

## NOTICE OF FILING

### Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)  
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)  
Date of Lodgment: 10/10/2023 12:30:14 PM AEDT  
Date Accepted for Filing: 10/10/2023 1:58:15 PM AEDT  
File Number: VID559/2020  
File Title: EDWARD THOMAS & ANOR v COMMONWEALTH FINANCIAL  
PLANNING LIMITED & ORS  
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 17

Rule 8.05(1)(a)

## **Third Second Further Amended Statement of Claim**

No. VID 559 of 2020

Federal Court of Australia

District Registry: Victoria

Division: General

**Edward Thomas** and others

Applicants

**Commonwealth Financial Planning Limited (ACN 003 900 169)** and others

Respondents

### **A. PARTIES**

1. This proceeding is commenced as a representative proceeding pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) by the First Applicant (Edward Thomas), the Second Applicant (Diana Tyrrell) and the Third Applicant (~~Carmel Angelilli~~) (Notre Dame Saez Gomez Galarza) on their own behalf and on behalf of the Group Members, as defined in paragraph 8 below.

The Respondents

2. The First Respondent (**CFP**):

(a) is a company duly incorporated pursuant to the Corporations Act 2001 (Cth) (**Corporations Act**) and capable of being sued;

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Filed on behalf of (name & role of party) First, Second and Third Applicants  
Prepared by (name of person/lawyer) Craig Allsopp, Practice Leader, Shine Lawyers  
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(include state and postcode) \_\_\_\_\_

(b)is and at all material times was part of a group of companies of which the Commonwealth Bank of Australia (ACN 123 123 124) (**CBA**, holder of Australian Financial Services Licence (**AFSL**) 234945) was the parent (**CBA Group**);

(c)is and was at all material times a wholly owned subsidiary of CBA;

(d)is and at all material times was the holder of an AFSL granted pursuant to s 913B of the Corporations Act;

**Particulars**

AFSL No. 231139.

(e)at all material times carried on a business of providing advice about life insurance policies, such advice was:

- (i) financial product advice within the meaning of s 766B(1) of the Corporations Act;
- (ii) personal advice within the meaning of s 766B(3) of the Corporations Act;
- (iii) provided to retail clients within the meaning of s 761G of the Corporations Act;
- (iv) advice to which Division 2 of Part 7.7 A of the Corporations Act applied as of 1 July 2013.

3. The Second Respondent (**FWL**):

(a)is a company duly incorporated pursuant to the Corporations Act and capable of being sued;

(b)is and at all material times was part of the CBA Group;

(c)is and was at all material times a wholly owned subsidiary of CBA;

(d) was the holder of an AFSL granted pursuant to s 913B of the Corporations Act until CBA ceased providing licensee services through FWL in around May 2020;

**Particulars**

AFSL No. 211138.

(e) was a related licensee of CBA until CBA ceased providing licensee services through FWL in around May 2020;

(f) at all material times carried on a business of providing advice about life insurance policies, such advice was:

- (i) financial product advice within the meaning of s 766B(1) of the Corporations Act;
- (ii) personal advice within the meaning of s 766B(3) of the Corporations Act;
- (iii) provided to retail clients within the meaning of s 761G of the Corporations Act;
- (iv) advice to which Division 2 of Part 7.7 A of the Corporations Act applied as of 1 July 2013.

4. The Third Respondent (**CommInsure**):

(a) is and at all material times was the holder of an AFSL granted pursuant to s 913B of the Corporations Act;

**Particulars**

Australian Financial Services Licence No. 235035.

(b) registered under s 21 of the *Life Insurance Act 1995* (Cth) (**Life Insurance Act**) to issue life policies within the meaning of that Act;

(c) carried on a life insurance business within the meaning of the Life Insurance Act;

(c1) was part of the CBA Group until at least 2019;

(d) was a wholly owned subsidiary of CBA until at least 1 November 2019; and

**Particulars**

- i. CBA announced the conditional sale of CommInsure to AIA Group Limited on 21 September 2017.
- ii. On 23 August 2019, CBA announced that CBA's full economic interests associated with CommInsure (with an exception that is not relevant to this claim) would be transferred to AIA Group Limited on implementation of a joint co-operation agreement, expected before the end of the first half of 2020. On 1 November 2019 CBA released an ASX announcement to the effect that the joint co-operation agreement had been implemented.

(e) was and is an 'associate' of CFP and FWL for the purpose of section 961J of the Corporations Act.

4A The Fourth Respondent, AIA Australia Limited (ACN 004 837 861) (**AIAA**), at all material times was, and is a company duly incorporated pursuant to the *Corporations Act 2001* (Cth) and capable of being sued.

5. At all material times, between 21 August 2014 to 21 August 2020 (**Relevant Period**) (ending at May 2020 for FWL),

(a) CFP and FWL each had a network of authorised representatives who provided financial product advice to retail clients on behalf of CFP and FWL (the **Authorised Representatives**);

**Particulars**

- i. The Authorised Representatives were and are both self-employed and operating as sole-traders, operating as corporate entities or trusts, or employed by other Authorised Representatives operating as corporate entities.
- ii. The Authorised Representatives included financial advisers employed by Colonial Services Pty Ltd (ACN 075 733 023), a wholly owned subsidiary of CBA, as well as self-employed financial advisers and incorporated adviser practices.

