

NOTICE OF FILING

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File Title: DANIEL MCDONALD v AUSTRALIAN LIFE INSURANCE
DISTRIBUTION PTY LTD (ACN 103 157 811) & ANOR
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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Form 17

Rule 8.05(1)(a)

AMENDED STATEMENT OF CLAIM

No. VID 172 of 2024

Federal Court of Australia

District Registry: Victoria

Division: General

Daniel McDonald

Applicant

Australian Life Insurance Distribution Pty Ltd (ACN 103 157 811) and Anor named in the Schedule

Respondents

A. CLAIMANTS 2

B. RESPONDENTS AND INSURERS 2

C. THE PRODUCTS – MPP and MYPP 5

D. BROKER NETWORK AND REGULATORY REGIME 11

E. THE AUSSIE SALES SYSTEM FOR MPP AND MYPP 20

F. REGULATORY FRAMEWORK 29

G. CONTRAVENTIONS 37

H. MISLEADING CONDUCT 57

I. CLAIMANTS’ LOSS AND DAMAGE 62

J. RELIEF 64

K. COMMON QUESTIONS OF FACT OR LAW 64

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[Form approved 01/08/2011]

A. CLAIMANTS

1. The Applicant, Daniel McDonald is a:
 - (a) natural person; and
 - (b) resident of Traralgon, Victoria.
2. The Applicant brings this proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) on his own behalf and on behalf of all persons who:
 - (a) between 28 February 2018 and 29 February 2024 (**Claim Period**), acquired a:
 - (i) Mortgage Protection Plan insurance (**MPP**); or
 - (ii) My Protection Plan insurance (**MyPP**),
manufactured by Australian Life Insurance Distribution Pty Ltd (ACN 103 157 811) (**ALID**) in respect of a home loan arranged by a broker authorised by:
 - (1) Lendi Group Distribution Pty Ltd (formerly, Aussie Home Loans Investments Pty Ltd) (ACN 105 265 861) (**AHLI**); or
 - (2) Aussie Home Loans Pty Limited (ACN 002 119 511) (**AHL**);
(together, **Aussie**); and
 - (b) acquired MPP or MyPP as consumers within the meaning of the *National Consumer Credit Protection Act 2009* (Cth) (**NCCPA**); and
 - (c) as at the date of commencement of this proceeding are not a Justice, Registrar, District Registrar, or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia;
(the Applicant and Group Members being, together and severally, **Claimants**).
3. As at the date of the commencement of this proceeding, there are, as against each Respondent, seven or more persons who have against that Respondent the claims set out in this pleading.

B. RESPONDENTS AND INSURERS

B.1 Respondents

4. The first respondent, ALID:
 - (a) was at all material times and is a company incorporated pursuant to the *Corporations Act 2001* (Cth) (**Corporations Act**) and capable of being sued;
 - (b) is a wholly owned subsidiary of A.L.I. Group Pty Ltd (ACN 101 330 036);

- (c) is, and at all material times during the Claim Period was, the holder of an Australian Financial Services Licence (**AFSL**) (number 226403) granted pursuant to s 913B of the Corporations Act (**ALID AFSL**);
 - (d) was authorised by the ALID AFSL to deal in, and provide general financial product advice for, financial products including general insurance products and life risk insurance products; and
 - (e) distributed MPP and MyPP through various channels, including through:
 - (i) AHLI and brokers engaged by AHLI; and
 - (ii) AHL and brokers engaged by AHL.
5. The ~~s~~Second ~~r~~Respondent, AHLI:
- (a) was at all material times and is a company incorporated pursuant to the Corporations Act and capable of being sued;
 - (b) since 30 June 2022 was and is wholly owned by AHL Holdings Pty Limited (ACN 105 266 073) (**Aussie Holdings**);
- (ba) from 4 June 2019, wholly owned AHL;
- (bb) at all material times, wholly owned:
- (i) Australian Home Loans Holdings Pty Limited (ACN 074 936 904), which until at least 3 June 2019 wholly owned Aussie Centre Administration Pty Limited (ACN 085 291 489) (**Aussie Centre Admin**) (from 12 April 2023 Aussie Centre Admin changed its registered name to Lendi Group Broking Pty Ltd); and
 - (ii) Aussiehomeloans.com.au Pty Ltd (ACN 124 582 261) (**Aussiehomeloans.com.au**);
- (bc) from 4 June 2019 wholly owned Aussie Centre Admin;
- (c) is, and at all material times during the Claim Period was a related body corporate of:
 - (i) AHL; ~~and~~
 - (ii) Aussie Holdings;
 - (iii) Aussie Centre Admin; and
 - (iv) Aussiehomeloans.com.au;

Particulars

- i. *Aussie Group Company Structure: Exhibit DS-2
AHL.0008.0003.0011.*
- ii. *Corporations Act, ss 9, 50.*
- iii. *National Consumer Credit Protection Act 2009 (Cth)
(NCCP), s 5.*

(d) is, and at all material times during the Claim Period was, an associate of:

- (i) AHL; and
- (ii) Aussie Holdings;

Particulars

Corporations Act, ss 11, 50.

(da) at all material times during the Claim Period, was the main:

- (i) operating entity; and
- (ii) financing entity,

of the Aussie group of companies ("Aussie Group"):

Particulars

*Aussie Group Company Structure: Exhibit DS-2
AHL.0008.0003.0011.*

(db) at all material times during the Claim Period traded as "Aussie";

Particulars

*Aussie Group Company Structure: Exhibit DS-2
AHL.0008.0003.0011.*

(e) is, and at all material times during the Claim Period was:

- (i) the holder of Australian Credit Licence numbered 246786 (**AHLI ACL**);
- (ii) authorised under the AHLI ACL to provide:
 - (1) credit activities; and

- (2) credit assistance;
- (f) at all material times during the Claim Period carried on a business of providing mortgage broking services;
- (g) during the Claim Period offered MPP and MyPP for sale;
- (h) is, and at all material times during the Claim Period was, a representative of ALID with authority to:
 - (i) provide general financial product advice in relation to MPP and MyPP; and
 - (ii) deal in a financial product, being MPP and MyPP-;

Particulars

- i. *AHL Investments Pty Ltd Australian Credit License, Licence Number 246786.*
 - ii. *Australian Financial Services Representative – Aussie Investments Pty Ltd – AFS Representative number 000338358.*
- (i) during the Claim Period owned all rights in the “Image” of Aussie, being the distinctive appearance of an Aussie franchise store:

Particulars

- i. *Cl 28.1, and definition of “Image” and “Aussie” in the Aussie Centre FY 2017 Franchise Agreement: AHL.0008.0010.0160.*
 - ii. *Definition of Aussie franchise store is the same as that of “Aussie Centre” in the Aussie Centre FY 2017 Franchise Agreement: AHL.0008.0010.0160.*
 - iii. *Aussie Group Company Structure: Exhibit DS-2 AHL.0008.0003.0011; and AHLI, at all material times in the Claim Period, wholly owned Aussiehomeloans.com.au Pty Ltd (ACN 124 582 261), which owns the web domain Aussie.com.au.*
- (j) during the Claim period owned various trade marks, including:

- (i) the words, "Aussie Home Loans", "Aussie Home Loans We'll Save You", "Aussie Insurance", "Aussie Mortgages", "Aussie", "Aussie Mobile", "Aussie Mortgage Broking"; and
- (ii) the images, "Triangle Atop 3 Rectangles Form House; Underline", "Rects.3,Stacked & Triangle Form House,Stylised", "Triangle Atop 2 Horiz. Stripes Form House,Styl."; and

Particulars

- i. Trade mark numbers 706118; 747820; 747823; 751070; 751071; 751072; 800152; 937992; 956870; 1027367; 1158208; 1158209; 1161895; 1161896; 1161897; 1297906; 1710886; 1777376; 1777377; 1793168; 1793172.
 - ii. The trade marks in (i) above are trade marks in the following classes: 14, 16, 18, 20, 21, 25, 35, 36.
- (k) developed and, at all times during the Claim Period, operated and held all rights in the "Aussie System" which included:
- (i) the distinctive method and style for setting up, establishing, fitting-out, promoting and operating an Aussie franchise store;
 - (ii) the trademarks used by franchisees; and
 - (iii) the confidential information regarding the business interest, methodology and affairs of Aussie Centre Admin, AHLI and AHL.

Particulars

- i. Background (page 4), cl 28.1 and 1.1 (definitions of "Aussie System", "Confidential Information", "Aussie Trade Marks", in the Aussie Centre FY 2017 Franchise Agreement: AHL.0008.0010.0160.
- ii. Aussie Group Company Structure: Exhibit DS-2 AHL.0008.0003.0011.
- iii. AHLI is and was the parent company of Aussiehomeloans.com.au Pty Ltd, being the entity which directly owned the domain name.

B.2 MPP and MyPP Insurers

6. Hannover Life Re of Australasia Ltd (ACN 062 395 484) (**Hannover Re**):

- (a) at all material times during the Claim Period:
- (i) carried on a life insurance business within the meaning of the *Life Insurance Act 1995* (Cth) (**LI Act**); and
 - (ii) was registered under s 21 of the LI Act to issue life policies within the meaning of the LI Act; and

Particulars

- i. *Aussie Mortgage Protection Plan, Product Disclosure Statement & Policy Document issued 15 May 2017 (2017 MPP PDS).*
- ii. *Aussie Mortgage Protection Plan, Product Disclosure Statement & Policy Document issued 21 June 2019 (2019 MPP PDS).*
~~*2017 and 2019 MPP Product Disclosure Statements (PDS).*~~

- (b) during the Claim Period until about a date in 2021 was the insurer in respect of the DTI Benefit cover provided under ~~the~~ MPP.

7. QBE Insurance (ACN 003 191 035) (**QBE**):

- (a) at all material times during the Claim Period:
- (i) carried on a life insurance business within the meaning of the LI Act;
 - (ii) was registered under s 21 of the LI Act to issue life policies within the meaning of that Act;
 - (iii) was the holder of an AFSL (number 239545) granted pursuant to s 913B of the Corporations Act (**QBE AFSL**); and
 - (iv) was authorised under the QBE AFSL to:
 - (1) provide financial product advice for general insurance products; and
 - (2) deal in financial products, including general insurance products and life risk insurance products, on behalf of another person; and

Particulars

2017 MPP PDS and 2019 MPP PDS.

- (b) was the insurer in respect of the Involuntary Unemployment Benefit cover provided under ~~the~~ MPP until a date in 2021.
8. Zurich Australia Limited (ACN 000 010 195) (**Zurich**):
- (a) at all material times during the Claim Period:
 - (i) carried on a life insurance business within the meaning of the LI Act;
 - (ii) was registered under s 21 of the LI Act to issue life policies within the meaning of that Act;
 - (iii) was the holder of an AFSL (232510) granted pursuant to s 913B of the Corporations Act (**Zurich AFSL**); and
 - (iv) was authorised under the Zurich AFSL to deal in and provide general financial product advice for financial products including for life risk insurance products; and
 - (b) was the insurer for all benefits offered by MyPP from about 1 June 2021.

Particulars

~~2021 MyPP PDS;~~

- i. *My Protection Plan, Product Disclosure Statement & Policy Document issued 27 September 2021 (2021 MyPP PDS).*
- ii. *<https://www.aligroup.com.au/news/2021/zurich-partnership>.*

C. THE PRODUCTS – MPP AND MYPP

9. At all material times during the Claim Period, MPP insured or purported to insure the insureds against the following risks:
- (a) death and terminal illness (**DTI Benefit**);
 - (b) the diagnosis of one of 11 conditions specified in the MPP policy terms (**Living Benefit**);

- (c) loss of income if the policyholder became involuntarily unemployed in the five years of the policy (**Involuntary Unemployment Benefit**); and
- (d) disabling injury (optional cover) (**Accidental Injury Benefit**).

Particulars

- i. 2017 MPP PDS, 6-9.
- ii. 2019 MPP PDS, 7-10.

~~2017 and 2019 MPP PDS.~~

10. At all material times during the Claim Period, MyPP insured or purported to insure the insureds against the following risks:
- (a) death and terminal illness (being a DTI Benefit);
 - (b) the diagnosis of one of the 17 specified conditions specified in the MyPP policy (**Trauma Benefit**); and
 - (c) a fracture to a bone of one of 10 different parts of the body (**Specified Injury Benefit**).

Particulars

2021 MyPP PDS, 4, 14-17.

~~2021 MyPP PDS.~~

11. In the premises set out in paragraphs 9 and 10 above, each of MPP and MyPP was at all material times:
- (a) as to the DTI Benefit:
 - (i) a life policy within the meaning of s 9 of the LI Act; and further or alternatively
 - (ii) a contract of insurance that was:
 - (1) a continuous disability policy within the meaning of s 9A of the LI Act; and
 - (2) a financial product within the meaning of s 764A(1)(~~de~~) of the Corporations Act; and
 - (b) as to the insurance cover other than the DTI Benefit:
 - (i) a facility through the acquisition of which a person manages financial risk, within the meaning of s 12BAA(1)(b) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);

- (ii) in the premises in (i) – a financial product within the meaning of the ASIC Act;
- (iii) a contract of insurance within the meaning of s 764A(1)(d) of the Corporations Act, being a general insurance product; and
- (iv) in the premises in (iii) – a financial product for the purposes of Chapter 7 of the Corporations Act.

11A Further and in the alternative to paragraph 11 above, in the premises set out in paragraphs 9 and 10 above:

(a) each of MPP and MyPP were contracts that provided insurance cover in respect of:

(i) the death of the insured person;

Particulars

- i. 2017 MPP PDS, 6-9.
- ii. 2019 MPP PDS, 7-8.
- iii. My Protection Plan, Product Disclosure Statement & Policy Document issued 22 June 2020 (2020 MyPP PDS), 7-8.
- iv. 2021 MyPP PDS, 14.

(ii) the insured person contracting a sickness or a disease that is specifically listed in the MPP or MyPP policy terms; and

Particulars

- i. 2017 MPP PDS, 6-9.
- ii. 2019 MPP PDS, 7-8.
- iii. 2020 MyPP PDS, 7-8.
- iv. 2021 MyPP PDS, 15.

(iii) the insured person becoming involuntarily unemployed (MPP only), or fracturing a specified bone (MyPP only), and

Particulars

2019 MPP PDS, 9.

- (b) the amount of the liability of the insurer under MPP and MyPP was ascertained by reference to a liability of the insured person under their home loan.

