



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

No. S ECI 2024 04990

Case: S ECI 2024 04990

Filed on: 28/08/2025 01:59 PM

B E T W E E N

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

WRIT

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|                     |                               |                  |                                 |
|---------------------|-------------------------------|------------------|---------------------------------|
| Date of Document:   | 28 August 2025                | Solicitors Code: | 564                             |
| Filed on behalf of: | The Plaintiffs                | DX:              | N/A                             |
| Prepared by:        | Maurice Blackburn Lawyers     | Telephone:       | (07) 3016 0392                  |
|                     | Level 21, 380 La Trobe Street | Ref:             | VVM/3053156                     |
|                     | Melbourne VIC 3000            | Email:           | VMawuli@mauriceblackburn.com.au |

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TO THE DEFENDANT

**TAKE NOTICE** that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

**IF YOU INTEND TO DEFEND** the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

**YOU OR YOUR SOLICITOR** may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" with the Prothonotary by submitting the Notice of Appearance for filing electronically in RedCrest or in person at the Principal Registry, 450 Little Bourke Street, Melbourne. See [www.supremecourt.vic.gov.au](http://www.supremecourt.vic.gov.au); and

- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

**IF YOU FAIL** to file an appearance within the proper time, the plaintiff may **OBTAIN JUDGMENT AGAINST YOU** on the claim without further notice.

**\*THE PROPER TIME TO FILE AN APPEARANCE** is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in New Zealand under Part 2 of the *Trans-Tasman Proceedings Act 2010* of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the writ.

IF the plaintiff claims a debt only and you pay that debt, namely, \$ and \$ for legal costs to the plaintiff or the plaintiff's solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

**FILED** 28 August 2025

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Prothonotary

1. Place of trial — Melbourne
2. Mode of trial — Judge
3. This writ was filed for the plaintiffs by Maurice Blackburn Lawyers, of Level 21, 380 La Trobe Street, Melbourne VIC 3000, as solicitors for the plaintiffs.
4. The address of the first plaintiff is [REDACTED]
5. The address of the second plaintiff is [REDACTED]
6. The address for service of the plaintiffs is Level 21, 380 La Trobe Street, Melbourne VIC 3000.
7. The email address for service of the plaintiffs is VMawuli@mauriceblackburn.com.au.
8. The addresses of the defendants are as follows:  
 First Defendant: A1 Richmond Road, Homebush West NSW 2140  
 Second Defendant: A1 Richmond Road, Homebush West NSW 2140

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

**No. S ECI 2024 04990**

**B E T W E E N**

**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

**STATEMENT OF CLAIM**

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|                     |                               |                  |                                 |
|---------------------|-------------------------------|------------------|---------------------------------|
| Date of Document:   | 28 August 2025                | Solicitors Code: | 564                             |
| Filed on behalf of: | The Plaintiffs                | DX:              | N/A                             |
| Prepared by:        | Maurice Blackburn Lawyers     | Telephone:       | (07) 3016 0392                  |
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## A PARTIES AND GROUP MEMBERS

### A.1 Plaintiffs

1. The first plaintiff (**Mr Wong**):
  - (a) is a natural person;
  - (b) was and is a 'consumer' within the meaning of s 12BC of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and s 3 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (the **Australian Consumer Law**) in relation to his purchases the subject of this statement of claim.
2. 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:
  - (a) the following goods (the **Wong Purchase**):
    - (i) a Bosch Oven;
    - (ii) a Bosch Cooktop; and
    - (iii) a Bosch Dishwasher; and
  - (b) at about the same time as, and in connection with each of the goods comprising the Wong Purchase, an extended warranty and bundle of contractual rights known as Product Care (**Product Care**) (the terms and conditions of which were contained in a brochure entitled 'Product Care –Electrical Product Care), for a term of:
    - (i) four years in connection with the Bosch Oven and the Bosch Cooktop; and
    - (ii) three years in connection with the Bosch Dishwasher.

#### *Particulars*

*Invoice Number: 2786688 dated 29 April 2019; Product Care Numbers: PC-0107500710545 (Bosch Oven), PC-0107500710546 (Bosch Cooktop); PC-0107500710547 (Bosch Dishwasher).*

3. The second plaintiff (**Mr Daglas**):

- (a) is a natural person;
- (b) was and is a 'consumer' within the meaning of s 12BC of the ASIC Act and s 3 of the Australian Consumer Law in relation to his purchases the subject of this statement of claim.

4. On or about 12 November 2023, Mr Daglas purchased, alternatively 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**) the following goods (the **Daglas First Purchase**):

- (a) two Electrolux Steam Ovens; and
- (b) an Electrolux Induction Hob.

5. On or about 13 January 2024, Mr Daglas for the total price of \$7,135:

- (a) made full and final payment for the Daglas First Purchase; and
- (b) at about the same time, and in connection with each of the goods comprising the Daglas First Purchase pleaded at paragraph 4 above, purchased from Harvey Norman Darwin Product Care (the terms and conditions of which were contained in a brochure entitled 'Product Care – Electrical – Effective 9 November 2023') for a term of four years.

#### *Particulars*

*Invoice Number: 3461605 dated 13 January 2024; Product Care Numbers: AU-0119001156548 (first Electrolux Steam Oven), AU-0119001156549 (second Electrolux Steam Oven), AU-0119001156550 (Electrolux Induction Hob).*

6. On or about 12 March 2024, Mr Daglas purchased, alternatively agreed to purchase, from Harvey Norman Darwin an Electrolux Fridge (the **Daglas Second Purchase**).

7. On or about 3 May 2024, Mr Daglas for the total price of \$2,960:

- (a) made full and final payment for the Daglas Second Purchase; and
- (b) at about the same time, and in connection with the goods comprising the Daglas Second Purchase, purchased Product Care from Harvey Norman Darwin (the terms and conditions of which were contained in a brochure entitled 'Product Care – Electrical – Effective 9 November 2023') for a term of three years.

*Particulars*

*Invoice Number: 3511877 dated 12 March 2024; Product Care Number: AU-0119001166632.*

## **A.2 Group Members**

8. The plaintiffs commence this proceeding as a group proceeding pursuant to Part 4A of the *Supreme Court Act* 1986 (Vic) (**Supreme Court Act**) on their own behalf and on behalf of all persons (**Group Members**):

(a) who acquired from a Harvey Norman Retail Entity (defined in paragraph 13 below) between 18 September 2018 and 19 September 2024 (**Claim Period**):

(i) an item of electrical goods, an appliance, an item of white goods or a computer product (**Relevant Goods**); and, in connection with the acquisition of the Relevant Goods,

(ii) Product Care, the terms and conditions of which were contained in the brochures pleaded in Schedule A to this statement of claim;

in circumstances in which the Harvey Norman Retail Entity was:

(iii) trading and operating as either a 'Harvey Norman' store, 'Joyce Mayne' store or 'Domayne' store (**Harvey Norman Stores**); or

(iv) operating through one of the following websites, the Harvey Norman website, <https://www.harveynorman.com.au>, the Joyce Mayne website, <https://www.joycemayne.com.au> or the Domayne website, <https://www.domayne.com.au> (**Harvey Norman Websites**);

(b) who were consumers for the purposes of and within the meaning of:

(i) s 3 of Schedule 2 to the Australian Consumer Law, because:

(A) the Group Member acquired the Relevant Goods for an amount that did not exceed \$40,000 prior to 1 July 2001, or \$100,000 from 1 July 2021; and

(B) the Relevant Goods were of a kind ordinarily acquired for personal, domestic or household use or consumption; alternatively,

(ii) s 12BC of the ASIC Act;

- (c) who have suffered loss or damage by reason of the contravening conduct of at least one of the defendants as pleaded in this statement of claim;
- (d) who were not at the date of the filing of this statement of claim any of the following:
  - (i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of the first defendant;
  - (ii) a director, an officer, or an associate (as defined in ss 9 to 15 of the Corporations Act) of the defendants or either of them;
  - (iii) a Judge, Associate Judge or Judicial Registrar of the Supreme Court of Victoria or a Justice or Registrar of the High Court of Australia;
  - (iv) an officer or employee of, or other legal practitioner engaged by, Maurice Blackburn in relation to this proceeding; or
  - (v) an expert or consultant engaged by Maurice Blackburn in relation to this proceeding.

9. As at the date of the commencement of this proceeding there are seven or more Group Members.

### **A.3 Defendants**

10. The first defendant (**Harvey Norman**) is and was at all material times:

- (a) incorporated pursuant to the Corporations Act and capable of being sued;
- (b) a person within the meaning of ss 12DA and 12DB of the ASIC Act, s 1041H Corporations Act and, or alternatively, ss 18, 236 and 237 of the Australian Consumer Law; and
- (c) the holding or ultimate holding company of the second defendant (**Yoogalu**).

11. Yoogalu is and was at all material times:

- (a) incorporated pursuant to the Corporations Act and capable of being sued;
- (b) a person within the meaning of ss 12DA and 12DB of the ASIC Act, s 1041H Corporations Act and, or alternatively, ss 18, 236 and 237 of the Australian Consumer Law; and

- (c) a controlled entity of Harvey Norman within the meaning of s 50AA of the Corporations Act.

Particulars

*The plaintiffs refer to the Deed of Cross-Guarantee dated 26 June 2019 between Yoogalu and Harvey Norman, which provides, amongst other things, that Harvey Norman 'controls' Yoogalu and that Harvey Norman has power and rights over Yoogalu, such that Harvey Norman has the capacity to determine Yoogalu's operating policies.*

*Further particulars may be provided following discovery.*

## **B THE HARVEY NORMAN BUSINESS MODEL**

### **B.1 Harvey Norman Retail Entities**

12. At all material times, Harvey Norman operated an integrated retail and property business, which included retail operations in Australia.
13. During the Claim Period as part of its retail operations Harvey Norman:
  - (a) owned directly, or through subsidiaries it controlled, the trademarks Harvey Norman<sup>®</sup>, Domayne<sup>®</sup>, and Joyce Mayne<sup>®</sup>;
  - (b) directly, or through subsidiaries it controlled, entered into agreements (described as 'Harvey Norman Franchise Agreements') with entities (including Harvey Norman Nunawading and Harvey Norman Darwin):
    - (i) to use the Harvey Norman<sup>®</sup>, Domayne<sup>®</sup> or Joyce Mayne<sup>®</sup> trademarks in Australia; and
    - (ii) to conduct a retail business at or from or within the Harvey Norman Stores or through the Harvey Norman Websites,

(each, a **Harvey Norman Retail Entity**).
14. During the Claim Period, including by reason of the agreements pleaded in paragraph 13 above, Harvey Norman Retail Entities across Australia (including Harvey Norman Nunawading and Harvey Norman Darwin):
  - (a) traded through, and operated, the Harvey Norman Stores, or sections of Harvey Norman Stores, and the Harvey Norman Websites;
  - (b) were required to follow, and did follow, a strict system for the operation of the Harvey Norman Stores or sections of the Harvey Norman Stores, which

included standards, specifications, procedures and policies, providing for the uniform operation and image of all Harvey Norman Stores;

- (c) were required to obtain, and did obtain, written approval from entities controlled by Harvey Norman for any products used or offered for sale to consumers;
- (d) were required to, and did, sell Product Care to consumers;
- (e) were required to pay or transfer significant amounts of revenue received by them from consumers to entities controlled by Harvey Norman for the benefit of Harvey Norman.

15. During the Claim Period, the purported franchisor for:

- (a) Harvey Norman Darwin was H.N. Darwin Franchisor Pty Limited; and
- (b) Harvey Norman Nunawading was H.N. Nunawading Franchisor Pty Limited.

16. During the Claim Period, both H.N. Darwin Franchisor Pty Limited and H.N. Nunawading Franchisor Pty Limited:

- (a) had a registered business address and principal place of business listed with ASIC as 'Harvey Norman Holdings Ltd, A 1 Richmond Road, Homebush West NSW 2140'; and
- (b) shared common directors, each of whom were executives at and/or officers of Harvey Norman (being Gerald Harvey, Kay (Katie) Page, Chris Mentis and John Slack-Smith); and
- (c) had a share structure comprising 2 ordinary shares, for a total amount of \$2.00, each of which were held by Harvey Norman.

17. By reason of the matters pleaded in paragraphs 13 and 14 above (and paragraphs 15 and 16 for Harvey Norman Darwin and Harvey Norman Nunawading) and 24 and 25, below:

- (a) Harvey Norman conducted its retail business through the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin); and, or alternatively,
- (b) the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin) were acting for and on behalf of Harvey Norman in relation to the sale of products to consumers, including Product Care; and, or alternatively,

- (c) the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin) were acting for and on behalf of Harvey Norman in relation to the sale of products to consumers, including Product Care, at the direction or with the consent or agreement of directors of Harvey Norman (and section 12GH(2) of the ASIC Act, alternatively s 139B(2) of the Australian Consumer Law, are relied upon).

*Particulars*

*Section 12GH(2) of the ASIC Act, alternately s 139B(2) of the Australian Consumer Law are relied upon.*

## **B.2 Yoogalu's involvement**

18. Further or alternatively, during the Claim Period Yoogalu employed Harvey Norman's key management personnel, including executive directors and senior executives of Harvey Norman and the consolidated corporate group of which Harvey Norman was a part.
19. Prior to and during the Claim Period Yoogalu:
  - (a) planned, designed and created, alternatively, was involved in, or facilitated, the planning, design and creation of, Product Care and the Product Care Terms and Conditions (defined in paragraph 26 below);
  - (b) reviewed, approved and made recommendations in relation to the Product Care Terms and Conditions, including recommendations to the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin);
  - (c) caused or arranged for Product Care to be:
    - (i) available for sale to consumers from the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin) and, or alternatively,
    - (ii) administered by the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin) and third parties engaged by Yoogalu and/or Harvey Norman (**Product Care Administrators**);
  - (d) alternatively to paragraph 19(c), directed or approved the sale of Product Care to consumers through stores operated by the Harvey Norman Retail Entities

(including Harvey Norman Nunawading and Harvey Norman Darwin) and the manner in which it was sold;

(e) was responsible for providing, and in fact provided:

(i) the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin) and their store managers and sales staff; and, or alternatively,

(ii) Product Care Administrators,

with training on consumer rights under the Australian Consumer Law (including in relation to the sale and administration of claims);

(f) was responsible for, and conducted, compliance monitoring of the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin) and their store managers and sales staff with respect to the sale of Product Care to consumers; and

(g) was responsible for, and conducted, compliance reporting to the Australian Competition and Consumer Commission concerning the training and compliance of the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin) and their store managers and sales staff with respect to the sale of Product Care to consumers.

20. By reason of the matters pleaded in paragraph 19 above, Yoogalu exercised control over the way in which the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin) sold Product Care to consumers.

21. By reason of the matters pleaded in paragraphs 11(c), 18 to 20 above, Yoogalu was acting for and on behalf of Harvey Norman in relation to the sale of Product Care to consumers.

22. Further or alternatively, by reason of the matters pleaded in paragraphs 18 to 20 above:

(a) the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin) were acting for and on behalf of Yoogalu in relation to the sale of Product Care to consumers; and, or alternatively,

(b) the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin) were acting for and on behalf of Yoogalu in relation to the sale of Product Care to consumers at the direction or with the consent or agreement of directors of Yoogalu (and section 12GH(2) of the ASIC Act, alternatively s 139B(2) of the Australian Consumer Law, are relied upon).

*Particulars*

*Section 12GH(2) of the ASIC Act, alternately s 139B(2) of the Australian Consumer Law are relied upon.*

**B.3 Product Care Sales Process**

23. At all material times, by reason of the matters pleaded in paragraph 14, further or alternatively, paragraph 19, the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin) were required by Harvey Norman, further or alternatively, Yoogalu, to sell Product Care to consumers, and did sell Product Care to consumers, whether in person at Harvey Norman Stores, over the telephone or through the Harvey Norman Websites, in a process that included the following features (**Sales Process**):

- (a) consumers approached Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin) in person at Harvey Norman Stores, over the telephone, or through the Harvey Norman Websites, to purchase Relevant Goods;
- (b) at or around the time Relevant Goods were purchased, or agreed to be purchased, or collected by a consumer, the consumer was offered Product Care by a Harvey Norman Retail Entity;
- (c) the offer of Product Care was for the purported purpose of providing the consumer with extended warranty protection for the Relevant Goods;
- (d) consumers were charged a high price for Product Care by the Harvey Norman Retail Entities relative to the value of the goods;
- (e) consumers were not provided with the Product Care Terms and Conditions (defined in paragraph 26 below) until at or around the time that the consumer purchased Product Care; and/or
- (f) consumers were not informed of the Product Care limitations (pleaded in paragraphs 36 to 42 below).

**B.4 Underwriting**

24. At all material times Product Care was underwritten by third party underwriters, being:

- (a) until 31 July 2022, ICF Holdings Pty Ltd; and
- (b) from 1 August 2022, Virginia Surety Company, Inc,

pursuant to agreements entered into by Harvey Norman and/or its controlled entities and the third party underwriters.

25. At all material times administration services for Product Care, including in relation to:
- (a) claims management and handling services; and
  - (b) supporting, administering, managing and promoting the sale of Product Care,
- were provided by ICF Holdings Pty Ltd, PCASA Operations Pty Ltd, Assurant Inc, and/or Warranty Group Australasia Pty Ltd, pursuant to agreements entered into by Harvey Norman and/or its controlled entities.

## **C PRODUCT CARE AND THE AUSTRALIAN CONSUMER LAW**

### **C.1 Terms and Conditions**

26. During the Claim Period, the terms and conditions of Product Care were contained within the brochures pleaded in Schedule A to this statement of claim (**Product Care Terms and Conditions**).
27. During the Claim Period, pursuant to the Product Care Terms and Conditions the term of Product Care (**Product Care Term**):
- (a) commenced on the expiry of the manufacturer's warranty of the Relevant Goods (which, for the avoidance of doubt, included the goods comprising the Wong Purchase, the Daglas First Purchase, and Daglas Second Purchase); and
  - (b) operated for the period of years chosen by consumers (being one, two, three, or four years, depending on the minimum and maximum terms offered in relation to the Relevant Goods).

#### *Particulars*

*See Schedule B and Schedule F to this Statement of Claim.*

28. During the Claim Period, pursuant to the Product Care Terms and Conditions, Product Care provided a relief or remedy if, and only if, each of the following conditions was met (**Eligibility Conditions**):
- (a) the Relevant Goods failed to operate;
  - (b) the failure to operate arose from a fault latent in the Relevant Goods at the time of purchase, and not from any other or subsequent cause; and

- (c) the failure to operate did not entitle the consumer to a replacement of the Relevant Goods under the Australian Consumer Law.

