendant supplied the goods the subject of Mr Douglas' First Purchase or Mr Douglas' Second Purchase to him for the purposes of s 54(1) of the ACL or otherwise;
- (c) admit that Harvey Norman Darwin supplied the goods the subject of Mr Douglas' First Purchase and the goods the subject of Mr Douglas' Second Purchase to him for the purposes of s 54(1) of the ACL; and
- (d) otherwise deny the allegations.

73 As to paragraph 73, the defendants:

- (a) refer to and repeat paragraph 3(b) and 72 above;
- (b) say further that, to the extent Mr Douglas had the entitlements relating to the Statutory Guarantee under the ACL, his entitlements were those pleaded in

paragraphs 29 to 35 above in relation to Mr Douglas' First Purchase and Mr Douglas' Second Purchase; and

- (c) otherwise deny the allegations.

D.2.5 Mr Douglas' Product Care limitations

74 The defendants refer to and repeat paragraphs 36 to 43 and 69 to 73 above and deny the allegations in paragraph 74.

D.3 Group Members

D.3.1 Group Members' purchase of Product Care

75 As to paragraph 75, the defendants:

- (a) admit that, during the Claim Period, Group Members acquired Relevant Goods by attending Harvey Norman Retail Entities in person at Branded Complexes or purchasing Relevant Goods through the Websites;
- (b) refer to and repeat subparagraph 23(b)(iii) above; and
- (c) otherwise deny the allegations.

76 As to paragraph 76, the defendants:

- (a) refer to and repeat paragraphs 2(b) and 23 above;
- (b) say that the allegation that Group Members acquired Product Care in "some or all" of the circumstances pleaded at paragraph 23(a) to (g) is vague and embarrassing;
- (c) say that there is no paragraph 23(g) of the Statement of Claim; and
- (d) otherwise deny the allegations in paragraph 76.

D.3.2 Group Members' Product Care

77 As to paragraph 77, the defendants:

- (a) refer to and repeat subparagraph 26(b) and say that the brochures set out in Schedule A of the Statement of Claim were the version of the Product Care Terms and Conditions for Franchisees to use during each of the periods set out in Schedule A;
- (b) do not know and cannot admit whether every customer who purchased a Relevant Good with Product Care during the Claim Period was provided with the version of the Product Care Terms and Conditions for the time of the customer's purchase; and
- (c) otherwise deny the allegations.

78 As to paragraph 78, the defendants:

- (a) refer to and repeat paragraph 27 above; and
- (b) otherwise deny the allegations.

D.3.3 Group Members' protection under the Australian Consumer Law

79 As to paragraph 79, the defendants:

- (a) admit that the acquisition by Group Members of Relevant Goods was in trade and commerce;
- (b) deny that the first defendant or the second defendant supplied Relevant Goods to Group Members for the purposes of s 54(1) of the ACL or otherwise;

- (c) admit that Harvey Norman Retail Entities supplied Relevant Goods to Group Members for the purposes of s 54(1) of the ACL;
- (d) repeat paragraph 75 above; and
- (e) otherwise deny the allegations.

80 As to paragraph 80, the defendants:

- (a) refer to and repeat paragraph 8(b) above and admit that consumers (within the meaning of s 3 of the ACL) had the benefit of the Statutory Guarantee under the ACL and the entitlements admitted or otherwise set out in paragraphs 29 to 35 above in relation to the purchase of Relevant Goods from Harvey Norman Retail Entities; and
- (b) otherwise deny the allegations.

D.3.4 Group Members' Product Care limitations

81 The defendants refer to and repeat paragraphs 36 to 43 and 77 to 80 above and deny the allegations in paragraph 81.

E MISLEADING OR DECEPTIVE CONDUCT

E.1 Introductory matters

82 As to paragraph 82, the defendants:

- (a) refer to and repeat paragraphs 89, 90, 92, 93, 95, 96, 98, 102, 106 and 114 below;
- (b) deny that any of the conduct pleaded in Section E of the Statement of Claim was the conduct of the first defendant or the second defendant;

- (c) say further that, to the extent that any of the conduct alleged in Section E occurred, it was conduct of the Franchisees (or some of them);
- (d) admit that, to the extent that any of the conduct pleaded in Section E occurred, it was in trade or commerce; and
- (e) otherwise deny the allegations.

83 As to paragraph 83, the defendants:

- (a) say that Product Care was not a facility through which, or through the acquisition of which, a person “manages financial risk” for the purposes of s 12BAA(1)(b) and 5(a) of the ASIC Act or ss 763A(1)(b) and 763C(a) of the *Corporations Act 2001* (Cth) (**Corporations Act**);
- (b) say alternatively that, to the extent Product Care is a facility through which, or through the acquisition of which, a person manages financial risk for the purposes of the sections referred to in subparagraph (a) above:
 - (i) Product Care is not a financial product because it is:
 - (A) an incidental component of a facility that also has other components; or
 - (B) a facility that is incidental to one or more other facilities, within the meaning of s 763E(1)(a)(i) or (ii) of the Corporations Act (the other components or other facility(ies) being the components or facility(ies) relating to the purchase of the Relevant Good with which Product Care is purchased); and

(ii) when the purchase of the Relevant Good with Product Care is considered as a whole, it is reasonable to assume that the main purpose of the purchase is not managing financial risk within the meaning of s 763E(1)(b)(i) or (ii); and

(c) otherwise deny the allegations.