Particulars

- i. Paragraphs 9 and 10 and their particulars are repeated.
- ii. 2017 MPP PDS, 7.
- iii. 2019 MPP PDS, 8.
- iv. 2020 MyPP PDS, 8.

12. Further and in the alternative to paragraph 11 above, and by reason of the matters pleaded at 11A, each of MPP and MyPP was and is a consumer credit insurance product within the meaning of s 761G(5)(b)(v) of the Corporations Act and reg 7.1.15 of the *Corporations Regulations 2001* (Cth).

Particulars

- i. *MPP and MyPP provide assistance in meeting loan repayments in death, injury or sickness or becoming unemployed (reg 7.1.15(1)(a)); and.*
- ii. ~~¶~~*The amount of liability of the insurer under the contract is to be ascertained by reference to a liability of the insured under a specified agreement to which the insured person is a party (reg 7.1.15(1)(b)).*
- iii. MPP and MyPP provided insurance to the Claimants (subject to certain conditions) in the event of death, injury, sickness or becoming unemployed (MPP only).

D. BROKER NETWORK AND REGULATORY REGIME

D.1 Aussie Broker Network

13. At all times during the Claim Period, AHLI provided mortgage broking services to customers through a network of mortgage brokers (**Aussie Network**) comprising:

- (a) **Franchise Brokers** (being AHLI's franchise network); and

- (b) **Mobile Brokers** (being AHL's mobile broker network);
(together, **Brokers**).

Franchise Brokers

14. At all times during the Claim Period, the relationship between AHLI and each Franchise Broker was governed by a franchise agreement made between AHLI, Aussie Centre Admin and that Franchise Broker (**Franchise Agreement**).

Particulars

- i. *So far as the ~~a~~Applicant is able to say prior to discovery, the terms of each Franchise Agreement were materially identical to ~~2017~~the Aussie Centre FY 2017 Franchise Agreement, (Final): AHL.0008.0010.0160.*
- ii. Franchise Broker means the Franchisee as defined in the Franchise Agreement.
- iii. *Further particulars may be provided following discovery.*

15. There were terms of each Franchise Agreement that or to the effect that:

- (a) Franchise Brokers were required by AHLI, by itself directly, and through Aussie Centre Admin, to:

- (i) operate as an AHLI's "authorised credit representative" of AHLI; ~~and~~

Particulars

Franchise Agreement, cl 2.1.

- (ii) provide services, including to promote the "Aussie" brand; and

Particulars

Franchise Agreement, cls 2.1, and 1.1 (definition of "Services").

- (iii) operate a franchise store strictly in accordance with the "Aussie System", being the distinctive method and style for setting up, establishing, fitting out, promoting and operating an Aussie franchise store;

Particulars

Franchise Agreement, Background D(ii), cls 1.1 (definition of “Services”, “Aussie Centre”, “Image”, “Location” and “Aussie System”), 2.1.

- (b) Franchise Brokers were required to promote, market, originate, sell and otherwise distribute “Products” including MPP;

Particulars

Franchise Agreement, cls 2.1, 1.1 (definitions of “Product” and “Cross Sale Product”).

- (c) Franchise Brokers were strictly required to meet certain key performance indicators, including minimum sales and profitability targets;

Particulars

Franchise Agreement, cls 18.2, 18.4.

- (ca) Franchise Brokers were required to operate their business in accordance with a business plan approved by Aussie Centre Admin and manuals specifying the standards and procedures for operating an Aussie franchise store prepared by or for Aussie Centre Admin;

Particulars

Franchise Agreement, cls 16.2(a)-(b), 1.1 (definitions of business plan and manuals).

- (cb) Franchise Brokers were required to act in a way that enhances the goodwill associated with the “Aussie System”, the “Aussie Business” and the Aussie Trade Marks;

Particulars

Franchise Agreement, cls 1.2(b), 1.1 (definitions of Aussie System, Aussie Business and Aussie Trademarks).

- (d) Franchise Brokers were prohibited by AHLI from:
- (i) holding a separate Australian credit licence;
 - (ii) being appointed as a credit representative of another Australian credit licensee;
 - (iii) submitting home loan applications outside of the Aussie Network; or
 - (iv) introducing customers other than to AHLI and its related bodies corporate;

Particulars

- i. *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry – Witness Statement of David Lee Smith, [16].*
- ii. *Further particulars will be provided following discovery.*

- (e) Franchise Brokers were required to operate the business as an Aussie branded business in that the Franchise Brokers were required to:
- (i) fit-out the premises from which they would operate, in accordance with an approved Aussie-specific design and construction plans for internal and external fit-out as provided by Aussie Centre Admin to the Franchise Broker;
 - (ii) maintain the fit-out (in excellent condition and in accordance with the “Manuals”);
 - (iii) undertake marketing activities;
 - (iv) only advertise the franchise using materials that were prepared by or on behalf of Aussie or approved by Aussie Centre Admin prior to use;
 - (v) include the www.aussie.com.au web site address (**Aussie Web Site**) on any stationary used by the Franchise Broker as directed by Aussie Centre Admin;
 - (vi) promote access to and use the Aussie Web Site as directed by Aussie Centre Admin and as set out in the Manuals; and

- (vii) register to use the business name “Aussie” and maintain the business name throughout the term of the franchise agreement; and

Particulars

Franchise Agreement, cls 6.2, 6.6, 6.10, 7.1, 7.2, 10.1, 10.5, 10.10, 11.1, 16.1, 19.6(d).

- (f) Franchise Brokers were required to participate (at their own cost) in any training as required by Aussie Centre Admin, including seminars, online training courses, conferences, meetings, state, regional or national conferences.

Particulars

Franchise Agreement, cl 13.

15A. Aussie Centre Admin was the entity through which AHLI ensured compliance with the terms of the Franchise Agreement.

Particulars

Franchise Agreement.

Mobile brokers

15B. At all times during the Claim Period:

- (a) AHL, by its related bodies corporate, promoted, marketed, originated and distributed loan, credit and other financial and related products on its own behalf or as intermediary for lenders and other suppliers under the Aussie brand and image;
- (b) AHL undertook the activities in (a) on behalf of AHLI;
- (c) the Mobile Brokers arranged loan, credit and other financial and related products with lenders under the “Aussie” brand and image; and
- (d) the Aussie brand was at all times owned by AHLI.

Particulars

- i. Mobile Broker Engagement, Recitals B and D.
- ii. Franchise Agreement, cl 1.1 (definition of “Image”).
- iii. Franchise Agreement, cl 28.1.

- iv. Aussie Group Company Structure: Exhibit DS-2
AHL.0008.0003.0011.

16. At all times during the Claim Period, the Mobile Brokers were:

- (a) engaged under agreements made between each Mobile Broker and AHL; and

Particulars

*So far as the aApplicant is able to say prior to discovery, the terms of the said engagements were materially identical to those recorded in a document titled 'The 2016 Aussie Core Independent Contractor Agreement – Aussie Consultant' (AHL.008.0010.0089) (**Mobile Broker Engagement**). Further particulars may be provided following discovery.*

- (b) appointed by AHLI as authorised credit representatives under the AHLI ACL.

Particulars

*So far as the aApplicant is able to say prior to discovery, the terms of the said engagements were materially identical to those recorded in a document titled '2016 Aussie Core Independent Contractor Agreement – Aussie Representative' (AHL.0008.0010.0124) (**Mobile Broker Authorisation**).*

17. At all material times the Mobile Brokers were contractually obliged by AHL:

- (a) to operate under the AHLI ACL;

Particulars

- i. Mobile Broker Engagement, Recital C.
- ii. Mobile Broker Authorisation, Recital C.
- iii. Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry – Witness Statement of David Lee Smith, [16(a)].

- (b) to operate under and promote the 'Aussie' brand and image, which were rights held by AHLI;

Particulars

- i. Mobile Broker Engagement, Recital D, Definition of "Services", cl 2.2(a).
- ii. Mobile Broker Authorisation, Recital D, Definition of "Services", cl 2.2(a).

- (c) to promote, market, originate, sell and otherwise distribute "Products", under the 'Aussie' brand including MPP and MyPP, which were products that AHLI had contractual arrangements to distribute;

Particulars

- i. Mobile Broker Engagement, cls 1.1, 2.2(a) (definitions of "Product" and "Cross Sale Product").
- ii. Mobile Broker Authorisation, cls 1.1, 2.2(a).

- (d) not to hold a separate Australian credit licence;

Particulars

Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry – Witness Statement of David Lee Smith, [16](c).

- (e) not to accept appointment as a credit representative of another Australian credit licensee;

Particulars

Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry – Witness Statement of David Lee Smith, [16](b).

- (f) not to submit home loan applications outside of the Aussie Network; and

Particulars

- i. Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry – Witness Statement of David Lee Smith, [16(e)].
- ii. Mobile Broker Engagement, cl 3.3(a)(vi)-(viii).
- iii. Mobile Broker Authorisation, cl 3.3(a)(vi)-(viii).

(g) to introduce customers only to AHL and its related bodies corporate.

Particulars

- i. *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry – Witness Statement of David Lee Smith, [16].*
- ii. *Further particulars will be provided following discovery.*
- iii. Mobile Broker Engagement, cl 3.3(a)(vi)-(viii).
- iv. Mobile Broker Authorisation, cl 3.3(a)(vi)-(viii).

D.2 Brokers were credit representatives

18. At all times during the Claim Period material to each of the Claimants, each Broker dealing with that Claimant was an authorised credit representative of AHLI within the meaning of the NCCPA.

Particulars

- i. *NCCPA ss 5, 64(2) or 65(2).*
- ii. *Particulars of the authorisation given by AHLI to each Broker may be provided following discovery.*

D.3 Brokers were authorised representatives of ALID

19. At all times during the Claim Period material to each of the Claimants, each Broker dealing with that Claimant was an authorised representative of ALID and was authorised to provide financial services on behalf of ALID under the ALID AFSL.

Particulars

- i. *Corporations Act, s 916A.*

- ii. *The Applicant's Broker commenced as an authorised representative of ALID on 4 February 2014. The classes of the Applicant's Broker's appointment were to provide general financial product advice only and deal in a financial product/apply for, acquire, vary or dispose of financial products on behalf of another.*
- iii. *Particulars of the authorisation given by ALID to each Broker may be provided following the following the trial of common questions or otherwise as the Court may direct.*

D.4 Commissions and incentives payable on the sale of MPP and MyPP

20. During the periods identified in Section B in respect of each of Hannover Re, QBE and Zurich (together, the **Insurers**):
- (a) each of the Insurers had agreements with ALID under which MPP or MyPP, as applicable, would be distributed by Aussie;
 - (b) ALID appointed AHLI and the Brokers as authorised representatives of ALID for the purpose of selling MPP and MyPP to insureds through the Aussie Network;
 - (c) ALID was entitled to receive commissions from the Insurers in respect of MPP and MyPP sold through the Aussie Network;
 - (d) Aussie was entitled to receive upfront and trail commissions from ALID in respect of MPP and MyPP sold through the Aussie Network (**Aussie Commission**); and
 - (e) a portion of the Aussie Commission may have been payable to Brokers in respect of MPP and MyPP sold by them to customers (**Broker Commission**).

Particulars

- i. *Aussie Home Loans Financial Services Guide (Version 3) prepared on 28/01/2016; Aussie Home Loans Financial Services Guide prepared on 5/04/2021_½*
- ii. *Aussie Credit Guide (Exhibit 05 AHL.0008.0014.2233).*
- iii. *So far as the Applicant is able to say prior to discovery, the Broker Commissions included:*
 - a. *“Cross Sale Product” commissions; and*

b. performance commissions if they met certain performance criteria specified in the Mobile Broker Engagement or the Mobile Broker Authorisation.

iv. Further particulars may be provided following discovery.

E. THE AUSSIE SALES SYSTEM FOR MPP AND MYPP

21. At all material times during the Claim Period:

- (a) in the course of assisting customers to obtain or refinance home loans, the Brokers obtained financial information from customers including:
 - (i) their amount and source of income;
 - (ii) their fixed and variable expenses;
 - (iii) any existing debts proposed to be repaid from the home loan;
 - (iv) their credit history;
 - (v) their age and number of dependents;
 - (vi) their assets; and
 - (vii) particulars of any foreseeable changes in their financial circumstances;
- (b) the Brokers requested from customers, for the purpose of verifying the financial information obtained:
 - (i) their bank statements;
 - (ii) the most recent three statements for each credit card held by them;
 - (iii) their most recent superannuation statement;
 - (iv) their most recent home and contents insurance policy;
 - (v) their most recent statements of any term deposits, shares and other investments;
 - (vi) their most recent PAYG payment summary or tax assessment;
 - (vii) their two most recent pay slips; and
 - (viii) if they were self-employed – the last two years of personal and business tax returns and ATO assessments, including P&L statements;

Particulars

- i. <https://www.aussie.com.au>;

- ii. <https://web.archive.org/web/20180320095244/https://www.aussie.com.au/mortgage-broker/whats-involved.html>;
- iii. <https://web.archive.org/web/20180516030025/https://www.aussie.com.au/mortgage-broker/supporting-documents.html>;
- iv. <https://web.archive.org/web/20190415110940/https://www.aussie.com.au/mortgage-broker/whats-involved.html>;
- v. <https://web.archive.org/web/20200401062002/https://www.aussie.com.au/mortgage-broker/whats-involved.html>;
- vi. <https://web.archive.org/web/20200405031116/https://www.aussie.com.au/mortgage-broker/supporting-documents.html>.

- (c) Brokers used a proprietary computer system made available to them by Aussie, called Toolbox, *inter alia* to:
- (i) guide the Brokers' requests for financial information;
 - (ii) identify loan products suitable for the customers; and
 - (iii) prepare loan applications on behalf of the customers;

Particulars

- i. *So far as the ~~a~~Applicant is able to say prior to discovery and receipt of experts' reports, Toolbox:*
 - a. *steps through the process of capturing information required to be submitted for a loan application and generates the required documentation that needs to be received and signed by the customer;*
 - b. *captures customer information, which is obtained through a fact find needs analysis conversation with the customer; and*
 - c. *uses customer declared information and data to assess a customer's requirements against all available products offered by Aussie panel lenders*

and to provide a list of products potentially available to the customer.