*Particulars*

*See Schedule C to this statement of claim.*

## **C.2 Australian Consumer Law**

- 29. By reason of s 54(1) of the Australian Consumer Law, at the time a consumer (within the meaning of s 3 of the Australian Consumer Law) acquired Relevant Goods from a Harvey Norman Retail Entity (including Harvey Norman Nunawading and Harvey Norman Darwin) there was a guarantee that the Relevant Goods were of acceptable quality within the meaning of s 54(2) (the **Statutory Guarantee**).

- 30. By reason of ss 54(2) and (3) of the Australian Consumer Law, the Relevant Goods were of acceptable quality if they were as:

- (a) fit for all the purposes for which goods of that kind are commonly supplied; and
- (b) acceptable in appearance and finish; and
- (c) free from defects; and
- (d) safe; and
- (e) durable,

as a reasonable consumer fully acquainted with the state and condition of the Relevant Goods (including any hidden defects), would regard as acceptable having regard to the matters set out in s 54(3) of the Australian Consumer Law, including the nature and price of the Relevant Goods, any statements made about the Relevant Goods on any packaging or label and any other relevant circumstance relating to the supply of the Relevant Goods.

- 31. Pursuant to s 260 of the Australian Consumer Law, a failure to comply with the Statutory Guarantee was a major failure that applied to the supply by the Harvey Norman Retail Entity (including Harvey Norman Nunawading and Harvey Norman Darwin) of the Relevant Goods to consumers if one or more of the matters set out in s 260 were satisfied, including:

- (a) the Relevant Goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure;

- (b) the Relevant Goods were substantially unfit for a purpose for which goods of the same kind were commonly supplied and the Relevant Good could not, easily and within a reasonable time, be remedied to make them fit for such a purpose;
- (c) the Relevant Goods were not of acceptable quality because they were unsafe; or
- (d) the failure was one of two or more failures to comply with the Statutory Guarantee and the Relevant Goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of those failures, taken as a whole.

32. Pursuant to s 259 of the Australian Consumer Law, in the event there was a major failure of the Statutory Guarantee in respect of the Relevant Goods, consumers could at their discretion either:

- (a) subject to section 262 of the Australian Consumer Law, notify the Harvey Norman Retail Entity (including Harvey Norman Nunawading and Harvey Norman Darwin) that the Relevant Goods were rejected and of the grounds for that rejection; or
- (b) by action against the Harvey Norman Retail Entity (including Harvey Norman Nunawading and Harvey Norman Darwin), recover compensation for any reduction in the value of the Relevant Goods below the price paid or payable for the Relevant Goods.

33. Pursuant to s 263 of the Australian Consumer Law, in the event that a consumer rejected the Relevant Goods as pleaded in paragraph 32(a) above, the Harvey Norman Retail Entity (including Harvey Norman Nunawading and Harvey Norman Darwin) was required, at the election of the consumer:

- (a) to refund any money paid by the consumer and amount equal to the value of any other consideration provided by the consumer for the Relevant Goods; or, alternatively
- (b) to replace the Relevant Goods with goods of the same type, and of similar value, if such goods were reasonably available to the Harvey Norman Retail Entity (including Harvey Norman Nunawading and Harvey Norman Darwin).

34. If the Relevant Goods failed to operate, including by reason of a fault (whether a latent defect or a lack of durability) with the Relevant Goods at the time of their acquisition and such failure occurred within a period of time:

- (a) beginning on the date of the acquisition of the Relevant Goods by the consumer; and
- (b) ending on the first date on which a reasonable consumer fully acquainted with the state and condition of the Relevant Goods as at the date of their acquisition (including any hidden defects) would consider it acceptable that the Relevant Goods could fail to operate,

(which period of time will for the purposes of this statement of claim also be defined as the **Acceptable Operational Life** of the Relevant Goods) then such failure would be a major failure within the meaning of s 260 of the Australian Consumer Law.

35. By reason of the matters pleaded in paragraphs 31 to 34, in the event the Relevant Goods failed to operate during their Acceptable Operational Life, consumers were entitled under or by reason of the Statutory Guarantee at their discretion to either a full refund of all money and any other consideration paid by them in respect of the Relevant Goods or, alternatively, a replacement of the Relevant Goods by goods of the same type and similar value.

### **C.3 Product Care Limitations**

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

36. By reason of the Eligibility Conditions, a consumer was only entitled to a remedy under Product Care in the event the Relevant Goods failed to operate during the period of time (if any):
- (a) beginning on the expiry of the Acceptable Operational Life of the Relevant Goods (because if the Relevant Goods failed to operate during their Acceptable Operational Life, the consumer was entitled to a replacement of the Relevant Goods under the Statutory Guarantee, as pleaded in paragraph 35 above); and
  - (b) ending on the expiry of the Product Care Term (in the event the consumer had in fact acquired Product Care for a term which continued after the expiry of the Acceptable Operational Life of the Relevant Goods).
37. By reason of the matters pleaded in paragraph 36, a consumer could only obtain a protection benefit or a substantive protection benefit by reason of Product Care if the Product Care Term together with the period of any manufacturer's warranty exceeded the Acceptable Operational Life of the Relevant Goods.

38. By reason of the matter pleaded in paragraphs 36 and/or 37, a consumer did not (and could not) obtain a protection benefit or a substantive protection benefit by reason of Product Care for any, or alternatively, all of the duration of the Product Care Term acquired.

*Particulars*

*See Schedule B and Schedule F to this Statement of Claim.*

**C.3.2 Inability to make an informed decision**

39. By reason of the matters pleaded in paragraph 37, at the time a consumer acquired Product Care he or she could not make an informed decision as to whether to acquire Product Care unless he or she:
- (a) had been able to ascertain, and had in fact ascertained, the Acceptable Operational Life of the Relevant Goods; and, in addition
  - (b) had ensured that the Product Care Term and the manufacturer's warranty exceeded the Acceptable Operational Life of the Relevant Goods.
40. Consumers were not in a position at the time of his or her acquisition of Product Care to ascertain, and had not ascertained, the Acceptable Operational Life of the Relevant Goods.

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

41. Further, pursuant to the Product Care Terms and Conditions in the event that the Eligibility Conditions were satisfied, a consumer was entitled to the remedy stipulated by the Product Care Terms and Conditions, which remedy is pleaded at Schedule D to this statement of claim but which:
- (a) generally comprised at the discretion of the Harvey Norman Retail Entity (including Harvey Norman Nunawading and Harvey Norman Darwin):
    - (i) a one-off replacement to the nearest equivalent of the Relevant Goods;
    - (ii) a store credit or cash settlement if the Harvey Norman Retail Entity (including Harvey Norman Nunawading and Harvey Norman Darwin) could not offer a suitable replacement of the Relevant Goods; or
    - (iii) a replacement of an essential accessory if the failure was isolated to that accessory; and

- (b) was limited in the sense that the value of the relief could not exceed the original purchase price of the Relevant Good less any freight costs associated with any replacement.

42. By reason of the Eligibility Conditions and the matters pleaded in paragraph 41 above, and in contrast to the remedies available to a consumer under the Statutory Guarantee pleaded in paragraphs 32 to 35, the remedies available to a consumer pursuant to the Product Care Terms and Conditions were discretionary in favour of the Harvey Norman Retail Entities and:

- (a) would or could give rise to a replacement of the Relevant Goods by goods of a lower value;
- (b) did not entitle consumers to a refund of any money paid by the consumers and any amount that was equal to the value of any other consideration provided by the consumers for the Relevant Goods; and
- (c) did not entitle consumers to recover compensation for any reduction in the value of the Relevant Good below the price paid or payable for the Relevant Goods.

43. Product Care had each or any of the limitations pleaded in paragraphs 36 to 42 irrespective of the type of Relevant Goods purchased.

#### *Particulars*

*See Schedule B, Schedule C and Schedule D to this Statement of Claim.*

## **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. On or around 29 April 2019, Mr Wong attended the Harvey Norman Nunawading store in person to acquire the goods comprising the Wong Purchase.

45. At or around the time Mr Wong acquired the goods comprising the Wong Purchase, Harvey Norman through or by Harvey Norman Nunawading (by reason of the matters pleaded in paragraphs 17 and/or 21), alternatively, Yoogalu through or by Harvey Norman Nunawading (by reason of the matters pleaded in paragraph 22), alternatively, Harvey Norman Nunawading:

- (a) offered Product Care for sale to Mr Wong; and

- (b) offered Product Care for sale to Mr Wong for the purported purpose of providing extended warranty protection for the goods comprising the Wong Purchase for the period of time pleaded at paragraph 51 below.

*Particulars*

*At or around the time of acquisition of the goods comprising the Wong Purchase, Mr Wong was approached by a salesperson of Harvey Norman Nunawading with whom Mr Wong discussed the products Mr Wong had decided to purchase prior to entering the store.*

*Mr Wong and the salesperson then went to the customer desk in the kitchen section of Harvey Norman Nunawading at which point Mr Wong and the salesperson settled on the price for the goods comprising the Wong Purchase.*

*At or around this time, the salesperson suggested to Mr Wong that Mr Wong purchase Product Care in relation to the goods comprising the Wong Purchase. Prior to this point, Mr Wong had not heard of Product Care.*

*Following the conversation in relation to Product Care, Mr Wong was of the belief that if anything were to happen to the goods comprising the Wong Purchase, he would be covered by Product Care.*

*During Mr Wong's conversation with the salesperson of Harvey Norman Nunawading, there was no reference to, or discussion of, the Australian Consumer Law or any rights available to Mr Wong under the Australian Consumer Law in relation to the goods comprising the Wong Purchase.*

*Mr Wong then purchased the goods comprising the Wong Purchase, along with Product Care for each of those goods, with his credit card, and he did not receive a copy of the Product Care booklet until after he had completed his purchase.*

*The purpose is to be inferred from the express statements in the Product Care Terms and Conditions, the name "Product Care", and the circumstances pleaded and the particulars identified above.*

46. The price charged by Harvey Norman Nunawading to Mr Wong for each Product Care purchase:

- (a) depended on the length of the Product Care Term, being the terms pleaded at paragraph 51 below;
- (b) was set in accordance with a uniform pricing methodology designed by Harvey Norman, alternatively, Yoogalu and implemented by Harvey Norman Nunawading with the consent of Harvey Norman, alternatively, Yoogalu; and

- (c) was a significant percentage of the price of the goods comprising the Wong Purchase.

*Particulars*

*Mr Wong paid a total of \$547 for Product Care in relation to the goods comprising the Wong Purchase (which constituted approximately 19% of the total price of the goods comprising the Wong Purchase) as follows:*

- (i) \$189 for Product Care in relation to the Bosch Oven (which constituted approximately 17% of the price of the Bosch Oven (which was \$1,099));*
- (ii) \$119 for Product Care in relation to the Bosch Cooktop (which constituted approximately 16% of the price of the Bosch Cooktop (which was \$749)); and*
- (iii) \$239 for Product Care in relation to the Bosch Dishwasher (which constituted approximately 22% of the price of the Bosch Dishwasher (which was \$1,096)).*

47. Harvey Norman through or by Harvey Norman Nunawading (by reason of the matters pleaded in paragraphs 17 and/or 21), alternatively, Yoogalu through or by Harvey Norman Nunawading (by reason of the matters pleaded in paragraph 22), alternatively, Harvey Norman Nunawading, provided Mr Wong a copy of the Product Care Terms and Conditions after Mr Wong had completed the purchase of, and acquired, the goods comprising the Wong Purchase and Product Care.

*Particulars*

*Mr Wong was provided the Product Care Terms and Conditions by the salesperson stapling the Product Care Terms and Conditions to the tax invoice for the goods comprising the Wong Purchase and Product Care and handing these documents to Mr Wong after the purchase.*

48. Prior to Mr Wong acquiring Product Care, Mr Wong was not informed by Harvey Norman through or by Harvey Norman Nunawading (by reason of the matters pleaded in paragraphs 17 and/or 21), alternatively, Yoogalu through or by Harvey Norman Nunawading (by reason of the matters pleaded in paragraph 22), alternatively, Harvey Norman Nunawading that, or the risk that, Product Care had each or any of the limitations pleaded in paragraphs 36 to 42.
49. Further or alternatively, by reason of the matters pleaded in paragraphs 44 to 48 above, Mr Wong purchased Product Care pursuant to the Sales Process pleaded in paragraph 23 above.

### ***D.1.2 Mr Wong's Product Care***

50. The terms and conditions of Product Care acquired by Mr Wong were contained within the Product Care – Electrical Product Care brochure in place between 12 September 2018 to 22 May 2019 pleaded in Schedule A to this statement of claim.
51. By reason of the matters pleaded in paragraphs 2, 26, 27, and 50, Mr Wong's Product Care Term (**Wong Product Care Term**):
  - (a) commenced on 29 April 2021 (being the expiry of the manufacturer's 24-month warranty of the goods comprising the Wong Purchase); and
  - (b) operated until:
    - (i) 29 April 2025 in respect of the Bosch Oven and the Bosch Cooktop (being a period of four years); and
    - (ii) 29 April 2024 in respect of the Bosch Dishwasher (being a period of three years).

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

52. The acquisition by Mr Wong of the goods comprising the Wong Purchase pleaded in paragraph 2 was:
  - (a) in trade and commerce;
  - (b) a supply by Harvey Norman, Yoogalu, and, or alternatively, Harvey Norman Nunawading to Mr Wong for the purposes of s 54(1) of the Australian Consumer Law.
53. By reason of the matters pleaded in paragraphs 1 and 52, for each of the goods comprising the Wong Purchase, Mr Wong had the benefit of the Statutory Guarantee and the entitlements under the Australian Consumer Law pleaded in paragraphs 29 to 35 above.

### ***D.1.4 Mr Wong's Product Care limitations***

54. By reason of the Eligibility Conditions, and the matters pleaded in paragraphs 43 and 50 to 53 above, Mr Wong's Product Care had the limitations pleaded in paragraphs 36 to 42, including that:
  - (a) Mr Wong did not (and could not) obtain a protection benefit or a substantive protection benefit by reason of Product Care for any, or alternatively, all of the

duration of the Wong Product Care Term acquired (as pleaded in paragraph 38 above);

- (b) at the time Mr Wong acquired his Product Care he had not made, and could not make, an informed decision as to whether to acquire Product Care (as pleaded in paragraphs 39 and 40 above);
- (c) the remedies available to Mr Wong pursuant to the Product Care Terms and Conditions were less advantageous than the remedies under the Statutory Guarantee (as pleaded in paragraphs 41 and 42);

*Particulars*

*Mr Wong's Eligibility Conditions are identified at Schedule C to this statement of claim, at paragraphs C1(f), C2(e) and C3(d).*

*The remedies available to Mr Wong pursuant to the Product Care Terms and Conditions are identified at Schedule D, at paragraph D1.*

*Further particulars may be provided after discovery and evidence.*

## **D.2 Mr Daglas**

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

- 55. On or around 13 November 2023, Mr Daglas attended the Harvey Norman Darwin store in person to acquire the goods comprising the Daglas First Purchase.
- 56. At or around the time that Mr Daglas informed Harvey Norman Darwin of his intention to purchase the goods comprising the Daglas First Purchase, Harvey Norman through or by Harvey Norman Darwin (by reason of the matters pleaded in paragraphs 17 and/or 21), alternatively, Yoogalu through or by Harvey Norman Darwin (by reason of the matters pleaded in paragraph 22), alternatively, Harvey Norman Darwin:
  - (a) first offered Product Care for sale to Mr Daglas; and
  - (b) first offered Product Care for sale to Mr Daglas for the purported purpose of providing extended warranty protection for the goods comprising the Daglas First Purchase.
- 57. Mr Daglas declined the initial offer of Product Care pleaded at paragraph 56 above at or around the time the offer was made.
- 58. In or around December 2024, Mr Daglas again attended the Harvey Norman Darwin Store in person and Harvey Norman through or by Harvey Norman Darwin (by reason of the

matters pleaded in paragraphs 17 and/or 21), alternatively, Yoogalu through or by Harvey Norman Darwin (by reason of the matters pleaded in paragraph 22), alternatively, Harvey Norman Darwin:

- (a) again offered Product Care for sale to Mr Douglas in relation to the Douglas First Purchase; and
- (b) again offered Product Care for sale to Mr Douglas for the purported purpose of providing extended warranty protection for the goods comprising the Douglas First Purchase for the period of time pleaded at paragraph 70(a) below.

#### *Particulars*

*At or around the time Mr Douglas intended to purchase the goods comprising the Douglas First Purchase, Mr Douglas was approached by a salesperson of Harvey Norman Darwin with whom Mr Douglas discussed the products Mr Douglas had decided to purchase prior to entering the store.*

*Mr Douglas and the salesperson then went to a desk in the kitchen section of Harvey Norman Darwin at which point Mr Douglas paid an initial deposit in relation to the goods comprising the Douglas First Purchase as he did not need the goods immediately and intended to pay for the goods by way of periodic instalments.*

*At or around this time, the salesperson suggested to Mr Douglas that Mr Douglas purchase Product Care in relation to the goods comprising the Douglas First Purchase, which Mr Douglas elected not to purchase at this time. Prior to this point, Mr Douglas had not heard of Product Care.*

*About a month later, Mr Douglas attended Harvey Norman Darwin and spoke to the same salesperson referred to above. During this interaction, the salesperson again suggested that Mr Douglas purchase Product Care in relation to the goods comprising the Douglas First Purchase.*

*Following this conversation in relation to Product Care, Mr Douglas was of the belief that if anything were to happen to the goods comprising the Douglas First Purchase, those goods would be covered by Product Care with no extra cost to Mr Douglas.*

*The price of Product Care was then added to the total price for the goods comprising the Douglas First Purchase, the receipt for which Mr Douglas received upon making full and final payment for the goods (including Product Care) on or around 13 January 2024.*

*During Mr Douglas' conversation with the salesperson of Harvey Norman Darwin, there was no reference to, or discussion of, the Australian Consumer Law or any rights available to Mr Douglas under the Australian Consumer Law in relation to the goods comprising the Douglas First Purchase.*

59. The price charged by Harvey Norman Darwin to Mr Douglas for each Product Care purchase in relation to the Douglas First Purchase:

- (a) depended on the length of the Product Care Term, being the terms pleaded at paragraph 67 below;
- (b) was set in accordance with a uniform pricing methodology designed by Harvey Norman, alternatively, Yoogalu and implemented by Harvey Norman Darwin with the consent of Harvey Norman, alternatively, Yoogalu; and
- (c) was a significant percentage of the price of the goods comprising the Douglas First Purchase.