84 The defendants refer to and repeat paragraph 83 above and deny the allegations in paragraph 84.

85 The defendants refer to and repeat paragraphs 17, 21, 22 and 83 above and deny the allegations in paragraph 85.

86 The defendants refer to and repeat paragraphs 17, 21, 22 and 85 above and deny the allegations in paragraph 86.

87 The defendants refer to and repeat paragraphs 84, 85 and 86 above and deny the allegations in paragraph 87.

88 The defendants admit the allegations in paragraph 88.

E.2 The Sales Process Representations

E.2.1 Mr Wong

89 As to paragraph 89, the defendants:

- (a) refer to and repeat paragraphs 17, 21 to 23 and 44 to 49 above;
- (b) deny that the first defendant or the second defendant made any representation through or by Harvey Norman Nunawading to Mr Wong;

- (c) do not know and cannot admit what, if anything, Harvey Norman Nunawading represented to Mr Wong in the course of Mr Wong's Purchase; and
- (d) otherwise deny the allegations.

90 As to paragraph 90, the defendants:

- (a) refer to and repeat paragraphs 54, 87, 89(a) and (b) above;
- (b) say that the conduct pleaded in paragraph 89, to the extent it occurred, was not conduct of the first defendant or the second defendant;
- (c) say further or alternatively that, to the extent one or more of the representations alleged in subparagraphs 89(d), (e), (f)(i) or (g) were made by the first defendant or the second defendant (which is denied), none of those representations was misleading or deceptive or likely to mislead or deceive for the reasons set out in paragraphs 35A to 42 above; and
- (d) otherwise deny the allegations.

91 As to paragraph 91, the defendants:

- (a) refer to and repeat paragraphs 17, 21, 22, 87 and 89(c) above;
- (b) say that, to the extent one or more of the representations alleged in subparagraphs 89(d), (e), (f)(i) or (g) were made by Harvey Norman Nunawading, none of those representations was misleading or deceptive or likely to mislead or deceive for the reasons set out in paragraphs 35A to 42 above;

- (c) say further or alternatively that, even if Harvey Norman Nunawading did make representations that were misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act, s 1041H of the Corporations Act, or s 18 of the ACL (which is denied), neither the first defendant nor the second defendant was knowingly involved in any such contravention; and
- (d) otherwise deny the allegations.

E.2.2 Mr Douglas

92 As to paragraph 92, the defendants:

- (a) refer to and repeat paragraphs 17, 21 to 23, 55 to 62 and 64 to 68 above;
- (b) deny that the first defendant or the second defendant made any representation through or by Harvey Norman Darwin to Mr Douglas;
- (c) do not know and cannot admit what, if anything, Harvey Norman Darwin represented to Mr Douglas in the course of Mr Douglas' First Purchase or Mr Douglas' Second Purchase; and
- (d) otherwise deny the allegations.

93 As to paragraph 93, the defendants:

- (a) refer to and repeat paragraphs 74, 87, 92(a) and (b) above;
- (b) say that the conduct pleaded in paragraph 92, to the extent it occurred, was not conduct of the first defendant or the second defendant;
- (c) say further or alternatively that, to the extent one or more of the representations alleged in subparagraphs 89(d), (e), (f)(i) or (g) were made by

the first defendant or the second defendant (which is denied), none of those representations was misleading or deceptive or likely to mislead or deceive for the reasons set out in paragraphs 35A to 42 above; and

(d) otherwise deny the allegations.

94 As to paragraph 94, the defendants:

- (a) refer to and repeat paragraphs 17, 21, 22, 87 and 93(c) above;
- (b) say that, to the extent one or more of the representations alleged in subparagraphs 89(d), (e), (f)(i) or (g) were made by Harvey Norman Darwin, none of those representations was misleading or deceptive or likely to mislead or deceive for the reasons set out in paragraphs 35A to 42 above;
- (c) say further or alternatively that, even if Harvey Norman Darwin did make representations that were misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act, s 1041H of the Corporations Act or s 18 of the ACL (which is denied), neither the first defendant nor the second defendant was knowingly involved in any such contravention; and
- (d) otherwise deny the allegations.

E.2.3 Group Members

95 As to paragraph 95, the defendants:

- (a) refer to and repeat paragraphs 17, 21, 22 and 75 to 76 above;
- (b) deny that the first defendant or the second defendant made any representation through or by Harvey Norman Retail Entities to Group

Members during the course of Group Members' purchase of Relevant Goods with Product Care;

- (c) do not know and cannot admit what, if anything, a Harvey Norman Retail Entity represented to a Group Member during the course of a Group Member's purchase of Relevant Goods;
- (d) say further that the question of what, if anything, a particular Harvey Norman Retail Entity represented to an individual Group Member while completing a particular sale of a Relevant Good with Product Care will turn on the individual circumstances of each sale and is not suitable for determination in a group proceeding; and
- (e) otherwise deny the allegations.

96 As to paragraph 96, the defendants:

- (a) refer to and repeat paragraph 87 and subparagraphs 95(a), (b) and (d) above;
- (b) say that the conduct pleaded in paragraph 95, to the extent it occurred, was not conduct of the first defendant or the second defendant;
- (c) say further or alternatively that, to the extent one or more of the representations alleged in subparagraphs 89(d), (e), (f)(i) or (g) were made by the first defendant or the second defendant (which is denied), none of those representations was misleading or deceptive or likely to mislead or deceive for the reasons outlined in paragraphs 35A to 42 above; and
- (d) otherwise deny the allegations.