- (d) following receipt and assessment of the financial information obtained from or in respect of each customer, the Brokers:
 - (i) provided the customer with a personalised report as to their home loan options;
 - (ii) were trained and expected by Aussie to discuss the available options with the customer;
 - (iii) were trained and expected by Aussie to recommend a home loan option for the customer;
 - (iv) were trained and expected by Aussie to recommend that the customer purchase MPP or MyPP (a recommendation to a customer to purchase MPP or MyPP is referred to as Insurance Advice);
 - (v) only recommended MPP and MyPP to customers;
 - (vi) purported to base the recommendations in (iii), (iv) and (v) on a qualitative assessment of the customer's:
 - (1) needs and objectives;
 - (2) individual circumstances; and
 - (3) preferences; and
 - (vii) purported to base the recommendations in (iii), (iv) and (v) on grounds that were specific to the customer's circumstances;

Particulars

The Applicant refers to and repeats paragraphs 30B and 30D and their particulars below.

- (e) were trained and expected by Aussie to cause:
 - (i) any home loan application approved by the customer to be lodged with the relevant lender for approval; and
 - (ii) any application for MPP or MyPP to be lodged with the relevant insurer; and
- (f) in the event that MPP or MyPP was approved for the customer – may have become entitled to Broker Commissions; 1

(the procedures in (a) to (f) being the **Aussie MPP Sales System**).

Particulars

- i. The particulars to paragraph 20 and sub-paragraphs 21(a)-(c) are repeated.
- ii. Insurance Advice is to be interpreted as the Broker's recommendation to a customer to purchase MPP or MyPP within the context of the Aussie MPP Sales System.
- iii. Further particulars will be provided following review of the Respondents' discovery and expert evidence.

21A. In the course of assisting the Applicant to obtain a home loan, in or around September to October 2019, the Applicant's Broker:

- (a) requested and obtained financial and personal information from the Applicant, including information relating to the Applicant's:
 - (i) employment;
 - (ii) income;
 - (iii) work history;
 - (iv) credit history; and
 - (v) personal circumstances;
- (b) was provided with information by the Applicant in relation to his existing death and total and permanent disability insurance policy; and
- (c) requested and was provided by the Applicant, documents demonstrating the information sought in sub-paragraph (a) above, including payslips.

Particulars of (a) – (c)

- i. The requests (a) and (c) were oral and in writing, and the provision in (b) was oral.
- ii. The Applicant refers to and repeats the pleadings in sub-paragraphs 21(a)-(b) and 21(d) above, and the particulars to paragraph 26 below.

- iii. Further particulars may be provided following the provision of the Applicant's lay evidence and with discovery.

21B. After engaging in the conduct, and receiving the information identified, at paragraph 21A above, the Applicant's broker:

- (a) recommended that the Applicant obtain the MPP policy; and
- (b) did not recommend that the Applicant obtain or consider any other insurance policy.

Particulars

- i. The recommendation was oral.
- ii. The Applicant refers to and repeats the pleadings in sub-paragraphs 21(a)-(b) and 21(d) above, and the particulars to paragraph 26 below.
- iii. Further particulars may be provided following the provision of the Applicant's lay evidence and with discovery.

21C. By engaging in the conduct pleaded at paragraphs 21A to 21B above, the Applicant's broker implemented the Aussie MPP Sales System.

21D. In addition to the matters pleaded at paragraphs 21A to 21C above, the Applicant's broker represented to the Applicant that it was not possible to obtain approval for a home loan, unless the Applicant also obtained the MPP or MyPP policy.

Particulars

- i. The Applicant was told that it was necessary for him to obtain the MPP Policy in order to obtain approval for the home loan.
- ii. The representation was made to the Applicant on at least two occasions, at two meetings which occurred on or around September and October 2019, between the Applicant, his wife and a Broker, at the Aussie Home Loans office of the Applicant's Broker.

- iii. The representation was made in the context of the Applicant and his wife seeking to apply for a home loan with Aussie Home Loans, and in the context of the matters at paragraphs 21A to 21B above.
- iv. The representation was oral.
- v. Further particulars may be provided following the provision of the Applicant's lay evidence and with discovery.

21E. In addition to the implementation of the Aussie MPP Sales System, some Brokers told some Group Members that it was not possible to obtain approval for a home loan, unless they also obtained the MPP or MyPP policy (Necessity Representation).

Particulars

- i. The Applicant repeats the particulars to paragraph 21D above.
- ii. Particulars relating to individual Group Members will be provided following the trial of common questions or otherwise as the Court may direct.
- iii. The Necessity Representation was an express representation.

22. In the premises set out in ~~the preceding~~ paragraphs 21 – 21E, a reasonable person in the position of the ~~customer~~ Claimant would infer or understand that the Insurance Advice, and/or the Necessity Representation (to the extent it was made) was based on a qualitative assessment by the Broker of the customer's:

- (a) needs and objectives;
- (b) individual circumstances; and
- (c) preferences.

23. Each of the Claimants acquired MPP or MyPP as a result of the Aussie MPP Sales System.

Particulars

~~In September 2019, the Applicant and his wife Jessica McDonald made an offer to purchase a property at 49 Cross's Rd, Traralgon, Victoria.~~

~~Sometime in about September 2019, prior to the offer being accepted, the Applicant and Mrs McDonald attended the offices of Aussie Home Loans for a meeting with an Aussie Broker. At the meeting the Broker asked for, and the Applicant provided, personal and financial information, including documents relating to that information.~~

~~The Broker advised the Applicant and Mrs McDonald that they should obtain a MPP policy because it would give them protection should they die, become sick or injured, or lose their employment, and that without this insurance they would not be able to get approval for the home loan.~~

~~In reliance on that advice, the Applicant applied for, and obtained, a Mortgage Protection Plan policy, Policy number, 261285.~~

~~Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.~~

The Aussie MPP Sales system includes the Insurance Advice. In respect of the scope of the Aussie MPP Sales system, the Applicant refers to and repeats paragraph 21 above.

23A. Further to paragraph 23 above, some Claimants, including the Applicant, also acquired MPP or MyPP by reason of their reliance on the Necessity Representation.

E.1 Sales System involved personal advice

Financial product advice

24. The Insurance Advice which was a part of the Aussie MPP Sales System comprised or involved recommendations that:

- (a) were intended to influence the Claimants in making a decision in relation to MPP or MyPP; or

- (b) could reasonably be regarded as being intended to have such an influence.

Particulars

- i. *The intent in (a) is to be inferred, further or alternatively the inference in (b) arose, from the circumstances that:*
 - a. *the Broker was engaged by the Claimant for the purpose of assisting and providing advice on the home loan process;*
 - b. *the Broker requested and reviewed financial information, and information relating to their personal circumstances, from the Claimant;*
 - c. *the Broker met with the Claimant for the purpose of providing personalised recommendations;*
 - d. *the Broker stood to gain from the commissions paid by ALID; and*
 - e. *following the recommendation by the Broker, the Claimant in fact acquired MPP or MyPP.*
- ii. *Further particulars may be provided following discovery and receipt of experts' reports.*

25. In the premise set out in paragraph 24, the Insurance Advice was financial product advice.

Particulars

Corporations Act, s 766B(1).

Personal advice

26. The Insurance Advice comprised or involved recommendations that:
- (a) were given to the Claimants in circumstances where a reasonable person might expect the Brokers to have considered one or more of the objectives, financial situation or needs of the Claimants; and
 - (b) in the premises – was personal advice within the meaning of the Corporations Act.

Particulars

- i. *Corporations Act, s 766B(3).*
- ii. *The Applicant, along with Mrs McDonald, attended in-person meetings with an Aussie Broker for the purpose of arranging a home loan for the purchase of a property.*
- iii. *During those meetings, and after providing information regarding his personal and financial circumstances, the Applicant was advised to acquire MPP. Mrs McDonald was also advised to acquire MPP.*
- iv. *One of the reasons provided by the Broker for acquiring MPP was that the Applicant and Mrs McDonald would require MPP in order to obtain the home loan necessary for the purchase of the property.*
- v. *The amount of cover recommended to the Applicant was tailored to the needs and financial situation of the Applicant.*

Financial services

27. Further and in the alternative, by providing the Insurance Advice, being financial product advice, to Claimants, the Brokers were:

- (a) providing a financial service; and

Particulars

- i. The Insurance Advice was financial product advice, as pleaded at paragraphs 24 to 25 above.
- ii. Corporations Act, s 766A(1)(a) and/or s 766A(1)(b).

- (b) providing the financial service to the Claimants as retail clients.

Particulars

- i. Corporations Act, s 761G(7), Corporations Regulations 2001 Reg 7.1.25(2), insofar as the Insurance Advice related to the DTI Benefit provided under the MyPP and MPP policies.

- ii. MPP and MyPP insofar as they provide the DTI benefit, are 'risk-based financial products' within the meaning of the Corporations Regulations, and a 'life risk insurance products' within the meaning of the Corporations Act, such that s 761G(7)(a) does not apply.
- iii. Corporations Act, s 761G(5)(a)(i) and s 761G(5)(b)(iv); Corporations Regulations 2001; Reg 7.1.14(1)(a)(b) insofar as the Insurance Advice related to the insurance cover under the MPP and MyPP policies other than the DTI Benefit.
- iv. Further or in the alternative to particulars (i) to (iii), to the extent that MPP and MyPP are not a "general insurance product" the Applicant relies on s 761G(7) of the Corporations Act on the basis that, at the time that the Insurance Advice was provided, the price for the provision of the financial product, or the value of the financial product to which the financial service relates did not exceed \$500,000.

28. Some or all of the Claimants relied on the Insurance Advice in agreeing to purchase MPP or MyPP.

Particulars

- i. *The Applicant believed that the Broker he attended in-person meetings with was recommending that he acquire MPP because the Broker considered it was in his best interests to do so and he relied on that advice when he agreed to purchase MPP.*
- ii. *Particulars relating to individual group members may be provided following the trial of common questions or otherwise as the Court may direct.*

F. REGULATORY FRAMEWORK

F.1 Personal advice obligations

29. At all material times, ALID as the holder of the ALID AFSL was required by:

- (a) ~~section 912A of the Corporations Act to:~~

- (i) ~~do all things necessary to ensure that any financial product advice given by the Brokers within the ostensible scope of their authority as authorised representatives of ALID (being the Insurance Advice) was provided efficiently, honestly and fairly to customers;~~
 - (ii) ~~have in place adequate arrangements for the management of conflicts of interest that may arise wholly, or partially, in relation to the provision of Insurance Advice;~~
 - (iii) ~~take reasonable steps to ensure the Brokers complied with the financial services laws; and~~
 - (iv) ~~ensure that the Brokers were adequately trained to provide the Insurance Advice (including by complying with section 912D) and were competent to provide the Insurance Advice; [Not used]~~
- (b) section 961L of the Corporations Act to take reasonable steps to ensure that if personal advice was provided by Brokers to customers, the Brokers:
- (i) in accordance with section 961B of the Corporations Act – acted in the best interests of the clients in relation to the advice;
 - (ii) in accordance with section 961G of the Corporations Act – only provided the advice to the customer if it would be reasonable to conclude that the advice was appropriate to the customer; and
 - (iii) in accordance with section 961H of the Corporations Act – warned the customer if it was reasonably apparent to Aussie or the Broker that information relating to the objectives, financial situation and needs of the customer on which the advice was based was incomplete or inaccurate;
- (c) section 961J of the Corporations Act to give priority to the interests of the customer over any other interest.

F.2 NCCPA and Corporations Act obligations

30. The Claimants were, in relation to their receipt of Insurance Advice from Brokers, consumers within the meaning of the NCCPA.

30A. The home loan products referred to at paragraph 21 above, were credit contracts within the meaning of section 4 of the National Credit Code (Annexure to the NCCPA).

Particulars

- i. National Credit Code ss 3, 4.

- ii. The home loans recommended by Brokers to customers as part of the Aussie System were contractual arrangements under which credit was to be provided to the customer, by which either:
 - a. the home loan provider agreed to defer payment of a debt owed by the customer; or
 - b. the customer incurred a deferred debt to the home loan provider.

30B. By engaging in the conduct at sub-paragraphs 21(a)-(d)(i)-(iii), (e)(i) above, the Brokers were at all material times, providing credit assistance within the meaning of section 8 of the NCCPA, because the conduct involved:

- (a) obtaining personalised information (including financial information) for the purpose of recommending a credit contract product to the customer;
- (b) identifying credit contracts for customers;
- (c) providing the customer with a personalised report as to their credit contract options;
- (d) recommending a credit contract to the customer with a specific lender;
- (e) assisting a customer to apply for a credit contract with the relevant lender; and
- (f) lodging an application for a credit contract with the relevant lender for approval.

Particulars

- i. NCCPA s 8(a), (d).
- ii. The conduct that constituted obtaining personalised information (including financial information) for the purpose of recommending a credit contract product to the customer is the conduct pleaded at sub-paragraphs 21(a)-(b) above.
- iii. The conduct that constituted identifying credit contracts for customers is the conduct pleaded at sub-paragraph 21(c)(i)-(ii) above.
- iv. The conduct that constituted providing the customer with a personalised report as to their credit contract options is the conduct pleaded at sub-paragraph 21(d)(i) above.

- v. The conduct that constituted recommending a credit contract to the customer with a specific lender is the conduct pleaded at sub-paragraph 21(d)(iii).
- vi. The conduct that constituted assisting a customer to apply for a credit contract with the relevant lender is the conduct pleaded at sub-paragraphs 21(a)-(d)(i)-(iii), (e)(i).
- vii. The conduct that constituted lodging an application for a credit contract with the relevant lender for approval is the conduct pleaded at sub-paragraph 21(e)(i).

30C. In the premises of paragraphs 30A and 30B above, by engaging in the conduct at sub-paragraphs 21(a)-(d)(i)-(iii), (e)(i) above, the Brokers were at all material times providing a credit service within the meaning of section 7 of the NCCPA, because the conduct amounts to the provision of credit assistance to a consumer as set out at paragraph 30B above.

Particulars

- i. NCCPA s 7(a).
- ii. The particulars to sub-paragraph 30B are repeated.

30D By engaging in the conduct pleaded below at paragraph 69C and/or making the Necessity Representation, the Brokers were at all material times engaging in conduct which related to a credit activity within the meaning of the NCCPA, because the conduct:

- (a) occurred in the course of or shortly after the conduct pleaded in paragraph 30B;
- (b) involved the Broker recommending an amount of cover for MPP or MyPP by reference to the amount of the home loan;
- (c) eligibility for the insurance was limited to persons who had applied for a loan, loan review or loan increase, or who were related to someone who had applied; and

Particulars of (b) – (c)

- i. 2017 MPP PDS, 7.
- ii. 2019 MPP PDS, 8.
- iii. 2020 MyPP PDS, 8.