*Particulars*

*Mr Douglas paid a total of \$1,090 for Product Care in relation to the goods comprising the Douglas First Purchase (which constituted approximately 18% of the total price of the goods comprising the Douglas First Purchase) as follows:*

- (i) \$360 for Product Care in relation to the first Electrolux Steam Oven (which constituted approximately 18% of the price of the first Electrolux Steam Oven (which was \$1,998));*
- (ii) \$310 for Product Care in relation to the second Electrolux Steam Oven (which constituted approximately 18% of the price of the second Electrolux Steam Oven (which was \$1,699)); and*
- (iii) \$420 for Product Care in relation to the Electrolux Induction Hob (which constituted approximately 18% of the price of the Electrolux Induction Hob (which was \$2,298)).*

60. Harvey Norman through or by Harvey Norman Darwin (by reason of the matters pleaded in paragraphs 17 and/or 21), alternatively, Yoogalu through or by Harvey Norman Darwin (by reason of the matters pleaded in paragraph 22), alternatively, Harvey Norman Darwin, provided Mr Douglas with a copy of the Product Care Terms and Conditions after Mr Douglas had completed the purchase of, and acquired, the goods comprising the Douglas First Purchase and Product Care.

*Particulars*

*Mr Douglas was provided the Product Care Terms and Conditions by the salesperson stapling the Product Care Terms and Conditions to the tax invoice for the goods comprising the Douglas First Purchase and Product Care and handing these documents*

*to Mr Douglas after the purchase.*

61. Prior to Mr Douglas acquiring Product Care in relation to the Douglas First Purchase, Mr Douglas was not informed by Harvey Norman through or by Harvey Norman Darwin (by reason of the matters pleaded in paragraphs 17 and/or 21), alternatively, Yoogalu through or by Harvey Norman Darwin (by reason of the matters pleaded in paragraph 22), alternatively, Harvey Norman Darwin that, or the risk that, Product Care had each or any of the limitations pleaded in paragraphs 36 to 42.
62. Further or alternatively, by reason of the matters pleaded in paragraphs 55 to 60 above, Mr Douglas purchased Product Care in relation to the Douglas First Purchase pursuant to the Sales Process pleaded in paragraph 23 above.

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

63. On or around 12 March 2024, Mr Douglas attended the Harvey Norman Darwin store in person to acquire the goods comprising the Douglas Second Purchase.
64. At or around the time that Mr Douglas informed Harvey Norman Darwin of his intention to purchase the goods comprising the Douglas Second Purchase, Harvey Norman through or by Harvey Norman Darwin (by reason of the matters pleaded in paragraphs 17 and/or 21), alternatively, Yoogalu through or by Harvey Norman Darwin (by reason of the matters pleaded in paragraph 22), alternatively, Harvey Norman Darwin:
  - (a) offered Product Care for sale to Mr Douglas, this time in relation to the goods comprising the Douglas Second Purchase; and
  - (b) offered Product Care for sale to Mr Douglas for the purported purpose of providing extended warranty protection for the goods comprising the Douglas Second Purchase for the period of time pleaded at paragraph 71 below.

#### ***Particulars***

*At or around the time Mr Douglas intended to purchase the goods comprising the Douglas Second Purchase, Mr Douglas was approached by, or sought out, the same salesperson of Harvey Norman Darwin with whom Mr Douglas had discussed the goods comprising the Douglas First Purchase and Product Care in relation to those goods, but this time in relation to the goods comprising the Douglas Second Purchase, which Mr Douglas had decided to purchase prior to entering the store.*

*Mr Douglas and the salesperson then went to a desk in the kitchen section of Harvey Norman Darwin at which point Mr Douglas paid an initial deposit in relation to the goods comprising*

*the Douglas Second Purchase as he did not need the goods immediately and intended to pay for the goods by way of periodic instalments.*

*At or around this time, the salesperson suggested to Mr Douglas that Mr Douglas purchase Product Care in relation to the goods comprising the Douglas Second Purchase.*

*At this time, Mr Douglas was of the belief that if anything were to happen to the goods comprising the Douglas Second Purchase, those goods would be covered by Product Care with no extra cost to Mr Douglas. This belief arose by reason of the interaction Mr Douglas had with Harvey Norman Darwin regarding Product Care in relation to the First Douglas Purchase.*

*The price of Product Care was then added to the total price for the goods comprising the Douglas Second Purchase, the receipt for which Mr Douglas received upon making full and final payment for the goods (including Product Care) on or around 3 May 2024.*

*During Mr Douglas' conversation with the salesperson of Harvey Norman Darwin regarding Product Care in relation to the Douglas Second Purchase, there was no reference to, or discussion of, the Australian Consumer Law or any rights available to Mr Douglas under the Australian Consumer Law in relation to the goods comprising the Douglas Second Purchase.*

65. The price charged by Harvey Norman Darwin to Mr Douglas for each Product Care purchase in relation to the Douglas Second Purchase:
- (a) depended on the length of the Product Care Term, being the terms pleaded at paragraph 68 below;
  - (b) was set in accordance with a uniform pricing methodology designed by Harvey Norman, alternatively, Yoogalu and implemented by Harvey Norman Darwin with the consent of Harvey Norman, alternatively, Yoogalu; and
  - (c) was a significant percentage of the price of the goods comprising the Douglas Second Purchase.

#### *Particulars*

*Mr Douglas paid an unspecified amount for Product Care in relation to the goods comprising the Douglas Second Purchase. The invoice for the Douglas Second Purchase (Invoice Number 3511877) contains a single price comprising both the price of the Electrolux Fridge and the price of the associated Product Care.*

66. Harvey Norman through or by Harvey Norman Darwin (by reason of the matters pleaded in paragraphs 17 and/or 21), alternatively, Yoogalu through or by Harvey Norman Darwin (by reason of the matters pleaded in paragraph 22), alternatively, Harvey Norman Darwin, provided Mr Douglas with a copy of the Product Care Terms and Conditions after

Mr Douglas had completed the purchase of, and acquired, the goods comprising the Douglas Second Purchase and Product Care.

*Particulars*

*Mr Douglas was provided the Product Care Terms and Conditions by the salesperson stapling the Product Care Terms and Conditions to the tax invoice for the goods comprising the Douglas Second Purchase and Product Care and handing these documents to Mr Douglas after the purchase.*

67. Prior to Mr Douglas acquiring Product Care in relation to the Douglas Second Purchase, Mr Douglas was not informed by Harvey Norman through or by Harvey Norman Darwin (by reason of the matters pleaded in paragraphs 17 and/or 21), alternatively, Yoogalu through or by Harvey Norman Darwin (by reason of the matters pleaded in paragraph 22), alternatively, Harvey Norman Darwin that, or the risk that, Product Care had each or any of the limitations pleaded in paragraphs 36 to 42.
68. Further or alternatively, by reason of the matters pleaded in paragraphs 63 to 66 above, Mr Douglas purchased Product Care in relation to the Douglas Second Purchase pursuant to the Sales Process pleaded in paragraph 23 above.

**D.2.3 Mr Douglas' Product Care**

69. The terms and conditions of Product Care acquired by Mr Douglas were contained within the Product Care brochure titled 'Product Care –Electrical – Effective 9 November 2023' pleaded in Schedule A to this statement of claim.
70. By reason of the matters pleaded in paragraphs 4, 26, 27, and 69, Mr Douglas' Product Care Term for the Douglas First Purchase (**Douglas First Purchase Product Care Term**):
  - (a) commenced on 12 November 2025, alternatively, 13 January 2026 (being the expiry of the manufacturer's 24-month warranty of the goods comprising the Douglas First Purchase); and
  - (b) operated for the period of 4 years chosen by Mr Douglas, ending 12 November 2027, alternatively, 13 January 2028.
71. By reason of the matters pleaded in paragraphs 6, 26, 27, and 69, Mr Douglas' Product Care Term for the Douglas Second Purchase (**Douglas Second Purchase Product Care Term**):
  - (a) commenced on 3 May 2026 (being the expiry of the manufacturer's 24-month warranty of the goods comprising the Douglas Second Purchase); and

- (b) operated for the period of 3 years chosen by Mr Douglas, ending 3 May 2027.

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

72. The acquisition by Mr Douglas of the goods comprising the Douglas First Purchase pleaded in paragraph 4 and the Douglas Second Purchase pleaded in paragraph 6 was:

- (a) in trade and commerce;
- (b) a supply by Harvey Norman, Yoogalu, and, or alternatively, Harvey Norman Darwin to Mr Douglas for the purposes of s 54(1) of the Australian Consumer Law.

73. By reason of the matters pleaded in paragraphs 3 and 72, for each of the goods comprising the Douglas First Purchase and the Douglas Second Purchase, Mr Douglas had the benefit of the Statutory Guarantee and the entitlements under the Australian Consumer Law pleaded in paragraphs 29 to 35 above.

***D.2.5 Mr Douglas' Product Care limitations***

74. By reason of the Eligibility Conditions, and the matters pleaded in paragraphs 43 and 69 to 73 above, Mr Douglas' Product Care had the limitations pleaded in paragraphs 36 to 42, including that:

- (a) Mr Douglas did not (and could not) obtain a protection benefit or a substantive protection benefit by reason of Product Care for any, or in the alternatively, all of the duration of the:
  - (i) Douglas First Purchase Product Care Term he acquired (as pleaded in paragraph 70 above); or
  - (ii) Douglas Second Purchase Product Care Term he acquired (as pleaded in paragraph 71 above);
- (b) at the time Mr Douglas acquired his Product Care in relation to the goods comprising the Douglas First Purchase and the Douglas Second Purchase, Mr Douglas had not made, and could not make, an informed decision as to whether to acquire Product Care (as pleaded in paragraphs 39 and 40 above);
- (c) the remedies available to Mr Douglas pursuant to the Product Care Terms and Conditions were less advantageous than the remedies under the Statutory Guarantee (as pleaded in paragraphs 41 and 42).

*Particulars*

*Mr Daglas' Eligibility Conditions are identified at Schedule C to this statement of claim, at paragraphs C1(n), C2(o) and C3(n).*

*The remedies available to Mr Daglas pursuant to the Product Care Terms and Conditions are identified at Schedule D, at paragraph D3.*

*Further particulars may be provided after discovery and evidence.*

### **D.3 Group Members**

#### ***D.3.1 Group Members' purchase of Product Care***

75. During the Claim Period, Group Members acquired Relevant Goods by attending Harvey Norman Retail Entities in person at Harvey Norman Stores, purchasing Relevant Goods over the telephone from Harvey Norman Retail Entities, or through the Harvey Norman Websites.
76. During the Claim Period, Group Members acquired Product Care in some or all of the circumstances pleaded at paragraph 23(a) to (g), and the circumstances pleaded in 23 (f), above.

#### ***D.3.2 Group Members' Product Care***

77. The terms and conditions of Product Care acquired by Group Members were contained within the brochures pleaded in Schedule A to this statement of claim.
78. During the Claim Period, pursuant to the Product Care Terms and Conditions the term of the cover (if any) purported to be afforded by Product Care to Group Members (**Group Member Product Care Term**):
  - (a) commenced on the expiry of the manufacturer's warranty of the Relevant Goods; and
  - (b) operated for the period of years chosen by Group Members (being one, two, three, or four years, depending on the Relevant Good to which Product Care related).

*Particulars*

*See Schedule B and Schedule F to this Statement of Claim.*

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

79. The acquisition by Group Members of the Relevant Goods pleaded in paragraph 75 was:
- (a) in trade and commerce;
  - (b) a supply by Harvey Norman, Yoogalu, and, or alternatively, the Harvey Norman Retail Entities to Group Members for the purposes of s 54(1) of the Australian Consumer Law.
80. By reason of the matters pleaded in paragraphs 78, for each of the Relevant Goods, Group Members had the benefit of the Statutory Guarantee and the entitlements under the Australian Consumer Law pleaded in paragraphs 29 to 35, above.

### ***D.3.4 Group Members' Product Care limitations***

81. By reason of the Eligibility Conditions, and the matters pleaded in paragraphs 43 and 77 to 80 above, Group Members' Product Care had the limitations pleaded in paragraphs 36 to 42, including that:
- (a) Group Members did not (and could not) obtain a protection benefit or a substantive protection benefit by reason of Product Care for any, or alternatively, all of the duration of the Product Care Term acquired (as pleaded in paragraph 38 above);
  - (b) at the time Group Members acquired Product Care they could not make an informed decision as to whether to acquire Product Care (as pleaded in paragraphs 39 and 40 above);
  - (c) the remedies available to Group Members pursuant to the Product Care Terms and Conditions were less advantageous than the remedies under the Statutory Guarantee (as pleaded in paragraphs 41 and 42).

#### *Particulars*

*The Eligibility Conditions are identified at Schedule C to this statement of claim.*

*The remedies available to Group Members pursuant to the Product Care Terms and*

*Conditions are identified at Schedule D.*

*Further particulars may be provided after discovery and evidence.*

## **E MISLEADING OR DECEPTIVE CONDUCT**

### **E.1 Introductory matters**

82. The conduct pleaded in this Section E was conduct:

(a) of Harvey Norman, Yoogalu and, or alternatively, the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin); and

(b) in trade and commerce.

83. The Product Care products purchased by Mr Wong, Mr Daglas and Group Members were each a financial product within the meaning of ss 12BAA(1)(b) and (5)(a) of the ASIC Act and, or alternatively, ss 763A(1)(b) and 763C(a) of the Corporations Act, because they were a means by which Mr Wong, Mr Daglas and Group Members, consumers, sought to manage the financial consequences to them of particular circumstances occurring.

84. Further, or in the alternative, the Product Care products were upon issue by Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin), a financial service provided by the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin), within the meaning of ss 12BAB(1)(b), (1AA), (7)(b) and (8) of the ASIC Act and, or alternatively, ss 766A(1)(b) and 766C(1)(b) of the Corporations Act.

85. Further, or in the alternative, by reason of the matters pleaded in paragraph 83, by engaging in the conduct pleaded in:

(a) paragraphs 17 and/or 21, Harvey Norman; and, or alternatively,

(b) paragraph 22, Yoogalu;

was arranging for Mr Wong, Mr Daglas, and Group Members, consumers, to apply for or acquire a financial product, namely:

(c) in the case of Mr Wong, Product Care in relation to the goods comprising the Wong Purchase;

- (d) in the case of Mr Daglas, Product Care in relation to the goods comprising the First Daglas Purchase and the Second Daglas Purchase;
- (e) in the case of Group Members, Product Care in relation to the Relevant Goods.

86. By reason of the matters pleaded in paragraph 85, and by reason of ss 12BAB(1)(b), (1AA), (7)(a) and (8) of the ASIC Act and, or alternatively, ss 766A(1)(b) and 766C(2) of the Corporations Act, Harvey Norman, and, or alternatively, Yoogalu was dealing in a financial product and thereby providing a financial service.

87. By reason of the matters pleaded in paragraphs 84, 85 and 86, the conduct of:

- (a) Harvey Norman pleaded in paragraphs 17 and/or 21 and in this Section E below;
- (b) Yoogalu pleaded in paragraph 22 and in this Section E below; and, or alternatively,
- (c) the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin), pleaded in this Section E below,

was conduct in relation to financial services.

88. Alternatively, Product Care was:

- (a) a 'service' within the meaning of s 2 of the Australian Consumer Law insofar as the Product Care Terms and Conditions amounted to a right, benefit, privilege or facility that is provided, granted or conferred in trade or commerce to consumers, including under a contract for or in relation to the performance of work whether with or without the supply of goods; and/or
- (b) a 'product related service' within the meaning of s 2 of the Australian Consumer Law insofar as Product Care was a service for or relating to the maintenance or repair of consumer goods and/or a service that relates to the supply of consumer goods of that kind; and
- (c) a service acquired by a consumer in circumstances where the amount paid or payable for the service did not exceed \$40,000 prior to 1 July 2021 and \$100,000 from 1 July 2021;
- (d) supplied to, and acquired by, consumers in trade or commerce within the meaning of s 2 of the Australian Consumer Law.

## E.2 The Sales Process Representations

### E.2.1 Mr Wong

89. By reason of the matters pleaded at paragraphs 44 to 48, above, further or alternatively, the fact that Mr Wong purchased Product Care pursuant to the Sales Process pleaded at paragraph 23 above:

- (a) Harvey Norman through or by Harvey Norman Nunawading (by reason of the matters pleaded in paragraphs 17 and/or 21);
- (b) Yoogalu through or by Harvey Norman Nunawading (by reason of the matters pleaded in paragraph 22); alternatively,
- (c) Harvey Norman Nunawading,

represented to Mr Wong that:

- (d) Product Care would provide substantive protection benefits for the duration of the Product Care Term;
- (e) the protection benefits provided by Product Care were in addition to any protection benefits provided at law;
- (f) Product Care provided protection benefits that were:
  - (i) better than, or additional to, those provided by the Statutory Guarantee; and, or alternatively
  - (ii) the only remedies available in relation to the goods purchased; and, or alternatively
- (g) purchasing Product Care was a prudent thing to do,

(the matters pleaded at sub-paragraphs (d) to (g) are the **Sales Process Representations**).

#### *Particulars*

*The representations were implied by one or more of:*

- (i) *the matters pleaded in paragraphs 44 to 49;*
- (ii) *the name “Product Care”, and in particular the word “Care”, which implied that in acquiring Product Care substantive protection benefits in conjunction with, and in addition to, the goods purchased, which protection benefits would not*

*otherwise have at law or at all;*

- (iii) the fact that Product Care was acquired for a specified term;*
- (iv) the fact that Product Care was offered as an optional buying decision, separate to the decision to purchase the goods;*
- (v) the fact that Product Care was acquired from a well-known and long-established brand, namely, 'Harvey Norman', which brand would reasonably be considered to be reputable, ethical and reliable, such it would not reasonably have contemplated that Harvey Norman would sell extended warranty product with no or no significant protection benefits;*
- (vi) the fact that Product Care cost a significant sum, which suggested that the protection benefits purportedly conferred by Product Care were substantive and not otherwise available; and*
- (vii) the fact that Product Care was a product which purportedly provided extended warranty protection benefits in relation to goods purchased.*

*Further particulars may be provided after discovery and evidence.*

90. By reason of the matters pleaded in paragraph 54, Harvey Norman's conduct, further or alternatively, Yoogalu's conduct pleaded in paragraph 89 was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act and, or alternatively, s 1041H of the Corporations Act and, or alternatively, s 18 of the Australian Consumer Law.
91. In the alternative to paragraph 90, if or to the extent that the conduct pleaded in paragraph 89 was conduct of Harvey Norman Nunawading and not conduct of Harvey Norman or Yoogalu, then:
  - (a) Harvey Norman Nunawading's conduct pleaded in paragraph 90 was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act and, or alternatively, s 1041H of the Corporations Act, and, or alternatively s 18 of the Australian Consumer Law; and
  - (b) by reason of the matters:
    - (i) pleaded in paragraphs 17 and/or 21, Harvey Norman; and, or alternatively,
    - (ii) pleaded in paragraph 22; Yoogalu,

was knowingly involved in that contravention within the meaning of s 12GF of the ASIC Act and, or alternatively, s 1041I of the Corporations Act and, or alternatively, s 236 of the Australian Consumer Law.

