

NOTICE OF FILING

Details 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

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 33
Rule 16.32



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

SECOND RESPONDENT'S DEFENCE

NOTE: Unless otherwise stated, a defined term used in this Defence has the same meaning as assigned to it in the Amended Statement of Claim (**ASOC**). Headings and definitions are adopted from the ASOC for ease of reference. The Second Respondent (**AHLI**) does not make any admissions by the use of the headings or defined terms.

In answer to the ASOC, AHLI says as follows:

A. CLAIMANTS

1. As to paragraph 1:
 - (a) it admits sub-paragraph 1(a); and
 - (b) it does not know and therefore cannot admit subparagraph 1(b).

2. As to paragraph 2:
 - (a) in relation to sub-paragraph 2(a):

Filed on behalf of (name & role of party)	The Second Respondent, Lendi Group Distribution Pty Ltd		
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[Form approved 01/08/2011]

- (i) it admits that, between about 28 February 2018 and 28 June 2020, MPP was distributed by ALID in circumstances which met the MPP eligibility requirements;

Particulars

The MPP eligibility requirements were set out in:

(A) the MPP Product Disclosure Statement & Policy Document dated 15 May 2017 (**2017 MPP PDS**); and

(B) the MPP Product Disclosure Statement & Policy Document dated 21 June 2019 (**2019 MPP PDS**).

- (ii) it admits that, between about 29 June 2020 and 29 February 2024, MyPP was distributed by ALID in circumstances which met the MyPP eligibility requirements;

Particulars

The MyPP eligibility requirements were set out in:

(A) the MyPP Product Disclosure Statement & Policy Document dated 22 June 2020 (**2020 MyPP PDS**); and

(B) the MyPP Product Disclosure Statement & Policy Document dated 5 April 2021 and 27 September 2021 (**2021 MyPP PDS**).

- (iii) it admits that Brokers were authorised to arrange home loans, subject to the AHLI Appointment Terms referred to below, and the terms of the Franchise Agreement, the Mobile Broker Engagement and/or the Mobile Broker Authorisation;
- (iv) it says that MPP was, and was expressed as being, “independent” of, or not “tied” to, any home loan;

Particulars

2017 MPP PDS, pp 9, 12; 2019 MPP PDS, pp 10, 14.

- (v) it says that MyPP was, and was expressed as being, “independent” of, or not “tied” or “linked” to, any home loan;

Particulars

2020 MyPP PDS pp 10, 13; 2021 MyPP PDS, p 10.

- (vi) it otherwise denies sub-paragraph 2(a); and
- (vii) it says further that, in relation to any person that acquired MPP or MyPP prior to 1 March 2018, any action under:

(A) s 1041I of the Corporations Act;

(B) s 12GF(1) of the ASIC Act; and

(C) s 236(1) of the ACL;

accrued more than 6 years prior to the commencement of this proceeding and is consequently statute barred by operation of:

(D) s 1041I(2) of the Corporations Act;

(E) s 12GF(2) of the ASIC Act; and

(F) s 236(2) of the ACL;

- (b) save that it refers to and repeats paragraphs 18, 30 and 30A-30D below, it otherwise does not know and therefore cannot admit sub-paragraph 2(b); and

- (c) it does not know and therefore does not admit subparagraph 2(c).

- 3. It does not know and therefore cannot admit paragraph 3.

B. RESPONDENTS AND INSURERS

B.1 Respondents

4. As to paragraph 4:
 - (a) it admits sub-paragraphs 4(a)-4(d);
 - (b) save that it admits that ALID distributed MPP and MyPP through channels, including through AHLI's network of Franchise Brokers and AHL's network of Mobile Brokers, it otherwise denies subparagraph 4(e).

5. As to paragraph 5:
 - (a) it admits sub-paragraph 5(a);
 - (b) it admits sub-paragraph 5(b);
 - (ba) it admits sub-paragraph 5(ba);
 - (bb) save as to say that Australian Home Loans Holdings Pty Limited (ACN 074 936 904) was deregistered on 2 September 2019, it otherwise admits sub-paragraph 5(bb);
 - (bc) it admits sub-paragraph 5(bc);
 - (c) on the understanding that the reference in sub-paragraph 5(c)(iv) of the ASOC to "Aussiehomeloans.com.au" is intended to refer to Aussiehomeloans.com.au Pty Ltd (ACN 124 582 261), it admits sub-paragraph 5(c) and otherwise does not know and therefore does not admit;
 - (d) it admits sub-paragraph 5(d);
 - (da) it admits sub-paragraph 5(da);
 - (db) it admits sub-paragraph 5(db);