- (d) the Necessity Representation was a representation that MPP or MyPP was necessary for the Claimant to obtain the home loan.

31. In the premises set out in paragraphs 30A – 30D and Sections D and E above, at all times material to their dealings with each Claimant:

(a) each of:

(i) AHLI and AHL, ~~by themselves and~~ by their Brokers dealing with each Claimant; and

(ii) each Broker:

(b) was:

(i) a mortgage broker;

(ii) providing or implementing the Insurance Advice; ~~and~~

(iii) providing credit assistance to the Claimant within the meaning of the NCCPA;

(iv) engaging in a credit activity within the meaning of the NCCPA; and

(v) engaging in conduct that relates to a credit activity within the meaning of the NCCPA.

Particulars

- i. NCCPA ss 6, 7, 8, 15B.
- ii. A credit service under the NCCPA is defined to include the provision of credit assistance to a consumer.
- iii. The Applicant refers to and repeats the matters in paragraph 30C above.
- iv. A credit activity under the NCCPA is defined to include the provision of a credit service (s 6).

31A. In the premises set out at paragraphs 30 to 31 above, at all times material to their dealings with each Claimant, when providing credit assistance to each Claimant and thereby engaging in a credit activity within the meaning of the NCCPA, each Broker was acting in their capacity as an authorised representative of AHLI, within the meaning of s 64(2) of the NCCPA, alternatively s 65(2) of the NCCPA.

32. At all times material to their dealings with each Claimant, each Broker was, as a credit representative of AHLI, required by the NCCPA:

- (a) not to provide credit assistance to a Claimant unless the Broker:
 - (i) made an assessment as to whether the loan was unsuitable for the consumer if the contract were entered;
 - (ii) made reasonable inquiries of the consumer's requirements and objectives;
 - (iii) made reasonable inquiries about the consumer's financial situation; and
 - (iv) took reasonable steps to verify the consumer's financial situation;

Particulars

NCCPA ss 115 to 117.

- (b) in order to satisfy the obligation in sub-paragraph 32(a) above – to obtain from each Claimant as a customer:
 - (i) the Claimant's amount and source of income;
 - (ii) the Claimant's fixed and variable expenses;
 - (iii) any existing debts that were to be repaid from the loan;
 - (iv) the Claimant's credit history;
 - (v) the Claimant's age and number of dependents;
 - (vi) the Claimant's assets; and
 - (vii) particulars of any foreseeable changes in the Claimant's financial circumstances; and

Particulars

NCCPA s 117.

- (c) in order to satisfy the obligation in sub-paragraph 32(a)(i) above – to obtain the following information from each Claimant:
 - (i) the amount of credit sought;
 - (ii) the timeframe for which credit was required;
 - (iii) the purpose of, and the benefit sought from, the credit;

- (iv) whether the Claimant sought particular product features or flexibility, and understood the costs of these features and any additional risks;
- (v) whether the Claimant:
 - (1) required any additional expenses, such as premiums for insurance related to the credit or consumer lease, to be included in the amount financed; and
 - (2) understood the additional costs of the said expenses being financed rather than purchased outright; and

Particulars

NCCPA s 116.

- (vi) from 18 February 2020:
 - (1) to act in the best interests of the Claimant in relation to the credit assistance; and

Particulars

NCCPA s 158LE(1).

- (2) if the Broker knew, or reasonably ought to have known, of a conflict between the interests of the Claimant and the Broker or relevant associates of the Broker – to give priority to the Claimant’s interests when providing credit assistance.

Particulars

NCCPA s 158LF(1).

33. In the premises set out in paragraph 26, at all times material to each Claimant the Broker dealing with that Claimant in relation to the Claimant’s purchase of MPP or MyPP was required by reason of the personal advice obligations to:

- (a) act in the best interests of the Claimant in relation to the Insurance Advice;

Particulars of (a)

Corporations Act, s 961B.

- (b) warn the Claimant if it was reasonably apparent to the Broker that information relating to the objectives, financial situation and needs of the Claimant on which the Insurance Advice was based was incomplete or inaccurate;

Particulars of (b)

Corporations Act, s 961H.

- (c) give priority to the interests of the Claimant over the interests of the Broker, AHLI, AHL and ALID and the Insurers in relation to the Insurance Advice; and

Particulars of (c)

Corporations Act, s 961J.

- (d) only provide Insurance Advice if it was reasonable to conclude that the advice was appropriate to the Claimant.

Particulars of (d)

Corporations Act, s 961G.

Particulars of (a) – (d)

Paragraph 33(a)-(d) is to be read in relation to the personal advice obligations paragraph 29 above.

33A. At all material times:

- (a) the Brokers in fact complied with their obligations in sub-paragraphs 32(a)(ii)-(iv), (b) and (c)(i)-(iv) above, by making the inquiries pleaded in sub-paragraphs 32(a)(ii)-(iv) and obtaining the information pleaded in sub-paragraphs 32(b) and (c)(i)-(iv) above from each Claimant;
- (b) the Brokers were acting in their capacity as authorised credit representatives of AHLI when making the inquiries pleaded in sub-paragraphs 32(a)(ii)-(iv) and obtaining the information pleaded in sub-paragraphs 32(b) and (c)(i)-(iv) above from each Claimant; and
- (c) AHLI ensured that the Brokers in fact complied with their obligations as pleaded in sub-paragraphs 32(a)(ii)-(iv), (b) and (c)(i)-(v) above.

Particulars

The Applicant infers that pursuant to s 47 of the NCCPA, AHLI was complying with its obligation to undertake the steps in sub-paragraphs 32(a)(ii)-(iv), (b) and (c)(i)-(v).

G. CONTRAVENTIONS

G.1 MPP and MyPP were unsuitable and uncompetitive

34. MPP and MyPP did not:

- (a) offer income protection / salary continuance insurance, being a benefit which pays the insured part of their lost income if they are unable to work due to an injury, illness, or disability;
- (b) offer cover for partial disability;
- (c) offer TPD which covered all causes of total and permanent disability;
- (d) offer Life Buyback, being a condition which allows the insured to restore the amount of their life cover at a certain point in time (usually 12 months) after a claim against their Trauma or TPD benefit;
- (e) have a TPD Split Benefit definition, being a condition which allows the insured to apply for the benefit so that it is both inside and outside of the insureds superannuation; or
- (f) have an 'Own' occupation definition, being that if you can no longer complete the significant roles of your own occupation, which is superior level of cover compared to an 'Any' occupation definition.

Particulars

- i. The particulars to paragraph 34 are in Schedule 1.
- ii. Further particulars may be provided following service of experts' reports.

35. Some or all ~~Each~~ of the features ~~restrictions~~ referred to in paragraph 34 above were ~~generally~~ found in other policies for insurance ~~generally~~ available to persons in the position of the Claimants at the relevant time (Alternative Policies).

Particulars

- i. The particulars to paragraph 35 are in Schedule 1.

- ii. Further particulars may be provided following discovery and receipt of service of experts' reports.

36. MPP and MyPP had the following features:

- (a) the Living Benefit (MPP) and Trauma Benefit (MyPP), which both provided only 30% of the death benefit amount;
- (b) the Involuntary Unemployment Benefit cover in MPP provided only 1% of the death benefit amount, and for only three months (cumulative across the life of the policy) capped at \$7,500 (total) (2017 MPP PDS and 2019 MPP PDS);
- (c) the Involuntary Unemployment Benefit cover was only available in the first five years from the date on which the policy commenced (2017 MPP PDS and 2019 MPP PDS); and
- (d) the Specified Injury Benefit in MyPP cover only provides 3% of the DTI Benefit, capped at \$7,500 (total) (2021 MyPP PDS).

Particulars

- i. The particulars to paragraph 36 are in Schedule 2.
- ii. Further particulars may be provided following service of experts' reports.

37. The restrictions referred to in paragraph 36 above were not, or not usually, found in Alternative Policies.

Particulars

- i. The particulars to paragraph 37 are in Schedule 2.
- ii. Further particulars may be provided following ~~discovery~~ and receipt of service of experts' reports.

38. At all material times during the Claim Period, MPP and MyPP:

- (a) cost more than Alternative Policies; and

Particulars

- i. Particulars for the cost of the Applicant's annual premium in year 1 together with particulars for the annual premium for Alternative Policies at around the

time of the commencement of the Applicant's MPP policy, are in Schedule 3.

- ii. *Further particulars may be provided following discovery and receipt of experts' reports.*

(b) in relation to the Living Benefit and Trauma Benefit cover:—

- (i) offered very limited breadth of cover compared to Alternative Policies; and

Particulars

- i. *The Living Benefit and Trauma Benefit definition in the MPP and MyPP PDS documents:*
 - a. *excluded various illnesses, such as mental health, through non-inclusion;*
 - b. *is limited by an "included by listing" definition;*
 - c. *only lists a small number of medical conditions;*
 - d. *TPD and critical illness impacts are linked together as a 'Living Benefit' or 'Trauma Benefit' (as applicable) even though they are not likely to have the same financial impact.*
- ii. *Each of the restrictions referred to above were not found in other TPD and critical illness policies generally available to the Claimants in Alternative Policies.*
- iii. *Further particulars may be provided following discovery and receipt of experts' reports.*

- (ii) were subject to disadvantageous conditions, compared to Alternative Policies.

Particulars

- i. *Paragraphs 34 to 36 above are repeated.*
- ii. *Further particulars may be provided following ~~discovery~~ and receipt of service of experts' reports.*

39. In the premises set out in paragraphs 34 to 38 above, MPP and MyPP were unsuitable for:
- (a) any customers; and further or alternatively
 - (b) some or all of the Claimants, including the Applicant.

Particulars

- i. MPP and MyPP could not have been suitable for any customer, because for all customers, at the time of the Insurance Advice, there were products available to the customers, which either provided better cover for the same or lesser price, or equivalent cover for a lesser price.
- ii. Further particulars may be provided following discovery and receipt of experts' reports.
- iii. In the case of the Applicant, the Applicant refers back to and repeats paragraphs 34 – 38. In addition to those matters, MPP was not suitable for the Applicant because he already held an insurance policy.

G.2 Brokers – best interests obligations (completeness of enquiries)

40. The Aussie MPP Sales System:

- (a) restricted Brokers so that they could only recommend MPP and MyPP, such that the Brokers could not investigate, consider and assess Alternative Policies or the prices of Alternative Policies;
- (b) did not provide Brokers with any means to compare MPP or MyPP against Alternative Policies;
- (c) did not require Brokers to compare MPP or MyPP against Alternative Policies;
- (d) set as the ~~default~~ level of cover by reference to the amount of the Claimant's home loan, rather than the level of insurance that was appropriate for the Claimants;
- (e) required the Brokers to recommend MPP or MyPP whether or not MPP or MyPP satisfied the objectives, financial situation and needs of the Claimants-; and
- (f) did not require a Broker to obtain adequate details of the:
 - (i) amount of insurance already held by Claimants; or

- (ii) amount and type of insurance required by Claimants to meet their objectives, financial situation and needs.

Particulars

So far as the Applicant is able to say prior to discovery and receipt of experts' reports, the Aussie MPP Sales System did not require a Broker to obtain the said details at all, or at least so far as they might be connected with the details of life and other insurance in the Claimants' superannuation.

41. Further to paragraph 40, Brokers did not, in relation to the Applicant and some or all of the Group Members:

- (a) obtain adequate details of the:
 - (i) amount of insurance currently held by Claimants; or
 - (ii) amount and type of insurance required by Claimants to meet their objectives, financial situation and needs; or
- (b) investigate and assess, adequately or at all, whether the MPP or MyPP sold to the said Claimants was:
 - (i) appropriate to the Claimant's circumstances; or
 - (ii) the most suitable of the insurance products available in the market, having regard to the Claimant's circumstances and requirements.

Particulars

- i. *So far as the ~~a~~Applicant is able to say prior to discovery, the Applicant informed his broker that he held a life and TPD benefit in his CBUS superannuation fund but the Applicant's broker did not ask about or obtain any information about the terms of this insurance when informed of this fact, including the amount of cover each benefit provided. The Applicant's broker did not investigate alternatives to MPP.*
- ii. *Particulars relating to individual group members may be provided following the trial of common questions or otherwise as the Court may direct.*

42. In the premises set out in:

- (a) paragraph 40; and further or alternatively
- (b) paragraph 41;

it would have been reasonably apparent to the Brokers, or persons in the position of the Brokers, that information relating to the Claimants' circumstances and relevant to their acquisition of MPP or MyPP was incomplete, within the meaning of s 961C of the Corporations Act.

43. In the premises set out in paragraph 42, the Brokers failed to:

- (a) consider adequately or at all whether MPP or MyPP satisfied the objectives, financial situation and needs of the Claimants;
- (b) conduct a reasonable investigation into the financial products (being the Alternative Products) that might achieve those objectives, and meet those needs of the Claimants that would reasonably be considered to be relevant to the Insurance Advice; or
- (c) base all judgments made in relation to the Insurance Advice on the Claimants':
 - (i) relevant circumstances; and
 - (ii) best interests.

44. In the premises set out in paragraphs 39 and 43, the Brokers breached their duty to act in the best interests of the Claimants.

Particulars

Corporations Act, s 961B(2).

G.3 Brokers – failure to warn

45. Further and in the alternative to Section G.2, the Aussie MPP Sales System did not require the Brokers to give a prominent and specific warning to the customer that or to the effect that:

- (a) the Broker was or may be submitting an application for MPP or MyPP for the customer without having obtained all the information that might reasonably be regarded as relevant to the assessment whether the MPP or MyPP was appropriate for the customer's circumstances;

- (b) the Broker was or may be submitting an application for MPP or MyPP for the customer without having given specific consideration to whether the MPP was appropriate for the customer's circumstances;
 - (c) the Broker was submitting an application for MPP or MyPP because it was the standard step to be taken by:
 - (i) a Broker in the Aussie Network; and
 - (ii) a Broker acting under the Aussie MPP Sales System; or
 - (d) the Broker was submitting an application for MPP or MyPP for the reason, or reasons among which was a principal reason, that selling MPP or MyPP to the customer would earn commission for the Broker and AHL or AHLI, as applicable.
46. By reason of the Aussie MPP Sales System, the Brokers did not give any or any adequate warning to the Applicant, or some or all of the Group Members, that or to the effect that:
- (a) the Broker was or may be submitting an application for MPP or MyPP for the customer, without having obtained all the information that might reasonably be regarded as relevant to the assessment whether the MPP or MyPP was appropriate for the customer's circumstances;
 - (b) the Broker was or may be submitting an application for MPP or MyPP for the customer, without having given specific consideration to whether the MPP or MyPP was appropriate for the customer's circumstances;
 - (c) the Broker was submitting an application for MPP or MyPP because it was the standard step to be taken by:
 - (i) a Broker in the Aussie Network; and
 - (ii) a Broker acting under the Aussie MPP Sales System; or
 - (d) the Broker was submitting an application for MPP or MyPP for the reason, or reasons among which was a principal reason, that selling MPP or MyPP to the customer would earn commission for the Broker and AHL or AHLI, as applicable.
47. In the premises of paragraph 46 the Brokers breached their duties to warn the Claimants that their advice to acquire MPP or MyPP was, or may be, based on incomplete or inaccurate information relating to the Claimant's relevant personal circumstance.