97 As to paragraph 97, the defendants:

- (a) refer to and repeat paragraphs 17, 21, 22, 87, 95(c) and (d) above;
- (b) say further that, to the extent one or more of the representations alleged in subparagraphs 89(d), (e), (f)(i) or (g) were made by Harvey Norman Retail Entities, none of those representations was misleading or deceptive or likely to mislead or deceive for the reasons outlined in paragraphs 35A to 42 above;
- (c) say further or alternatively that, even if Harvey Norman Retail Entities did make representations that were misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act, s 1041H of the Corporations Act or s 18 of the ACL (which is denied), neither the first defendant nor the second defendant was knowingly involved in any such contravention; and
- (d) otherwise deny the allegations.

E.3 Misleading conduct by omission

E.3.1 Mr Wong

98 As to paragraph 98, the defendants:

- (a) as to the allegation in subparagraph (a), refer to and repeat paragraphs 44 to 49 above;
- (b) admit that 'Harvey Norman' is a well-known and long-established brand which would reasonably be considered to be reputable, ethical and reliable;
- (c) refer to and repeat paragraph 53 above and do not admit that Mr Wong had the benefit of the Statutory Guarantee in relation to Mr Wong's Purchase;

- (d) deny the allegations in subparagraph (d) and:
 - (i) refer to and repeat paragraphs 19(b)(vii) and (viii), 36 to 42 and 54 above;
 - (ii) say further that Mr Wong did not acquire, nor was there a material risk that he acquired, Product Care in the circumstances alleged in subparagraphs (i) to (iii) because:
 - (A) to the extent Mr Wong was provided with the Product Care Terms and Conditions prior to completing Mr Wong's Purchase, those terms and conditions contained the Essential Information;
 - (B) Product Care did not have any of the limitations pleaded at paragraphs 36 to 42 and 54 of the Statement of Claim; and
 - (C) Product Care had the benefits outlined at paragraph 35A above; and
 - (iii) accordingly, neither the first defendant nor the second defendant knew or ought to have known of the matters alleged in subparagraph (d) of the Statement of Claim; and
 - (iv) refer to and repeat paragraph 101(a) and (b) below; and
- (e) otherwise deny the allegations.

99 The defendants refer to and repeat paragraphs 17, 21, 22, 36 to 42, 54 and 98 above and deny the allegations in paragraph 99.

100 The defendants refer to and repeat paragraphs 48, 87, 98 and 99 above and deny the allegations in paragraph 100.

101 As to paragraph 101, the defendants:

- (a) refer to and repeat paragraphs 17, 21, 22, 48, 87 and 98(d)(i) and (ii) above;
- (b) say accordingly that Harvey Norman Nunawading neither knew, nor ought to have known, of the matters alleged in subparagraph 98(d) of the Statement of Claim;
- (c) deny that Harvey Norman Nunawading engaged in misleading or deceptive conduct or conduct likely to mislead or deceive;
- (d) say further or alternatively that, to the extent that Harvey Norman Nunawading did contravene one or more of the provisions alleged in paragraph 101(a) (which is denied), neither the first defendant nor the second defendant was knowingly involved in any such contravention; and
- (e) otherwise deny the allegations.

E.3.2 Mr Douglas

102 As to paragraph 102, the defendants:

- (a) as to the allegation in subparagraph (a), refer to and repeat paragraphs 55 to 62 (in relation to Mr Douglas' First Purchase) and 63 to 68 (in relation to Mr Douglas' Second Purchase) above;
- (b) admit that 'Harvey Norman' is a well-known and long-established brand which would reasonably be considered to be reputable, ethical and reliable;

- (c) refer to and repeat paragraph 73 above and do not admit that Mr Douglas had the benefit of the Statutory Guarantee in relation to Mr Douglas' First Purchase and Mr Douglas' Second Purchase;
- (d) deny the allegations in subparagraph (d) and:
 - (i) refer to and repeat paragraphs 19(b)(vii) and (viii), 36 to 42 and 74 above;
 - (ii) say further that Mr Douglas did not acquire, nor was there a material risk that he acquired, Product Care in the circumstances alleged in subparagraphs (i) to (iii) because:
 - (A) to the extent Mr Douglas was provided with the Product Care Terms and Conditions prior to completing Mr Douglas' First Purchase and Mr Douglas' Second Purchase, those terms and conditions contained the Essential Information;
 - (B) Product Care did not have any of the limitations pleaded at paragraphs 36 to 42 and 74 of the Statement of Claim; and
 - (C) Product Care had the benefits outlined at paragraph 35A above; and
 - (iii) accordingly, neither the first defendant nor the second defendant knew or ought to have known of the matters pleaded in subparagraph (d) of the Statement of Claim;
 - (iv) refer to and repeat paragraph 105(a) and (b) below; and
- (e) otherwise deny the allegations.

- 103 The defendants refer to and repeat paragraphs 17, 21, 22, 23(b)(v) and 102 above and deny the allegations in paragraph 103.
- 104 The defendants refer to and repeat paragraphs 61, 67, 87, 102 and 103 above and deny the allegations in paragraph 104.
- 105 As to paragraph 105, the defendants:
- (a) refer to and repeat paragraphs 17, 21, 22, 61, 67, 87 and 102(d)(i) and (ii) above;
 - (b) say accordingly that Harvey Norman Darwin neither knew, nor ought to have known, of the matters alleged in subparagraph 102(d) of the Statement of Claim;
 - (c) deny that Harvey Norman Darwin engaged in misleading or deceptive conduct or conduct likely to mislead or deceive;
 - (d) say further or alternatively that, to the extent that Harvey Norman Darwin did contravene one or more of the provisions alleged in paragraph 105(a) (which is denied), neither the first defendant nor the second defendant was knowingly involved in any such contravention; and
 - (e) otherwise deny the allegations.