- (e) in relation to sub-paragraph 5(e):
 - (i) it admits sub-paragraph 5(e)(i);
 - (ii) save that it admits that it was authorised to provide credit activities as specified in the AHLI ACL, it otherwise denies sub-paragraph 5(e)(ii);
- (f) save that it admits that at all material times during the Claim Period it carried on a business of appointing Franchise Brokers and Mobile Brokers as credit representatives under the AHLI ACL to provide mortgage broking services, it otherwise denies sub-paragraph 5(f);
- (g) says that during the Claim Period, Brokers offered to arrange MPP and MyPP, and it otherwise denies sub-paragraph 5(g);
- (h) says that it is, and at all material times during the Claim Period was, an Australian Financial Services Authorised Representative of ALID with authority to provide general financial product advice only, and to deal in a financial product, and it otherwise denies sub-paragraph 5(h);
- (i) it admits sub-paragraph 5(i);
- (j) it admits sub-paragraph 5(j);
- (k) on the understanding that the term “Aussie System” in sub-paragraph 5(k) of the ASOC is intended to have the meaning given to it in the Franchise Agreement:
 - (i) it says that at all material times during the Claim Period “Aussie System” included, as defined in the Franchise Agreement, “the distinctive method and style for setting up, establishing, fitting-out, promoting and operating an Aussie Centre including, but not limited to, the Manuals, the Image, the Aussie Trade Marks, the Confidential Information, all software and all modifications to that system implemented by Aussie from time to time”;
 - (ii) it otherwise denies sub-paragraph 5(k).

B.2 MPP and MyPP Insurers

6. It does not plead to paragraph 6, as it contains no allegation against it.
7. It does not plead to paragraph 7, as it contains no allegation against it.
8. It does not plead to paragraph 8, as it contains no allegation against it.

C. THE PRODUCTS – MPP AND MYPP

9. As to paragraph 9, it admits that:
 - (a) MPP provided for payment of a “Death Benefit” and a “Terminal Illness Benefit” as set out in the 2017 MPP PDS and the 2019 MPP PDS;
 - (b) MPP provided for payment of a “Living Benefit” as set out, and in relation to the conditions specified, in the 2017 MPP PDS and the 2019 MPP PDS;
 - (c) MPP provided for payment of an “Involuntary Unemployment Benefit” if the policyholder became involuntarily unemployed in the first five years of the policy as set out in the 2017 MPP PDS and the 2019 MPP PDS;
 - (d) MPP also offered optional cover for disabling injury as set out in the 2017 MPP PDS and the 2019 MPP PDS,

and otherwise denies paragraph 9.

10. As to paragraph 10, it admits that:
 - (a) MyPP provided for payment of a “Death Benefit” and a “Terminal Illness Benefit” as set out in the 2020 MyPP PDS and the 2021 MyPP PDS;
 - (b) MyPP provided for payment of a “Trauma Benefit” as set out, and in relation to the conditions specified, in the 2020 MyPP PDS and the 2021 MyPP PDS;

- (c) MyPP provided for payment of a “Specified Injury Benefit” as set out, and in relation to the fracture of any body parts specified, in the 2021 MyPP PDS,

and otherwise denies paragraph 10.

11. As to paragraph 11:

- (a) it admits that MPP and MyPP are contracts of insurance which are life policies within the meaning of s 9 of the LI Act, and financial products within the meaning of s 764A(1)(e) of the Corporations Act, and otherwise, it denies sub-paragraph 11(a); and

- (b) it admits paragraph 11(b).

11A. As to paragraph 11A:

- (a) save that it refers to and repeats paragraphs 9 and 10 above, it admits sub-paragraph 11A(a); and

- (b) it denies sub-paragraph 11A(b) and refers to and repeats paragraphs 2(a)(iv)-(v) above.

12. It denies paragraph 12.

D. BROKER NETWORK AND REGULATORY REGIME

D.1 Aussie Broker Network

13. As to paragraph 13:

- (a) it admits that all times during the Claim Period, AHLI had appointed Franchise Brokers and Mobile Brokers as credit representatives under the AHLI ACL to provide mortgage broking services; and

- (b) it otherwise denies paragraph 13.

Franchise Brokers

14. It admits paragraph 14.
15. As to paragraph 15:
- (a) in relation to sub-paragraph 15(a), it admits that there were terms of the Franchise Agreement that:
- (i) AHLI appoints the Franchisee as its authorised credit representative and the Franchisee accepts such appointment and agrees to provide the 'Services' on the terms and conditions of the Franchise Agreement (cl. 2.1);
 - (ii) the Services include, where the Services are provided by an Aussie Centre Franchisee, the promotion of the Aussie brand (cl. 1.1);
 - (iii) Aussie Centre Admin grants a Franchise to the Franchisee to provide the Services by operating an Aussie Centre from the Location as part of the Aussie System pleaded at paragraph 5(k) above (Background D(ii));
- (b) in relation to sub-paragraph 15(b):
- (i) it refers to and repeats paragraph 15(a) (i) above, and admits that there were terms of the Franchise Agreement that:
 - (A) Services means the activities of promoting, marketing, originating, selling and otherwise distributing the Products (cl. 1.1);
 - (B) Products means the loan, credit and financial products, including Cross Sale Products, nominated by AHLI, Aussie Centre Admin or Aussie Home Loans Pty Ltd being either products of AHLI or its Related Bodies Corporate or products offered by AHLI or its Related Bodies Corporate as an intermediary for Suppliers (cl. 1.1); and