Particulars

- i. *The Applicant was not warned that the advice to acquire MPP or MyPP was, or may be, based on incomplete or inaccurate information.*
- ii. *Corporations Act, s 961H.*

G.4 Brokers – failure to give appropriate advice

48. By reason of the matters pleaded in paragraphs 21 to 21C, 22, 23, and 34 to 39, above, the Aussie MPP Sales System resulted in advice being given to the Claimants that:
- (a) recommended an insurance product that did not have any of the features in paragraph 34;
 - (ab) recommended an insurance product that was unsuitable for all or some group members;
 - (b) failed adequately to consider the appropriateness of MPP or MyPP for the Claimants;
 - (c) failed adequately to consider the level of insurance that was appropriate for the Claimants; and
 - (d) failed to include any consideration of appropriate alternatives to MPP or MyPP.

Particulars

The Applicant refers to and repeats the matters set out in paragraphs 34 to 38 above.

49. By reason of the matters pleaded in paragraph 39 and 48 above:
- (a) the MPP and MyPP was not likely to satisfy the Claimants' relevant circumstances;
 - (b) the Claimants were not likely to be in a better position if they acted on the Insurance Advice; and
 - (c) in the premises in (a), further or alternatively (b) – it was not reasonable to conclude that the Insurance Advice given to the Claimants to acquire MPP or MyPP was appropriate.
50. In the premises set out in paragraphs 39, 48 and 49, the Brokers in providing the Insurance Advice breached their duty to provide appropriate advice to the Claimants.

Particulars

Corporations Act, s 961G.

G.5 Brokers – failure to prioritise customer interests

51. At all times material to each Claimant it was in the interests of the Claimant to:
- (a) receive advice that considered their objectives, financial situation and needs;
 - (b) only obtain a policy of insurance if that policy met their objectives, financial situation and needs;
 - (c) only obtain an amount and type of cover that met their objectives, financial situation and needs; and
 - (d) where a policy of insurance met their objectives, financial situation and needs, to obtain such a policy at the lowest price.
52. At all times material to each Claimant it was in the interests of:
- (a) the Brokers to receive Broker Commissions for the sale of MPP and MyPP;
 - (b) Aussie and ALID to receive commissions or other payments and incentives for the sale of MPP and MyPP; and
 - (c) the Insurers to receive the premiums on the sale of MPP and MyPP.
53. In the premises set out in paragraphs 51 and 52 there was a conflict between the interests of the Claimants and:
- (a) the Brokers' own interests;
 - (b) the interests of Aussie;
 - (c) the interests of ALID; and/or
 - (d) the interests of the Insurers;
- (together and severally **Conflicts**).
54. The Brokers knew, or reasonably ought to have known, of the Conflicts.

Particulars

- i. *The Conflicts arose from the business structures under which the Brokers operated and were obvious from the*

commission arrangements that affected the Brokers' revenues.

- ii. *The Applicants may provide further particulars following discovery.*

55. The Brokers, in relation to the Applicant and some or all of the Group Members:
- (a) gave the Insurance Advice for the reasons, or reasons including as principal reasons, that:
 - (i) it was standard practice under the Aussie MPP Sales System to give the advice; and
 - (ii) it was in Aussie's interests that the Insurance Advice be given so that:
 - (1) the Claimants purchased MPP or MyPP;
 - (2) ALID earned commissions from the Insurers;
 - (3) Aussie earned commissions from ALID; and
 - (4) the Brokers earned commissions from Aussie;
 - (b) gave the Insurance Advice despite not having complete information as to the relevant Claimant's circumstances;
 - (c) gave the Insurance Advice despite the advice not being appropriate to the relevant Claimant's circumstances; and
 - (d) in the premises in (a) to (c) or any of them – failed to give priority to the interests of the said Claimants, compared to the interests of:
 - (i) the Brokers in earning commission;
 - (ii) Aussie in earning commissions; and further or alternatively
 - (iii) ALID in earning commissions.
56. In the premises set out in paragraphs 51 to 55, the Brokers breached their duty to give priority to the interest of the Claimants.

Particulars

Corporations Act, s 961J(1).

G.6 ALID – no adequate steps to ensure Broker compliance

57. At all material times during the Claim Period ALID:

- (a) authorised AHLI and AHL, by itself or by the Brokers, to:
 - (i) promote MPP or MyPP to customers; and
 - (ii) assist customers to apply for MPP or MyPP;
- (b) in connection with the authorisations in (a), offered Aussie and the Brokers the commission arrangements described in paragraph 20 above;
- (ba) ought to have known, that it was not possible for AHLI and/or Brokers to give general advice only in respect of MPP or MyPP, within the context of the Aussie MPP Sales System;
- (bb) ought to have known the features of the Aussie MPP Sales System;
- (c) took no or no adequate step to ensure the Brokers (as its authorised representatives) complied with the financial services laws in sections G2 to G5;
- (d) took no or no adequate step to:
 - (i) train Brokers; or
 - (ii) ensure that training was provided to Brokers;to ensure that Brokers complied with Division 2 of Part 7.7A of the Corporations Act or the NCCPA (together, **Adviser Obligations**) in their dealings with customers in relation to MPP and MyPP; and
- (e) took no or no adequate step to:
 - (i) construct MPP and MyPP application procedures to ensure that MPP and MyPP were not offered to customers for whom it was not in fact appropriate; or
 - (ii) audit Brokers to ensure compliance with the Adviser Obligations.

Particulars

- i. *Paragraphs 20, 29 and 55 above, and the particulars to those paragraphs, are repeated; each of which relate to ALID's failure to take adequate steps to ensure broker compliance.*
- ii. *ALID ought to have known the features of the Aussie MPP Sales System because each of the Brokers were its Authorised representatives and it was required to take reasonable steps to ensure that those Brokers*

complied with their obligations under ss961B, 961G and 961J of the Act. In order to take such reasonable steps, ALID needed to understand how the Aussie MPP Sales System worked.

- iii. *Further particulars may be provided following discovery and receipt of experts' reports.*

58. In the premises set out in the preceding paragraph, ALID:

- (a) failed to take reasonable steps to ensure that Brokers, as its representatives under its AFSL, complied with ss 961B, 961G, 961H or 961J of the Corporations Act; and
- (b) in the premises – contravened s 961L of the Corporations Act.

G.7 ALID – responsibility

59. The Insurance Advice, and the Necessity Representation ~~by the Brokers~~ was conduct:

- (a) that related to the provision of a financial service; and
- (b) on which the Claimants could reasonably be expected to rely, within the meaning of Corporations Act s 917A.

60. The Claimants in good faith relied upon the Insurance Advice and/or the Necessity Representation (to the extent it was made), in acquiring MPP or MyPP, within the meaning of Corporations Act s 917A.

Particulars

- i. *The Applicant refers to and repeats the particulars of reliance in paragraphs 21D, 21E, 2326 and 28 above.*
- ii. *Particulars relating to individual Group Members may be provided following the trial of common questions or otherwise as the Court may direct.*

61. By reason of the matters pleaded in paragraphs 19 and 57 to 60 above:

- (a) ALID is responsible for the conduct of each of the Brokers; and

Particulars

Corporations Act, s 917B.

- (b) ALID's responsibility extends to make ALID liable to each Claimant for the Claimants' ~~Loss and Damage~~.

Particulars

Corporations Act, s 917E.

G.8 AHLI – responsibility

61A. The Applicant refers to and repeats paragraphs 30A to 31A and 33A above as though set out herein.

62. The Insurance Advice conduct pleaded at paragraph 69C below and the making of the Necessity Representation, by the Brokers was conduct:

- (a) ~~was conduct in the course of the Brokers' acting as authorised representatives of AHLI, within the meaning of s 64(2) of the NCCPA, alternatively s 65(2) of the NCCPA; [not used]~~

(ab) that related to the provision of credit assistance by the Brokers to the Claimants:

Particulars

- i. *The Applicant refers to and repeats the matters at paragraphs 30A – 31 above.*
- ii. *NCCPA ss 6 item 2, 7, 8(a), 9 and 74(a).*
- iii. *The conduct pleaded at paragraph 69C and Necessity Representation was conduct inherently related to the conduct specified at paragraph 21(c)-(d)(i)-(iii) being conduct which amounted to credit assistance. The relationship between the relevant conduct is set out at paragraph 30D.*

- (b) that related to a credit activity; and

Particulars

~~*NCCPA ss 8(a), 9 and 74(a).*~~

The Applicant refers to and repeats the particulars to sub paragraph (ab) above. The conduct amounting to credit assistance also amounts to a credit activity.

- (c) on which the customers, being the Claimants, could reasonably be expected to rely.

Particulars

NCCPA s 74(b).

63. The Claimants in good faith relied upon the Insurance Advice and/or the Necessity Representation (to the extent it was made) in acquiring MPP or MyPP, within the meaning of s 74(c) of the NCCPA.

Particulars

The Applicant refers to and repeats the particulars of reliance in paragraphs 23, 26 and 28 above.

64. By reason of the matters pleaded in paragraphs 62 to 63 above:
(a) AHLI is responsible for the conduct of each of the Brokers; and

Particulars

NCCPA s 75.

- (b) AHLI's responsibility extends to make it liable to each Claimant for the Claimants' ~~Loss~~ And ~~Damage~~.

Particulars

NCCPA s 77.

G.9 AHLI – agency liability

65. ~~Further or in the alternative, by reason of the matters set out in paragraphs 14 to 16 above as well as the Aussie MPP Sales System, each of the Brokers was, at all material times in respect of the Broker's dealings with a Claimant, an agent for AHLI and/or held out by AHLI as their agent (such agency being the Agency).~~ [Not used]

65A. At all material times during the Claim Period, by reason of the terms of the Franchise Agreement, Mobile Broker Engagement and Mobile Broker Authorisation set out at paragraphs 14 to 17 above, each of the Brokers were:

- (a) contractually required to conduct their business at the direction of AHLI;
- (b) authorised by AHLI to use the Aussie fit-out, signage and trademarks to represent themselves as forming part of the Aussie brand (in the case of the Franchise Brokers only);
- (c) authorised by AHLI to promote their business as forming part of the 'Aussie' brand (in the case of the Franchise Brokers only);
- (d) authorised by AHLI to operate under the "Aussie" brand and image;
- (e) authorised by AHLI to hold themselves out as an agent of AHLI; and
- (f) were contractually prohibited from being appointed as a credit representative of another Australia credit licensee or holding a separate credit licence.

Particulars

- i. Each of the matters at (a) and (d) were express in the terms of the Franchise Agreements:
 - a. The Applicant refers to and repeats sub-paragraphs 5(bb)-(bc) and their particulars above.
 - b. The Applicant refers to and repeats paragraph 14 to 17 and its particulars above.
 - c. Franchise Agreement, Background B and D, cls 1.1 (definition of "Services"), 1.2(c), and 21.3(r).
- ii. The matter at (d) was express in the terms of the Mobile Broker Engagement and Mobile Broker Authorisation:
 - a. Mobile Broker Engagement, Recitals B and D.
 - b. Mobile Broker Authorisation, Recitals B and D.
- iii. Each of the matters at (b)-(c) and (e) were implied by the terms of the Franchise Agreement, Mobile Broker Engagement and Mobile Broker Authorisation:
- iv. In respect of the authorisations:
 - a. They were implied by the terms of the contracts, the ownership by AHLI of the Aussie brand and systems, and (in the case of the Franchise

Brokers) AHLI's express consent to the terms of the contracts as a party to the contracts:

- b. pleaded at subparagraphs (b)-(c), the Applicant refers to and repeats paragraphs 14-17, 65B and 65E-65H and their particulars.
- c. pleaded at subparagraph (e), the Applicant refers to and repeats paragraphs 65B-65H and their particulars below.
- v. The Applicant refers to and repeats paragraphs 14-17 and their particulars above.
- vi. In respect of sub-paragraph (f), the Applicant refers to cl 21.5(e) of the Franchise Agreement, cl 9.2 of the Mobile Broker Engagement, and sections 67 and 76 of the NCCPA.

65B. At all material times during the Claim Period, the Brokers complied with the requirements of the Franchise Agreements, Mobile Broker Engagement and Mobile Broker Authorisation set out at paragraphs 14 to 17 above, and in doing so, held themselves out as being agents of AHLI.

Particulars

The Applicant refers to and repeats the particulars to paragraph 65F below.

65C. Further to paragraph 65A, at all material times during the Claim Period AHLI, by training and requiring the Brokers to act in accordance with the Aussie MPP Sales System, and requiring the Brokers to comply with the Franchise Agreements, Mobile Broker Engagement and Mobile Broker Authorisation set out at paragraphs 14 to 17 above, authorised and directed the Brokers to:

- (a) act as agents of AHLI in implementing the Aussie MPP Sales System; and

Particulars

The Applicant refers to and repeats paragraph 65A and its particulars above.

- (b) hold themselves out as being agents of AHLI in accordance with the Aussie MPP Sales System.

Particulars

The Applicant refers to and repeats paragraph 65B, and 65F and its particulars.

65D. Further to paragraph 65A and 65B above, at all material times during the Claim Period the Brokers implemented the Aussie MPP Sales System while complying with the terms of the Franchise Agreements, Mobile Broker Engagement and Mobile Broker Authorisation set out at paragraphs 14 to 17 above.

Particulars

The Applicant refers to and repeats the particulars to paragraph 65F below.

65E By reason of paragraph 65D above, at all material times during the Claim Period the Brokers:

- (a) acted as agents of AHLI in implementing the Aussie MPP Sales System; and/or
(b) held themselves out as being agents of AHLI in implementing the Aussie MPP Sales System.