E.3.3 Group Members

- 106 As to paragraph 106, the defendants:
- (a) as to the allegation in subparagraph (a), refer to and repeat paragraphs 75 to 76 above;

- (b) admit that 'Harvey Norman' is a well-known and long-established brand which would reasonably be considered to be reputable, ethical and reliable;
- (c) refer to and repeat paragraphs 8(b) and 80 above and admit that "consumers" (within the meaning of s 3 of the ACL) had the benefit of the Statutory Guarantee in relation to Relevant Goods they purchased from Franchisees;
- (d) deny the allegations in subparagraph (d) and:
 - (i) refer to and repeat paragraphs 19(b)(vii) and (viii), 36 to 42, and 81 above;
 - (ii) say further that Group Members did not acquire, nor was there a material risk that they acquired, Product Care in the circumstances alleged in subparagraphs (i) to (iii) because:
 - (A) to the extent Group Members were provided with the Product Care Terms and Conditions prior to completing their purchase of the Relevant Goods with Product Care, those terms and conditions contained the Essential Information;
 - (B) Product Care did not have any of the limitations pleaded at paragraphs 36 to 42 and 81 of the Statement of Claim; and
 - (C) Product Care had the benefits outlined at paragraph 35A above; and

- (iii) accordingly, neither the first defendant nor the second defendant knew or ought to have known of the matters pleaded in subparagraph (d) of the Statement of Claim;
- (iv) refer to and repeat paragraph 109(a) and (b) below; and
- (e) otherwise deny the allegations.

107 The defendants proceed on the assumption that the reference to Harvey Norman Nunawading in paragraph 107 should be a reference to Harvey Norman Retail Entities and refer to and repeat paragraphs 17, 21, 22 and 106 above and deny the allegations in paragraph 107.

108 The defendants refer to and repeat paragraphs 76, 87, 106 and 107 above and deny the allegations in paragraph 108.

109 As to paragraph 109, the defendants:

- (a) refer to and repeat paragraphs 17, 21, 22, 76, 87, 106(d)(i) and (ii) and 107 above;
- (b) say accordingly that Harvey Norman Retail Entities neither knew, nor ought to have known, of the matters alleged in subparagraph 106(d) of the Statement of Claim;
- (c) deny that Harvey Norman Retail Entities engaged in misleading or deceptive conduct or conduct likely to mislead or deceive;
- (d) say further or alternatively that, to the extent that Harvey Norman Retail Entities did contravene one or more of the provisions alleged in paragraph

109(a) (which is denied), neither the first defendant nor the second defendant was knowingly involved in any such contravention; and

(e) otherwise deny the allegations.

E.4 Brochure Representations

E.4.1 Representations

110 The defendants admit the allegations in paragraph 110.

111 The defendants do not plead to paragraph 111 as it contains no allegations.

112 As to paragraph 112, the defendants:

- (a) say that the Product Care Terms and Conditions informed the purchaser that the purchaser had rights and remedies under the ACL and included a statement to the effect that the purchaser's rights under Product Care were in addition to the purchaser's rights and remedies under the ACL;
- (b) refer to and repeat paragraphs 19(b)(vii) and (viii), 26(b), 76 and 77 above;
- (c) say that the Product Care Terms and Conditions did not represent that consumers could obtain a replacement of Relevant Goods "in the event of fault in or failure of" the Relevant Goods;
- (d) say that they rely on the full terms and effect of the Product Care Terms and Conditions; and
- (e) otherwise deny the allegations.

113 The defendants refer to and repeat paragraphs 17, 21, 22 and 112 above and deny the allegations in paragraph 113.

114 The defendants refer to and repeat paragraphs 17, 19(b), 21, 22 and 112 above and deny the allegations in paragraph 114.

115 As to paragraph 115, the defendants:

- (a) refer to and repeat paragraph 112 above;
- (b) say that, if any of the representations alleged in paragraph 112 were made (which is denied):
 - (i) they were not representations as to future matters within the meaning of s 12BB of the ASIC Act or s 769C of the Corporations Act; and
 - (ii) the defendants do not know and cannot admit whether those representations were altered, modified or withdrawn by the Franchisee or any other person prior to the expiry of the Cooling Off Period or at all; and
- (c) otherwise deny the allegations.

E.4.2 The Additional Protection Representation was misleading and deceptive

116 As to paragraph 116, the defendants:

- (a) refer to and repeat subparagraphs 19(b)(vii) and (viii) and paragraphs 35A and 112 above;

- (b) say that, if the Additional Protection Representation was made (which is denied), it was not misleading or deceptive or likely to mislead or deceive because:
 - (i) the Product Care Terms and Conditions included the Essential Information which informed consumers of their rights under the ACL and the difference between those rights and Product Care;
 - (ii) the Group Member's rights under Product Care were in addition to, and did not detract from, the purchaser's rights and remedies under the ACL; and
 - (iii) Product Care had the Product Care Benefits, which were in addition to consumers' rights under the ACL;
- (c) say further that, if the Additional Protection Representation was made (which is denied) and was a representation with respect to future matters (which is denied), there were reasonable grounds for that representation at the time it was made, namely the matters in subparagraphs (b)(i), (ii) and (iii) above; and
- (d) otherwise deny the allegations.

117 As to paragraph 117, the defendants:

- (a) refer to and repeat paragraphs 17, 21, 22, 26(b), 87, 112, 114, 115 and 116;
- (b) deny that the Franchisees contravened s 12DA(1) of the ASIC Act, s 1041H of the Corporations Act or s 18 of the ACL;

- (c) say further or alternatively that, if any Franchisee did contravene any of the provisions referred to in subparagraph (b) above (which is denied), neither the first defendant nor the second defendant were involved in that contravention within the meaning of s 12GF of the ASIC Act, s 1041I of the Corporations Act or s 236 of the ACL; and
- (d) otherwise deny the allegations.