(b) CFP had a network of employee advisers (employed by CFP or related bodies corporate of CFP) who provided financial product advice to retail clients on behalf of CFP under the AFSL of CFP (the **Employee Advisers**).

(together, the **Advisers**)

**Particulars**

Witness statement given to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (**Banking Royal Commission**) by Mr Hugh Humphrey dated 13 April 2018 (**Humphrey Statement**) at paragraph 2.

6. At all material times, each of the Advisers was:
- (a) an agent for and on behalf of CFP or FWL in providing advice to members of the public about policies of insurance; and either:
  - (b) authorised by written notice to provide financial product advice on behalf of CFP or FWL in accordance with ss 916A or 916B of the Corporations Act; or
  - (c) an authorised representative of CFP or FWL within the meaning of s 761A of the Corporations Act.
- 6A. At all material times, each of the Advisers of CFP was either:
- (a) an employee or director of CFP; or
  - (b) an employee or director of a related body corporate of CFP; or
  - (c) acting on behalf of CFP.
7. In respect of each of the material allegations concerning the conduct of the Advisers contained in this ~~Third~~ Second Further Amended Statement of Claim, that conduct was within the scope of their authority as employees, agents and/or authorised representatives of CFP or FWL (as applicable).

**Particulars**

- i. The material allegations concerning the conduct of the Advisers are the allegations contained in paragraphs 19, 20, 48 to 56 and 71-81.
- ii. Each of the material allegations in those paragraphs depends on the giving of personal advice by the Advisers, which was either:
  - a. A core function of their role as an employee (in the case of the Employee Advisers); or
  - b. Governed by the terms of the Authorised Representative agreement and the "Authorisation" referred to in that Agreement. The Applicants refer to the Authorised Representative Agreement between FWL and Joe Vitale dated 23 January 2008 (CBG.514.001.0127)

#### The Applicants and Group Members

8. The Applicants and the persons who they represent in this proceeding (**Group Members**) are persons who on or after 21 August 2014:
- (a) were advised by an Adviser of CFP or FWL to obtain, renew or otherwise retain (by themselves or through their superannuation funds as members) life cover, including terminal illness, total & permanent disability cover, income protection, and trauma cover (**CBA Life Products**), that was issued by Commlnsure;
  - (b) on the basis of such advice obtained, renewed or otherwise retained (by themselves or through their superannuation funds as members) CBA Life Products, that were issued by Commlnsure; and
  - (c) by reason thereof and in paying what are claimed to be any excess premiums on such CBA Life Products (by themselves or through their superannuation funds as members):
    - (i) suffered loss or damage; or
    - (ii) claim an account of profits;
  - (d) are not a Justice, Registrar, District Registrar, or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia.

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

**B. ATTRIBUTION OF KNOWLEDGE AND ADMISSIONS**

10. Hugh Humphrey was, as at 3 April 2018, General Manager of Bank Financial Planning, CBA.

11. Mark Ballantyne was:

(a) as at 13 April 2018, General Manager of FWL and CFP Pathways; and

(b) a director of FWL from 15 July 2019 to 23 July 2020.

12. The knowledge of Humphrey and Ballantyne is attributed to CFP and FWL by reason of the fact that:

(a) Humphrey was a senior employee of CBA, the parent company of CFP and FWL, with responsibility for managing CFP, and FWL until CBA ceased providing licensee services through FWL in around May 2020, and as such was under a duty to communicate to the board of CFP and FWL the knowledge gained by him in his position;

(b) Ballantyne was a senior employee of CFP and FWL and as such was under a duty to communicate to the board of CFP and FWL the knowledge gained by him in his position;

13. The admissions made by Humphrey and Ballantyne in their statements provided to the Royal Commission as pleaded in this Third ~~Second~~ Further Amended Statement of Claim are taken to be admissions by CFP and FWL by reason of the fact that they each had authority to make statements on behalf of the relevant Respondent in relation to the matter with respect to which the representation was made.



### Particulars

- i. Witness statement given to the Banking Royal Commission by Mr Mark Robert Ballantyne dated 13 April 2018 (**Ballantyne Statement**) at page 1;
- ii. Humphrey Statement at page 1.

## C. CBA LIFE PRODUCTS

- 14. At all material times, CommInsure issued CBA Life Products.