- (ii) it admits that MPP and MyPP were Products within the meaning of the Franchise Agreement;
- (c) in relation to sub-paragraph 15(c), it admits that there were terms of the Franchise Agreement that:
 - (i) the parties acknowledge that KPIs and KPI Targets will be applied to the Franchisee by Aussie Centre Admin under the terms of the Manuals or any other agreement made from time to time between the Franchisee and Aussie Centre Admin (cl. 18.1);
 - (ii) the Franchisee agrees that it is a fundamental term of the Franchise Agreement that it must strictly meet all KPIs and KPI Targets (cl. 18.2);
 - (iii) the parties agree that the following KPIs and KPI Target categories apply to the Franchise Agreement and are further outlined in the Manuals: Franchise operations and risk; Sales and Profitability; Customer satisfaction and service; Growth and market share (cl. 18.4);
- (d) in relation to sub-paragraph 15(ca), it admits that there were terms of the Franchise Agreement that:
 - (i) the Franchisee is responsible for the day to day operation of the Franchisee's Aussie Centre, which it must operate in accordance with:
 - (A) the Business Plan;
 - (B) the Documents; and
 - (C) all applicable laws, regulations, standards and codes, including but not limited to the ASIC Act, the Corporations Act and the *Competition and Consumer Act 2010* (Cth) (**CCA**) (cl. 16.2);
 - (ii) Business Plan means the business plan relating to the operation of the Franchisee's Aussie Centre, prepared by the Franchisee and approved by Aussie Centre Admin (and as amended from time to time) (cl. 1.1);

- (iii) Manuals means each of the following manuals specifying standards and procedures for operating Aussie Centres prepared by or for Aussie Centre Admin and issued to the Franchisee, as varied by Aussie Centre Admin from time to time (cl. 1.1);
- (e) in relation to sub-paragraph 15(cb), it admits that there were terms of the Franchise Agreement that the Franchisee must strictly comply with the terms of the Franchise Agreement, and act in a way that enhances the goodwill associated with the “Aussie System”, the “Aussie Business” and the “Aussie Trade Marks” (cl. 1.2(b));
- (f) in relation to sub-paragraph 15(d):
 - (i) it admits that there were terms of the Franchise Agreement that the Franchisee must not pursue or engage in any business activity other than the operation of the Aussie Centre without the prior written approval of Aussie Centre Admin or AHLI (cl. 21.3(r));
 - (ii) it says that, pursuant to the AHLI Appointment Terms, Franchise Brokers were prohibited from:
 - (A) accepting appointment as a credit representative of any other licensee without AHLI’s prior written consent;
 - (B) obtaining their own Australian Credit Licence; and
 - (C) engaging in any credit services in respect of loans, credit and other financial and related products which were not offered by AHLI or by a lender or other provider of financial and related products with whom AHLI have an agreement.

Particulars

The prohibitions set out in sub-paragraph (ii) were contained in clauses 2.4 - 2.6 of AHLI’s standard Credit Representative Appointment Agreement for Brokers (**AHLI Appointment Terms**).

- (g) in relation to sub-paragraph 15(e), it admits that there were terms of the Franchise Agreement that:
- (i) Aussie Centre Admin must provide to the Franchisee the Layout Plan and all necessary specifications to undertake the Fit-Out (cl. 6.1) and the Franchisee must undertake the Fit-Out in accordance with the Layout Plan (cl. 6.2);
 - (ii) Layout Plan means Aussie Centre Admin's design and construction plans for internal and external Fit-Out of the Location as an Aussie Centre (cl. 1.1);
 - (iii) the Franchisee agrees to maintain the Fit-Out in excellent condition and in accordance with the Manuals (cl. 6.6);
 - (iv) the Franchisee must operate the Franchisee's Aussie Centre at the Location and undertake marketing activities within the Referral Territory and may not carry on any other business at the Location without Aussie Centre Admin's prior written approval (cl. 16.1);
 - (v) the Franchisee must use only materials that are: prepared by or on behalf of Aussie Centre Admin; or prepared by or on behalf of the Franchisee and approved by Aussie Centre Admin before use in any such campaigns (cl. 19.6(d));
 - (vi) the Franchisee must include the address of the Aussie Web Site on any stationery used by the Franchisee as directed by Aussie Centre Admin. The Franchisee must promote access to and use the Aussie Web Site as directed by Aussie Centre Admin and as set out in the Manuals (cl. 10.5);
 - (vii) before the Franchisee commences trading as an Aussie Centre, the Franchisee must register the Approved Business Name under which the Franchisee will operate the Franchisee's Aussie Centre (cl. 7.1);
and
 - (viii) the Franchisee must apply for and register the Approved Business

Name with ASIC and maintain the currency of the Approved Business Name during the Term and renew the Approved Business Name with ASIC when necessary (cl. 7.2);

(h) in relation to sub-paragraph 15(f), it admits that there were terms of the Franchise Agreement that:

(i) the Franchisee must ensure that the Franchisee, Franchise Manager and Employees attend and complete, to Aussie Centre Admin's satisfaction, any Training (including seminars, online training courses, conferences, meetings, state, regional or national conferences) required by Aussie Centre Admin at the time and location as Aussie Centre Admin may specify (cl. 13.1 and cl. 13.2);

(ii) the Franchisee must: at Aussie Centre Admin's request, pay the cost of any Training which Aussie Centre Admin requires the Franchisee, the Franchise Manager and any Employees to undertake; and pay any fee for Training notified by Aussie Centre Admin within 30 days after the date of any invoice for that Training (cl. 13.6);

(i) it otherwise denies paragraph 15; and

(j) it says that there were further terms of the Franchise Agreement *inter alia* that:

(i) during the Term the relationship between Aussie Centre Admin and the Franchisee is that of franchisor and franchisee (cl. 17.1);

(ii) the parties agree that each are independent contractors (cl. 17.1);

(iii) the parties are not, and shall not be considered as, joint venturers, partners or agents of each other and no fiduciary relationship shall be deemed to exist between them (cl. 17.2);

(iv) the Franchisee is not, and must not represent itself as the agent, legal representative or employee of Aussie Centre Admin or AHLI for any purpose (cl. 17.3); and

- (v) the Franchisee must not engage in misleading or deceptive conduct or contravene any law in operating the Franchisee's Aussie Centre (cl. 21.5).