65F At all material times during the Claim Period AHLI held out to the Claimants that the Brokers were acting within the express or ostensible authority of AHLI, including when Brokers were making an Insurance Advice Representation or Necessity Representation.

Particulars

- i. Franchise Brokers and Mobile Brokers could both be accessed through the Aussie Website by using the “Find a Mortgage Broker” function.
ii. Franchise Brokers and Mobile Brokers were each described as Aussie mortgage brokers on the Aussie website, and the promotional material did not distinguish between Franchise Brokers and Mobile Brokers when referring to Aussie mortgage brokers.

- iii. Franchise Brokers and Mobile Brokers used “@aussie.com.au” email addresses.
- iv. The Aussie website stated that “Aussie” is a trade mark of AHLI:
 - a. <https://web.archive.org/web/20200411101015/https://www.aussie.com.au/find-broker/dario-matera.html>;
 - b. <https://web.archive.org/web/20210127103713/https://www.aussie.com.au/find-broker/dario-matera.html>; and
 - c. <https://web.archive.org/web/20210127064409/https://www.aussie.com.au/>.
- v. The Applicant refers to and repeats paragraphs 14 to 17 above.

65G. By reason of the matters at paragraphs 65A and 65E – 65F above, the Brokers were agents of AHLI, and had actual authority to:

- (a) promote, market, sell and otherwise distribute “Products” including MPP and MyPP on behalf of AHLI;
- (b) make representations to the claimants about the Products including MPP and MyPP in connection with selling those products on behalf of AHLI; and
- (c) implement the Aussie MPP Sales System, including by recommending MPP or MyPP to the claimants and lodging any application for MPP and MyPP with the relevant insurer.

65H. In the alternative to paragraph 65G, by reason of the matters at 65A and 65E – 65F above, the Brokers were agents of AHLI and had ostensible authority to:

- (a) promote, market, sell and otherwise distribute “Products” including MPP and MyPP on behalf of AHLI;
- (b) make representations to the Claimants about the Products including MPP and MyPP in connection with selling those products on behalf of AHLI; and
- (c) implement the Aussie MPP Sales System, including by recommending MPP or MyPP to the Claimants and lodging any application for MPP and MyPP with the relevant insurer.

(Paragraphs 65G and 65H are the “Agency”).

66. The Brokers engaged in the Insurance Advice conduct pleaded at paragraph 69C below and/or the Necessity Representation (to the extent it was made):
- (a) in the course of; and
 - (b) within the actual, apparent or ostensible authority conferred on them by ~~the~~ the Agency.
67. The Insurance Advice conduct pleaded at paragraph 69C below, and/or the Necessity Representation (to the extent it was made) involved the making of statements that were within the general class or scope of statements that AHLI or AHL authorised the Brokers to make, and put the Brokers in a position to make.

Particulars

- i. *In respect of the authorisation (actual or ostensible), the Applicant refers to and repeats paragraphs 14-17, 65A-65B and 65F-65H and their particulars above.*
 - ii. *In respect of putting the Brokers in a position to make the Necessity Representation, the Applicant refers to and repeats sub-paragraph 17(c) and its particulars above.*
68. Further or in the alternative to paragraphs 66 ~~67~~ and 67:
- (a) the Brokers gave the Insurance Advice on behalf of AHLI;
 - (b) by reason of the Aussie MPP Sales System, AHLI had full knowledge of the essential features of the Insurance Advice; and
 - (c) in continuing to promote the Aussie MPP Sales System, AHLI’s conduct was sufficient to constitute an act of ratification.
69. In the premises ~~set out in the five preceding paragraphs of paragraphs 65A-68~~, AHLI is liable, or vicariously liable, for each Claimant’s ~~Loss and d~~Damage caused by the Insurance Advice conduct pleaded at paragraph 69C below, and/or the Necessity Representation (to the extent it was made).

Particulars

The Applicant refers to and repeats paragraphs 13-17 and their particulars above.

69A Further or in the alternative to paragraph 69, in the premises of paragraphs 65A-68, the conduct pleaded at paragraph 69C below, and/or the Necessity Representation was:

- (a) conduct of an agent of a body corporate, acting within the scope of their actual or apparent authority; or
- (b) conduct of a person acting at the direction or with the consent or agreement of a director, employee or agent of AHLI, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, employee or agent.

Particulars

- i. The applicant refers to and repeats the particulars to paragraph 69.
- ii. In respect of the scope of the actual or apparent authority, the applicant refers to the pleading and particulars of 14 - 17, and 65A - 65H.
- iii. In relation sub-paragraph (b), the conduct pleaded at paragraph 69C below, and/or the Necessity Representation was conduct engaged in with the consent or agreement of a director employee or agent of AHLI by reason of the terms of the Franchise Agreement and the Mobile Broker Engagement, each of which authorised and/or required the Brokers to engage in the Aussie MPP Sales System.
- iv. Consent or agreement of a director, employee or agent of AHLI can be inferred by their entry into a Franchise Agreement or Mobile Broker Engagement, as applicable.

69B In the premise of paragraph 69A, the conduct pleaded at paragraph 69C below, and/or the Necessity Representation is taken to be engaged in by AHLI:

- (a) for the purposes of this proceeding; or

- (b) alternatively, for the purposes of the misleading or deceptive conduct provisions pleaded at paragraph 73 below.

Particulars

- i. Corporations Act s 769B(1) and (2).
- ii. ASIC Act s 12GH(1) and (2).
- iii. Competition and Consumer Act s 84(4).

H. MISLEADING CONDUCT

69C AHLI, by the Brokers, engaged in the following conduct in respect of each Claimant:

- (a) implementing the Aussie MPP Sales System including by:
 - (i) requesting personal and financial information from the Claimants before providing the Insurance Advice;
 - (ii) the provision of the Insurance Advice to the Claimants after they had provided the personal and financial information requested; and
 - (iii) the provision of the Insurance Advice to the Claimants at or around the same time as providing personalised advice with respect to a loan;
- (b) only recommending MPP or MyPP;
- (c) recommending an amount of cover for MPP or MyPP by reference to the amount of the home loan;
- (d) in the premises of (a)-(c), conveying to a reasonable person that one or more of the Claimants' objectives, financial situation and needs had been considered in making the recommendation;
- (e) providing to the Claimant the MPP or MyPP PDS documents; and
- (f) providing to the Claimant the promotional material for that product.

Particulars

The promotional material included MPP and MyPP Sales Brochures 2017 and 2019 MPP PDS, and 2021 MPP PDS.

70. At all material times AHLI, ~~by themselves and~~ by the Brokers, by engaging in the conduct pleaded at paragraph 69C, represented to Claimants that or to the effect that:

- (a) AHLI, or alternatively the Broker, in providing the Insurance Advice was putting the interests of each Claimant ahead of the interest of the Broker, AHLI or any third party;
 - (b) the Broker had made all reasonable and necessary enquiries as to the personal circumstances and objectives of the Claimant;
 - (c) the Broker had made all reasonable and necessary enquiries as to the mortgage insurance products available to the Claimant;
 - (d) the Insurance Advice was based on the Broker's assessment of the personal circumstances and objectives of the Claimant;
 - (e) the Broker, having made reasonable enquiries as described in (b) and (c) above, had the opinion that:
 - (i) MPP or MyPP was a suitable insurance product for the Claimant; and
 - (ii) MPP or MyPP was the most suitable mortgage protection insurance product available to the Claimant;
 - (f) MPP or MyPP was a suitable insurance product for the Claimant; and
 - (g) MPP or MyPP was the most suitable mortgage protection insurance product available to the Claimant.
- (together and severally **Insurance Advice Representations**).

Particulars

In so far as they were conveyed to the Applicant Claimants (including the Applicant):

- i. *In respect of 70(a)-(c) and to (eg), the representations was were implied from the conduct in paragraph 69C context of the Claimant's' application for a home loan, the Aussie MPP System and the Statutory obligations (in Section F above) owed by AHLI and the Aussie Brokers;*
 - (i) *In respect of 70(d), by presenting the applicant with promotional material which set out the potentially dire implications to their ability maintain their home loan repayments and avoid default if they did not acquire MPP and went on to suffer an injury or illness.*
 - (ii) *In so far as they were conveyed to the Claimants, in respect of 70(a)-(c) and (e), the representation was*

implied from the context of the Claimant's application for a home loan, the Aussie MPP Sales System and the Statutory obligations owed by AHLI and the Aussie Brokers.

- ii. *Further particulars may be provided following discovery.*
- iii. *Further particulars relating to individual group members may be provided following the trial of common questions or otherwise as the Court may direct.*

70A. In addition to the Insurance Advice Representations the Brokers made the Necessity Representation to the Applicant and some group members.

Particulars

- i. *The Applicant refers to and repeats the particulars to paragraphs 21D, 21E and 26 above.*

70B. The Insurance Advice Representations and the Necessity Representation were made by AHLI, because a reasonable person in the position of the claimants, would have understood the representations were made by AHLI.

Particulars

- i. *The Insurance Advice Representation was an implied representation arising from the conduct set out at paragraph 69C above.*
- ii. *The Necessity Representation was made by express words by the Brokers.*
- iii. *A reasonable person would have understood the representations were made by AHLI, because the Brokers were required to, and did, hold themselves out to the world as representatives of AHLI, including by only providing services under the "Aussie" branding.*
- iv. *The Applicant repeats the matters at paragraphs 15 and 17 above.*

70C. In the alternative to paragraph 70B above, AHLI is responsible for the making of the Insurance Advice Representations and the Necessity Representation by the Brokers, because:

- (a) of the operation of section 78(1) of the NCCPA; and/or
- (b) the Brokers made the Insurance Advice Representations and the Necessity Representation as agents of AHLI.

71. By making the Insurance Advice Representations, and/or the Necessity Representation, the Brokers and/or AHLI engaged in conduct:

- (a) in trade or commerce within the meaning of:
 - (i) s 12BA(1) of the ASIC Act; alternatively
 - (ii) s 18 of the *Competition and Consumer Act 2010* (Cth) Sch 2 (**ACL**);
- (b) in relation to a financial service within the meaning of:
 - (i) s 766A(1) of the Corporations Act and s 12BAB(1) of the ASIC Act; alternatively
 - (ii) s 2 of the ACL; and
- (c) in relation to a financial product within the meaning of s 764A(1) of the Corporations Act.

72. At all material times during the Brokers' interactions with the Applicant and some or all of the Claimants:

- (a) AHLI, alternatively the Brokers, in providing the Insurance Advice was not putting the interests of the said Claimants ahead of the interest of the Broker, Aussie or ALID;
- (b) the Brokers had not made all reasonable and necessary enquiries as to the personal circumstances and objectives of the said Claimants;
- (c) the Brokers had not made all reasonable and necessary enquiries as to the mortgage insurance products available to the said Claimants;
- (d) the Insurance Advice was not based on the Broker's assessment of the personal circumstances and objectives of the said Claimants;
- (e) the Broker did not have reasonable grounds for any opinion that:
 - (i) MPP or MyPP was a suitable insurance product for the Claimant; or

- (ii) MPP or MyPP was the most suitable mortgage protection insurance product available to the Claimant; and

Particulars

The Applicant refers to and repeats the particulars to paragraphs 34 to 39 above.

- (f) it was not necessary for the Claimants to obtain MPP or MyPP in order to be approved for a home loan.

73. In the premises set out in the two preceding paragraphs, AHLI, by itself and by its respective Brokers, engaged in conduct that was:

- (a) in relation to a financial service and:
 - (i) misleading or deceptive, or likely to mislead or deceive; and
 - (ii) in the premises – in contravention of s 12DA of the ASIC Act;
- (b) in relation to a financial product or a financial service, and:
 - (i) misleading or deceptive, or likely to mislead or deceive; and
 - (ii) in the premises – in contravention of s 1041H(1) of the Corporations Act; alternatively

Particulars

s 1041H(1) of the Corporations Act.

- (c) misleading or deceptive, or likely to mislead or deceive, in contravention of s 18(1) of the ACL.

Particulars

- i. AHLI engaged in the conduct itself, because either:
 - a. a reasonable person would have understood the representations were made by AHLI.
 - b. the Brokers were acting as AHLI's agent as pleaded in paragraphs 65-69 above.
- ii. Alternatively, if the Court finds that the conduct constituting the Insurance Advice Representation and Necessity Representation was the conduct of the Broker

and not AHLI, AHLI is responsible for the conduct of each of the Brokers for the reasons pleaded at paragraph 64 above.

74. In reliance on the Insurance Advice Representations, and/or the Necessity Representation (to the extent it was made), the Applicants and some or all of the Group Members purchased MPP or MyPP.

Particulars

The Applicant refers to and repeats the particulars set out under paragraph 21D, 21E, 23, 26 and 28 above.

I. CLAIMANTS' LOSS AND DAMAGE

75. But for:

- (a) the Insurance Advice; and, or alternatively;
- (b) the Insurance Advice Representations; and, or alternatively;
- (c) the Necessity Representations,

the Claimants, including the Applicant, would not have purchased MPP or MyPP.

Particulars

- i. *The Applicant refers to and repeats the particulars to paragraphs 4, 19, 21, 23 and 35. AHLI and the Brokers were not authorised to provide personal financial product advice to the Claimants.*
- ii. *The Claimants were subject to, and relied on, the representations in paragraph 70 above.*
- iii. *Some of the Claimants, and the Applicant, were also subject to, and relied on, the Necessity Representation, the particulars of which (at paragraphs 21D, 21E and 26 above) are referred to and repeated.*
- iv. *Further particulars may be provided following discovery and receipt of experts' reports.*

76. By reason of some or all of the contraventions alleged in paragraphs 44, 47, 50, 56, 58, 59-69 and 73 above, the Claimants, including the Applicant, suffered loss and damage.

Particulars

- i. *The Applicant paid premiums from October 2019 until the cancellation of his policy in about September 2023.*
- ii. *Particulars relating to individual group members may be provided following the trial of common questions or otherwise as the Court may direct.*
- iii. *Further particulars may be provided following discovery and receipt of experts' reports.*

77. In the premises set out in the preceding paragraph:

(a) ALID; and, further or alternatively

(b) AHLI,

are liable to compensate the Claimants referred to therein for the said loss and damage.

Particulars of (a)

Sections 917E, 917F and 961M of the Corporations Act,

Particulars of (b)

- i. *Section 1041I(1) of the Corporations Act;*
- ii. *Section 12GF(1) of the ASIC Act; and, or alternatively*
- iii. *Section 236(1) of the ACL.*

78. Further or in the alternative to paragraph 77, the Applicant and some Group Members seek:

(a) a declaration under sections 925A or 925C that the contracts be rescinded; alternatively

(b) an order under section 961N that the contracts be declared void.