### Particulars

CommInsure Protection Combined Product Disclosure Statement and Policy 11 May 2014 (CBG.501.017.5572); Update to CommInsure Protection Combined Product Disclosure Statement and Policy effective 25 June 2014 (CML.507.001.0038); Supplementary Combined Product Disclosure Statement and Policy issued 18 October 2015 (CBG.501.012.2209); Updates to the CommInsure Protection Combined Disclosure Statement and Policy issued 11 May 2014, dated 10 March 2016 (CBG.501.010.7512); CommInsure Protection Supplementary Product Disclosure Statement and Policy issued 16 June 2016 (CML.506.001.0645); CommInsure Protection Combined Product Disclosure Statement and Policy issued 13 November 2016 (CML.506.001.0783); Simple Life Product Disclosure Statement and Policy Document issued 30 January 2017; CommInsure Protection Combined Product Disclosure Statement and Policy issued 1 April 2017 (CBG.501.008.0787); CommInsure Protection Supplementary Combined Product Disclosure Statement and Policy issued 9 June 2017 (CML.506.001.1442) CommInsure Protection Combined Product Disclosure Statement and Policy issued 17 September 2017 (CBG.501.006.1136); Corporate Cover Combined Product Disclosure Statement and Policy issued 23 February 2018; CommInsure Protection Supplementary Combined Product Disclosure Statement and Policy issued 8 April 2018 (CML.506.001.0939); CommInsure Protection Combined Product Disclosure Statement and Policy issued 23 September 2018; CommInsure Protection Supplementary Combined Product Disclosure Statement and Policy issued 1 November 2019 (CML.506.001.1100); Life Insurance Provided by AIA Australia Product Disclosure Statement and Policy Document issued 1 April 2020; CommInsure Protection Supplementary Combined Product Disclosure Statement issued 1 April 2020 (CML.507.002.0001); CommInsure Protection Supplementary Combined Product Disclosure Statement and Policy issued 23 August 2020.

15. The CBA Life Products provided one or more of the following benefits:
- (a) death cover;
  - (b) total and permanent disablement cover;
  - (c) trauma cover;
  - (d) income protection; and
  - (e) business overheads cover.
16. The owners of the CBA Life Products could be:
- (a) the insured;
  - (b) a person other than the insured;
  - (c) two or more persons jointly;
  - (d) a company; or
  - (e) the trustee of the insured's superannuation fund.
17. At all material times, the insurer of CBA Life Products was CommInsure.
18. At all material times, CommInsure sold and distributed CBA Life Products through CFP and FWL and their networks of Authorised Representatives.

#### **Particulars**

- i. Distributor agreement between CFP and CommInsure; and
- ii. Distributor agreement between FWL and CommInsure dated 29 February 2012 (CBA.600.005.2575), and addendum to that agreement dated 16 January 2013 (CBA.600.005.2674).

**D. ADVICE TO OBTAIN, RENEW OR RETAIN CBA LIFE PRODUCTS**

18A In respect of the First Applicant:

(1a) a CFP Adviser named Valerie Lumby undertook to provide personal advice to the First Applicant:

**Particulars**

- i. Adviser checklist for the First Applicant dated 4 October 2011 (CML.507.001.0565).
- ii. Email from Mark Smith to Valerie Lumby dated 30 September 2014 recording the First Applicant asking “queries about his insurance cover” (CBG.513.003.5884), with reply (CBG.513.003.5886);
- iii. Email from Mark Smith to Valerie Lumby dated 30 November 2016 regarding an enquiry from the First Applicant: “The premiums are substantial and there may be an opportunity for new advice” (CBG.513.010.7795), with reply (CBG.513.010.7799), and associated correspondence about premium calculations (CBG.513.010.7820);
- iv. CommInsure Protection Quotation prepared for the First Applicant on 30 November 2016 (CBG.513.010.7822);
- v. Time Critical File Note dated 8 December 2016 and prepared by Valerie Lumby in respect of the First Applicant;
- vi. FirstChoice - Adviser Service Fee, Licensee Service Fee and Adviser Trail Rebate Nomination Form signed by the First Applicant on 12 December 2016 (CBG.513.011.1663); and
- vii. Colonial First State – Adviser nomination / Access to information form signed by the First Applicant on 14 December 2016 (CBG.513.011.1907).

(a) the First Applicant received personal advice from Valerie Lumby on or about 19 December 2016;

**Particulars**

- i. Statement of Advice Prepared for Mr Edward (Ed) Thomas on 19 December 2016 (CBG.500.001.0055);
- ii. Email from Valerie Lumby addressed to the First Applicant referring to Statement of Advice as an attachment, dated 20 December 2016 (CBG.513.011.2525).

(b) the personal advice included a recommendation to retain his life, total and permanent disablement policy (01750849) and income protection policy (01755981), which were CBA Life Products, through his superannuation fund, FirstChoice Wholesale Personal Super, of which he was a member;

(c) the First Applicant accepted that personal advice, and retained his life, total and permanent disablement policy (01750849) and income protection policy (01755981) through his superannuation fund, FirstChoice Wholesale Personal Super;

(d) from 19 December 2016, CommInsure charged and received from the First Applicant, premiums on his CBA Life Products, which included the Excess Premiums (as pleaded at paragraph 23 below);

(e) the First Applicant held an account in the FirstChoice Wholesale Personal Super from which the premiums on his CBA Life Products, which included the Excess Premiums (as pleaded in paragraph 23 below), were deducted and paid to CommInsure from 19 December 2016 onwards.

**Particulars**

Particulars i and ii to paragraph 22 are repeated.