### ***E.2.2 Mr Douglas***

92. By reason of the circumstances in which Mr Douglas purchased Product Care in relation to the Douglas First Purchase (pleaded at paragraphs 55 to 62, above) and the Douglas Second Purchase (pleaded above at paragraphs 64 to 68, above), further or alternatively, the fact that Mr Douglas purchased Product Care in relation to the goods comprising the Douglas First Purchase and the Douglas Second Purchase pursuant to the Sales Process pleaded at paragraph 23 above:

- (a) Harvey Norman through or by Harvey Norman Darwin (by reason of the matters pleaded in paragraphs 17 and/or 21);
- (b) Yoogalu through or by Harvey Norman Darwin (by reason of the matters pleaded in paragraph 22); alternatively,
- (c) Harvey Norman Darwin,

made the Sales Process Representations to Mr Douglas on each occasion that Mr Douglas purchased Product Care.

#### *Particulars*

*The representations were implied by one or more of:*

- (i) *the matters pleaded in paragraphs 55 to 62, and 64 to 68 above;*
- (ii) *the matters identified in particulars (ii) to (vii) to paragraph 89.*

*Further particulars may be provided after discovery and evidence.*

93. By reason of the matters pleaded in paragraph 74, Harvey Norman's conduct, further or alternatively, Yoogalu's conduct pleaded in paragraph 92 was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act and, or alternatively, s 1041H of the Corporations Act and, or alternatively, s 18 of the Australian Consumer Law.

94. In the alternative to paragraph 93, if or to the extent that the conduct pleaded in paragraph 92 was conduct of Harvey Norman Darwin and not conduct of Harvey Norman or Yoogalu, then:

- (a) Harvey Norman Darwin's conduct pleaded in paragraph 92 was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act and, or alternatively, s 1041H of the Corporations Act, and, or alternatively s 18 of the Australian Consumer Law; and
- (b) by reason of the matters:
  - (i) pleaded in paragraphs 17 and/or 21, Harvey Norman; and, or alternatively,
  - (ii) pleaded in paragraph 22; Yoogalu,

was knowingly involved in that contravention within the meaning of s 12GF of the ASIC Act and, or alternatively, s 1041I of the Corporations Act and, or alternatively, s 236 of the Australian Consumer Law.

### **E.2.3 Group Members**

95. By reason of the circumstances in which Group Members purchased Product Care pleaded above at paragraphs 75 to 76, above:
- (a) Harvey Norman through or by the Harvey Norman Retail Entities (by reason of the matters pleaded in paragraphs 17 and/or 21);
  - (b) Yoogalu through or by the Harvey Norman Retail Entities (by reason of the matters pleaded in paragraph 22); alternatively,
  - (c) the Harvey Norman Retail Entities,
- made the Sales Process Representations to Group Members in relation to the sale of Product Care.

#### *Particulars*

*The representations were implied by one or more of:*

- (i) *the matters pleaded in paragraphs 75 to 76 above;*
- (ii) *the matters identified in particulars (ii) to (vii) to paragraph 89.*

*Further particulars may be provided after discovery and evidence.*

96. By reason of the matters pleaded in paragraph 81, Harvey Norman's conduct, further or alternatively, Yoogalu's conduct pleaded in paragraph 95 was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act and, or

alternatively, s 1041H of the Corporations Act and, or alternatively, s 18 of the Australian Consumer Law.

97. In the alternative to paragraph 96, if or to the extent that the conduct pleaded in paragraph 95 was conduct of Harvey Norman Retail Entities and not conduct of Harvey Norman or Yoogalu, then:

(a) the Harvey Norman Retail Entities' conduct pleaded in paragraph 95 was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act and, or alternatively, s 1041H of the Corporations Act, and, or alternatively s 18 of the Australian Consumer Law; and

(b) by reason of the matters:

(i) pleaded in paragraphs 17 and/or 21, Harvey Norman; and, or alternatively,

(ii) pleaded in paragraph 22; Yoogalu,

was knowingly involved in that contravention within the meaning of s 12GF of the ASIC Act and, or alternatively, s 1041I of the Corporations Act and, or alternatively, s 236 of the Australian Consumer Law.

### **E.3 Misleading conduct by omission**

#### ***E.3.1 Mr Wong***

98. Further or alternatively, Mr Wong acquired Product Care for the goods comprising the Wong Purchase:

(a) in the circumstances pleaded at paragraphs 44 to 49, above;

(b) from a well-known and long-established brand, namely, 'Harvey Norman', which brand would reasonably be considered to be reputable, ethical and reliable;

(c) despite having the benefit of the Statutory Guarantee; and, or alternatively

(d) in circumstances in which Harvey Norman, and, or alternatively, Yoogalu and, or alternatively, Harvey Norman Nunawading knew or ought reasonably to have known that Mr Wong was, or there was a material risk that Mr Wong may have been, acquiring Product Care:

(i) based on inaccurate information;

- (ii) despite the Product Care limitations pleaded in paragraphs 36 to 42 and 54; and or alternatively,
- (iii) thereby incurring costs which a properly informed consumer would not have incurred.

99. In the circumstances pleaded in paragraph 98 it would reasonably be expected that:

- (a) Harvey Norman through or by Harvey Norman Nunawading (by reason of the matters pleaded in paragraphs 17 and/or 21);
- (b) Yoogalu through or by Harvey Norman Nunawading (by reason of the matters pleaded in paragraph 22); alternatively,
- (c) Harvey Norman Nunawading,

would disclose or cause to be disclosed to Mr Wong the Product Care limitations pleaded in paragraphs 36 to 42 and 54, prior to Mr Wong acquiring Product Care.

100. By reason of the matters pleaded in paragraph 48, Harvey Norman's conduct, and, or alternatively, Yoogalu's conduct pleaded in paragraph 99 was misleading or deceptive or likely to mislead or deceive in contravention of:

- (a) s 12DA(1) of the ASIC Act;
- (b) s 1041H of the Corporations Act; and, or alternatively
- (c) s 18 of the Australian Consumer Law.

101. In the alternative to paragraph 100, if or to the extent that the conduct pleaded in paragraph 48 was conduct of Harvey Norman Nunawading and not conduct of Harvey Norman or Yoogalu, then:

- (a) Harvey Norman Nunawading's conduct pleaded in paragraph 48 was misleading or deceptive or likely to mislead or deceive in contravention of:
  - (i) s 12DA(1) of the ASIC Act;
  - (ii) s 1041H of the Corporations Act; and, or alternatively;
  - (iii) s 18 of the Australian Consumer Law; and
- (b) by reason of the matters:
  - (i) pleaded in paragraphs 17 and/or 21, Harvey Norman; and, or alternatively,

(ii) pleaded in paragraph 22; Yoogalu,

was knowingly involved in that contravention within the meaning of s 12GF of the ASIC Act and, or alternatively, s 1041I of the Corporations Act and, or alternatively, s 236 of the Australian Consumer Law.

### **E.3.2 Mr Douglas**

102. Further or alternatively, Mr Douglas acquired Product Care for the goods comprising the Douglas First Purchase and the Douglas Second Purchase:

- (a) in the circumstances pleaded at paragraphs 55 to 62 (in relation to the Douglas First Purchase) and 63 to 68 (in relation to the Douglas Second Purchase), above;
- (b) from a well-known and long-established brand, namely, 'Harvey Norman', which brand would reasonably be considered to be reputable, ethical and reliable;
- (c) despite having the benefit of the Statutory Guarantee; and, or alternatively
- (d) in circumstances in which Harvey Norman, and, or alternatively, Yoogalu and, or alternatively, Harvey Norman Darwin knew or ought reasonably to have known that Mr Douglas was, or there was a material risk that Mr Douglas may have been, acquiring Product Care:
  - (i) based on inaccurate information;
  - (ii) despite the Product Care limitations pleaded in paragraphs 36 to 42 and 74; or alternatively,
  - (iii) thereby incurring costs which a properly informed consumer would not have incurred.

103. In the circumstances pleaded in paragraph 102 it would reasonably be expected that:

- (a) Harvey Norman through or by Harvey Norman Nunawading (by reason of the matters pleaded in paragraphs 17 and/or 21);
- (b) Yoogalu through or by Harvey Norman Nunawading (by reason of the matters pleaded in paragraph 22); alternatively,
- (c) Harvey Norman Nunawading,

would disclose or cause to be disclosed to Mr Douglas the Product Care limitations pleaded in paragraphs 36 to 42 and 74, prior to Mr Douglas acquiring Product Care.

104. By reason of the matters pleaded in paragraph 61 (in relation to the Douglas First Purchase) and paragraph 67 (in relation to the Douglas Second Purchase), Harvey Norman's conduct, and, or alternatively, Yoogalu's conduct pleaded in paragraph 103 was misleading or deceptive or likely to mislead or deceive in contravention of:

- (a) s 12DA(1) of the ASIC Act;
- (b) s 1041H of the Corporations Act; and, or alternatively
- (c) s 18 of the Australian Consumer Law.

105. In the alternative to paragraph 104, if or to the extent that the conduct pleaded in paragraph 61 (in relation to the Douglas First Purchase) and paragraph 67 (in relation to the Douglas Second Purchase) was conduct of Harvey Norman Darwin and not conduct of Harvey Norman or Yoogalu, then:

(a) Harvey Norman Darwin's conduct pleaded in paragraph 61 (in relation to the Douglas First Purchase) and paragraph 67 (in relation to the Douglas Second Purchase) was misleading or deceptive or likely to mislead or deceive in contravention of:

- (i) s 12DA(1) of the ASIC Act;
- (ii) s 1041H of the Corporations Act; and, or alternatively;
- (iii) s 18 of the Australian Consumer Law; and

(b) by reason of the matters:

- (i) pleaded in paragraphs 17 and/or 21, Harvey Norman; and, or alternatively,
- (ii) pleaded in pleaded in paragraph 22; Yoogalu,

was knowingly involved in that contravention within the meaning of s 12GF of the ASIC Act and, or alternatively, s 1041I of the Corporations Act and, or alternatively, s 236 of the Australian Consumer Law.

### ***E.3.3 Group Members***

106. Further or alternatively, Group Members acquired Product Care for the Relevant Goods:

- (a) in the circumstances pleaded at paragraphs 75 to 76 above;
- (b) from a well-known and long-established brand, namely, 'Harvey Norman', which brand would reasonably be considered to be reputable, ethical and reliable;
- (c) despite having the benefit of the Statutory Guarantee; and, or alternatively
- (d) in circumstances in which Harvey Norman, and, or alternatively, Yoogalu and, or alternatively, the Harvey Norman Retail Entities knew or ought reasonably to have known that Group Members were, or there was a material risk that Group Members may have been, acquiring Product Care:
  - (i) based on inaccurate information;
  - (ii) despite the Product Care limitations pleaded in paragraphs 36 to 42; or alternatively,
  - (iii) thereby incurring costs which a properly informed consumer would not have incurred.

107. In the circumstances pleaded in paragraph 106 it would reasonably be expected that

- (a) Harvey Norman through or by Harvey Norman Nunawading (by reason of the matters pleaded in paragraphs 17 and/or 21);
- (b) Yoogalu through or by Harvey Norman Nunawading (by reason of the matters pleaded in paragraph 22); alternatively,
- (c) Harvey Norman Nunawading,

would disclose or cause to be disclosed to Group Members the Product Care limitations pleaded in paragraphs 36 to 42 and 81, prior to Group Members acquiring Product Care.

108. By reason of the matters pleaded in paragraph 23(f), Harvey Norman's conduct, and, or alternatively, Yoogalu's conduct pleaded in paragraph 107, was misleading or deceptive or likely to mislead or deceive in contravention of:

- (a) s 12DA(1) of the ASIC Act;
- (b) s 1041H of the Corporations Act; and, or alternatively
- (c) s 18 of the Australian Consumer Law.

109. In the alternative to paragraph 108, if or to the extent that the conduct pleaded in paragraph 107 was conduct of the Harvey Norman Retail Entities and not conduct of Harvey Norman or Yoogalu, then:
- (a) the Harvey Norman Retail Entities' conduct pleaded in paragraph 107 was misleading or deceptive or likely to mislead or deceive in contravention of:
    - (i) s 12DA(1) of the ASIC Act;
    - (ii) s 1041H of the Corporations Act; and, or alternatively;
    - (iii) s 18 of the Australian Consumer Law; and
  - (b) by reason of the matters:
    - (i) pleaded in paragraphs 17 and/or 21, Harvey Norman; and, or alternatively,
    - (ii) pleaded in pleaded in paragraph 22; Yoogalu,

was knowingly involved in that contravention within the meaning of s 12GF of the ASIC Act and, or alternatively, s 1041I of the Corporations Act and, or alternatively, s 236 of the Australian Consumer Law.

#### **E.4 Brochure Representations**

##### ***E.4.1 Representations***

110. From 23 May 2019 in respect of electrical Relevant Goods, and from 1 February 2020 in respect of computer Relevant Goods, the Product Care Terms and Conditions contained a provision pursuant to which the Group Members could cancel their cover under Product Care within a period following their acquisition of Product Care (**Cooling Off Period**).

##### *Particulars*

*See Schedule E to this statement of claim.*

111. If, or to the extent that, Group Members acquiring Product Care in the Harvey Norman Stores or, alternatively, over the telephone, or, alternatively through the Harvey Norman Websites:
- (a) were, or became, aware of the matter pleaded in paragraph 110 prior to their acquisition of Product Care or prior to the expiry of the Cooling Off Period (none of which is admitted), alternatively;

- (b) received the Product Care Terms and Conditions prior to their acquisition of Product Care and read those Product Care Terms and Conditions,

the Group Members say further as follows.

112. During the Claim Period the Product Care Terms and Conditions pleaded in Schedule A included or gave rise to representations to Group Members that (**Brochure Representations**):

- (a) Product Care comprised or provided:
  - (i) for the duration of the Product Care Term, protection to Group Members in addition to or, alternatively, materially in addition to the protection provided to Group Members, under the Australian Consumer Law; and, or alternatively;
  - (ii) the remedies under Product Care were better than, or additional to those provided by, the Statutory Guarantee,

(the **Additional Protection Representation**).
- (b) Group Members would have the benefit of protection under both the Australian Consumer Law and Product Care for the duration of the Product Care Term (the **Dual Protection Representation**).
- (c) Product Care provided certainty to the Group Members of the period during which they could obtain a replacement of the Relevant Goods in the event of a fault in or failure of the Relevant Goods (the **Certainty Representation**).

#### *Particulars*

*As to the Additional Protection Representation and Dual Protection Representation, the Product Care Terms and Conditions varied from time to time during the Claim Period as pleaded in Schedule A and included the express statements pleaded in Schedule F, and which generally included express statements that:*

- (i) *“These Terms and Conditions are in relation to Your rights under Product Care which are in addition to Your existing rights under the ACL”.*
- (ii) *“How long does the protection against defects last? – The number of years shown on Your Original Documents. Protection begins on the expiry of the Manufacturer’s Voluntary Warranty Period which is also shown on Your Original Documents”.*

- (iii) *“The rights under Product Care are in addition to Your rights and remedies under the ACL”.*

*As to the Certainty Representations, the Product Care Terms and Conditions varied from time to time during the Claim Period as pleaded in Schedule A and included the express statements pleaded in Schedule F, and which generally included express statements that:*

- (i) *“With Product Care you have certainty that Your Product is covered for a specific period of time for an Eligible Fault”.*
- (ii) *“Enjoy Confidence, Support, & Exclusive Benefits with your Purchase”.*

113. The Brochure Representations were made by the Harvey Norman Retail Entities and by reason of the matters pleaded by reason of the matters:

- (a) pleaded in paragraphs 17 and/or 21, Harvey Norman; and, or alternatively,
- (b) pleaded in pleaded in paragraph 22; Yoogalu,

engaged in conduct which enabled, facilitated and procured the making of the Brochure Representations.

114. In the alternative, the Brochure Representations were made by Harvey Norman, and, or alternatively, Yoogalu and the Harvey Norman Retail Entities were a mere conduit in the making of the Brochure Representations.

115. The Brochure Representations were:

- (a) representations as to future matters within the meaning of section 12BB of the ASIC Act and, or alternatively, s 769C of the Corporations Act; and
- (b) continuing representations which were not altered, corrected, modified or withdrawn prior to expiry of the Cooling Off Period or at all.

#### ***E.4.2 The Additional Protection Representation was misleading and deceptive***

116. In the premises, the Additional Protection Representation was misleading and deceptive or likely to mislead and deceive because:

- (a) Product Care did not comprise or give rise to protection to Group Members in addition to or, alternatively, materially in addition to the protection provided to Group Members under the Australian Consumer Law for the duration of the Product Care Term; and, or alternatively

- (b) there were no reasonable grounds for the Additional Protection Representation at the time it was made.

117. By reason of the matters pleaded in paragraphs 112, 114, 115, and 116:

- (a) the Harvey Norman Retail Entities contravened s 12DA(1) of the ASIC Act and, or alternatively, s 1041H of the Corporations Act, and, or alternatively s 18 of the Australian Consumer Law; and
- (b) by reason of the matters:
  - (i) pleaded in paragraphs 17 and/or 21, Harvey Norman; and, or alternatively,
  - (ii) pleaded in pleaded in paragraph 22; Yoogalu,

was involved in that contravention within the meaning of s 12GF of the ASIC Act and, or alternatively, s 1041I of the Corporations Act, and, or alternatively, s 236 of the Australian Consumer Law.