J. RELIEF

79. The Applicant claims on his own behalf and on behalf of each of the Group Members the relief set out in the accompanying Originating Application.

K. COMMON QUESTIONS OF FACT OR LAW

80. The questions of fact or law common to the claims of the Applicant and the Group Members are as follows:

- (a) whether MPP and MyPP had the features alleged in Section C;
- (b) what were the commission arrangements between the Respondents, and between any of them and Insurers, in relation to MPP and MyPP;
- (c) whether the Aussie MPP Sales System had features alleged in paragraph 21;
- (d) whether the effect of the Aussie MPP Sales System was as alleged in paragraphs:
 - (i) 24;
 - (ii) 26; and/or
 - (iii) 40;
- (e) whether Brokers, in dealing with customers in relation to MPP and MyPP in accordance with the Aussie MPP Sales System, were giving personal advice within the meaning of s 766B(3) of the Corporations Act;
- (f) If the answer to ~~(d)~~(e) is “yes”, whether the Brokers were under an obligation to comply with ss 961B(1), 961G(1), 961H(1) and 961J(1) of the Corporations Act in giving personal advice;
- (g) whether in the circumstances pleaded in Section G.2 Brokers failed to comply with the ‘best interest’ obligations in s 961B of the Corporations Act;
- (h) whether in the circumstances pleaded in Section G.3 Brokers failed to warn customers in accordance with s 961H of the Corporations Act;
- (i) whether in the circumstances pleaded in Section G.4 Brokers failed to give appropriate advice in accordance with s 961G of the Corporations Act;
- (j) whether in the circumstances pleaded in Section G.5 Brokers failed to give priority to the interests of customers in accordance with s 961J of the Corporations Act;
- (k) whether ALID failed to take reasonable steps to ensure Broker compliance with ss 961B, 961G, 961H or 961J of the Corporations Act, in contravention of s 961L;

- (l) whether ALID is responsible for any and if so what loss and damage suffered by Claimants by reason of the matters referred to in (g) to (k) above;
- (m) whether AHLI is responsible for any and if so what loss and damage suffered by Claimants:
 - (i) by reason of the matters set out in Section I; further or alternatively
 - (ii) by reason of the Agency alleged in Section G.9;
- (n) whether AHLI, by themselves or by the Brokers, made any and if so which of the Insurance Advice Representations;
- (o) whether by the Insurance Advice Representations, AHLI contravened s 12DA of the ASIC Act, s 1041H of the Corporations Act or s 18 of the ACL; and
- (p) if any of ALID or AHLI is liable to compensate the Claimants_– what principles govern the measure of compensable loss?

Date: ~~29 February 2024~~ 16 September 2024



Signed by Craig Allsopp

Lawyer for the Applicant

This amended pleading was prepared and settled by Zoe Graus and Thomas Bagley of Counsel and settled by Jeremy Stoljar SC.

Certificate of lawyer

I, Craig Richard Allsopp, certify to the Court that, in relation to the Amended Statement of Claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~29 February 2024~~ 16 September 2024



Signed by Craig Allsopp

Lawyer for the Applicant

Schedule

No. 172 of 2024

Federal Court of Australia

District Registry: Victoria

Division: General

Applicants

Applicant: Daniel McDonald

Respondents

First Respondent: Australian Life Insurance Distribution Pty Ltd (ACN 103 157 811)

Second Respondent: Lendi Group Distribution Pty Ltd (ACN 105 265 861)

Date:

Schedule 1 – Particulars to [34] – [35]

	Product	(a) Income protection / salary continuance insurance	(b) Cover for partial disability	(c) TPD which covered all causes of total and permanent disability	(d) Life Buyback	(e) TPD Split Benefit definition	(f) 'Own' occupation definition
Paragraph 34: MPP and MyPP did not contain:							
1	<i>MPP</i>	No PDS issued 15/05/2017; 21/06/2019.	No PDS issued 15/05/2017; 21/06/2019.	No PDS issued 15/05/2017; 21/06/2019.	No PDS issued 15/05/2017; 21/06/2019.	No PDS issued 15/05/2017; 21/06/2019.	No PDS issued 15/05/2017; 21/06/2019.
2	<i>MyPP</i>	No PDS issued 22/06/2020; 27/09/2021.	No PDS issued 22/06/2020; 27/09/2021.	No PDS issued 22/06/2020; 27/09/2021.	No PDS issued 22/06/2020; 27/09/2021.	No PDS issued 22/06/2020; 27/09/2021.	No PDS issued 22/06/2020; 27/09/2021.
Paragraph 35: Some or all of the features referred to in paragraph 34 above were found in other policies for insurance available to persons in the position of the Claimants at the relevant time (Alternative Policies):							
Alternate Policies, Retail							
1	<i>TAL Accelerated Protection</i>	Yes PDS issued 12/10/2018, p8; 27/03/2020, p17; 01/04/2021, p17; 24/09/2021, p21; 05/08/2022, p53; 08/09/2023, p19.	Yes PDS issued 12/10/2018, p8; 27/03/2020, p17; 01/04/2021, p17; 24/09/2021, p21; 05/08/2022, p53; 08/09/2023, p19.	Yes PDS issued 12/10/2018, p17; 27/03/2020, p27; 01/04/2021, p28; 24/09/2021, p36; 05/08/2022, p36; 08/09/2023, p36.	Yes PDS issued 12/10/2018, p11; 27/03/2020, p32; 01/04/2021, p32; 24/09/2021, p36-37; 05/08/2022, p41; 08/09/2023, p36.	Yes PDS issued 12/10/2018, p40; 27/03/2020, p29; 01/04/2021, p29; 24/09/2021, p37; 05/08/2022, p37; 08/09/2023, p37.	Yes PDS issued 12/10/2018, p17; 27/03/2020, p27; 01/04/2021, p28; 24/09/2021, p36; 05/08/2022, p36; 08/09/2023, p36.
2	<i>ClearView Life Solutions</i>	Yes PDS issued 01/10/2018, p40; 12/03/2020, p40; 05/04/2021, p40.	Yes PDS issued 01/10/2018, p40; 12/03/2020, p40; 05/04/2021, p40.	Yes PDS issued 01/10/2018, p16; 12/03/2020, p16; 05/04/2021, p15.	Yes PDS issued 01/10/2018, p18; 12/03/2020, p18; 05/04/2021, p17.	Yes PDS issued 01/10/2018, p18; 12/03/2020, p18; 05/04/2021, p17.	Yes PDS issued 01/10/2018, p17; 12/03/2020, p17; 05/04/2021, p16.

	Product	(a)Income protection / salary continuance insurance	(b) Cover for partial disability	(c) TPD which covered all causes of total and permanent disability	(d) Life Buyback	(e) TPD Split Benefit definition	(f) 'Own' occupation definition
3	<i>AIA Priority Protection</i>	Yes PDS issued 18/05/2019, p39; 10/10/2020, p39; 08/05/2021, p45; 20/02/2022, p44; 15/10/2023, p48; 12/05/2024, p48.	Yes PDS issued 18/05/2019, p167; 10/10/2020, p81; 08/05/2021, p102; 20/02/2022, p99; 15/10/2023, p67; 12/05/2024, p65.	Yes PDS issued 18/05/2019, p89; 10/10/2020, p81; 08/05/2021, p102; 20/02/2022, p99; 15/10/2023, p26; 12/05/2024, p26.	Yes PDS issued 18/05/2019, p76; 10/10/2020, p 68; 08/05/2021, p 89; 20/02/2022, p86; 15/10/2023, p90; 12/05/2024, p90.	Yes PDS issued 18/05/2019, p138; 10/10/2020, p139; 08/05/2021, p161; 20/02/2022, p153; 15/10/2023, p 157; 12/05/2024, p157.	Yes PDS issued 18/05/2019, p20; 10/10/2020, p 20; 08/05/2021, p21; 20/02/2022, p23; 15/10/2023, p31; 12/05/2024, p31.
4	<i>BT Protection Plan</i>	Yes PDS issued 01/04/2019, p38; 01/08/2022, p39.	Yes PDS issued 01/04/2019, p40; 01/08/2022, p43.	Yes PDS issued 01/04/2019, p16, 105, 106; 01/08/2022, p116.	Yes PDS issued 01/04/2019, p18, 30; 01/08/2022, p31.	Yes PDS issued 01/04/2019, p105- 106; 01/08/2022, p116-117.	Yes PDS issued 01/04/2019, p104- 105; 01/08/2022, p111.
5	<i>St George Protection Plan</i>	Yes PDS issued 01/04/2019 p41.	Yes PDS issued 01/04/2019 p27.	Yes PDS issued 01/04/2019 p27.	Yes PDS issued 01/04/2019 p35.	Yes PDS issued 01/04/2019 p34.	Yes PDS issued 01/04/2019 p41.
6	<i>Westpac Protection Plan</i>	Yes PDS issued 01/04/2019, p40.	Yes PDS issued 01/04/2019, p42, 49, 50, 53.	Yes PDS issued 01/04/2019, p16, 106, 107.	Yes PDS issued 01/04/2019, p31.	Yes PDS issued 01/04/2019, p106- 107.	Yes PDS issued 01/04/2019, p103.
7	<i>OnePath OneCare</i>	Yes PDS issued 13/04/2019, p67; 01/04/2020, p67; 29/03/2021, p66; 27/09/2021, p67; 01/08/2022, p8.	Yes PDS issued 13/04/2019, p79; 01/04/2020, p78; 29/03/2021, p77; 27/09/2021, p 32; 01/08/2022, p32.	Yes PDS issued 13/04/2019,p17; 01/04/2020, p17; 29/03/2021, p17; 27/09/2021, p17; 01/08/2022, p17.	Yes PDS issued 13/04/2019, p58-59; 01/04/2020, p58-59; 29/03/2021, p58-59; 27/09/2021, p58-59; 01/08/2022, p58-59.	Yes PDS issued 13/04/2019, p32; 01/04/2020, p32; 29/03/2021, p32; 27/09/2021, p33; 01/08/2022, p33.	Yes PDS issued 13/04/2019, p14; 01/04/2020, p14; 29/03/2021, p14; 27/09/2021, p14; 01/08/2022, p14.

	Product	(a)Income protection / salary continuance insurance	(b) Cover for partial disability	(c) TPD which covered all causes of total and permanent disability	(d) Life Buyback	(e) TPD Split Benefit definition	(f) 'Own' occupation definition
8	<i>Integrity Life Here for You Life Insurance</i>	Yes PDS issued April 2019, p31; 30/01/2023, p40.	Yes PDS issued April 2019, p32; 30/01/2023, p47.	Yes PDS issued April 2019, p75-76; 30/01/2023, p75- 76.	Yes PDS issued April 2019, p44; 30/01/2023, p13.	Yes PDS issued April 2019, p58; 30/01/2023, p76.	Yes PDS issued April 2019, p57; 30/01/2023, p75- 76.
9	<i>MLC Insurance</i>	Yes PDS issued 09/10/2017, p30; 31/10/2022, p32.	Yes PDS issued 09/10/2017, p96; 31/10/2022, p102.	Yes PDS issued 09/10/2017, p92; 31/10/2022, p20.	Yes PDS issued 09/10/2017, p51, 52; 31/10/2022, p55, 56, 62.	Yes PDS issued 09/10/2017, p62; 31/10/2022, p68.	Yes PDS issued 09/10/2017, p102; 31/10/2022, p108.
10	<i>NEOS Protection</i>	Yes PDS issued 01/07/2019, p38; 01/04/2020, p38; 05/04/2021, p38; 05/04/2022, p38; 30/06/2023, p38.	Yes PDS issued 01/07/2019, p44; 01/04/2020, p44; 05/04/2021, p44; 05/04/2022, p43; 30/06/2023, p43.	Yes PDS issued 01/07/2019, p16; 01/04/2020, p16; 05/04/2021, p16; 05/04/2022, p16; 30/06/2023, p16.	Yes PDS issued 01/07/2019, p36; 01/04/2020, p36; 05/04/2021, p36; 05/04/2022, p36; 30/06/2023, p36.	Yes PDS issued 01/07/2019, p40; 01/04/2020, p40; 05/04/2021, p40; 05/04/2022, p39; 30/06/2023, p39.	Yes PDS issued 01/07/2019, p71; 01/04/2020, p71; 05/04/2021, p71; 05/04/2022, p70-71; 30/06/2023, p70-71.
11	<i>Zurich Wealth Protection</i>	Yes PDS issued 27/05/2019, p5; 01/04/2020, p5; 29/03/2021, p30; 27/09/2021, p28.	Yes PDS issued 27/05/2019, p33; 01/04/2020, p33; 29/03/2021, p49; 27/09/2021, p35.	Yes PDS issued 27/05/2019, p32; 01/04/2020, p33; 29/03/2021, p8; 27/09/2021, p74.	Yes PDS issued 27/05/2019, p23; 01/04/2020, p23; 29/03/2021, p22; 27/09/2021, p20.	Yes PDS issued 27/05/2019, p54; 01/04/2020, p54; 29/03/2021, p61; 27/09/2021, p20.	Yes PDS issued 27/05/2019, p72; 01/04/2020, p72; 29/03/2021, p95; 27/09/2021, p93.