18B In respect of the Second Applicant:

(1a) a FWL Authorised Representative named Joseph Vitale undertook to provide personal advice to the Second Applicant;

**Particulars**

- i. Telephone conversation between the Second Applicant and Joseph Vitale on or about 6 November 2014 (CBG.519.001.0379);
- ii. Application dated 1 August 2010 from the Second Applicant to CommInsure (CML.504.001.0035)

(a) the Second Applicant received personal advice from Joseph Vitale on or about 6 November 2014, 8 September 2016 and 12 January 2017:

**Particulars**

- i. Letter from Joe Vitale to Sean Tyrrell and the Second Applicant dated 6 November 2014 (CBG.519.001.0379)
- ii. Email from Joe Vitale to Sean Tyrrell and the Second Applicant dated 8 September 2016 (CBG.519.001.0540)
- iii. Email from Joe Vitale to the Second Applicant dated 12 January 2017 (CBG.519.001.0568)

(b) the personal advice included a recommendation to retain her life and terminal illness policy (0155 3725), which was a CBA Life Product, through her superannuation fund, Tyrrell Superannuation Fund, of which she was a member and a trustee;

(c) the Second Applicant accepted that personal advice, and retained her life and terminal illness policy (01553725);

(d) from 6 November 2014, Commlnsure charged and received from the Second Applicant, premiums on her CBA Life Products (as pleaded at paragraph 23 below).

(e) the Second Applicant held an account in the Tyrrell Superannuation Fund from which the premiums on her CBA Life Product, which included the Excess Premiums (as pleaded in paragraph 23 below), were deducted and paid to Commlnsure from 6 November 2014 onwards.

**Particulars**

Particulars iii to vi to paragraph 22 are repeated

18C In respect of the Third Applicant:

(a) a CFP Adviser Named Denis Voo undertook to provide personal advice to the Third Applicant on or around ~~2 February 2018~~ 10 December 2018;

**Particulars**

- i. Statement of advice prepared by Denis Voo dated 10 December 2018.

- ~~i. Financial Needs Analysis for the Third Applicant dated 2 February 2018 (CBG.572.001.0382);~~
- ~~ii. Service Request (SR 1) Annual Review Guide & Checklist dated 2 February 2018 (CBA.572.001.0357);~~
- ~~iii. Commonwealth Financial Planning Advice Valuation Tool 8.1 dated 2 February 2018 (CBG.572.001.0381)~~
- ~~iv. Particulars of the name of the CFP adviser will be provided on the Respondents producing an unredacted document with the identity of the CFP Adviser.~~

(b) the Third Applicant received personal advice from her ~~CFP adviser Denis Voo on 2 February 2018~~10 December 2018:

#### **Particulars**

The particulars to paragraph 18C(a) are repeated.

- ~~i. Record of Advice signed and dated by the Third Applicant on 2 February 2018 (CBG.572.001.0379);~~
- ~~ii. Client Declaration signed and dated by the Third Applicant on 2 February 2018 ([0393] of CBG.572.001.0382);~~

(c) the personal advice included a recommendation to obtain:

- a. Total Care Plan with life and TPD cover (policy number 02714923),
- b. Total Care Plan Super with life and TPD cover (policy number 02714921),  
and
- c. Income Care Plus (policy number 02714992),

each of which is a CBA Life Product.

(d) the Third Applicant accepted that personal advice by agreeing and signing the documents necessary to obtain the CBA Life Products in paragraph 18C(c) above.

(e) from 20 December 2018 Commlnsure charged and received premiums on the Third Applicant's Total Care Plan, Total Care Plan Super And Income Care Plus policies, which included the Excess Premiums (as pleaded in paragraph 23 below).

**Particulars**

- i. Policy Schedule for Total Care Plan (policy number 02714923):
- ii. Policy Schedule for Total Care Plan Super (policy number 02714921; and
- iii. Policy Schedule for Income Care Plus (policy number 02714922).

~~(c) the personal advice included a recommendation to retain her Commlnsure Total Care Plan (policy number 01678032) policy, with Life Care Cover, TPD Cover and Trauma Plus Cover, which is a CBA Life Product.~~

~~(d) the Third Applicant accepted that personal advice by continuing her Commlnsure Total Care Plan (policy number 01678032) policy at the policy anniversary date on or about 19 May 2018.~~

~~(e) from on or about 19 May 2018, Commlnsure charged and received premiums on the Third Applicant's Total Care Plan with Life Care Cover, TPD Cover and Trauma Plus Cover, which included the Excess Premiums (as pleaded in paragraph 23 below).~~

19. In respect of each of the Applicants and Group Members, one or more of the Advisers undertook to provide them with advice regarding their insurance needs, including the premiums payable on insurance.

**Particulars**

- i. The First, Second and Third Applicants refer to, and repeat, paragraphs 18A, 18B and 18C and their particulars.
- ii. Particulars relating to claims of Group Members will be provided following the initial trial of the common questions of the Applicants' claims.

20. On or after 21 August 2014, the Applicants and Group Members were each provided with personal advice by one or more of the Advisers in relation to insurance products, including a recommendation that the Applicants or Group Member obtain, renew or otherwise retain one or more CBA Life Products.

**Particulars**

The particulars to paragraph 19 are repeated.