118. In the alternative to paragraph 117, the Additional Protection Representation was made by Harvey Norman, and, or alternatively, Yoogalu and the Harvey Norman Retail Entities were a mere conduit in the making of the Additional protection Representation, such that Harvey Norman, and, or alternatively, Yoogalu contravened s 12DA(1) of the ASIC Act and, or alternatively, s 1041H of the Corporations Act, and, or alternatively, s 18 of the Australian Consumer Law.

#### ***E.4.3 The Dual Protection Representation was misleading and deceptive***

119. In the premises, the Dual Protection Representation was misleading and deceptive because:

- (a) Group Members did not have the benefit of protection under both the Australian Consumer Law and Product Care for the duration of the Product Care Term; and, or alternatively
- (b) there were no reasonable grounds for the Dual Protection Representation at the time it was made.

120. By reason of the matters pleaded in paragraphs 112, 114, 115 and 119:

- (a) the Harvey Norman Retail Entities contravened s 12DA(1) of the ASIC Act and, or alternatively, s 1041H of the Corporations Act, and, or alternatively, s 18 of the Australian Consumer Law; and

(b) by reason of the matters:

(i) pleaded in paragraphs 17 and/or 21, Harvey Norman; and, or alternatively,

(ii) pleaded in pleaded in paragraph 22; Yoogalu,

was involved in that contravention within the meaning of s 12GF of the ASIC Act and, or alternatively, s 1041I of the Corporations Act and, or alternatively, s 236 of the Australian Consumer Law.

121. In the alternative to paragraph 120, the Dual Protection Representation was made by Harvey Norman, and, or alternatively, Yoogalu and the Harvey Norman Retail Entities were a mere conduit in the making of the Dual Protection Representation, such that Harvey Norman, and, or alternatively, Yoogalu contravened s 12DA(1) of the ASIC Act and, or alternatively, s 1041H of the Corporations Act, and, or alternatively, s 18 of the Australian Consumer Law.

#### ***E.4.4 The Certainty Representation was misleading and deceptive***

122. The Certainty Representation was misleading or deceptive or likely to mislead and deceive because:

(a) Product Care did not provide certainty to the Group Members of the period during which they could obtain a refund or replacement of the Relevant Goods in the event of a fault in or failure of the Relevant Goods; and, or alternatively

(b) there was no reasonable grounds for the Certainty Representation at the time it was made.

123. By reason of the matters pleaded in paragraphs 112, 114, 115 and 123:

(a) the Harvey Norman Retail Entities contravened s 12DA(1) of the ASIC Act and, or alternatively, s 1041H of the Corporations Act and, or alternatively, s 18 of the Australian Consumer Law; and

(b) by reason of the matters

(i) pleaded in paragraphs 17 and/or 21, Harvey Norman; and, or alternatively,

(ii) pleaded in pleaded in paragraph 22; Yoogalu,

was involved in that contravention within the meaning of s 12GF of the ASIC Act and, or alternatively, s 1041I of the Corporations Act and, or alternatively, s 236 of the Australian Consumer Law.

124. In the alternative to paragraph 123, the Certainty Representation was made by Harvey Norman, and, or alternatively, Yoogalu and the Harvey Norman Retail Entities were a mere conduit in the making of the Certainty Representation, such that Harvey Norman, and, or alternatively, Yoogalu contravened s 12DA(1) of the ASIC Act and, or alternatively, s 1041H of the Corporations Act, and, or alternatively, s 18 of the Australian Consumer Law.

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

125. Further, by reason of Harvey Norman's and, or alternatively, Yoogalu's and, or, alternatively, the Harvey Norman Retail Entities' contravening conduct in making the Brochure Representations and, further, making the Brochure Representations in the context of:

- (a) the matters pleaded in paragraphs 75 to 76; and, or alternatively
- (b) the layout and presentation of the Product Care Terms and Conditions, which featured prominently the supposed benefits of Product Care (including words on the front page such as "Enjoy Confidence, Support & Exclusive Benefits with Your Purchase"), but which did not feature prominently the Cooling Off Period,

the Group Members were not, or would not reasonably have been, aware of the facts that:

- (c) the Product Care Terms and Conditions included a Cooling Off Period; and
- (d) it would have been in their interests to exercise their rights under the Cooling Off Period.

**F UNCONSCIONABLE CONDUCT**

126. Further or alternatively, the conduct pleaded in this Section F was conduct:

- (a) of Harvey Norman and, or alternatively, Yoogalu and, or alternatively, the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin); and
- (b) in trade and commerce,

127. By reason of the matters pleaded in paragraphs 84, 85 and 86, the conduct of:
- (a) Harvey Norman pleaded in paragraphs 17 and/or 21 and in this Section F below; and, or alternatively,
  - (b) Yoogalu pleaded in paragraph 22 and in this Section F below; and, or alternatively,
  - (c) the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin), pleaded in this Section F below,
- was conduct in relation to financial services.
128. The matters in paragraph 88 are repeated.
129. At all material times, Harvey Norman and, or alternatively, Yoogalu had a practice, process or system of selling, issuing and administering Product Care to consumers, alternatively, had a practice, process or system of facilitating the sale, issuance or administration of Product Care to consumers (including by reason of the matters pleaded in paragraphs 12 to 25 above).
130. Each of the practices, processes or systems pleaded in paragraph 129 had the effect that Harvey Norman and, or alternatively, Yoogalu, and, or alternatively, the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin) generated revenue (directly or indirectly) from the sale and provision of consumer protections that:
- (a) existed under the Australian Consumer Law by reason of the matters pleaded in paragraphs 29 to 35 above; and
  - (b) Harvey Norman, and, or alternatively, Yoogalu, and, or alternatively, the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin) were obliged to honour without charge.
131. Harvey Norman and, or alternatively, Yoogalu were aware, or ought to have been aware, of the matters pleaded in paragraph 130 above.
132. By reason of the matters pleaded in paragraphs 126 to 130 and/or 131, Harvey Norman and, or alternatively, Yoogalu engaged in conduct that was unconscionable within the meaning of s 12CB of the ASIC Act and/or section 21 of the Australian Consumer Law.

## **G TRADING WITHOUT AN AFSL**

### **G.1 Introductory matters**

133. By reason of the matters pleaded in paragraph 87:
- (a) Harvey Norman and, or alternatively, Yoogalu and, or alternatively, the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin), carried on a financial services business in Australia within the meaning of ss 9, 18 to 21, 761A, and 761C of the Corporations Act; and
  - (b) Harvey Norman and, or alternatively, Yoogalu and, or alternatively, the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin), carried on a financial services business within the meaning of s 911D of the Corporations Act.
134. During the Claim Period, neither Harvey Norman, nor Yoogalu nor the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin), held an Australian Financial Services Licence (**AFSL**).
135. By reason of the matters pleaded in paragraphs 133 and 134, Harvey Norman and, or alternatively, Yoogalu and contravened s 911A of the Corporations Act.
136. In the alternative to paragraph 135, to the extent that the conduct pleaded in paragraphs 133 and 134 was conduct of the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin), by reason of the matters pleaded in paragraphs 133 and 134, the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin) contravened s 911A of the Corporations Act.

### **G.2 Mr Wong**

137. At all material times, neither Harvey Norman, nor Yoogalu nor Harvey Norman Nunawading disclosed to Mr Wong, and it would have been reasonably expected that they would disclose, that:
- (a) Harvey Norman, or alternatively, Yoogalu, or alternatively, Harvey Norman Nunawading, were required to hold an AFSL;
  - (b) Harvey Norman, or alternatively, Yoogalu, or alternatively, Harvey Norman Nunawading, did not hold an AFSL; and

- (c) Harvey Norman, or alternatively, Yoogalu, or alternatively, Harvey Norman Nunawading, were thereby supplying Product Care to Mr Wong, in contravention of law.
138. By reason of the matters pleaded in paragraphs 135 and 137, Harvey Norman and, or alternatively, Yoogalu, contravened s 1041H of the Corporations Act.
139. In the alternative to paragraph 138, by reason of the matters pleaded in paragraph 137:
- (a) Harvey Norman Nunawading contravened s 1041H of the Corporations Act; and
  - (b) by reason of the matters:
    - (i) pleaded in paragraphs 17 and/or 21, Harvey Norman; and, or alternatively,
    - (ii) pleaded in pleaded in paragraph 22; Yoogalu,

was knowingly involved in that contravention within the meaning of s1041I of the Corporations Act.
140. By reason of the matters pleaded in paragraphs 135 and 136, Mr Wong's interests have been affected by Harvey Norman's and, or alternatively, Yoogalu's or, alternatively, Harvey Norman Nunawading's, conduct in contravention of the Corporations Act, within the meaning of s 1324(1) of the Corporations Act, in that he has acquired Product Care.

### **G.2.1 Mr Daglas**

141. At all material times, neither Harvey Norman, nor Yoogalu nor Harvey Norman Darwin disclosed to Mr Daglas, and it would have been reasonably expected that they would disclose, that:
- (a) Harvey Norman, or alternatively, Yoogalu, or alternatively, Harvey Norman Darwin, were required to hold an AFSL;
  - (b) Harvey Norman, or alternatively, Yoogalu, or alternatively, Harvey Norman Darwin, did not hold an AFSL; and
  - (c) Harvey Norman, or alternatively, Yoogalu, or alternatively, Harvey Norman Darwin, were thereby supplying Product Care to Mr Daglas, in contravention of law.
142. By reason of the matters pleaded in paragraphs 135 and 141, Harvey Norman and, or alternatively, Yoogalu contravened s 1041H of the Corporations Act.

143. In the alternative to paragraph 142, by reason of the matters pleaded in paragraph 141:
- (a) Harvey Norman Darwin contravened s 1041H of the Corporations Act; and
  - (b) by reason of the matters:
    - (i) pleaded in paragraphs 17 and/or 21, Harvey Norman; and, or alternatively,
    - (ii) pleaded in pleaded in paragraph 22; Yoogalu,
 was knowingly involved in that contravention within the meaning of s 1041I of the Corporations Act.
144. By reason of the matters pleaded in paragraphs 135 and 136, Mr Daglas' interests have been affected by Harvey Norman's and, or alternatively, Yoogalu's or, alternatively, Harvey Norman Darwin's, conduct in contravention of the Corporations Act, within the meaning of s 1324(1) of the Corporations Act, in that he has acquired Product Care.

### **G.2.2 Group Members**

145. At all material times, neither Harvey Norman, nor Yoogalu nor the Harvey Norman Retail Entities disclosed to Group Members, and it would have been reasonably expected that they would disclose, that:
- (a) Harvey Norman, or alternatively, Yoogalu, or alternatively, the Harvey Norman Retail Entities, were required to hold an AFSL;
  - (b) Harvey Norman, or alternatively, Yoogalu, or alternatively, the Harvey Norman Retail Entities, did not hold an AFSL; and
  - (c) Harvey Norman, or alternatively, Yoogalu, or alternatively, the Harvey Norman Retail Entities, were thereby supplying Product Care to Group Members, in contravention of law.
146. By reason of the matters pleaded in paragraphs 135 and 145, Harvey Norman and, or alternatively, Yoogalu contravened s 1041H of the Corporations Act.
147. In the alternative to paragraph 146, by reason of the matters pleaded in paragraphs 136 and 145:
- (a) the Harvey Norman Retail Entities contravened s 1041H of the Corporations Act; and
  - (b) by reason of the matters:

(i) pleaded in paragraphs 17 and/or 21, Harvey Norman; and, or alternatively,

(ii) pleaded in pleaded in paragraph 22; Yoogalu,

was knowingly involved in that contravention within the meaning of s 1041I of the Corporations Act.

148. By reason of the matters pleaded in paragraphs 135 and 145, Group Members' interests have been affected by Harvey Norman's and, or alternatively, Yoogalu's or, alternatively, the Harvey Norman Retail Entities', conduct in contravention of the Corporations Act, within the meaning of s 1324(1) of the Corporations Act, in that they each have acquired Product Care.

## **H CAUSATION AND LOSS**

### **H.1 Causation**

#### ***H.1.1 Mr Wong***

149. The contraventions pleaded above in relation to Mr Wong were part of the process pursuant to which Mr Wong acquired Product Care in relation to the goods comprising the Wong Purchase, and were thereby a cause of Mr Wong's acquisition of Product Care in relation to each of those goods.

150. Further, or in the alternative, if Harvey Norman, and or, alternatively, Yoogalu and or, alternatively, Harvey Norman Nunawading had:

(a) disclosed to Mr Wong some or all of the matters pleaded in paragraphs 36 to 42, 54 or 98(d) above prior to him acquiring Product Care; and, or alternatively

(b) disclosed to Mr Wong the matters pleaded in paragraph 137,

Mr Wong would not have acquired Product Care in relation to the goods comprising the Wong Purchase.

151. Further or in the alternative, had Harvey Norman and, or alternatively Yoogalu and, or alternatively Harvey Norman Nunawading, not engaged in conduct in contravention of the Corporations Act as pleaded in paragraphs 138 and 139 above, Mr Wong would not have been sold Product Care.

152. Further or in the alternative, had Harvey Norman and, or alternatively, Yoogalu, not engaged in the unconscionable conduct pleaded at paragraphs 126 to 132, Mr Wong would not have been sold Product Care.

### ***H.1.2 Mr Douglas***

153. The contraventions pleaded above in relation to Mr Douglas were part of the process pursuant to which Mr Douglas acquired Product Care in relation to the goods comprising the Douglas First Purchase and the Douglas Second Purchase, and were thereby a cause of Mr Douglas' acquisition of Product Care in relation to each of those goods.

154. Further, or in the alternative, if Harvey Norman, and or, alternatively, Yoogalu and or, alternatively, Harvey Norman Darwin had:

- (a) disclosed to Mr Douglas some or all of the matters pleaded in paragraphs 36 to 42, 74 or 102(d) above prior to him acquiring Product Care; and, or alternatively
- (b) disclosed to Mr Douglas the matters pleaded in paragraph 141,

Mr Douglas would not have acquired Product Care in relation to the goods comprising the Douglas First Purchase and the Douglas Second Purchase.

155. Further or in the alternative, had Harvey Norman and, or alternatively Yoogalu and, or alternatively Harvey Norman Darwin, not engaged in conduct in contravention of the Corporations Act as pleaded in paragraphs 142 and 143 above, Mr Douglas would not have been sold Product Care.

156. Further or in the alternative, had Harvey Norman and, or alternatively, Yoogalu, not engaged in the unconscionable conduct pleaded at paragraphs 126 to 132, Mr Douglas would not have been sold Product Care.

### ***H.1.3 Group Members***

157. The contraventions pleaded above were part of the process pursuant to which Group Members acquired Product Care, and thereby a cause of the Group Members' acquisition of Product Care.

158. Further, or in the alternative, if Harvey Norman, and or, alternatively, Yoogalu and or, alternatively, the Harvey Norman Retail Entities had:

- (a) disclosed to the Group Members some or all of the matters pleaded in paragraphs 36 to 42, 81 or 106(d) above prior to them acquiring Product Care; and, or alternatively

(b) disclosed to the Group Members the matters pleaded in paragraph 145,  
the Group Members would not have acquired Product Care.

159. Further, or in the alternative, if or to the extent that that the matters pleaded in paragraph 111 are made out (which is not admitted) then in addition, or in the alternative, to the matters pleaded in paragraph 158, if Yoogalu or, alternatively, the Harvey Norman Retail Entities:

- (a) had not made the Brochure Representations, including making the Representations in the context of the matters pleaded in paragraphs 75 and 76; and, or alternatively
- (b) had disclosed to the Group Members the matters pleaded in paragraph 125(c) and (d),

the Group Members would have exercised their rights under the Cooling Off Period and thereby been refunded all amounts paid by them in relation to their acquisition of Product Care.

160. Further or in the alternative, had Yoogalu and, or alternatively the Harvey Norman Retailing Entities, not engaged in conduct in contravention of the Corporations Act as pleaded in paragraphs 146 and 147 above, the Group Members would not have been sold Product Care.

161. Further or in the alternative, had Harvey Norman and, or alternatively, Yoogalu, not engaged in the unconscionable conduct pleaded at paragraphs 126 to 132, the Group Members would not have been sold Product Care.

## **H.2 Loss**

### ***H.2.1 Mr Wong***

162. By reason of the matters pleaded in paragraphs 149, 150, 151, and/or 152 above, Mr Wong suffered loss or damage.

#### *Particulars*

*The loss or damage is the total of the amount paid by Mr Wong for Product Care.*

### ***H.2.2 Mr Daglas***

163. By reason of the matters pleaded in paragraphs 153, 154, 155, and/or 156 above, Mr Daglas suffered loss or damage.

*Particulars*

*The loss or damage is the total of the amount paid by Mr Daglas for Product Care.*

**H.2.3 Group Members**

164. By reason of the matters pleaded in paragraphs 157, 158, 159, 160, and/or 161 Group Members suffered loss or damage.

*Particulars*

*The loss or damage is the total of the amount paid by Group Members for Product Care.*

**I LIABILITY OF HARVEY NORMAN**

165. Yoogalu entered into a Deed of Cross Guarantee dated 21 September 1992, and varied from time to time, with Harvey Norman (**Deed of Cross Guarantee**).
166. The Deed of Cross Guarantee:
- (a) was a 'deed of cross guarantee' within the meaning and purposes of ASIC Corporations (Wholly-owned Companies) Instrument 2016/785, and its predecessor, ASIC Class Order [CO 98/1418], being instruments made by the Australian Securities and Investments Commission pursuant to s 341(1) of the Corporations Act; and
  - (b) as such, granted Yoogalu relief from the financial recording, financial reporting and auditing requirements of Parts 2M.2, 2M.3 and 2M.4 of the Corporations Act.
167. Under the terms of the Deed of Cross Guarantee, in the event that Yoogalu has any liability to pay damages or refund monies to the Plaintiff or Group Members:
- (a) any such liability is a 'debt' within the meaning of the Deed of Cross Guarantee;
  - (b) the Plaintiff and Group Members are 'creditors' within the meaning of the Deed of Cross Guarantee; and
  - (c) Harvey Norman guarantees to the Plaintiff and Group Members payment in full of any liability to pay damages or refund monies.

*Particulars**Clauses 3.1 and 3.2 of the Deed of Cross Guarantee.*

168. By reason of the matters pleaded in paragraph 167 above, Harvey Norman is liable to the extent that Yoogalu cannot satisfy any award for damages or other monetary relief.