	Product	(a) Income protection / salary continuance insurance	(b) Cover for partial disability	(c) TPD which covered all causes of total and permanent disability	(d) Life Buyback	(e) TPD Split Benefit definition	(f) 'Own' occupation definition
Alternate Policies, Group							
12	<i>BT Super for Life</i>	Yes Additional Information Booklet issued 10/12/2018, p65-73; 01/11/2019, p68; 01/10/2020, p96; 01/08/2021, p96; 01/02/2022, p96.	Yes Additional Information Booklet issued 10/12/2018, p66, 68-69, 72; 01/11/2019 74-75; 01/10/2020, p 103-105; 01/08/2021, p 103-105; 01/02/2022, p 103-105.	Yes Additional Information Booklet issued 10/12/2018, p58-64; 01/11/2019 76; 01/10/2020, p 103; 01/08/2021, p 103-105; 01/02/2022, p 103.	No Additional Information Booklet issued 10/12/2018; 01/11/2019; 01/10/2020; 01/08/2021; 01/02/2022.	No Additional Information Booklet issued 10/12/2018; 01/11/2019; 01/10/2020; 01/08/2021; 01/02/2022.	No Additional Information Booklet issued 10/12/2018; 01/11/2019; 01/10/2020; 01/08/2021; 01/02/2022.
13	<i>AustralianSuper</i>	Yes PDS issued 27/10/2018, p6; 30/03/2019, p6; 25/09/2020, p7; Insurance in Your Super document issued 27/10/2018, p6, 8, 22, 32-33.	Yes PDS issued 27/10/2018, p31; 30/03/2019, p31; 25/09/2020, p31; Insurance in Your Super document issued 27/10/2018, p22-23, 31.	Yes PDS issued 27/10/2018, p6; 30/03/2019, p6; 25/09/2020, p7; Insurance in Your Super document issued 27/10/2018, p6, 8, 24-25, 31, 35.	No PDS issued 27/10/2018; 30/03/2019; 25/09/2020. Insurance in Your Super document issued 27/10/2018.	No PDS issued 27/10/2018; 30/03/2019; 25/09/2020. Insurance in Your Super document issued 27/10/2018	No PDS issued 27/10/2018; 30/03/2019; 25/09/2020. Insurance in Your Super document issued 27/10/2018

	Product	(a) Income protection / salary continuance insurance	(b) Cover for partial disability	(c) TPD which covered all causes of total and permanent disability	(d) Life Buyback	(e) TPD Split Benefit definition	(f) 'Own' occupation definition
14	CBUS <i>(being the policy held by the Applicant)</i>	Yes PDS issued 01/07/2019, p4; 31/10/2020, p4; 02/10/2021, p4; 14/02/2022, p 4; 26/08/2023, p14; Income Protection guide issued 01/07/2019, p4-5; 26/08/2023, p4-5.	Yes Income Protection guide issued 01/07/2019, p10; 26/08/2023, p 10.	Yes PDS issued 01/07/2019, p10; 31/10/2020, p10; 02/10/2021, p10; 14/02/2022, p10; 26/08/2023, p10; Death and TPD insurance handbook for Industry Super issued 30/09/2017, p4, 27 and 29; 31/10/2020, p 8; 26/08/2023, p 4.	No PDS issued 01/07/2019; 31/10/2020; 02/10/2021; 14/02/2022; 26/08/2023. Death and TPD insurance handbook for Industry Super issued 30/09/2017; 31/10/2020; 26/08/2023; Income Protection guide issued 01/07/2019; 26/08/2023.	No PDS issued 01/07/2019; 31/10/2020; 02/10/2021; 14/02/2022; 26/08/2023. Death and TPD insurance handbook for Industry Super issued 30/09/2017; 31/10/2020; 26/08/2023; Income Protection guide issued 01/07/2019; 26/08/2023.	No PDS issued 01/07/2019; 31/10/2020; 02/10/2021; 14/02/2022; 26/08/2023. Death and TPD insurance handbook for Industry Super issued 30/09/2017; 31/10/2020; 26/08/2023; Income Protection guide issued 01/07/2019; 26/08/2023.

Schedule 2 – Particulars to [36] – [37]

	Product	(a) Living Benefit and Trauma Benefit provided only 30% of the death benefit amount	(b) Involuntary Unemployment Benefit provided only 1% of the death benefit amount, and for only three months (cumulative across the life of the policy) capped at \$7,500 (total)	(c) Involuntary Unemployment Benefit only available in the first five years from the date on which the policy commenced	(d) Specified Injury Benefit in MyPP cover only provides 3% of the DTI Benefit, capped at \$7,500 (total)
Paragraph 36					
MPP and MyPP had the following benefits:					
1	MPP	Yes PDS issued 15/05/2017, p6-8; 21/06/2019, p7-9.	Yes PDS issued 15/05/2017, p8; 21/06/2019, p9.	Yes PDS issued 15/05/2017, p8; 21/06/2019, p9.	No PDS issued 15/05/2017; 21/06/2019.
2	MyPP	Yes PDS issued 22/06/2020, p8-9; 27/09/2021, 15-16.	No PDS issued 22/06/2020; 27/09/2021.	No PDS issued 22/06/2020; 27/09/2021.	Yes PDS issued 27/09/2021, p17.
Paragraph 37:					
The restrictions referred to in paragraph 36 above were not, or not usually, found in Alternative Policies.					
Alternative Policies, Retail					
1	<i>TAL Accelerated Protection</i>	No PDS issued 12/10/2018; 27/03/2020; 01/04/2021; 24/09/2021; 05/08/2022; 08/09/2023.	No PDS issued 12/10/2018; 27/03/2020; 01/04/2021; 24/09/2021; 05/08/2022; 08/09/2023.	No PDS issued 12/10/2018; 27/03/2020; 01/04/2021; 24/09/2021; 05/08/2022; 08/09/2023.	No PDS issued 12/10/2018; 27/03/2020; 01/04/2021; 24/09/2021; 05/08/2022; 08/09/2023.
2	<i>ClearView Life Solutions</i>	No PDS issued 01/10/2018; 12/03/2020; 05/04/2021.	No PDS issued 01/10/2018; 12/03/2020; 05/04/2021.	No PDS issued 01/10/2018; 12/03/2020; 05/04/2021.	No PDS issued 01/10/2018; 12/03/2020; 05/04/2021.

	Product	(a) Living Benefit and Trauma Benefit provided only 30% of the death benefit amount	(b) Involuntary Unemployment Benefit provided only 1% of the death benefit amount, and for only three months (cumulative across the life of the policy) capped at \$7,500 (total)	(c) Involuntary Unemployment Benefit only available in the first five years from the date on which the policy commenced	(d) Specified Injury Benefit in MyPP cover only provides 3% of the DTI Benefit, capped at \$7,500 (total)
3	<i>AIA Priority Protection</i>	No PDS issued 18/05/2019; 10/10/2020; 08/05/2021; 20/02/2022; 15/10/2023; 12/05/2024.	No PDS issued 18/05/2019; 10/10/2020; 08/05/2021; 20/02/2022; 15/10/2023; 12/05/2024.	No PDS issued 18/05/2019; 10/10/2020; 08/05/2021; 20/02/2022; 15/10/2023; 12/05/2024.	No PDS issued 18/05/2019; 10/10/2020; 08/05/2021; 20/02/2022; 15/10/2023; 12/05/2024.
4	<i>BT Protection Plan</i>	No PDS issued 01/04/2019; 01/08/2022.	No PDS issued 01/04/2019; 01/08/2023.	No PDS issued 01/04/2019; 01/08/2024.	No PDS issued 01/04/2019; 01/08/2025.
5	<i>St George Protection Plan</i>	No PDS issued 01/04/2019.	No PDS issued 01/04/2020.	No PDS issued 01/04/2021.	No PDS issued 01/04/2022.
6	<i>Westpac Protection Plan</i>	No PDS issued 01/04/2019.	No PDS issued 01/04/2019.	No PDS issued 01/04/2019.	No PDS issued 01/04/2019.
7	<i>OnePath OneCare</i>	No PDS issued 13/04/2019; 01/04/2020; 29/03/2021; 27/09/2021; 01/08/2022.	No PDS issued 13/04/2019; 01/04/2020; 29/03/2021; 27/09/2021; 01/08/2022.	No PDS issued 13/04/2019; 01/04/2020; 29/03/2021; 27/09/2021; 01/08/2022.	No PDS issued 13/04/2019; 01/04/2020; 29/03/2021; 27/09/2021; 01/08/2022.
8	<i>Integrity Life Here for You Life Insurance</i>	No PDS issued April 2019; 30/01/2023.	No PDS issued April 2019; 30/01/2024.	No PDS issued April 2019; 30/01/2025.	No PDS Issued April 2019; 30/01/2026.
9	<i>MLC Insurance</i>	No PDS issued 09/10/2017; 31/10/2022.	No PDS issued 09/10/2017; 31/10/2022.	No PDS issued 09/10/2017; 31/10/2022.	No PDS issued 09/10/2017; 31/10/2022.
10	<i>NEOS Protection</i>	No PDS issued 01/07/2019; 01/04/2020; 05/04/2021; 05/04/2022; 30/06/2023, p38.	No PDS issued 01/07/2019; 01/04/2020; 05/04/2021; 05/04/2022; 30/06/2023, p38.	No PDS issued 01/07/2019; 01/04/2020; 05/04/2021; 05/04/2022; 30/06/2023, p38.	No PDS issued 01/07/2019; 01/04/2020; 05/04/2021; 05/04/2022; 30/06/2023, p38.

	Product	(a) Living Benefit and Trauma Benefit provided only 30% of the death benefit amount	(b) Involuntary Unemployment Benefit provided only 1% of the death benefit amount, and for only three months (cumulative across the life of the policy) capped at \$7,500 (total)	(c) Involuntary Unemployment Benefit only available in the first five years from the date on which the policy commenced	(d) Specified Injury Benefit in MyPP cover only provides 3% of the DTI Benefit, capped at \$7,500 (total)
11	<i>Zurich Wealth Protection</i>	No PDS issued 27/05/2019; 01/04/2020; 29/03/2021; 27/09/2021.	No PDS issued 27/05/2019; 01/04/2020; 29/03/2021; 27/09/2022.	No PDS issued 27/05/2019; 01/04/2020; 29/03/2021; 27/09/2023.	No PDS issued 27/05/2019; 01/04/2020; 29/03/2021; 27/09/2024.
Alternate Policies, Group					
12	<i>BT Super for Life</i>	No Additional Information Booklet issued 10/12/2018; 01/10/2020; 01/08/2021; 01/02/2022.	No Additional Information Booklet issued 10/12/2018; 01/10/2020; 01/08/2021; 01/02/2022.	No Additional Information Booklet issued 10/12/2018; 01/10/2020; 01/08/2021; 01/02/2022.	No Additional Information Booklet issued 10/12/2018; 01/10/2020; 01/08/2021; 01/02/2022.
13	<i>AustralianSuper</i>	No PDS issued 27/10/2018; 30/03/2019; 25/09/2020; Insurance in Your Super document issued 27/10/2018	No PDS issued 27/10/2018; 30/03/2019; 25/09/2020; Insurance in Your Super document issued 27/10/2018	No PDS issued 27/10/2018; 30/03/2019; 25/09/2020; Insurance in Your Super document issued 27/10/2018	No PDS issued 27/10/2018; 30/03/2019; 25/09/2020; Insurance in Your Super document issued 27/10/2018
14	<i>CBUS (being the policy held by the Applicant)</i>	No PDS issued 01/07/2019; 31/10/2020; 02/10/2021; 14/02/2022; 26/08/2023. Death and TPD insurance handbook for Industry Super issued 30/09/2017; 31/10/2020; 26/08/2023; Income Protection guide issued 01/07/2019; 26/08/2023.	No PDS issued 01/07/2019; 31/10/2020; 02/10/2021; 14/02/2022; 26/08/2023. Death and TPD insurance handbook for Industry Super issued 30/09/2017; 31/10/2020; 26/08/2023; Income Protection guide issued 01/07/2019; 26/08/2023.	No PDS issued 01/07/2019; 31/10/2020; 02/10/2021; 14/02/2022; 26/08/2023. Death and TPD insurance handbook for Industry Super issued 30/09/2017; 31/10/2020; 26/08/2023; Income Protection guide issued 01/07/2019; 26/08/2023.	No PDS issued 01/07/2019; 31/10/2020; 02/10/2021; 14/02/2022; 26/08/2023. Death and TPD insurance handbook for Industry Super issued 30/09/2017; 31/10/2020; 26/08/2023; Income Protection guide issued 01/07/2019; 26/08/2023.

Schedule 3 – Particulars to 38(a)

Year-1 premium Daniel McDonald (estimated)						
#	Product	Benefit type and amount (estimated)			Policy Fee	Annual premium
		Death	Living Benefit	Involuntary Unemployment		
1	<i>Daniel McDonald's MPP</i>	\$300,000	\$90,000	\$2,500/month (3-month maximum, not exceeding \$7,500)	\$7	\$804.12

Year-1 premium for Alternative Policies, Retail								
#	Product	Benefit type and amount				Total annual premium		
		Death \$330,000	TPD \$100,000		Trauma \$100,000	Death and Trauma (excl. policy fee / stamp duty)	Death, Trauma and TPD (ETE, except where only ADL available) (incl. policy fees and stamp duty)	% of Daniel McDonald's MPP Cost (Without TPD)
			ADL*	ETE** / Any occupation				
1	<i>TAL Accelerated Protection</i>	\$164.36	\$55.24	\$73.66	\$156.02	\$420.35	\$494.01	52.27%
2	<i>ClearView Life Solutions</i>	\$207.10	N/A	\$87.66	\$162.36	\$394.46	\$482.12	49.05%
3	<i>AIA Priority Protection</i>	\$183.02	\$79.90	N/A	\$167.32	\$454.96	\$454.96	56.58%

4	<i>BT Financial Group</i>	\$211.61	\$67.45	\$96.90	\$155.80	\$486.28	\$583.18	60.47%
5	<i>OnePath OneCare</i>	\$166.02	N/A	\$73.53	\$160.63	\$446.29	\$519.82	55.50%
6	<i>Integrity Life Here for You Life Insurance</i>	\$201.68	N/A	\$61.58	\$159.27	\$383.04	\$444.62	47.63%
7	<i>MLC Insurance</i>	\$235.04	N/A	\$80.00	\$102.00	\$355.24	\$435.24	44.18%
8	<i>NEOS Protection</i>	\$224.13	N/A	\$82.85	\$149.81	\$373.94	\$456.79	46.50%
9	<i>St George Protection Plan</i>	\$211.61	\$67.45	\$96.90	\$155.80	\$486.28	\$583.18	60.47%
10	<i>Westpac Protection Plan</i>	\$231.72	\$73.86	\$106.11	\$170.60	\$523.59	\$629.70	65.11%
11	<i>Zurich Wealth Protection</i>	\$158.19	N/A	\$61.77	\$182.42	\$461.08	\$522.85	57.34%

* ETE means "education, training and experience".

** ADL means "activities of daily living".

Year-1 premium for Alternative Policies, Group

	Product	Death \$330,000	TPD \$100,000	IP \$2,500, 30 day wait, 2-year benefit	Total (excluding IP)	% of Daniel McDonald's MPP Cost (excluding IP)	Total
12	<i>CBUS</i>	\$440.11	\$208.26	N/A	\$648.37	80.63%	\$648.37
13	<i>AustralianSuper</i>	\$237.46	\$74.04	\$179.89	\$311.50	38.74%	\$491.39
14	<i>BT Super for Life</i>	\$340.24	\$67.58	N/A	\$407.83	50.72%	\$407.83