21. Pursuant to that personal advice, the Applicants and Group Members each obtained, renewed or otherwise retained one or more CBA Life Products (by themselves or through their superannuation funds as members).

**Particulars**

The particulars to paragraph 19 are repeated.

22. On or after 21 August 2014, Commlnsure charged and received premiums on CBA Life Product(s) that the Applicants and Group Members obtained, renewed or otherwise retained (by themselves or through their superannuation funds as members).

**Particulars (First Applicant)**

- i. On 20 October 2017, an annual premium of \$4,893.13 (income protection policy) was paid to Commlnsure.
- ii. On 6 February 2018, an annual premium of \$8,679.64 (life and total and permanent disablement) was paid to Commlnsure.
- iii. For the period 28 October 2018 to 28 October 2019, a total annual premium of \$16,225.43 (life and total and permanent disablement, and income protection) was paid to Commlnsure.

**Particulars (Second Applicant)**

- iv. From 31 August 2016 to 31 August 2017 an annual premium of \$1,213.10 (life and total and terminal illness) was paid to Commlnsure on 20 September 2016.
- v. From 31 August 2017 to 31 August 2018 an annual premium of \$1,377.10 (life and terminal illness) paid to Commlnsure on 1 September 2017.
- vi. From 31 August 2018 to 31 August 2019 an annual premium of \$1,569.06 (life and terminal illness) paid to Commlnsure on 3 September 2018.



- vii. From 31 August 2019 to 31 August 2020 an annual premium of \$1,785.81 (life and terminal illness) paid to CommInsure on 1 September 2019.

**Particulars (Third Applicant)**

- viii. ~~For the period 19 May 2017 to 19 May 2018, an annual premium of \$3,325.72 (life, TPD and trauma plus) was paid to CommInsure.~~
- ix. ~~For the period 19 May 2018 to 19 May 2019, an annual premium of \$3,908.11 (life, TPD and trauma plus) was paid to CommInsure.~~
- x. ~~For the period 19 May 2019 to 19 May 2020, an annual premium of \$4,495.60 (life, TPD and trauma plus) was paid to CommInsure.~~
- xi. ~~For the period 19 May 2020 to 19 May 2021, an annual premium of \$3,937.82 (life, TPD and trauma plus) was paid to CommInsure.~~
- xii. For the period 20 December 2018 to 20 December 2019, a total annual premium of \$4,762.89 (life, TPD and income protection) was paid to CommInsure.

Particulars relating to claims of Group Members will be provided following the initial trial of the common questions of the Applicants' claims.

23. The premiums charged by CommInsure on the CBA Life Products were higher than the premiums payable on substantially equivalent or better insurance products that could have been obtained, renewed or retained by the Applicants and Group Members from third-party insurers (the difference in premiums is referred to as the **Excess Premiums**).

**Particulars**

The substantially equivalent or better insurance products that could be obtained from third party insurers at a lower premium include those set out below:

First Applicant, life, total and permanent disablement

<b>Policy Name</b>	<b>Insurer</b>
Accelerated Protection	TAL

Second Applicant, life, total and permanent disablement

<b>Policy Name</b>	<b>Insurer</b>
Priority Protection	AIA

Third Applicant, life, total and permanent disablement ~~and~~  
trauma, and income protection

<b>Policy Name</b>	<b>Insurer</b>
<del>Zurich Protection Plus</del>	<del>Zurich</del>
<del>AMP Elevate</del>	<del>AMP Life</del>
<u>Zurich Protection Plus</u>	<u>Zurich</u>
<u>ClearView - Life Solutions</u>	<u>ClearView</u>

Further particulars relating to the Applicants' claims will be provided following the exchange of expert evidence.

Further particulars relating to claims of Group Members will be provided following the initial trial of the common questions of the Applicants' claims.

24. At all material times, the Applicants and Group Members did not know, and the Advisers, CFP and FWL did not disclose to the Applicants or Group Members:
- (a) that the premiums charged by CommInsure on the CBA Life Products included the Excess Premiums;
  - (b) the nature or amount of the Excess Premiums; or
  - (c) that substantially equivalent or better policies of insurance were available for a lower premium.
25. The premiums charged on the relevant CBA Life Products (**Group Members' Premiums**), including the Excess Premiums, were paid to CommInsure by the holder of the CBA Life Product.

#### **Particulars**

The particulars to paragraph 22 are repeated.

## E. APPROVED PRODUCT LISTS

26. At all material times, CFP and FWL had issued one or more approved product lists containing life and risk insurance products (**Insurance APLs**) that their respective Authorised Representatives were and are authorised to recommend to retail clients.