**J COMMON QUESTIONS OF LAW OR FACT**

The questions of law or fact common to the claims of the Plaintiffs and Group Members are:

*Harvey Norman Business Model*

1. Did Harvey Norman operate a retail business with the features pleaded in paragraphs 12 to 14?
2. Did Harvey Norman conduct its retail business through the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin)?
3. Did the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin) act for and on behalf of Harvey Norman in relation to the sale of products to the Plaintiffs and Group Members, including Product Care, or alternatively at the direction or with the consent or agreement of directors of Harvey Norman?
4. Did Yoogalu have the roles pleaded in paragraphs 18 to 19 above?
5. Did Yoogalu act for and on behalf of Harvey Norman in relation to the sale of Product Care to the Plaintiffs and Group Members?
6. Did the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin) act for and on behalf of Yoogalu in relation to the sale of Product Care to the Plaintiffs and Group Members, or alternatively, at the direction or with the consent or agreement of directors of Yoogalu?
7. Were the Harvey Norman Retail Entities required by Harvey Norman, further or alternatively, Yoogalu, to sell Product Care to the Plaintiffs and Group Members?
8. Did the Harvey Norman Retail Entities sell Product Care to the Plaintiffs and Group Members, whether in person at Harvey Norman Stores, over the telephone or through the Harvey Norman Websites, in a process that included the features pleaded as the Sales Process?

9. Was Product Care underwritten by third party underwriters pursuant to agreements entered into between Harvey Norman and/or its controlled entities and the third party underwriters?
10. Did ICF Holdings Pty Ltd, PCASA Operations Pty Ltd, Assurant Inc and/or Warranty Group Australasia Pty Ltd, provide the services for Product Care identified in paragraph 25, pursuant to agreements entered into by Harvey Norman and/or its controlled entities?

*Product Care and the Australian Consumer Law*

11. During the Claim Period, pursuant to the Product Care Terms and Conditions, did the term of Product Care (**Product Care Term**):
  - (a) commence on the expiry of the manufacturer's warranty of the Relevant Goods; and
  - (b) operate for the period of years chosen by the Plaintiffs and Group Members (being one, two, three, or four years, depending on the minimum and maximum terms offered in relation to the Relevant Goods)?
12. During the Claim Period, pursuant to the Product Care Terms and Conditions, did Product Care provide a relief or remedy if, and only if, each of the Eligibility Conditions were met?
13. If the Relevant Goods failed to operate, including by reason of a fault (whether it is a latent defect or a lack of durability) with the Relevant Goods at the time of their acquisition and such failure occurred within a period of time during the defined **Acceptable Operational Life** in paragraph 34, then was such a failure a major failure within the meaning of s 260 of the Australian Consumer Law?
14. In the event the Relevant Goods failed to operate during their Acceptable Operational Life, were the Plaintiffs and Group Members entitled under or by reason of the Statutory Guarantee defined in paragraph 29 at their discretion to either a full refund of all money and any other consideration paid by them in respect of the Relevant Goods or, alternatively, a replacement of the Relevant Goods by goods of the same type and similar value?
15. By reason of the matters pleaded in paragraphs 36 and/or 37, did the Plaintiffs and Group Members not obtain a protection benefit or a substantive protection benefit by reason of Product Care for any, or alternatively, all of the duration of the Product Care Term acquired?

16. Were the Plaintiffs and Group Members not in a position at the time of their acquisition of Product Care to ascertain, and had not ascertained, the Acceptable Operational Life of the Relevant Goods?
17. Were the remedies available pursuant to the Product Care Terms and Conditions advantageous than the remedies under the Statutory Guarantee (as pleaded in paragraphs 41 and 42)?
18. Did Product Care had each or any of the limitations pleaded in paragraphs 36 to 42 irrespective of the type of Relevant Goods purchased?

Misleading or deceptive conduct

19. Did some or all of the features of the Sales Process pleaded at paragraph 23 convey the Sales Process Representations? If so, were the Sales Process Representations made by Harvey Norman, Yoogalu or the Harvey Norman Retail Entities?
20. If the Sales Process Representations were made by Harvey Norman or Yoogalu, were the Sales Process Representations misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act and, or alternatively, s 1041H of the Corporations Act and, or alternatively, s 18 of the Australian Consumer Law?
21. If the Sales Process Representations were made by the Harvey Norman Retail Entities:
  - (a) were the Sales Process Representations misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act and, or alternatively, s 1041H of the Corporations Act and, or alternatively, s 18 of the Australian Consumer Law?
  - (b) was Harvey Norman or Yoogalu, knowingly involved in that contravention within the meaning of s 12GF of the ASIC Act and, or alternatively, s 1041I of the Corporations Act and, or alternatively, s 236 of the Australian Consumer Law?
22. In the circumstances pleaded in paragraph 106, would it reasonably be expected that Harvey Norman, and, or alternatively, Yoogalu and, or alternatively, the Harvey Norman Retail Entities would disclose or cause to be disclosed the Product Care limitations pleaded in paragraphs 36 to 42 and 81, prior to the Plaintiffs and Group Members acquiring Product Care?
23. Was Harvey Norman's or Yoogalu's failure to disclose the Product Care limitations pleaded in paragraphs 36 to 42 and 81, prior to the Plaintiffs and Group Members acquiring Product Care conduct that was misleading or deceptive or likely to mislead or

deceive in contravention of s 12DA(1) of the ASIC Act, and, or alternatively, s 1041H of the Corporations Act, and, or alternatively, s 18 of the Australian Consumer Law?

24. If the failure to disclose the Product Care limitations pleaded in paragraphs 36 to 42 and 81, prior to the Plaintiffs and Group Members acquiring Product Care was conduct of the Harvey Norman Retail Entities and not conduct of Harvey Norman or Yoogalu, then:
  - (a) was such conduct misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act, and, or alternatively, s 1041H of the Corporations Act, and, or alternatively, s 18 of the Australian Consumer Law?
  - (b) was Harvey Norman or Yoogalu, knowingly involved in that contravention within the meaning of s 12GF of the ASIC Act and, or alternatively, s 1041I of the Corporations Act and, or alternatively, s 236 of the Australian Consumer Law?
25. Did the Product Care Terms and Conditions pleaded in Schedule A include or give rise to the Brochure Representations?
26. Were the Brochure Representations made by the Harvey Norman Retail Entities, and if so, did Harvey Norman, alternatively, Yoogalu engage in conduct that enabled, facilitated or procured the making of the Brochure Representations?
27. Were the Brochure Representations made by Harvey Norman, alternatively, Yoogalu?
28. Were the Brochure Representations:
  - (a) representations as to future matters within the meaning of section 12BB of the ASIC Act and, or alternatively, s 769C of the Corporations Act?
  - (b) continuing representations which were not altered, corrected, modified or withdrawn prior to expiry of the Cooling Off Period or at all?
29. If the Brochure Representations were made by Harvey Norman or Yoogalu, were the Brochure Representations misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act and, or alternatively, s 1041H of the Corporations Act and, or alternatively, s 18 of the Australian Consumer Law?
30. If the Brochure Representations were made by the Harvey Norman Retail Entities:
  - (a) were the Brochure Representations misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act and, or alternatively, s 1041H of the Corporations Act and, or alternatively, s 18 of the Australian Consumer Law?

- (b) was Harvey Norman or Yoogalu, knowingly involved in that contravention within the meaning of s 12GF of the ASIC Act and, or alternatively, s 1041I of the Corporations Act and, or alternatively, s 236 of the Australian Consumer Law?

31. In the circumstances identified in paragraph 125, would the Plaintiffs and Group Members not reasonably have been aware of the facts that:

- (a) the Product Care Terms and Conditions included a Cooling Off Period; and
- (b) it would have been in their interests to exercise their rights under the Cooling Off Period?

#### Unconscionable conduct

32. Did Harvey Norman and, or alternatively, Yoogalu have a practice, process or system of selling, issuing and administering Product Care to the Plaintiffs and Group Members, alternatively, have a practice, process or system of facilitating the sale, issuance or administration of Product Care to the Plaintiffs and Group Members?

33. Did the practices, processes or systems pleaded have the effect that Harvey Norman and, or alternatively, Yoogalu, and, or alternatively, the Harvey Norman Retail Entities generated revenue (directly or indirectly) from the sale and provision of consumer protections that:

- (a) existed under the Australian Consumer Law by reason of the matters pleaded in paragraphs 29 to 34 above; and
- (b) Harvey Norman, and, or alternatively, Yoogalu, and, or alternatively, the Harvey Norman Retail Entities (including Harvey Norman Nunawading and Harvey Norman Darwin) were obliged to honour without charge?

34. Were Harvey Norman and, or alternatively, Yoogalu aware, or ought to have been aware, of the matters pleaded in paragraph 130?

35. By reason of the matters pleaded, did Harvey Norman and, or alternatively, Yoogalu engage in conduct that was unconscionable within the meaning of s 12CB of the ASIC Act and/or section 21 of the Australian Consumer Law?

#### Trading without an AFSL

36. Did Harvey Norman, alternatively, Yoogalu, alternatively the Harvey Norman Retail Entities carry on a financial services business in Australia within the meaning of ss 9, 18 to 21, 761A, and 761C, or 911D of the Corporations Act?

37. Did Harvey Norman, alternatively, Yoogalu, alternatively the Harvey Norman Retail Entities hold an AFSL?
38. Did Harvey Norman, alternatively, Yoogalu, alternatively the Harvey Norman Retail Entities contravene section 911A of the Corporations Act?
39. Would it reasonably be expected that Harvey Norman, and, or alternatively, Yoogalu and, or alternatively, the Harvey Norman Retail Entities would disclose or cause to be disclosed the matters pleaded in paragraph 145?
40. Was Harvey Norman's or Yoogalu's failure to disclose the matters pleaded in paragraph 145 conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 1041H of the Corporations Act?
41. If the failure to disclose the matters pleaded in paragraph 145 was conduct of the Harvey Norman Retail Entities and not conduct of Harvey Norman or Yoogalu, then:
  - (a) was such conduct misleading or deceptive or likely to mislead or deceive in contravention of s 1041H of the Corporations Act?
  - (b) was Harvey Norman or Yoogalu, knowingly involved in that contravention within the meaning of s 1041I of the Corporations Act?
42. Were the Plaintiffs and Group Members' interests affected by Yoogalu's or, alternatively, the Franchisees', contravention of s 911A Corporations Act, within the meaning of s 1324(1) of the Corporations Act?

#### Causation and loss

43. Was any of the contravening conduct by Harvey Norman, alternatively, Yoogalu, alternatively, the Harvey Norman Retail Entities part of the process pursuant to which the Plaintiffs and Group Members acquired Product Care or cause of the Plaintiffs and Group Members acquiring Product Care?
44. If Harvey Norman, alternatively, Yoogalu, alternatively, the Harvey Norman Retail Entities not engaged in the contravening conduct, would the Plaintiffs and Group Members not have been sold Product Care?
45. Are the Plaintiffs and Group Members entitled to an award of compensation for loss or damage by reason of any contraventions as alleged in the Statement of Claim?

46. Should the Court make an award of damages in favour of the Plaintiffs and Group Members in an aggregate amount pursuant to s33Z(1)(e) or s33Z(1)(f) of the Supreme Court Act 1986 (Vic), and if so, in what amount?

Liability of Harvey Norman

47. Is Harvey Norman liable to the extent that Yoogalu cannot satisfy any award for damages or other monetary relief to the Plaintiffs and Group Members?

**AND THE PLAINTIFFS CLAIM on their own behalf and on behalf of the Group Members:**

- A. An injunctive order pursuant to s 1324(1) of the Corporations Act and, or alternatively, s 12GM(7)(d) of the ASIC Act requiring Harvey Norman and/or Yoogalu to pay to the First Plaintiff the payments made by him to Harvey Norman Nunawading for his acquisition of Product Care in relation to each of the goods comprising the Wong Purchase.
- B. An injunctive order pursuant to s 1324(1) of the Corporations Act and, or alternatively, s 12GM(7)(d) of the ASIC Act requiring Harvey Norman and/or Yoogalu to pay to the Second Plaintiff the payments made by him to Harvey Norman Darwin for his acquisition of Product Care in relation to each of the goods comprising the Daglas First Purchase and the Daglas Second Purchase.
- C. An injunctive order pursuant to s 1324(1) of the Corporations Act and, or alternatively, s 12GM(7)(d) of the ASIC Act requiring Harvey Norman and/or Yoogalu to pay to the Group Members the payments made by them to the Harvey Norman Retail Entities for their acquisition of Product Care.
- D. An order for damages or compensation for loss or damage pursuant to s 1041I and, or alternatively, s 1324(10) of the Corporations Act and, or alternatively, ss 12GF, 12GM(1) or 12GM(7)(e) of the ASIC Act and, or alternatively, ss 236, 237 or 243(e) of the Australian Consumer Law.
- E. An order under s 33Z(1)(e) or, alternatively, (f) of the Supreme Court Act for aggregate damages.
- F. A declaration that Harvey Norman is liable to the Plaintiffs and Group Members if or to the extent that Yoogalu cannot satisfy any award for damages or other monetary relief.
- G. An order under section 33ZJ of the Supreme Court Act that the Group Members reimburse the Plaintiffs, in such proportions as the Court may deem appropriate, any costs incurred by the Plaintiffs and not recovered pursuant to paragraph K hereof.
- H. Such further order as the Court may deem appropriate.
- I. Pre-judgment interest.
- J. Post-judgment interest, including interest on costs.
- K. Costs.

Dated: 28 August 2025

**JEREMY STOLJAR**

**D J FAHEY**

**J PAGE**

**SCHEDULE A – Product Care Terms and Conditions brochures**  
**(paragraphs 8(a)(ii), 26, 50, 69, 77 and 112)**

- A1. In respect of Relevant Goods that were electrical goods, appliances, or white goods:
- (a) from 31 July 2017 to 11 September 2018, a brochure entitled 'Electrical Product Care' (**31 July 2017 Electrical Product Care**);
  - (b) from 12 September 2018 to 22 May 2019, a brochure entitled 'Electrical Product Care' (**12 September 2018 Electrical Product Care**);
  - (c) from 23 May 2019 to 23 June 2019, a brochure entitled 'Product Care' (**23 May 2019 Electrical Product Care**);
  - (d) from 24 June 2019 to 31 May 2021, a brochure entitled 'Product Care' (**24 June 2019 Electrical Product Care**);
  - (e) from 1 June 2021 to 3 October 2021, a brochure entitled 'Product Care – Electrical – 1 June 2021' (**1 June 2021 Electrical Product Care**);
  - (f) from 4 October 2021 to 31 July 2022, a brochure entitled 'Product Care – Electrical – Effective 4 October 2021' (**4 October 2021 Electrical Product Care**);
  - (g) from 1 August 2022 to 8 November 2023, a brochure entitled 'Product Care – Electrical – Effective 1 August 2022' (**1 August 2022 Electrical Product Care**);
  - (h) from 9 November 2023 to 19 September 2024, a brochure entitled 'Product Care – Electrical – Effective 9 November 2023' (**9 November 2023 Electrical Product Care**); and
- A2. In respect of Relevant Goods that were computers:
- (a) from 31 July 2017 to 11 September 2018, a document entitled 'Computer Product Care' (**31 July 2017 Computer Product Care**);
  - (b) from 12 September 2018 to 31 January 2020, a brochure entitled 'Computer Product Care' (**12 September 2018 Computer Product Care**);
  - (c) from 1 February 2020 to 30 June 2021, a brochure entitled 'Product Care – Computers – Effective 1 February 2020' (**1 February 2020 Computer Product Care**);

- (d) from 1 July 2021 to 3 October 2021, a brochure entitled 'Product Care – Computers – Effective 1 July 2021' (**1 July 2021 Computer Product Care**);
- (e) from 4 October 2021 to 31 July 2022, a brochure entitled 'Product Care – Computers – Effective 4 October 2021' (**4 October 2021 Computer Product Care**);
- (f) from 1 August 2022 to 8 November 2023, a brochure entitled 'Product Care – Computers – Effective 1 August 2022' (**1 August 2022 Computer Product Care**); and
- (g) from 9 November 2023 to 19 September 2024, a brochure entitled 'Product Care – Electrical – Effective 9 November 2023' (**9 November 2023 Computer Product Care**).

**SCHEDULE B - Product Care Term (paragraphs 27, 38, 43 and 78)**

- B1. 31 July 2017 Electrical Product Care:
- (a) 'Replacement of Your Product', clauses 12 and 13, p 10;
  - (b) Definition of 'Term', p 14.
- B2. 31 July 2017 Computer Product Care:
- (a) 'Replacement of Your Product', clauses 12 and 13, p 11;
  - (b) Definition of 'Term', p 14.
- B3. 12 September 2018 Electrical Product Care:
- (a) 'Replacement of Your Product', clauses 12 and 13, p 10;
  - (b) Definition of 'Term', p 14.
- B4. 12 September 2018 Computer Product Care:
- (a) 'Replacement of Your Product', clauses 12 and 13, p 11;
  - (b) Definition of 'Term', p 15.
- B5. 23 May 2019 Electrical Product Care:
- (a) 'Replacement Terms and Conditions under Product Care Replacement Plan', p 19;
  - (b) 'Repair Terms and Conditions under Product Care Repair Plan', p 20;
- B6. Definitions of 'Eligible Fault' and 'Term', pp 22 and 24. 24 June 2019 Electrical Product Care:
- (a) 'Replacement Terms and Conditions under Product Care Replacement Plan', p 19;
  - (b) 'Repair Terms and Conditions under Product Care Repair Plan', p 20;
- B7. Definitions of 'Eligible Fault' and 'Term or Product Care Term', pp 22 and 24. 1 February 2020 Computer Product Care:
- (a) 'Replacement Terms and Conditions under Product Care', p 22;
  - (b) Definitions of 'Eligible Fault' and 'Term or Product Care Term', pp 24 and 26.

B8. 1 June 2021 Electrical Product Care:

- (a) 'Replacement Terms and Conditions for Product Care Replacement Plan', p 25;
- (b) 'Repair and Replacement Terms and Conditions for Product Care Coffee Plans', p 26;
- (c) Definition of 'Product Care Term', p 30.

B9. 1 July 2021 Computer Product Care:

- (a) 'Replacement Terms and Conditions under Product Care', p 26;
- (b) Definition of 'Product Care Term', p 30.

B10. 4 October 2021 Electrical Product Care:

- (a) 'Replacement Terms and Conditions for Product Care Replacement Plan', p 25;
- (b) 'Repair and Replacement Terms and Conditions for Product Care Coffee Plans', p 26;
- (c) Definition of 'Product Care Term', p 30.