118 The defendants refer to and repeat paragraphs 17, 21 and 22 above and deny the allegations in paragraph 118.

E.4.3 The Dual Protection Representation was misleading and deceptive

119 As to paragraph 119, the defendants:

- (a) refer to and repeat subparagraphs 19(b)(vii) and (viii) and paragraphs 35A and 112 above;
- (b) say that, if the Dual Protection Representation was made (which is denied), it was not misleading or deceptive or likely to mislead or deceive because:
 - (i) the Product Care Terms and Conditions included the Essential Information which informed consumers of their rights under the ACL and the difference between those rights and Product Care;
 - (ii) the Group Members' rights under Product Care during the Product Care Term were in addition to, and did not detract from, the purchaser's rights and remedies (if any) under the ACL during the Product Care Term; and

(iii) Product Care had the Product Care Benefits, which were in addition to consumers' rights under the ACL;

(c) say further that, if the Dual Protection Representation was made (which is denied) and was a representation with respect to future matters (which is denied), there were reasonable grounds for that representation at the time it was made, namely the matters in subparagraphs (b)(i), (ii) and (iii) above; and

(d) otherwise deny the allegations.

120 As to paragraph 120, the defendants:

(a) refer to and repeat paragraphs 17, 21, 22, 26(b), 87, 112, 114, 115 and 119;

(b) deny that Franchisees contravened s 12DA(1) of the ASIC Act, s 1041H of the Corporations Act or s 18 of the ACL;

(c) say further or alternatively that, if any Franchisees did contravene any of the provisions referred to in subparagraph (b) above (which is denied), neither the first defendant nor the second defendant were involved in that contravention within the meaning of s 12GF of the ASIC Act, s 1041I of the Corporations Act or s 236 of the ACL; and

(d) otherwise deny the allegations.

121 The defendants deny the allegations in paragraph 121.

E.4.4 The Certainty Representation was misleading and deceptive

122 As to paragraph 122, the defendants:

(a) refer to and repeat paragraph 112 above;

(b) say further or alternatively that, if the Certainty Representation was made (which is denied), the defendants:

(i) refer to and repeat subparagraphs 19(b)(vii) and (viii) and paragraph 35A above;

(ii) say that it was not misleading or deceptive or likely to mislead or deceive because:

(1) the Product Care Terms and Conditions included the Essential Information which properly informed consumers of their rights under the ACL and the difference between those rights and Product Care;

(2) Product Care had the Product Care Benefits, which were in addition to consumers' rights under the ACL; and

(3) the Product Care Benefits included the Temporal Certainty Benefit;

(iii) say further that, if the Certainty Representation was made (which is denied) and was a representation with respect to future matters (which is denied), there were reasonable grounds for that representation at the time it was made, namely the matters in subparagraph (b)(ii) above; and

(c) otherwise deny the allegations.

123 As to paragraph 123, the defendants:

(a) refer to and repeat paragraphs 17, 21, 22, 26(b), 87, 112, 114, 115 and 122;

- (b) deny that Harvey Norman Retail Entities contravened s 12DA(1) of the ASIC Act, s 1041H of the Corporations Act or s 18 of the ACL;
- (c) say further or alternatively that, if Harvey Norman Retail Entities did contravene any of the provisions referred to in subparagraph (b) above (which is denied), neither the first defendant nor the second defendant were involved in that contravention within the meaning of s 12GF of the ASIC Act, s 1041I of the Corporations Act or s 236 of the ACL; and
- (d) otherwise deny the allegations.

124 The defendants refer to and repeat paragraphs 17, 21 and 22 and deny the allegations in paragraph 124.

E.4.5 The Group Members were not reasonably able to take advantage of the Cooling Off Period

125 The defendants refer to and repeat paragraphs 19(b)(vii) and (viii), 23(b)(v), 75, 76 and 112 to 124 above and deny the allegations in paragraph 125.

F UNCONSCIONABLE CONDUCT

126 As to paragraph 126, the defendants:

- (a) say that neither defendant engaged in the conduct pleaded in paragraph 129 of the Statement of Claim;
- (b) say further that the plaintiffs do not allege that “Harvey Norman Retail Entities” engaged in any conduct in Section F of the Statement of Claim;
- (c) admit that, to the extent that any of the conduct pleaded in Section F occurred, it was in trade or commerce; and
- (d) otherwise deny the allegations.

- 127 The defendants refer to and repeat paragraphs 17, 21, 22, 83 to 86 and
subparagraphs 126(a) to (b) above and deny the allegations in paragraph 127.
- 128 The defendants refer to and repeat paragraph 88 above.
- 129 The defendants refer to and repeat paragraphs 12 to 25 above and deny the
allegations in paragraph 129.
- 130 As to paragraph 130, the defendants:
- (a) refer to and repeat paragraph 129 above;
 - (b) alternatively, if either defendant had the practices, processes or systems
pleaded at paragraph 129 (which is denied), they:
 - (i) refer to and repeat paragraphs 29 to 35A above; and
 - (ii) say that neither defendant supplied any Relevant Goods (either with
or without Product Care) or was obliged to honour without charge
any consumer protection provisions of the ACL that are referred to in
paragraphs 29 to 35 of the Statement of Claim; and
 - (c) otherwise deny the allegations.
- 131 The defendants refer to and repeat paragraph 130 above and deny the allegations in
paragraph 131.
- 132 The defendants refer to and repeat paragraphs 126 to 131 above, refer to and repeat
paragraphs 19(b)(vii) and (viii) and 23(b)(v) above, and deny the allegations in
paragraph 132.