### Particulars

CFP APL March 2020 (CBG.501.003.1981); CFP APL July 2019 (CBG.501.003.1989); CFP APL November 2018 (CBG.501.004.4850); CFP APL March 2018 (CBG.501.005.2357); CFP APL November 2017 (CBG.501.005.4607); CFP APL October 2017 (CBG.501.006.0773); CFP APL August 2017 (CBG.501.006.3662); CFP APL June 2017 (CBG.501.007.1298); CFP APL October 2016 (CBG.501.009.4663); CFP APL April 2016 (CBG.501.010.7581); CFP APL June 2015 (CBG.501.013.2091); CFP APL – Pathways April 2015 (CBG.501.014.1841); CFP APL – RBS April 2015 (CBG.501.014.1851); CFP APL – RBS February 2015 (CBG.501.014.6271); CFP APL – Pathways February 2015 (CBG.501.014.6275); CFP APL – RMS February 2015 (CBG.501.014.6278); CFP APL – Pathways (CBG.501.016.3335); CFP APL – RBS July 2014 (CBG.501.016.3411); CFP APL – RMC July 2014 (CBG.501.016.3601);

FWL APL July 2019 (CBG.501.003.1981.pdf); FWL APL November 2018 (CBG.501.004.4844); FWL APL October 2017 (CBG.501.006.0768); FWL APL August 2017 (CBG.501.006.6514); FWL APL June 2017 (CBG.501.007.1292); FWL APL December 2016 (CBG.501.008.6472); FWL APL October 2016 (CBG.501.009.4657); FWL APL April 2016 (CBG.501.010.7586); FWL APL January 2016 (CBG.501.011.5797); FWL APL June 2015 (CBG.501.013.2701); FWL APL May 2015 (CBG.501.013.5700); FWL APL April 2015 (CBG.501.014.1054); FWL APL July 2014 (CBG.501.016.3589).

27. At all material times, the CBA Life Products were included on the Insurance APLs.
28. At all material times, Authorised Representatives required one-off approval to recommend an insurance product not on the Insurance APLs.

### Particulars

- i. Commonwealth Financial Planning Limited Financial Services

Guide, Version 11, dated 1 July 2019, at page 5.

- ii. Witness statement given to the Banking Royal Commission by Mr Hugh Humphrey dated 21 August 2018, paragraphs 60 – 71 and Exhibit HH-14.
- iii. Further particulars may be provided following receipt of the Respondents' discovery.

## F. COMMISSIONS AND INCENTIVES

### CFP and FWL Authorised Representatives (other than Employee Advisers)

29. At all material times, Commlnsure had and has agreements in place with CFP and FWL, known as distributor terms of trade, in order to sell Commlnsure life insurance products (**Distribution Agreements**) pursuant to which Commlnsure agreed to pay CFP and FWL commissions in relation to the sale of CBA Life Products to clients (**Commissions**) that were facilitated by the Authorised Representatives on behalf of CFP and FWL.

#### Particulars

- i. Distributor agreement between CFP and Commlnsure.
  - ii. Distributor agreement between FWL and Commlnsure dated 29 February 2012 (CBA.600.005.2575), and addendum to that agreement dated 16 January 2013 (CBA.600.005.2674).
30. At all material times, the Commissions were and are payable on a per product basis and calculated by reference to the premium payable on the CBA Life Product.

#### Particulars

- i. Commissions varied and vary between insurance products, and include level, hybrid and upfront options, and comprise upfront and trailing commissions.
- ii. Commlnsure Commission Schedule – Financial Wisdom effective 1 January 2014 (CML.500.001.0134); Commlnsure commission schedule – CFP & pathways effective 1 January 2015 (CBG.501.014.5699); Commlnsure Commission Schedule Pathways effective 1 July 2017 (CBG.509.174.7295); Commlnsure Commission Schedule CFP effective 1 July 2017 (CBG.509.174.7357); Commlnsure Commission Schedule Financial Wisdom effective 1 January 2018

(CML.500.001.0021); Commlnsure Commission Schedule Financial Wisdom effective 1 January 2018  
 (CML.500.001.0227); Commlnsure Commission Schedule CFP effective 1 January 2018  
 (CML.500.001.0177); Commlnsure Commission Schedule CFP effective 1 January 2018  
 (CML.500.001.0113); Commlnsure Commission Schedule Pathways effective 1 January 2018  
 (CML.500.001.0041); Commlnsure Commission Schedule CFP effective 1 January 2019  
 (CML.500.001.0157);

31. At all material times, CFP and FWL Authorised Representatives were entitled to be paid the Commissions (or part of them) received by CFP or FWL in relation to CBA Life Products the sale of which were facilitated by the Authorised Representative.

#### Particulars

- i. Ballantyne Statement at pages 5 to 12.
- ii. Particulars in respect of the Commissions for the First Applicant

Reference	Date	Upfront payment / renewal	Annual Premium \$	CFP Commission %	CFP Commission \$	Adviser Commission %	Adviser Commission p/a \$
Annual renewal notice (CML.505.00 1.0011); and Statement Report dated 12 September 2019	2014	Renewal	12,221.17	10.00	1,222.12	10.5	183.32
Annual renewal notice (CML.505.00 1.0024); and Statement Report dated 12 September 2019	2015	Renewal	13,575.27	10.00	1,357.53	10.5	203.63
Annual renewal notice (CML.505.00 1.0024); and	2016	Renewal	12,246.89	10.00	1,224.69	10.5	183.70