B11. 4 October 2021 Computer Product Care:

- (a) 'Replacement Terms and Conditions under Product Care', p 26;
- (b) Definition of 'Product Care Term', p 30.

B12. 1 August 2022 Electrical Product Care:

- (a) 'Replacement Terms and Conditions for Product Care Replacement Plan', p 25;
- (b) 'Repair and Replacement Terms and Conditions for Product Care Coffee Plans', p 26;
- (c) Definition of 'Product Care Term', p 30.

B13. 1 August 2022 Computer Product Care:

- (a) 'Replacement Terms and Conditions under Product Care', p 30;
- (b) Definition of 'Product Care Term', p 34.

B14. 9 November 2023 Electrical Product Care:

- (a) 'Replacement Terms and Conditions for Product Care Replacement Plan', p 25;

- (b) 'Repair and Replacement Terms and Conditions for Product Care Coffee Plans', p 26;
- (c) Definition of 'Product Care Term', p 30.

B15. 9 November 2023 Computer Product Care:

- (a) 'Replacement Terms and Conditions under Product Care', p 30;
- (b) Definition of 'Product Care Term', p 34.

**SCHEDULE C – Product Care conditions (paragraphs 28, 43, 54 and 74)**

C1. As to the condition referred to in paragraph 28(a):

- (a) 31 July 2017 Electrical Product Care, 'Replacement of Your Product', clause 12, p 10.
- (b) 31 July 2017 Computer Product Care, 'Replacement of Your Product', clause 12, p 11.
- (c) 12 September 2018 Electrical Product Care, 'Replacement of Your Product', clause 12, p 10.
- (d) 12 September 2018 Computer Product Care, 'Replacement of Your Product', clause 12, p 11.
- (e) 23 May 2019 Electrical Product Care:
  - (i) 'Replacement Terms and Conditions under Product Care Replacement Plan', p 19;
  - (ii) 'Repair Terms and Conditions under Product Care Repair Plan', p 20;
  - (iii) Definition of 'Eligible Fault', p 22.
- (f) 24 June 2019 Electrical Product Care:
  - (i) 'Replacement Terms and Conditions under Product Care Replacement Plan', p 19;
  - (ii) 'Repair Terms and Conditions under Product Care Repair Plan', p 20;
  - (iii) Definition of 'Eligible Fault', p 22.
- (g) 1 February 2020 Computer Product Care:
  - (i) 'Replacement Terms and Conditions under Product Care', p 22;
  - (ii) Definition of 'Eligible Fault', p 24.
- (h) 1 June 2021 Electrical Product Care:
  - (i) 'Replacement Terms and Conditions for Product Care Replacement Plan', p 25;
  - (ii) 'Repair and Replacement Terms and Conditions for Product Care Coffee Plans', p 26.

- (i) 1 July 2021 Computer Product Care, 'Replacement Terms and Conditions under Product Care', p 26.
- (j) 4 October 2021 Electrical Product Care:
  - (i) 'Replacement Terms and Conditions for Product Care Replacement Plan', p 25;
  - (ii) 'Repair and Replacement Terms and Conditions for Product Care Coffee Plans', p 26.
- (k) 4 October 2021 Computer Product Care, 'Replacement Terms and Conditions under Product Care', p 26.
- (l) 1 August 2022 Electrical Product Care:
  - (i) 'Replacement Terms and Conditions for Product Care Replacement Plan', p 25;
  - (ii) 'Repair and Replacement Terms and Conditions for Product Care Coffee Plans', p 26.
- (m) 1 August 2022 Computer Product Care, 'Replacement Terms and Conditions under Product Care', p 30.
- (n) 9 November 2023 Electrical Product Care:
  - (i) 'Replacement Terms and Conditions for Product Care Replacement Plan', p 25;
  - (ii) 'Repair and Replacement Terms and Conditions for Product Care Coffee Plans', p 26.
- (o) 9 November 2023 Computer Product Care, 'Replacement Terms and Conditions under Product Care', p 30.

C2. As to the condition referred to in subparagraph 28(b):

- (a) 31 July 2017 Electrical Product Care:
  - (i) 'Replacement of Your Product', clauses 12 and 13, p 10;
  - (ii) 'Exclusions under Your Product Care, clause 16(a), p 10;
  - (iii) Definition of 'Eligible Fault' and 'Eligible Fault Exclusion', p 13.

- (b) 31 July 2017 Computer Product Care:
  - (i) 'Replacement of Your Product', clauses 12 and 13, p 11;
  - (ii) 'Exclusions under Your Product Care, clause 16(a), p 11;
  - (iii) Definition of 'Eligible Fault' and 'Eligible Fault Exclusion', p 14.
- (c) 12 September 2018 Electrical Product Care:
  - (i) 'Replacement of Your Product', clauses 12 and 13, p 10;
  - (ii) 'Exclusions under Your Product Care, clause 16(a), p 10;
  - (iii) Definition of 'Eligible Fault' and 'Eligible Fault Exclusion', p 13.
- (d) 12 September 2018 Computer Product Care:
  - (i) 'Replacement of Your Product', clauses 12 and 13, p 11;
  - (ii) 'Exclusions under Your Product Care, clause 16(a), p 11;
  - (iii) Definition of 'Eligible Fault' and 'Eligible Fault Exclusion', p 14.
- (e) 23 May 2019 Electrical Product Care:
  - (i) 'Replacement Terms and Conditions under Product Care Replacement Plan', p 19;
  - (ii) 'Repair Terms and Conditions under Product Care Repair Plan', p 20;
  - (iii) Definitions of 'Eligible Fault' and 'Eligible Fault Exclusion', p 22.
- (f) 24 June 2019 Electrical Product Care:
  - (i) 'Replacement Terms and Conditions under Product Care Replacement Plan', p 19;
  - (ii) 'Repair Terms and Conditions under Product Care Repair Plan', p 20;
  - (iii) Definitions of 'Eligible Fault' and 'Eligible Fault Exclusion', p 22.
- (g) 1 February 2020 Computer Product Care:
  - (i) 'Replacement Terms and Conditions under Product Care', p 22;
  - (ii) Definitions of 'Eligible Fault' and 'Eligible Fault Exclusion', pp 24 and 25.
- (h) 1 June 2021 Electrical Product Care:

- (i) 'Replacement Terms and Conditions for Product Care Replacement Plan', p 25;
  - (ii) 'Repair and Replacement Terms and Conditions for Product Care Coffee Plans', p 26.
  - (iii) Definitions of 'Eligible Fault', 'Eligible Fault Exclusion', and 'First Eligible Fault', pp 28 and 29.
- (i) 1 July 2021 Computer Product Care:
  - (i) 'Replacement Terms and Conditions under Product Care', p 26;
  - (ii) Definitions of 'Eligible Fault' and 'Eligible Fault Exclusion', pp 28 and 29.
- (j) 4 October 2021 Electrical Product Care:
  - (i) 'Replacement Terms and Conditions for Product Care Replacement Plan', p 25;
  - (ii) 'Repair and Replacement Terms and Conditions for Product Care Coffee Plans', p 26.
  - (iii) Definitions of 'Eligible Fault', 'Eligible Fault Exclusion', and 'First Eligible Fault', pp 28 and 29.
- (k) 4 October 2021 Computer Product Care:
  - (i) 'Replacement Terms and Conditions under Product Care', p 26;
  - (ii) Definitions of 'Eligible Fault' and 'Eligible Fault Exclusion', pp 28 and 29.
- (l) 1 August 2022 Electrical Product Care:
  - (i) 'Replacement Terms and Conditions for Product Care Replacement Plan', p 25;
  - (ii) 'Repair and Replacement Terms and Conditions for Product Care Coffee Plans', p 26.
  - (iii) Definitions of 'Eligible Fault', 'Eligible Fault Exclusion', and 'First Eligible Fault', pp 28 and 29.
- (m) 1 August 2022 Computer Product Care:
  - (i) 'Replacement Terms and Conditions under Product Care', p 30;

- (ii) Definitions of 'Eligible Fault' and 'Eligible Fault Exclusion', pp 32 and 33.

(n) 9 November 2023 Electrical Product Care:

- (i) 'Replacement Terms and Conditions for Product Care Replacement Plan', p 25;
- (ii) 'Repair and Replacement Terms and Conditions for Product Care Coffee Plans', p 26.
- (iii) Definitions of 'Eligible Fault', 'Eligible Fault Exclusion', and 'First Eligible Fault', pp 28 and 29.

(o) 9 November 2023 Computer Product Care:

- (i) 'Replacement Terms and Conditions under Product Care', p 30;
- (ii) Definitions of 'Eligible Fault' and 'Eligible Fault Exclusion', pp 32 and 33.

C3. As to the condition referred to in subparagraph 28(c):

(a) 31 July 2017 Electrical Product Care:

- (i) 'Replacement of Your Product', clauses 12 and 13, p 10;
- (ii) 'Exclusions under Your Product Care, clause 16(a), p 10;
- (iii) Definition of 'Eligible Fault', p 13.

(b) 31 July 2017 Computer Product Care:

- (i) 'Replacement of Your Product', clauses 12 and 13, p 11;
- (ii) 'Exclusions under Your Product Care, clause 16(a), p 11;
- (iii) Definition of 'Eligible Fault', p 14.

(c) 12 September 2018 Electrical Product Care:

- (i) 'Replacement of Your Product', clauses 12 and 13, p 10;
- (ii) 'Exclusions under Your Product Care, clause 16(a), p 10;
- (iii) Definition of 'Eligible Fault', p 13.

(d) 12 September 2018 Computer Product Care:

- (i) 'Replacement of Your Product', clauses 12 and 13, p 11;

- (ii) 'Exclusions under Your Product Care, clause 16(a), p 11;
  - (iii) Definition of 'Eligible Fault', p 14.
- (e) 23 May 2019 Electrical Product Care:
  - (i) 'Replacement Terms and Conditions under Product Care Replacement Plan', p 19;
  - (ii) 'Repair Terms and Conditions under Product Care Repair Plan', p 20;
  - (iii) Definitions of 'Eligible Fault', p 22.
- (f) 24 June 2019 Electrical Product Care:
  - (i) 'Replacement Terms and Conditions under Product Care Replacement Plan', p 19;
  - (ii) 'Repair Terms and Conditions under Product Care Repair Plan', p 20;
  - (iii) Definitions of 'Eligible Fault', p 22.
- (g) 1 February 2020 Computer Product Care:
  - (i) 'Replacement Terms and Conditions under Product Care', p 22;
  - (ii) Definition of 'Eligible Fault', p 24.
- (h) 1 June 2021 Electrical Product Care:
  - (i) 'Replacement Terms and Conditions for Product Care Replacement Plan', p 25;
  - (ii) 'Repair and Replacement Terms and Conditions for Product Care Coffee Plans', p 26;
  - (iii) Definitions of 'Eligible Fault', and 'First Eligible Fault', pp 28 and 29.
- (i) 1 July 2021 Computer Product Care:
  - (i) 'Replacement Terms and Conditions under Product Care', p 26;
  - (ii) Definition of 'Eligible Fault', p 28.
- (j) 4 October 2021 Electrical Product Care:
  - (i) 'Replacement Terms and Conditions for Product Care Replacement Plan', p 25;

- (ii) 'Repair and Replacement Terms and Conditions for Product Care Coffee Plans', p 26;
  - (iii) Definitions of 'Eligible Fault', and 'First Eligible Fault', pp 28 and 29.
- (k) 4 October 2021 Computer Product Care:
  - (i) 'Replacement Terms and Conditions under Product Care', p 26;
  - (ii) Definition of 'Eligible Fault', p 28.
- (l) 1 August 2022 Electrical Product Care:
  - (i) 'Replacement Terms and Conditions for Product Care Replacement Plan', p 25;
  - (ii) 'Repair and Replacement Terms and Conditions for Product Care Coffee Plans', p 26;
  - (iii) Definitions of 'Eligible Fault', and 'First Eligible Fault', pp 28 and 29.
- (m) 1 August 2022 Computer Product Care:
  - (i) 'Replacement Terms and Conditions under Product Care', p 30;
  - (ii) Definition of 'Eligible Fault', p 32.
- (n) 9 November 2023 Electrical Product Care:
  - (i) 'Replacement Terms and Conditions for Product Care Replacement Plan', p 25;
  - (ii) 'Repair and Replacement Terms and Conditions for Product Care Coffee Plans', p 26;
  - (iii) Definitions of 'Eligible Fault', and 'First Eligible Fault', pp 28 and 29.
- (o) 9 November 2023 Computer Product Care:
  - (i) 'Replacement Terms and Conditions under Product Care', p 30;
  - (ii) Definition of 'Eligible Fault', p 32.

**SCHEDULE D – Product Care remedies (paragraphs 41, 43, 54 and 74)**

D1. Under the 31 July 2017 Electrical Product Care, the 31 July 2017 Computer Product Care, the 12 September 2018 Electrical Product Care, the 12 September 2018 Computer Product Care, 1 February 2020 Computer Product Care, the 1 July 2021 Computer Product Care, the 4 October 2021 Computer Product Care, the 1 August 2022 Computer Product Care, and the 9 November 2023 Computer Product Care:

- (a) a one-off replacement to its nearest equivalent of the Relevant Goods;
- (b) a store credit or cash settlement if the Harvey Norman Retail Entity cannot offer a suitable replacement of the Relevant Goods; or
- (c) a replacement of an essential accessory if the failure is isolated to that accessory,

at the discretion of the Harvey Norman Retail Entity, and with the value not exceeding the original purchase price of the Relevant Goods less any freight costs associated with the replacement.

*Particulars*

*31 July 2017 Electrical Product Care:*

*'Replacement of Your Product, clause 15, p 10;*

*'Replacement Terms', clauses 19 to 23, pp 10-11;*

*31 July 2017 Computer Product Care:*

*'Replacement of Your Product, clause 15, p 11;*

*'Replacement Terms', clauses 19 to 23, pp 11-12;*

*12 September 2018 Electrical Product Care:*

*'Replacement of Your Product, clause 15, p 10;*

*'Replacement Terms', clauses 19 to 23, pp 10-11;*

*12 September 2018 Computer Product Care:*

*'Replacement of Your Product, clause 15, p 11;*

*'Replacement Terms', clauses 19 to 23, pp 11-12.*

*1 February 2020 Computer Product Care, 'Replacement Terms and Conditions under Product Care', p 22.*

*1 July 2021 Computer Product Care, 'Replacement Terms and Conditions under Product Care', p 26.*

*4 October 2021 Computer Product Care, 'Replacement Terms and Conditions under Product Care', p 26.*

*1 August 2022 Computer Product Care, 'Replacement Terms and Conditions under Product Care', p 30.*

*9 November 2023 Computer Product Care, 'Replacement Terms and Conditions under Product Care', p 30.*

D2. Under the 23 May 2019 Electrical Product Care, and the 24 June 2019 Electrical Product Care:

(a) 'Product Care Replacement Plan':

- (i) a one-off replacement to its nearest equivalent of the Relevant Goods;
- (ii) a store credit or cash settlement if the Harvey Norman Retail Entity cannot offer a suitable replacement of the Relevant Goods; or
- (iii) a replacement of an essential accessory if the failure is isolated to that accessory,

at the discretion of the Harvey Norman Retail Entity, and with the value not exceeding the original purchase price of the Relevant Goods less any freight costs associated with the replacement;

(b) 'Product Care Repair Plan':

- (i) a repair of the Relevant Goods; or
- (ii) if more than two repairs are required, a replacement of the Relevant Goods on the same terms and conditions as referred to in subparagraph (a) above.

#### *Particulars*

*23 May 2019 Electrical Product Care:*

*'Replacement Terms and Conditions Under Product Care Replacement Plan', p 19;*

*'Repair Terms and Conditions Under Product Care Repair Plan', p 20.*

*24 June 2019 Electrical Product Care:*

*'Replacement Terms and Conditions Under Product Care Replacement Plan', p 19;*

*'Repair Terms and Conditions Under Product Care Repair Plan', p 20.*

D3. Under the 1 June 2021 Electrical Product Care, the 4 October 2021 Electrical Product Care, the 1 August 2022 Electrical Product Care, and the 9 November 2023 Electrical Product Care:

(a) 'Product Care Replacement Plan':

- (i) a one-off replacement to its nearest equivalent of the Relevant Goods;
- (ii) a store credit or cash settlement if the Harvey Norman Retail Entity cannot offer a suitable replacement of the Relevant Goods; or
- (iii) a replacement of an essential accessory if the failure is isolated to that accessory,

at the discretion of the Harvey Norman Retail Entity, and with the value not exceeding the original purchase price of the Relevant Goods less any freight costs associated with the replacement;

(b) 'Product Care Coffee Plan':

- (i) a repair of the Relevant Goods; or
- (ii) if more than two repairs are required, a replacement of the Relevant Goods on the same terms and conditions as referred to in subparagraph (a) above.

#### *Particulars*

*1 June 2021 Electrical Product Care:*

*'Replacement Terms and Conditions for Product Care Replacement Plan', p 25;*

*'Repair and Replacement Terms and Conditions for Product Care Coffee Plans', p 26.*

*4 October 2021 Electrical Product Care:*

*'Replacement Terms and Conditions for Product Care Replacement Plan', p 25;*

*'Repair and Replacement Terms and Conditions for Product Care Coffee Plans', p 26.*

*1 August 2022 Electrical Product Care:*

*'Replacement Terms and Conditions for Product Care Replacement Plan', p 25;*

*'Repair and Replacement Terms and Conditions for Product Care Coffee Plans', p 26.*

*9 November 2023 Electrical Product Care:*

*'Replacement Terms and Conditions for Product Care Replacement Plan', p 25;*

*'Repair and Replacement Terms and Conditions for Product Care Coffee Plans', p 26.*

### **SCHEDULE E – Product Care cooling off terms (Section E.4.1)**

- E1. Under the 23 May 2019 Electrical Product Care, 24 June 2019 Electrical Product Care, 1 February 2020 Computer Product Care; 1 June 2021 Electrical Product Care, 1 July 2021 Computer Product Care, 4 October 2021 Electrical Product Care, 4 October 2021 Computer Product Care, 1 August 2022 Electrical Product Care, 1 August 2022 Computer Product Care, 9 November 2023 Electrical Product Care, and 9 November 2023 Computer Product Care, consumers had a 20 day period from purchase of Product Care and the Relevant Goods to cancel the Product Care acquired and receive a refund.