15A. Save that it admits that it and Aussie Centre Admin were parties to the Franchise Agreement, it denies paragraph 15A and says further that it will rely on the full terms and effect of the Franchise Agreement at trial.

Mobile Brokers

15B. As to paragraph 15B:

- (a) it admits that AHL's related bodies corporate, promoted, marketed, originated and distributed loan, credit and other financial and related products for lenders and other suppliers under the Aussie brand and image, and otherwise, it denies sub-paragraph 15B(a);
- (b) it denies sub-paragraph 15B(b);
- (c) save as to say that Mobile Brokers did so pursuant to the terms of the Mobile Broker Engagement or Mobile Broker Authorisation, it admits sub-paragraph 15B(c);
- (d) it admits that at all times the 'Image' and 'Aussie System' (as defined in the Franchise Agreement) were owned by AHLI, and otherwise denies sub-paragraph 15B(d).

16. It admits paragraph 16.

17. As to paragraph 17:

- (a) it admits that at all material times the Mobile Brokers were contractually obliged by AHL by the following terms of the Mobile Broker Engagement and the Mobile Broker Authorisation:
 - (i) the Mobile Broker wishes to arrange loan, credit and other financial and related products with lenders under the AHL brand and image and

Australian Credit Licence (Recital C);

- (ii) the parties agree that the Mobile Broker will arrange loan, credit and other financial and related products with lenders under the AHL brand and image on the terms and conditions set out in the Mobile Broker Engagement or the Mobile Broker Authorisation (Recital D);
- (iii) AHL engages the Mobile Broker to perform the Services on terms and subject to the conditions set out in in the Mobile Broker Engagement or the Mobile Broker Authorisation (cl. 2.2(a));
- (iv) Services means the activities of promoting, marketing, originating, selling and otherwise distributing the Products under the AHL brand and image including but not limited to:
 - (A) introduction of Customers to AHL and/or Suppliers;
 - (B) the origination or sale of the Products on behalf of AHL, including its Related Body Corporate, in its own right or as an intermediary for a Supplier;
 - (C) initiating and implementing business development activities for AHL;
 - (D) acting on all Customer enquiries promptly and in a manner which will maximise conversion and settlement ratios;
 - (E) generating repeat and referral business;
 - (F) providing customer service to a high standard and in a professional manner; and
 - (G) providing accurate and honest representation of the Products and AHL's services (cl. 1);
- (v) Products means the loan, credit and financial products, including Cross Sale Products, nominated by AHL being either products of AHL

or its Related Body Corporate or products offered by AHL as an intermediary for a Supplier (cl. 1);

(vi) to only introduce Customers to Products through AHL via the “Aussie distribution model” (cl. 3.3(a)(vi));

(vii) not to introduce Customers to loan, credit or other financial and related products that are not Products of Suppliers (cl. 3.3(a)(vii)); and

(viii) not to introduce Customers to Products directly through a Supplier without operating via the “Aussie distribution model” (cl. 3.3(a)(viii));

(b) it admits that MPP and MyPP were Products within the meaning of the Mobile Broker Engagement and the Mobile Broker Authorisation;

(c) it says that, pursuant to the AHLI Appointment Terms:

(i) AHLI agreed to and did, on the AHLI Appointment Terms, appoint Mobile Brokers to engage in credit services as defined in section 7 of the NCCPA (cl. 1.1 of the AHLI Appointment Terms);

(ii) Mobile Brokers accepted the appointment and agreed to the terms of this AHLI Appointment Terms (cl. 1.2 of the AHLI Appointment Terms);

(iii) Mobile Brokers were prohibited from:

(A) accepting appointment as a credit representative of any other licensee without AHLI’s prior written consent (cl. 2.4 of the AHLI Appointment Terms);

(B) obtaining their own Australian Credit Licence (cl. 2.5 of the AHLI Appointment Terms); and

(C) engaging in any credit services in respect of loans, credit and other financial and related products which were not offered by AHLI or by a lender or other provider of financial and related products with whom AHLI have an agreement (cl. 2.6 of the

AHLI Appointment Terms);

- (d) it refers to and repeats paragraphs 2, 15B and 20(b) herein;
- (e) it otherwise denies paragraph 17; and
- (f) it says that there were further terms of the Mobile Broker Engagement and the Mobile Broker Authorisation *inter alia* that:
 - (i) the Mobile Broker must at all times ensure that the Services are provided: properly and carefully; in a professional, efficient and businesslike manner; promptly and to a high standard; and in full compliance with all Relevant Legislation, including *inter alia* the NCCPA, the Corporations Act, the ASIC Act and the CCA (cl. 3.1); and
 - (ii) the Mobile Broker is engaged as an independent contractor (cl. 10.1(a)) and must not represent itself as AHL's agent or employee (cl. 3.9(a)).