G TRADING WITHOUT AN AFSL

G.1 Introductory matters

133 The defendants refer to and repeat paragraph 87 and deny the allegations in paragraph 133.

134 The defendants admit the allegations in paragraph 134.

135 The defendants refer to and repeat paragraph 133 above and deny the allegations in paragraph 135.

136 The defendants refer to and repeat paragraph 133 above and deny the allegations in paragraph 136.

G.2 Mr Wong

137 The defendants refer to and repeat paragraphs 133, 135 and 136 above and deny the allegations in paragraph 137.

138 The defendants refer to and repeat paragraphs 135 and 137 above and deny the allegations in paragraph 138.

139 The defendants refer to and repeat paragraphs 17, 21, 22 and 137 above and deny the allegations in paragraph 139.

140 The defendants refer to and repeat paragraphs 135 and 136 above and deny the allegations in paragraph 140.

G.2.1 Mr Douglas

141 The defendants refer to and repeat paragraphs 133, 135 and 136 above and deny the allegations in paragraph 141.

142 The defendants refer to and repeat paragraphs 135 and 141 above and deny the allegations in paragraph 142.

143 The defendants refer to and repeat paragraphs 17, 21, 22 and 141 above and deny the allegations in paragraph 143.

144 The defendants refer to and repeat paragraphs 135 and 136 above and deny the allegations in paragraph 144.

G.2.2 Group Members

145 The defendants refer to and repeat paragraphs 133, 135 and 136 above and deny the allegations in paragraph 145.

146 The defendants refer to and repeat paragraphs 135 and 145 above and deny the allegations in paragraph 146.

147 The defendants refer to and repeat paragraphs 17, 21, 22, 136 and 145 above and deny the allegations in paragraph 147.

148 The defendants refer to and repeat paragraphs 135 and 145 above and deny the allegations in paragraph 148.

H CAUSATION AND LOSS

H.1 Causation

H.1.1 Mr Wong

149 The defendants deny the allegations in paragraph 149.

150 The defendants refer to and repeat paragraphs 36 to 42, 54, 98(d) and 137 above and deny the allegations in paragraph 150.

151 The defendants refer to and repeat paragraphs 138 and 139 above and deny the allegations in paragraph 151.

152 The defendants refer to and repeat paragraphs 126 to 132 above and deny the allegations in paragraph 152.

H.1.2 Mr Daglas

153 The defendants deny the allegations in paragraph 153.

154 The defendants refer to and repeat paragraphs 36 to 42, 74, 102(d) and 141 above and deny the allegations in paragraph 154.

155 The defendants refer to and repeat paragraphs 142 and 143 and deny the allegations in paragraph 155.

156 The defendants refer to and repeat paragraphs 126 to 132 above and deny the allegations in paragraph 156.

H.1.3 Group Members

157 The defendants deny the allegations in paragraph 157.

158 The defendants refer to and repeat paragraphs 36 to 42, 81, 106(d) and 145 above and deny the allegations in paragraph 158.

159 The defendants refer to and repeat paragraphs 75, 76, 111, 112, 125 and 158 above and deny the allegations in paragraph 159.

160 The defendants refer to and repeat paragraphs 146 and 147 above and deny the allegations in paragraph 160.

161 The defendants refer to and repeat paragraphs 126 to 132 above and deny the allegations in paragraph 161.

H.2 Loss

H.2.1 Mr Wong

162 The defendants refer to and repeat paragraphs 149, 150, 151 and 152 above and deny the allegations in paragraph 162.

H.2.2 Mr Daglas

163 The defendants refer to and repeat paragraphs 23(b)(v), 153, 154, 155 and 156 above and deny the allegations in paragraph 163.

H.2.3 Group Members

164 The defendants refer to and repeat paragraphs 23(b)(v), 157, 158, 159, 160 and 161 above and deny the allegations in paragraph 164.

I LIABILITY OF HARVEY NORMAN

165 The defendants admit the allegations in paragraph 165.

166 As to paragraph 166, the defendants:

- (a) admit subparagraph (a);
- (b) admit that, as such, the second defendant was granted relief from the financial reporting and auditing requirements of Parts 2M.3 and 2M.4 of the Corporations Act; and
- (c) otherwise deny the allegations.

167 As to paragraph 167, the defendants:

- (a) say that clause 3.1 of the Deed of Cross-Guarantee relevantly provides that the first defendant guarantees to each "Creditor" payment in full of any

“Debt” (as those terms are defined in the Deed of Cross-Guarantee) in accordance with the Deed of Cross-Guarantee;

- (b) say further that “Debt” is relevantly defined to mean “any debt or claim which is now or at any future time admissible to proof in the winding up of [the second defendant]”;
- (c) say further that clause 3.2 relevantly provides that the Deed of Cross-Guarantee becomes enforceable in respect of the “Debt” of the second defendant:
 - (i) upon its winding up under s 459A or paragraphs 461(a) or (h) of the *Corporations Act* or as a creditors’ voluntary winding up under Division 3 of Pt 5.5 of the *Corporations Act*; or
 - (ii) in any other case, if six months after a resolution or order for its winding up any “Debt” has not been paid in full;
- (d) say further that the matters referred to in subparagraphs (c)(i) and (ii) above have not occurred and the Deed of Cross Guarantee has not become enforceable;
- (e) rely on the full terms and effect of the Deed of Cross Guarantee; and
- (f) otherwise deny the allegations.