#### *Particulars*

*23 May 2019 Electrical Product Care, p. 15.*

*24 June 2019 Electrical Product Care, p. 15.*

*1 February 2020 Computer Product Care, p.18.*

*1 June 2021 Electrical Product Care, p. 17.*

*1 July 2021 Computer Product Care, p. 18.*

*4 October 2021 Electrical Product Care, p. 17.*

*4 October 2021 Computer Product Care, p 18.*

*1 August 2022 Electrical Product Care, p.17.*

*1 August 2022 Computer Product Care. p. 18.*

*9 November 2023 Electrical Product Care, p. 17.*

*9 November 2023 Computer Product Care, p. 17.*

## **SCHEDULE F – Product Care express statements (paragraphs 27, 38, 78 and 112)**

### **31 July 2017 Electrical Product Care**

- F1. The 31 July 2017 Electrical Product Care contained the following statements:
- (a) “Discover all the benefits Product Care brings you” (p. 3);
  - (b) “Protection – With Product Care you can relax knowing your purchase comes with additional protection” (p. 3);
  - (c) “2, 3 or 4 Year Protection Terms Available – Your purchase of Your Product with Product Care provides You with protection for Your Product for Your choice of a period of either 2, 3, or 4 years from the expiry of the Manufacturer’s Voluntary Warranty Period” (p. 4);
  - (d) “The rights under Product Care are in addition to Your rights and remedies under the Australian Consumer Law” (p. 7);
  - (e) “At Annexure ‘A’ is a table that compares your existing rights under the Australian Consumer Law with Your additional rights under Product Care.” (pp. 7 and 9);  
and
  - (f) “Your Product gives You access to all these benefits, available during the Term of Your Product Care, subject to the Terms and Conditions and exclusions in this brochure...” (p. 9).

### **31 July 2017 Computer Product Care**

- F2. The 31 July 2017 Computer Product Care contained the following statements:
- (a) “Discover all the benefits Product Care brings you” (p. 4);
  - (b) “Protection – With Product Care you can relax knowing your purchase comes with additional protection” (p. 4);
  - (c) “1, 2 or 3 Year Protection Terms Available – Your purchase of Your Product with Product Care provides You with protection for Your Product for Your choice of a period of either 1, 2, or 3 years from the expiry of the Manufacturer’s Voluntary Warranty Period” (p. 5);
  - (d) “The rights under Product Care are in addition to Your rights and remedies under the Australian Consumer Law” (p. 8);

- (e) “At Annexure ‘A’ is a table that compares your existing rights under the Australian Consumer Law with Your additional rights under Product Care.” (pp. 8 and 10); and
- (f) “Your Product gives You access to all these benefits, available during the Term of Your Product Care, subject to the Terms and Conditions and exclusions in this brochure...” (p. 10).

### **12 September 2018 Electrical Product Care**

F3. The 12 September 2018 Electrical Product Care contained the following statements:

- (a) “Discover all the benefits Product Care brings you” (p. 3);
- (b) “Protection – With Product Care you can relax knowing your purchase comes with additional protection” (p. 3);
- (c) “2, 3 or 4 Year Protection Terms Available – Your purchase of Your Product with Product Care provides You with protection for Your Product for a period of either 2, 3, or 4 years (depending on the type of product purchased), from the expiry of the Manufacturer’s Voluntary Warranty Period” (p. 4);
- (d) “The rights under Product Care are in addition to Your rights and remedies under the Australian Consumer Law” (p. 7);
- (e) “At Annexure ‘A’ is a table that compares your existing rights under the Australian Consumer Law with Your additional rights under Product Care.” (pp. 7 and 9); and
- (f) “Your Product gives You access to all these benefits, available during the Term of Your Product Care, subject to the Terms and Conditions and exclusions in this brochure...” (p. 9).

### **12 September 2018 Computer Product Care**

F4. The 12 September 2018 Computer Product Care contained the following statements:

- (a) “Discover all the benefits Product Care brings you” (p. 4);
- (b) “Protection – With Product Care you can relax knowing your purchase comes with additional protection” (p. 4);
- (c) “1, 2 or 3 Year Protection Terms Available – Your purchase of Your Product with Product Care provides You with protection for Your Product for a period of either

1, 2, or 3 years (depending on the type of product purchased), from the expiry of the Manufacturer's Voluntary Warranty Period" (p. 5);

- (d) "The rights under Product Care are in addition to Your rights and remedies under the Australian Consumer Law" (p. 8);
- (e) "At Annexure 'A' is a table that compares your existing rights under the Australian Consumer Law with Your additional rights under Product Care." (pp. 8 and 10); and
- (f) "Your Product gives You access to all these benefits, available during the Term of Your Product Care, subject to the Terms and Conditions and exclusions in this brochure..." (p. 10).

### **23 May 2019 Electrical Product Care**

F5. The 23 May 2019 Electrical Product Care contained the following statements:

- (a) "Discover all the benefits of Product Care Repair or Product Care Replacement" (p. 1);
- (b) "With Product Care You have certainty that Your Product is covered for a specific period of time for an Eligible Fault" (p. 3);
- (c) "These Terms and Conditions are in relation to Your rights under Product Care which are in addition to Your existing rights under the ACL" (p. 4);
- (d) "How long does the protection against defects last? – The number of years shown on Your Original Documents. Protection begins on the expiry of the Manufacturer's Voluntary Warranty Period" (p. 5)
- (e) "The rights under Product Care are in addition to Your rights and remedies under the ACL" (p. 10);
- (f) "Pages 5 – 9 contain a table that compares Your existing rights under the ACL with Your additional rights under Product Care" (p. 10); and
- (g) "Period of Product Care Coverage – 2, 3, or 4 year protection terms available for eligible products" (p. 12).

### **24 June 2019 Electrical Product Care**

- F6. The 24 June 2019 Electrical Product Care contained the following statements:
- (a) “Discover all the benefits of Product Care Repair or Product Care Replacement for Electrical Products” (p. 1);
  - (b) “With Product Care You have certainty that Your Product is covered for a specific period of time for an Eligible Fault” (p. 3);
  - (c) “These Terms and Conditions are in relation to Your rights under Product Care which are in addition to Your existing rights under the ACL” (p. 4);
  - (d) “How long does the protection against defects last? – The number of years shown on Your Original Documents. Protection begins on the expiry of the Manufacturer’s Voluntary Warranty Period” (p. 5)
  - (e) “The rights under Product Care are in addition to Your rights and remedies under the ACL” (p. 10);
  - (f) “Pages 5 - 9 contain a table that compares Your existing rights under the ACL with Your additional rights under Product Care” (p. 10); and
  - (g) “Period of Product Care Coverage – 2, 3, or 4 year protection terms available for eligible products” (p. 12).

### **1 February 2020 Computer Product Care**

- F7. The 1 February 2020 Computer Product Care contained the following statements:
- (a) “Discover all the benefits of Product Care” (p. 1);
  - (b) “With Product Care You have certainty that Your Product is covered for a specific period of time for an Eligible Fault” (p. 8);
  - (c) “These Terms and Conditions are in relation to Your rights under Product Care which are in addition to Your existing rights under the ACL” (p. 9);
  - (d) “How long does the protection against defects last? – The number of years shown on Your Original Documents. Protection begins on the expiry of the Manufacturer’s Voluntary Warranty Period which is also shown on Your Original Documents” (p. 10);
  - (e) “The rights under Product Care are in addition to Your rights and remedies under the ACL” (p. 14);

- (f) “Pages 5 – 9 contain a table that compares Your existing rights under the ACL with Your additional rights under Product Care” (p. 14); and
- (g) “Period of Product Care Coverage – 1, 2, or 3 year protection terms available for eligible products” (p. 16).

#### **1 June 2021 Electrical Product Care**

F8. The 1 June 2021 Electrical Product Care contained the following statements:

- (a) “Discover all the benefits of Product Care for Electrical Products” (p. 1);
- (b) “With Product Care You have certainty that Your Product is covered for a specific period of time for an Eligible Fault” (p. 3);
- (c) “Period of Product Care Coverage – 1, 2, 3 or 4 year protection terms available for eligible products” (pp. 4 and 14);
- (d) “These Terms and Conditions are in relation to Your rights under Product Care which are in addition to Your existing rights under the ACL” (p. 6);
- (e) “How long does the protection against defects last? – For the Product Care Term. Protection begins on the expiry of the Manufacturer’s Voluntary Warranty Period which is also shown on Your Original Documents” (p. 7);
- (f) “The rights under Product Care are in addition to Your rights and remedies under the ACL” (p. 12); and
- (g) “Pages 7-10 contain a table that compares Your existing rights under the ACL with Your additional rights under Product Care” (p. 12).

#### **1 July 2021 Computer Product Care**

F9. The 1 July 2021 Computer Product Care contained the following statements:

- (a) “Discover all the benefits of Product Care” (p. 1);
- (b) “With Product Care You have certainty that Your Product is covered for a specific period of time for an Eligible Fault” (p. 7);
- (c) “Period of Product Care Coverage – 1, 2, or 3 year protection terms available for eligible products” (pp. 8 and 16);
- (d) “These Terms and Conditions are in relation to Your rights under Product Care which are in addition to Your existing rights under the ACL” (p. 9);

- (e) “How long does the protection against defects last? – For the Product Care Term. Protection begins on the expiry of the Manufacturer’s Voluntary Warranty Period which is also shown on Your Original Documents” (p. 10);
- (f) “The rights under Product Care are in addition to Your rights and remedies under the ACL” (p. 14); and
- (g) “Pages 10 to 12 contain a table that compares Your existing rights under the ACL with Your additional rights under Product Care” (p. 14).

#### **4 October 2021 Electrical Product Care**

F10. The 4 October 2021 Electrical Product Care contained the following statements:

- (a) “Discover all the benefits of Product Care for Electrical Products” (p. 1);
- (b) “With Product Care You have certainty that Your Product is covered for a specific period of time for an Eligible Fault” (p. 3);
- (c) “Period of Product Care Coverage – 1, 2, 3 or 4 year protection terms available for eligible products” (pp. 4 and 14);
- (d) “These Terms and Conditions are in relation to Your rights under Product Care which are in addition to Your existing rights under the ACL” (p. 6);
- (e) “How long does the protection against defects last? – For the Product Care term. Protection begins on the expiry of the Manufacturer’s Voluntary Warranty Period which is also shown on Your Original Documents” (p. 7);
- (f) “The rights under Product Care are in addition to Your rights and remedies under the ACL” (p. 12); and
- (g) “Pages 7-10 contain a table that compares Your existing rights under the ACL with Your additional rights under Product Care” (p. 12).

#### **4 October 2021 Computer Product Care**

F11. The 4 October 2021 Computer Product Care contained the following statements:

- (a) “Discover all the benefits of Product Care” (p. 1);
- (b) “With Product Care You have certainty that Your Product is covered for a specific period of time for an Eligible Fault” (p. 7);

- (c) "Period of Product Care Coverage – 1, 2, or 3 year protection terms available for eligible products" (pp. 8 and 16);
- (d) "These Terms and Conditions are in relation to Your rights under Product Care which are in addition to Your existing rights under the ACL" (p. 9);
- (e) "How long does the protection against defects last? – For the Product Care Term. Protection begins on the expiry of the Manufacturer's Voluntary Warranty Period which is also shown on Your Original Documents" (p. 10);
- (f) "The rights under Product Care are in addition to Your rights and remedies under the ACL" (p. 14); and
- (g) "Pages 10 to 12 contain a table that compares Your existing rights under the ACL with Your additional rights under Product Care" (p. 14).

#### **1 August 2022 Electrical Product Care**

F12. The 1 August 2022 Electrical Product Care contained the following statements:

- (a) "Enjoy Confidence, Support, & Exclusive Benefits with your Purchase" (p. 1);
- (b) "With Product Care You have certainty that Your Product is covered for a specific period of time for an Eligible Fault" (p. 3);
- (c) "Period of Product Care Coverage – 1, 2, 3 or 4 year protection terms available for eligible products" (pp. 4 and 14);
- (d) "These Terms and Conditions are in relation to Your rights under Product Care which are in addition to Your existing rights under the ACL" (p. 6);
- (e) "How long does the protection against defects last? – For the Product Care Term. Protection begins on the expiry of the Manufacturer's Voluntary Warranty Period which is also shown on Your Original Documents" (p. 7);
- (f) "The rights under Product Care are in addition to Your rights and remedies under the ACL" (p. 12); and
- (g) "Pages 7-10 contain a table that compares Your existing rights under the ACL with Your additional rights under Product Care" (p. 12).

#### **1 August 2022 Computer Product Care**

F13. The 1 August 2022 Computer Product Care contained the following statements:

- (a) “Enjoy Confidence, Support, & Exclusive Benefits with your Purchase” (p. 1);
- (b) “With Product Care You have certainty that Your Product is covered for a specific period of time for an Eligible Fault” (p. 7);
- (c) “Period of Product Care Coverage – 1, 2, or 3 year protection terms available for eligible products” (pp. 8 and 16);
- (d) “These Terms and Conditions are in relation to Your rights under Product Care which are in addition to Your existing rights under the ACL” (p. 9);
- (e) “How long does the protection against defects last? – For the Product Care Term. Protection begins on the expiry of the Manufacturer’s Voluntary Warranty Period which is also shown on Your Original Documents” (p. 10)
- (f) “The rights under Product Care are in addition to Your rights and remedies under the ACL” (p. 14); and
- (g) “Pages 10 to 12 contain a table that compares Your existing rights under the ACL with Your additional rights under Product Care” (p. 14).

#### **9 November 2023 Electrical Product Care**

F14. The 9 November 2023 Electrical Product Care contained the following statements:

- (a) “Enjoy Confidence, Support, & Exclusive Benefits with your Purchase” (p. 1);
- (b) “With Product Care You have certainty that Your Product is covered for a specific period of time for an Eligible Fault” (p. 3);
- (c) “Period of Product Care Coverage – 1, 2, 3 or 4 year protection terms available for eligible products” (p. 4 and 14);
- (d) “These Terms and Conditions are in relation to Your rights under Product Care which are in addition to Your existing rights under the ACL” (p. 6);
- (e) “How long does the protection against defects last? – For the Product Care Term. Protection begins on the expiry of the Manufacturer’s Voluntary Warranty Period which is also shown on Your Original Documents” (p. 7)
- (f) “The rights under Product Care are in addition to Your rights and remedies under the ACL” (p. 12); and
- (g) “Pages 7-10 contain a table that compares Your existing rights under the ACL with Your additional rights under Product Care” (p. 12).

**9 November 2023 Computer Product Care**

F15. The 9 November 2023 Computer Product Care contained the following statements:

- (a) “Enjoy Confidence, Support, & Exclusive Benefits with your Purchase” (p. 1);
- (b) “With Product Care You have certainty that Your Product is covered for a specific period of time for an Eligible Fault” (p. 7);
- (c) “Period of Product Care Coverage – 1, 2, or 3 year protection terms available for eligible products” (pp. 8 and 16);
- (d) “These Terms and Conditions are in relation to Your rights under Product Care which are in addition to Your existing rights under the ACL” (p. 9);
- (e) “How long does the protection against defects last? – For the Product Care Term. Protection begins on the expiry of the Manufacturer’s Voluntary Warranty Period which is also shown on Your Original Documents” (p. 10);
- (f) “The rights under Product Care are in addition to Your rights and remedies under the ACL” (p. 14); and
- (g) “Pages 10 to 12 contain a table that compares Your existing rights under the ACL with Your additional rights under Product Care” (p. 14).

**SCHEDULE G – Defined Terms**

| <b>DEFINED TERM</b>                      | <b>DEFINED IN PARAGRAPH / SCHEDULE</b> |
|------------------------------------------|----------------------------------------|
| Acceptable Operational Life              | 34                                     |
| Additional Protection Representation     | 112                                    |
| AFSL                                     | 134                                    |
| ASIC Act                                 | 1(b)                                   |
| Australian Consumer Law                  | 1(b)                                   |
| Brochure Representations                 | 112                                    |
| Certainty Representation                 | 112(c)                                 |
| Claim Period                             | 8(a)                                   |
| Cooling Off Period                       | 110                                    |
| Corporations Act                         | 8                                      |
| Daglas First Purchase                    | 4                                      |
| Daglas First Purchase Product Care Term  | 70                                     |
| Daglas Second Purchase                   | 6                                      |
| Daglas Second Purchase Product Care Term | 71                                     |
| Deed of Cross Guarantee                  | 165                                    |
| Dual Protection Representation           | 112(b)                                 |
| Eligibility Conditions                   | 28                                     |
| Franchise Agreements                     | 13                                     |
| Group Members                            | 8                                      |
| Group Member Product Care Term           | 78                                     |
| Harvey Norman                            | 10                                     |
| Harvey Norman Darwin                     | 4                                      |
| Harvey Norman Nunawading                 | 2                                      |
| Harvey Norman Retail Entity              | 13                                     |
| Harvey Norman Stores                     | 8(a)(iii)                              |
| Harvey Norman Websites                   | 8(a)(iv)                               |
| Mr Daglas                                | 3                                      |
| Mr Wong                                  | 1                                      |
| Product Care                             | 2(b)                                   |
| Product Care Administrators              | 19(c)(ii)                              |
| Product Care Term                        | 27                                     |

| DEFINED TERM                              | DEFINED IN PARAGRAPH / SCHEDULE |
|-------------------------------------------|---------------------------------|
| Product Care Terms and Conditions         | 26                              |
| Relevant Goods                            | 8(a)(i)                         |
| Sales Process                             | 23                              |
| Sales Process Representations             | 89                              |
| Statutory Guarantee                       | 29                              |
| Supreme Court Act                         | 8                               |
| Wong Product Care Term                    | 51                              |
| Wong Purchase                             | 2(a)                            |
| Yoogalu                                   | 10(c)                           |
| 31 July 2017 Computer Product Care        | A2                              |
| 31 July 2017 Electrical Product Care      | A1                              |
| 12 September 2018 Computer Product Care   | A2                              |
| 12 September 2018 Electrical Product Care | A1                              |
| 23 May 2019 Electrical Product Care       | A1                              |
| 24 June 2019 Electrical Product Care      | A1                              |
| 1 February 2020 Computer Product Care     | A2                              |
| 1 July 2021 Computer Product Care         | A2                              |
| 1 June 2021 Electrical Product Care       | A1                              |
| 4 October 2021 Computer Product Care      | A2                              |
| 4 October 2021 Electrical Product Care    | A1                              |
| 1 August 2022 Computer Product Care       | A2                              |
| 1 August 2022 Electrical Product Care     | A1                              |
| 9 November 2023 Computer Product Care     | A2                              |
| 9 November 2023 Electrical Product Care   | A1                              |