D.2 Brokers were credit representatives

18. As to paragraph 18:

- (a) it admits that, at all times during the Claim Period material to each of the Claimants, insofar as the Brokers engaged in the activities set out in paragraph 30B(a) below, each Broker dealing with that Claimant did so as a credit representative of AHLI within the meaning of the NCCPA; and
- (b) otherwise, it denies paragraph 18 and says further that the Brokers were not acting as credit representatives of AHLI within the meaning of the NCCPA in their dealings with each of the Claimants in respect of MPP and MyPP.

D.3 Brokers were authorised representatives of ALID

19. It does not plead to paragraph 19, as it is not relied upon in any claim made against it.

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

20. As to paragraph 20:

- (a) it does not know and therefore cannot admit sub-paragraph 20(a);
- (b) it admits that ALID appointed AHLI and the Brokers as authorised representatives of ALID to distribute MPP and MyPP on behalf of ALID and under the ALID AFSL;
- (c) it admits sub-paragraph 20(c);
- (d) it admits that AHLI was entitled to receive upfront and trail commissions from ALID in respect of MPP and MyPP arranged through the Aussie Network (**AHLI Commission**);
- (e) it admits that a portion of the AHLI Commission may have been payable to Brokers in respect of MPP and MyPP arranged by them for customers; and

otherwise, it denies paragraph 20.

E. THE AUSSIE SALES SYSTEM FOR MPP AND MYPP

21. As to paragraph 21:

- (a) in relation to sub-paragraph 21(a):
 - (i) it admits sub-paragraph 21(a) insofar as it relates to the Applicant's Broker assisting the Applicant to obtain a home loan;
 - (ii) it admits that in the course of assisting some or all customers to obtain or refinance home loans, the Brokers obtained some or all of the financial information from customers referred to in sub-paragraph 21(a); and
 - (iii) otherwise, it does know and therefore cannot admit sub-paragraph

21(a);

- (b) in relation to sub-paragraph 21(b):
 - (i) it admits sub-paragraphs 21(b)(i), (vi) and (vii) insofar as they relate to the Applicant's Broker requesting and obtaining financial information from the Applicant;
 - (ii) it admits that some of the Brokers requested from some or all customers, for the purpose of verifying the financial information obtained, some or all of the documents referred to in sub-paragraph 21(b); and
 - (iii) otherwise, it does not know and therefore cannot admit sub-paragraph 21(b);
- (c) save that it says the "Toolbox" computer system was progressively (between about September 2022 and June 2023) replaced by a computer system called "Platform", otherwise it admits sub-paragraph 21(c);
- (d) in relation to sub-paragraph 21(d):
 - (i) save that it says that the Brokers provided customers with a personalised report in writing as to an available home loan option or available home loan options and/or verbally reported to customers as to an available home loan option or available home loan options, it otherwise admits sub-paragraph 21(d)(i);
 - (ii) it admits that the Brokers were trained and expected by AHLI to discuss the available home loan option or options with the customer, and it otherwise denies sub-paragraph 21(d)(ii);
 - (iii) it admits that the Brokers were trained and expected by AHLI to recommend the available home loan option or options for the customer, and it otherwise denies sub-paragraph 21(d)(iii);
 - (iv) it denies sub-paragraph 21(d)(iv) and says that Brokers were not

trained by Aussie in respect of MPP or MyPP, nor trained or expected to provide any recommendation in respect of MPP or MyPP and it further refers to sub-paragraph 5(g) above;

(v) it denies sub-paragraph 21(d)(v) and refers to sub-paragraphs 15(a)-(b), 17(a)(iv)-(v) and 21(d)(iv) above;

(vi) it admits that Brokers based or purported to base the recommendations of home loan options on a qualitative assessment of the customer's needs and objectives, individual circumstances and preferences, and otherwise, it denies sub-paragraph 21(d)(vi); and

(vii) it admits that Brokers based or purported to base recommendations of home loan options on grounds that were specific to the customer's circumstances, and otherwise, it denies sub-paragraph 21(d)(vii);

(e) in relation to sub-paragraph 21(e):

(i) it admits sub-paragraph 21(e)(i);

(ii) it denies sub-paragraph 21(e)(ii) and says further that ALID, or a related entity of ALID, caused any application for MPP or MyPP to be lodged with the relevant insurer; and

(f) save that it says that it was not on approval of MPP or MyPP that any entitlement to Broker Commissions arose, it otherwise admits sub-paragraph 21(f).

21A. As to paragraph 21A:

(a) it admits sub-paragraph 21A(a);

(b) it denies sub-paragraph 21A(b); and

(c) it admits sub-paragraph 21A(c).

21B. As to paragraph 21B:

- (a) it admits that the Applicant's Broker offered the Applicant the MPP policy and otherwise, it denies sub-paragraph 21B(a); and
- (b) save that it refers to and repeats sub-paragraph 21(d)(iv) above and otherwise, it admits sub-paragraph 21B(b).