168 As to paragraph 168, the defendants:

- (a) refer to and repeat paragraph 167 above;
- (b) say further that, to the extent the plaintiffs purport to seek a declaration that the first defendant is liable to the plaintiffs and Group Members if or to the

extent that the second defendant cannot satisfy any award for damages or other monetary relief, the plaintiffs improperly seek a declaration on a hypothetical matter because they do not allege that the second defendant cannot or will not satisfy any award for damages or other monetary relief; and

- (c) otherwise deny the allegations in paragraph 168.

Dated 16 October 2025

PHILIP CRUTCHFIELD

BANJO McLACHLAN

MADELEINE SALINGER

SCHEDULE 1

Discount vouchers and vouchers for services for each Product Care Terms and Conditions Brochure¹

Electrical Product Care

1. In respect of 31 July 2017 Electrical Product Care:
 - a. 20% off a surge protector
 - b. 10% off a cooking accessory
 - c. 10% off a coffee accessory
 - d. 10% off an audio visual accessory
 - e. 20% off a laundry accessory
 - f. 20% off a refrigeration accessory
2. In respect of 12 September 2018 Electrical Product Care:
 - a. 20% off a surge protector
 - b. 10% off a cooking accessory
 - c. 10% off a coffee accessory
 - d. 10% off an audio visual accessory
 - e. 20% off a laundry accessory
 - f. 20% off a refrigeration accessory
3. In respect of 23 May 2019 Electrical Product Care:
 - a. 20% off a surge protector
 - b. 15% off a cooking appliance accessory (including cleaning products)
 - c. 15% off an audio visual accessory (including cables and cleaning kits)
 - d. 15% off a coffee accessory (including filters, cleaning kits and other accessories)
 - e. 10% off a floor care accessory (including bags, filters, mop heads and other accessories)
 - f. 15% off a fridge accessory (including filters, cleaning kits and other accessories)
 - g. Bonus local delivery and basic old appliance removal
 - h. Redeem 50 6" x 4" photo prints per year
4. In respect of 24 June 2019 Electrical Product Care:
 - a. 20% off a surge protector

¹ As referred to in paragraph 35A(f) of the Defence. This schedule uses the terms as defined in Schedule A of the Plaintiffs' statement of claim dated 28 August 2025.

- b. 15% off a cooking appliance accessory (including cleaning products)
 - c. 15% off an audio visual accessory (including cables and cleaning kits)
 - d. 15% off a coffee accessory (including filters, cleaning kits and other accessories)
 - e. 10% off a floor care accessory (including bags, filters, mop heads and other accessories)
 - f. 15% off a fridge accessory (including filters, cleaning kits and other accessories)
 - g. Bonus local delivery (Store to Door) and basic old appliance removal
 - h. Redeem 50 6" x 4" photo prints per year
5. In respect of 1 June 2021 Electrical Product Care:
- a. 20% off a surge protector
 - b. 15% off a cooking appliance accessory (including cleaning products)
 - c. 15% off an audio visual accessory (including cables and cleaning kits)
 - d. 15% off a coffee accessory (including filters, cleaning kits and other accessories)
 - e. 10% off a floor care accessory (including bags, filters, mop heads and other accessories)
 - f. 15% off a fridge accessory (including filters, cleaning kits and other accessories)
 - g. Bonus local delivery (Store to Door) and basic old appliance removal
 - h. Redeem 50 6" x 4" photo prints per year
6. In respect of 4 October 2021 Electrical Product Care:
- a. 20% off a surge protector
 - b. 15% off a cooking appliance accessory (including cleaning products)
 - c. 15% off an audio visual accessory (including cables and cleaning kits)
 - d. 15% off a coffee accessory (including filters, cleaning kits and other accessories)
 - e. 10% off a floor care accessory (including bags, filters, mop heads and other accessories)
 - f. 15% off a fridge accessory (including filters, cleaning kits and other accessories)
 - g. Bonus local delivery (Store to Door) and basic old appliance removal
 - h. Redeem 50 6" x 4" photo prints per year
7. In respect of 1 August 2022 Electrical Product Care:
- a. 20% off a surge protector
 - b. 15% off a cooking appliance accessory (including cleaning products)
 - c. 15% off an audio visual accessory (including cables and cleaning kits)

- d. 15% off a coffee accessory (including filters, cleaning kits and other accessories)
 - e. 10% off a floor care accessory (including bags, filters, mop heads and other accessories)
 - f. 15% off a fridge accessory (including filters, cleaning kits and other accessories)
 - g. Bonus local delivery (Store to Door) and basic old appliance removal
 - h. Redeem 50 6" x 4" photo prints per year
8. In respect of 9 November 2023 Electrical Product Care:
- a. 20% off a surge protector
 - b. 15% off a cooking appliance accessory (including cleaning products)
 - c. 15% off an audio visual accessory (including cables and cleaning kits)
 - d. 15% off a coffee accessory (including filters, cleaning kits and other accessories)
 - e. 10% off a floor care accessory (including bags, filters, mop heads and other accessories)
 - f. 15% off a fridge accessory (including filters, cleaning kits and other accessories)
 - g. Bonus local delivery (Store to Door) and basic old appliance removal
 - h. Redeem 50 6" x 4" photo prints per year

Computer Product Care

9. In respect of 31 July 2017 Computer Product Care:
- a. 25% off mobile phone accessories (excludes Samsung and Apple genuine)
 - b. 25% off frames and albums
 - c. 20% off headphones
 - d. 25% off internet security
 - e. 20% off full set of ink cartridges
 - f. 30% off 12 month Tech 2 Home Premium Phone Support Subscription
 - g. Redeem 50 6" x 4" photo prints per year for three years
 - h. Annual computer Health Check for three years
10. In respect of 12 September 2018 Computer Product Care:
- a. 25% off mobile phone accessories (excludes Samsung and Apple genuine)
 - b. 25% off frames and albums
 - c. 20% off headphones
 - d. 25% off internet security
 - e. 20% off full set of ink cartridges
 - f. 30% off 12 month Tech 2 Home Premium Phone Support Subscription
 - g. Redeem 50 6" x 4" photo prints per year for three years