Statement Report dated 12 September 2019							
Annual renewal notice (CML.507.00 1.0185); and Statement Report dated 12 September 2019	2017	Renewal	13,572.77	10.00	1,357.28	10	135.73
Annual renewal notice (CML.507.00 1.0175); and CommInsure overdue notice (CML.507.00 1.0458)	2018	Renewal	16,225.43	10.00	1,622.54	10	162.25

iii. Particulars in respect of the Commission for the Second Applicant

Reference	Date	Upfront payment / renewal	Annual Premium \$	FWL Commission %	FWL Commission \$	Adviser Commission %	Adviser Commission \$
CommInsure Payment Notice	2014	Renewal	958.30	20.00	191.66	91.50	175.37
CommInsure Payment Notice	2015	Renewal	1,082.98	20.00	216.60	91.50	198.19
CommInsure Payment Notice	2016	Renewal	1,213.10	20.00	242.62	91.50	222.00
CommInsure Payment Notice	2017	Renewal	1,377.10	20.00	275.42	91.50	252.01
CommInsure Payment Notice	2018	Renewal	1,569.06	20.00	313.81	91.50	287.14
CommInsure Payment Notice	2019	Renewal	1,785.81	20.00	357.16	91.50	326.80
CommInsure Payment Notice	2020	Renewal	2,025.00	20.00	405.00	91.50	370.58

- iv. Particulars in respect of the Commission for the Third Applicant will be provided after discovery.

Reference	Date	Upfront payment /renewal	Annual Premium \$	CFP Commission %	CFP Commission \$	Adviser Commission %	Adviser Commission p/a \$
Annual Renewal Notice (CML-511.00 1.0061)	2014	Renewal	2,532.95	10	253.295	14	35.46
Annual Renewal Notice (CML-511.00 1.0007)	2015	Renewal	2,456.32	10	245.632	14	34.39
Annual Renewal Notice (CML-511.00 1.0095)	2016	Renewal	2,828.59	10	282.859	14	39.60
Annual Renewal Notice (CML-511.00 1.0103)	2017	Renewal	3,235.72	10	323.572	14	45.30
Annual Renewal Notice (CML-511.00 1.0108)	2018	Renewal	3,908.11	10	390.811	14	54.71
Annual Renewal Notice (CML-511.00 1.0114)	2019	Renewal	4,495.60	10	449.56	14	62.94
Annual Renewal Notice (CML-511.00 1.0125)	2020	Renewal	3,937.82	10	393.782	14	55.13

32. Pursuant to the Distribution Agreements, CFP and FWL received Commissions from CommInsure in relation to the CBA Life Products obtained, renewed or otherwise retained by the Applicants and Group Members and paid those Commissions (or part of them) to the relevant Authorised Representatives.
33. FWL Authorised Representatives were also eligible for the incentive schemes described in paragraphs 39 – 42 below.

### CFP Employee Advisers

34. During the Relevant Period, the Employee Advisers received, among other things, variable remuneration pursuant to CFP's variable remuneration plan (**VRP**).

#### Particulars

Humphrey Statement at paragraphs 16 to 18 and 23.

35. The Commissions paid to the Employee Advisers comprised a material aspect of the:

(a) calculation of the VRP; and

(b) each Employee Advisers' annual remuneration.

#### Particulars

Humphrey Statement at paragraph 26.

36. Under the VRP, the Employee Advisers were eligible for quarterly bonus payments if they satisfied certain criteria including that the employee adviser has generated **total advice revenue** in excess of his/her year to date Total Revenue Target (**TRT**), a figure which was calculated as 1.45 times the advisers' base remuneration.

#### Particulars

- i. Humphrey Statement at paragraph 18.
- ii. Commonwealth Financial Planning Adviser Variable Remuneration Plan, Plan Summary and Business Rules for 2018/2019 and its predecessors, further particulars of which will be provided after discovery.

37. The revenue which contributed to the calculation of the Employee Adviser's total advice revenue included the Commissions received by CFP when a new life insurance policy sold to a client by an Employee Adviser came into force.

#### Particulars



- i. Humphrey Statement at paragraph 18.
    - ii. Commonwealth Financial Planning Adviser Variable Remuneration Plan, Plan Summary and Business Rules for 2017/2018 and its predecessors, further particulars of which will be provided after discovery.
38. Once an Employee Adviser met the eligibility criteria for a bonus payment, he/she received:
- (a) a share of up to 53% of his/her IAR, above his/her TRT for the relevant period;  
and
  - (b) a share of up to 16% of the life insurance renewal commission received by CFP upon his/her clients' renewal of their life insurance products.

#### **Particulars**

- i. Humphrey Statement at paragraph 18.
  - ii. Commonwealth Financial Planning Adviser Variable Remuneration Plan, Plan Summary and Business Rules for 2017/2018 and its predecessors, further particulars of which will be provided after discovery.