21C. As to paragraph 21C:

- (a) it refers to and repeats paragraphs 21, 21A and 21B above; and
- (b) otherwise, it denies paragraph 21C.

21D. It denies paragraph 21D.

21E. As to paragraph 21E:

- (a) it refers to and repeats sub-paragraphs 2(a)(iv)-(v) and paragraph 21D above;
- (b) it says that some or all Brokers were prohibited by ALID from stating or implying to customers that they were required to obtain insurance products as a condition of a credit facility;
- (c) it further says that the MyPP 2021 PDS stated that "You do not have to buy this policy. My Protection Plan is optional insurance. Approval of your application for a loan does not depend on you buying this policy"; and
- (d) otherwise, it does not know and cannot admit paragraph 21E.

Particulars

The prohibition in sub-paragraph (b) was contained in clause 2(b)(vii) of ALID's standard Terms and Conditions of Appointment for Brokers (**ALID Appointment Terms**).

The statement in sub-paragraph (c) was contained at p. 7 of the MyPP 2021 PDS.

22. It denies paragraph 22.

23. It denies paragraph 23.

23A. As to paragraph 23A:

(a) it refers to and repeats paragraph 21E above; and

(b) otherwise, it denies paragraph 23A.

E.1 Sales System involved personal advice

Financial product advice

24. It denies paragraph 24 and refers to sub-paragraph 21(d)(iv) above.

25. It denies paragraph 25 and refers to sub-paragraph 21(d)(iv) above.

Personal advice

26. It denies paragraph 26 and refers to sub-paragraph 21(d)(iv) above.

Financial services

27. It denies paragraph 27 and refers to sub-paragraph 21(d)(iv) above.

28. It denies paragraph 28.

F. REGULATORY FRAMEWORK

F.1 Personal advice obligations

29. It does not plead to paragraph 29, as it is not relied upon in any claim made against it.

F.2 NCCPA and Corporations Act obligations

30. As to paragraph 30:

- (a) it refers to paragraph 21 above;
- (b) it otherwise denies paragraph 30; and
- (c) it says further that the NCCPA did not apply in relation to the alleged receipt of the Insurance Advice (which is denied).

30A. It admits paragraph 30A.

30B. As to paragraph 30B:

- (a) it admits that the Brokers were providing credit assistance within the meaning of section 8 of the NCCPA:
 - (i) by recommending a credit contract to the customer with a specific lender;
 - (ii) by assisting a customer to apply for a credit contract with the relevant lender;
 - (iii) by lodging an application for a credit contract with the relevant lender for approval; and
- (b) it otherwise denies paragraph 30B.

30C. As to paragraph 30C:

- (a) it admits that insofar as the Brokers engaged in the activities set out in paragraph 30B(a) above, the Brokers were providing a credit service within the meaning of section 7 of the NCCPA; and
- (b) it otherwise denies paragraph 30C.

30D. It denies paragraph 30D, and it refers to sub-paragraphs 2(a)(iv)-(v) above, and it says further that the alleged conduct (which is denied insofar as set out in paragraphs 21E above and 69C below) was not related to a credit activity within the meaning of the NCCPA.

31. As to paragraph 31:

(a) it admits that at all times material to their dealings with each Claimant, each Broker was:

(i) a mortgage broker; and

(ii) insofar as engaging in the matters set out in paragraph 30B(a) above:

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

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

(C) engaging in conduct that relates to a credit activity within the meaning of the NCCPA; and

(b) otherwise, it denies paragraph 31 and refers to paragraphs 18, 21, 30 and 30A-30D above.

31A. As to paragraph 31A:

(a) it admits that when providing credit assistance as set out in paragraph 30B(a) above, and thereby engaging in a credit activity within the meaning of the NCCPA, each Broker was acting in their capacity as a credit representative of AHLI within the meaning of section 64(2) of the NCCPA, alternatively section 65(2) of the NCCPA; and

(b) otherwise, it denies paragraph 31A.

32. As to paragraph 32:

(a) it admits that at all material times the NCCPA required licensees not to provide credit assistance to a consumer by:

(i) suggesting that the consumer apply, or assisting the consumer to apply, for a particular credit contract with a particular credit provider; or

(ii) suggesting that the consumer apply, or assisting the consumer to apply, for an increase to the credit limit of a particular credit contract with a particular credit provider;

unless the licensee has, within 90 days (or other period prescribed by the regulations):

(iii) made a preliminary assessment as alleged in paragraph 32(a)(i); and

(iv) made inquiries and taken steps as alleged in paragraphs 32(a)(ii)-(iv),

otherwise, it denies sub-paragraph 32(a);

(b) in relation to sub-paragraph 32(b):

(i) it admits that licensees may need to obtain information of the kind set out in section B of the Australian Securities and Investments Commission Regulatory Guide 209 entitled 'Credit Licensing: Responsible lending conduct' dated December 2019 (**RG 209**); and

(ii) otherwise, it denies sub-paragraph 32(b);

(c) in relation to sub-paragraph 32(c):

(i) it admits that RG 209 provides (at RG 209.51) that licensees are likely to need information about:

(A) the amount of credit the consumer needs or the maximum amount of credit sought;

(B) the timeframe for which the credit product is required;

(C) the purpose for which the credit product is sought;

(D) whether the consumer seeks particular features or flexibility, the relative importance of different features to the consumer, and whether the consumer is prepared to accept any additional costs or risks associated with these features; and

(E) whether the consumer requires any additional expenses, such as premiums for insurance related to the credit, to be included in the amount financed, and whether the consumer is aware of the additional costs of these expenses being financed;

(ii) it admits that each Broker was, as a credit representative of AHLI, required by the NCCPA to comply with the obligations alleged in sub-paragraph 32(c)(vi); and

(iii) otherwise, it denies sub-paragraph 32(c).