- h. Annual computer Health Check for three years

11. In respect of 1 February 2020 Computer Product Care:

- a. One PC Health Check per year
- b. 25% off one Tech Team Service per year
- c. 15% off one Microsoft Office 365 in store Licence Renewal per year
- d. 15% off one Internet Security in store Licence Renewal per year
- e. Redeem 50 6" x 4" photo prints per year
- f. 15% off a full set of printer ink replacements per year
- g. 20% off a photo frame per year
- h. 20% off a photo album per year
- i. One \$50 Harvey Norman, Domayne or Joyce Mayne Gift Card when you sign up or renew a 24 month Optus mobile phone plan in store

12. In respect of 1 July 2021 Computer Product Care:

- a. One PC or Mobile Health Check per year
- b. 25% off one Tech Team Service each year
- c. 25% off one Microsoft 365 or Internet Security in-store licence renewal per year
- d. Redeem 100 6" x 4" photo prints per year
- e. 25% off a Full Set of Printer Ink/Toner Replacements per year
- f. 25% off a Photo Album or Frame per year
- g. \$10 off any Canvas, Photo Book or Photo Gift
- h. 25% off a Mobile Accessory, a Tablet Accessory or a Camera Accessory
- i. 25% off Cricut Accessories when you purchase two or more
- j. 25% off a Laptop Bag or Sleeve
- k. 25% off a Connect Smart Home product
- l. 25% off Headphones or a Speaker
- m. 25% off a Garmin Fitness Tracker
- n. 25% off a Keyboard & Mouse
- o. \$50 off New Security Camera System
- p. 25% off a Modem or Router

13. In respect of 4 October 2021 Computer Product Care:

- a. One PC or Mobile Health Check per year
- b. 25% off one Tech Team Service per year
- c. 25% off one Microsoft 365 or Internet Security in-store licence renewal per year
- d. Redeem 100 6" x 4" photo prints per year
- e. 25% off a Full Set of Printer Ink/Toner Replacements per year
- f. 25% off a Photo Album or Frame per year

- g. \$10 off any Canvas, Photo Book or Photo Gift
- h. 25% off a Mobile Accessory, a Tablet Accessory or a Camera Accessory
- i. 25% off Cricut Accessories when you purchase two or more
- j. 25% off a Laptop Bag or Sleeve
- k. 25% off a Connect Smart Home product
- l. 25% off Headphones or a Speaker
- m. 25% off a Garmin Fitness Tracker
- n. 25% off a Keyboard & Mouse
- o. \$50 off New Security Camera System
- p. 25% off a Modem or Router

14. In respect of 1 August 2022 Computer Product Care:

- a. One PC or Mobile Health Check per year
- b. 25% off one TechTeam Service per year
- c. 25% off one Microsoft 365 or Internet Security in-store licence renewal per year
- d. Redeem 100 6" x 4" photo prints per year
- e. 25% off a Full Set of Printer Ink/Toner Replacements per year
- f. 25% off a Photo Album or Frame per year
- g. \$10 off any Canvas, Photo Book or Photo Gift
- h. 25% off a Mobile Accessory, a Tablet Accessory or a Camera Accessory
- i. 25% off Cricut Accessories when you purchase two or more
- j. 25% off a Laptop Bag or Sleeve
- k. 25% off a Connect Smart Home product
- l. 25% off Headphones or a Speaker
- m. 25% off a Garmin Fitness Tracker
- n. 25% off a Keyboard & Mouse
- o. \$50 off New Security Camera System
- p. 25% off a Modem or Router

15. In respect of 9 November 2023 Computer Product Care:

- a. One PC or Mobile Health Check per year
- b. 25% off one TechTeam Service per year
- c. 25% off one Microsoft 365 or Internet Security in-store licence renewal per year
- d. Redeem 100 6" x 4" photo prints per year
- e. 25% off a Full Set of Printer Ink/Toner Replacements per year
- f. 25% off a Photo Album or Frame per year
- g. \$10 off any Canvas, Photo Book or Photo Gift
- h. 25% off a Mobile Accessory, a Tablet Accessory or a Camera Accessory
- i. 25% off Cricut Accessories when you purchase two or more

- j. 25% off a Laptop Bag or Sleeve
- k. 25% off a Connect Smart Home product
- l. 25% off Headphones or a Speaker
- m. 25% off a Garmin Fitness Tracker
- n. 25% off a Keyboard & Mouse
- o. \$50 off New Security Camera System
- p. 25% off a Modem or Router

SCHEDULE 2

Vouchers for free local delivery in the relevant Product Care Terms and Conditions

Brochures²

Electrical Product Care

- 23 May 2019 Electrical Product Care (pp 2, 17)
- 24 June 2019 Electrical Product Care (pp 2, 17)
- 1 June 2021 Electrical Product Care (pp 2, 19)
- 4 October 2021 Electrical Product Care (pp 2, 19)
- 1 August 2022 Electrical Product Care (pp 2, 19)
- 9 November 2023 Electrical Product Care (pp 2, 19)

² As referred to in the particulars to paragraph 41(g) of the Defence. This schedule uses the terms as defined in Schedule A of the Plaintiffs' statement of claim dated 28 August 2025.