33. Save that it refers to sub-paragraph 21(d)(iv) above, it does not plead to paragraph 33, as it is not relied upon in any claim made against it.

33A. As to paragraph 33A:

(a) in relation to sub-paragraph 33A(a), it admits that the Applicant's Broker made the inquiries, and obtained the information, referred to in sub-paragraphs 21(a) and 21(b) above;

(b) in relation to sub-paragraph 33A(b), it admits that the Applicant's Broker was acting as a credit representative of AHLI when making the inquiries, and obtaining the information, referred to in sub-paragraph 33A(a) above;

(c) in relation to sub-paragraph 33A(c), it admits that AHLI took reasonable steps to ensure that the Applicant's Broker made the inquiries and obtained the information referred to in sub-paragraph 33A(a) above;

- (d) it refers to and repeats paragraphs 18, 30, 30A-30D and 32 above; and
- (e) otherwise, it does not know and therefore cannot admit paragraph 33A.

G. CONTRAVENTIONS

G.1 MPP and MyPP were unsuitable and uncompetitive

34. As to paragraph 34:

- (a) in relation to sub-paragraph 34(a):
 - (i) it admits that MPP and MyPP did not provide a benefit which paid or pays the insured part of their lost income if they are unable to work due to an injury, illness or disability; and
 - (ii) otherwise, it denies sub-paragraph 34(a);
- (b) it denies sub-paragraphs 34(b) and 34(f); and
- (c) otherwise, it admits paragraph 34.

35. It says that the definition of 'Alternative Policies' is vague and embarrassing and otherwise, it does not know and therefore cannot admit paragraph 35.

36. As to paragraph 36:

- (a) it denies sub-paragraph 36(a) and says that the rate of 30% could be increased at the customer's request;
- (b) it denies sub-paragraph 36(b);
- (c) save that it says that only MPP had the features alleged in sub-paragraph 36(c), it otherwise admits sub-paragraph 36(c); and
- (d) save that it says that only MyPP the subject of the MyPP 2021 PDS had the features alleged in sub-paragraph 36(c), it otherwise admits sub-paragraph 36(c).

37. It refers to paragraph 35 above and says that the allegation that restrictions 'were not, or not usually, found in Alternative Policies' is vague and embarrassing and otherwise, it does not know and therefore cannot admit paragraph 37.
38. It refers to paragraph 35 above and otherwise, it does not know and therefore cannot admit paragraph 38.
39. It denies paragraph 39.

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

40. It does not plead to paragraph 40, as it is not relied upon in any claim made against it.
41. It does not plead to paragraph 41, as it is not relied upon in any claim made against it.
42. It does not plead to paragraph 42, as it is not relied upon in any claim made against it.
43. It does not plead to paragraph 43, as it is not relied upon in any claim made against it.
44. It does not plead to paragraph 44, as it is not relied upon in any claim made against it.

G.3 Brokers – failure to warn

45. It does not plead to paragraph 45, as it is not relied upon in any claim made against it.
46. It does not plead to paragraph 46, as it is not relied upon in any claim made against it.
47. It does not plead to paragraph 47, as it is not relied upon in any claim made against it.

G.4 Brokers – failure to give appropriate advice

48. It does not plead to paragraph 48, as it is not relied upon in any claim made against it.
49. It does not plead to paragraph 49, as it is not relied upon in any claim made against it.
50. It does not plead to paragraph 50, as it is not relied upon in any claim made against it.

G.5 Brokers – failure to prioritise customer interests

- 51. It does not plead to paragraph 51, as it is not relied upon in any claim made against it.
- 52. It does not plead to paragraph 52, as it is not relied upon in any claim made against it.
- 53. It does not plead to paragraph 53, as it is not relied upon in any claim made against it.
- 54. It does not plead to paragraph 54, as it is not relied upon in any claim made against it.
- 55. It does not plead to paragraph 55, as it is not relied upon in any claim made against it.
- 56. It does not plead to paragraph 56, as it is not relied upon in any claim made against it.

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

- 57. It does not plead to paragraph 57, as it is not relied upon in any claim made against it.
- 58. It does not plead to paragraph 58, as it is not relied upon in any claim made against it.

G.7 ALID – responsibility

- 59. It does not plead to paragraph 59, as it is not relied upon in any claim made against it.
- 60. It does not plead to paragraph 60, as it is not relied upon in any claim made against it.
- 61. It does not plead to paragraph 61, as it is not relied upon in any claim made against it.

G.8 AHLI – responsibility

- 61A. It refers to and repeats paragraphs 30A to 31A and 33A above, and otherwise, it does not plead to paragraph 61A, as it is not relied upon in any claim made against it.
- 62. It denies paragraph 62 and refers to and repeats paragraphs 18, 30 and 30A-30D above.
- 63. It denies paragraph 63.

64. It denies paragraph 64.

G.9 AHLI – agency liability

65. Paragraph 65 is not used in the ASOC.

65A. It refers to and repeats paragraphs 14 to 17 above, and otherwise, it denies paragraph 65A.

65B. It denies paragraph 65B and further:

- (a) it refers to paragraphs 15(j) and 17(f)(ii) above;
- (b) it says that, at all material times during the Claim Period, Franchise Brokers and Mobile Brokers accepted their appointment as AHLI's credit representatives on the basis, and subject to an acknowledgement in the AHLI Appointment Terms, that the appointment as credit representative did not make them agent for AHLI; and
- (c) it says further that, at all material times during the Claim Period, the Brokers, as authorised representatives of ALID under the ALID AFSL, provided financial services on behalf of, and as agent for, ALID.

Particulars

Clause 1(d) of the ALID Appointment Terms.

65C. It denies paragraph 65C and refers to and repeats paragraph 65B above.

65D. Save that it refers to and repeats paragraphs 14 to 17 and 21 above, it otherwise denies paragraph 65D.

65E. It denies paragraph 65E and refers to and repeats paragraph 65B above.

65F. It denies paragraph 65F.

65G. It denies paragraph 65G.

65H. It denies paragraph 65H.

66. It denies paragraph 66.

67. It denies paragraph 67 and refers to and repeats paragraph 65B above.

68. It denies paragraph 68.

69. It denies paragraph 69.

69A. It denies paragraph 69A.

69B. It denies paragraph 69B.

H. MISLEADING CONDUCT

69C. As to paragraph 69C:

- (a) it refers to and repeats paragraph 21 and 33A above, and otherwise, it denies sub-paragraph 69C(a);
- (b) it denies sub-paragraph 69C(b) and refers to sub-paragraph 21(d)(v) above;
- (c) it denies sub-paragraph 69C(c) and refers to sub-paragraph 21(d)(iv) above;
- (d) it denies sub-paragraph 69C(d);
- (e) it denies sub-paragraph 69C(e) and says further that ALID, and/or the Applicant's Broker acting on behalf of ALID, provided the Applicant with or referred the Applicant to the MPP PDS;
- (f) it denies sub-paragraph 69C(f) and says further that ALID, and/or the Applicant's Broker acting on behalf of ALID, provided to the Applicant material for MPP.

70. It denies paragraph 70.
- 70A. As to paragraph 70A:
- (a) it denies that the Applicant's Broker made a Necessity Representation to the Applicant;
 - (b) it does not know and therefore cannot admit whether other Brokers made any Necessity Representations as set out in paragraph 21E above; and
 - (c) otherwise it denies paragraph 70A.
- 70B. It denies paragraph 70B.
- 70C. It denies paragraph 70C and refers to and repeats paragraphs 18, 30 and 30A-30D above.
71. Save that it denies that the Insurance Advice Representations and/or the Necessity Representation were made by the Brokers and/or AHLI as set out in paragraphs 70 and 70A above, otherwise it admits paragraph 71.
72. As to paragraph 72:
- (a) in relation to the alleged interactions between the Applicant and the Applicant's Broker:
 - (i) it refers to and repeats paragraph 21 above, and otherwise, it denies sub-paragraph 72(a);
 - (ii) it refers to and repeats paragraph 33A above, and otherwise, it denies sub-paragraph 72(b);
 - (iii) save that it says the Applicant's Broker made no enquiries as to the mortgage insurance products available to the Applicant, otherwise it denies sub-paragraph 72(c);
 - (iv) it refers to and repeats paragraph 21 above, and otherwise, it denies

sub-paragraph 72(d);

(v) it denies sub-paragraph 72(e); and

(vi) save that it refers to and repeats the eligibility requirements for MPP and MyPP referred to in paragraph 2(a) above, it admits sub-paragraph 72(f); and

(b) in relation to the alleged interactions between the Brokers and some or all of the Claimants, save that it refers to and repeats sub-paragraph 72(a)(vi) above, it otherwise does not know and therefore cannot admit paragraph 72.

73. It denies paragraph 73.

74. It denies paragraph 74.

I. CLAIMANTS' LOSS AND DAMAGE

75. It denies paragraph 75 and refers to paragraphs 21, 21E and 70 above.

76. It denies paragraph 76.

77. As to paragraph 77:

(a) it does not plead to paragraph 77(a), as it contains no allegation against it; and

(b) it denies sub-paragraph 77(b).

78. It denies paragraph 78.

J. RELIEF

79. It denies paragraph 79.

K. COMMON QUESTIONS OF FACT OR LAW

80. It does not plead to paragraph 80 as it contains no allegation of material fact against it relevant to a cause of action.

Date: 6 November 2024



Signed by Kate Louise Green
Lawyer for the Second Respondent

This pleading was prepared by R.G Craig KC and R. Rozenberg of Counsel.

Certificate of lawyer

I Kate Louise Green certify to the Court that, in relation to the defence filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 6 November 2024



Signed by Kate Louise Green
Lawyer for the Second Respondent

Schedule

No. VID 172 of 2024

Federal Court of Australia

District Registry: Victoria

Division: General

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)