#### **FWL Incentive Payments**

39. In addition to the Commission payments in paragraphs 29 – 32 above, FWL Authorised Representatives who were authorised by FWL before 1 July 2013 had the option of sharing in the revenue generated by FWL by way of either:
- (a) the FWL Partner Program, pursuant to which FWL shared payments it received from Colonial First State First Choice (**CFS**) platforms and on specific CommInsure products with the FWL Authorised Representatives using a tiered formula (**FWL Partner Program**); or
  - (b) the FWL Short Term Incentive Program, pursuant to which FWL pooled revenue including payments it received from certain product providers which it distributed to qualifying FWL Authorised Representatives on a quarterly basis according to

the number of "Practice Quality" points the FWL Authorised Representative accumulated (**FWL Short Term Incentive Program**),

(together, the **Incentive Payments**)

### **Particulars**

Ballantyne Statement at pages 14, 15 and 17.

40. Under the terms of the FWL Partner Program, in respect of CFS platforms:
- (a) FWL Authorised Representatives receive a percentage of the revenue received by FWL from CFS on the basis of the FWL Authorised Representative's CFS qualifying funds under advice;
  - (b) the maximum payable by FWL to a FWL Authorised Representative based on that person's CFS qualifying funds under advice and net flow calculation is 100% of the revenue the FWL Authorised Representative generated from the CFS revenue payment to FWL; and
  - (c) the payment may be adjusted up where the FWL Authorised Representative has a net CFS funds inflow or down where the Authorised Representative has a net CFS funds outflow.

### **Particulars**

Ballantyne Statement at page 15.

41. Under the terms of the FWL Partner Program, in respect of CommInsure, FWL receives a payment determined by an agreed CommInsure minimum in-force business and lapse rate. A portion of that payment is allocated to participating FWL Authorised Representatives based on:
- (a) prior to 1 January 2018, the FWL Authorised Representative's level of new CommInsure premiums as a percentage of FWL's total new CommInsure

premiums for the relevant quarter which was then adjusted down by a tiered percentage if the FWL Authorised Representative's 12 month lapse rate exceeded 8%; and

- (b) from 1 January 2018, the FWL Authorised Representative's level of CommInsure premiums in force for policies held on or before 31 December 2017 as a percentage of FWL's total CommInsure premiums in force for policies held on or before that date for the relevant quarter which is then adjusted down by a tiered percentage if the FWL Authorised Representative's 12 month lapse rate exceeds 9.6%.

#### **Particulars**

Ballantyne Statement at pages 16 and 17.

42. Under the FWL Short Term Incentive Program, FWL Authorised Representatives who meet certain eligibility criteria are entitled to receive payment of a percentage of the FWL Short Term Incentive Program eligible pool of revenue collected by FWL.

#### **Particulars**

Ballantyne Statement at pages 17, 18 and 19.

### **G. CFP AND FWL RESPONSIBILITY FOR THE CONDUCT OF THEIR AUTHORISED REPRESENTATIVES**

43. In acting as pleaded in paragraphs 19 to 24 above, and 48 to 81 below of this Third ~~Second~~ Further Amended Statement of Claim, the Advisers were engaging in conduct that relates to the provision of a financial service within the meaning of s 917A(1)(a) of the Corporations Act.
44. In acting as pleaded in paragraphs 19 to 24 above, and 48 to 81 below of this Third ~~Second~~ Further Amended Statement of Claim, the Advisers were engaging in conduct on which the Applicants and each Group Member could reasonably be expected to rely within the meaning of s 917A(1)(b) of the Corporations Act.

45. The Applicants and each Group Member in fact relied in good faith upon the conduct of the Advisers within the meaning of s 917A(1)(c) of the Corporations Act.
46. By reason of the matters pleaded in paragraphs 5 to 7, 43 - 45 above, CFP and FWL are responsible for the conduct of each of their Advisers, by reason of ss 917B and 917E of the Corporations Act.
47. By reason of the matters pleaded in paragraph 46 above, the Applicants and Group Members have the same remedies pleaded in this Third ~~Second~~ Further Amended Statement of Claim against CFP and FWL as they have against the Advisers, by reason of s 917F of the Corporations Act.

#### H. FIDUCIARY OBLIGATIONS AND BREACH

47A During the Relevant Period CFP:

- (a) undertook, through the Advisers, to provide the First and Third Applicant and Group Members with personal financial advice;

#### Particulars

- i. Time Critical File Note dated 8 December 2016 and prepared by Valerie Lumby in respect of the First Applicant;
- ii. Colonial First State – Adviser nomination / Access to information form signed by the First Applicant on 14 December 2016 (CBG.513.011.1907), particularly item 2 “adviser nomination”; and
- iii. FirstChoice - Adviser Service Fee, Licensee Service Fee and Adviser Trail Rebate Nomination Form signed by the First Applicant on 12 December 2016 (CBG.513.011.1663);
- iv. ~~FirstChoice - Adviser Service Fee, and Adviser Trail Rebate Nomination Form signed by the signed by the Third Applicant on 25 March 2015 (CBG.572.001.0074).~~
- v. ~~Commonwealth Financial Planning – Local Ongoing Service Program Agreement signed by the Third Applicant on 23 December 2014 (CBG.572.001.0129).~~

(b) gave, through the Advisers, personal financial advice;

#### Particulars

- i. Statement of Advice prepared for Mr Edward (Ed) Thomas on 19 December 2016 (CBG.500.001.0055); and
- ii. Email from Valerie Lumby addressed to the First Applicant referring to Statement of Advice as an attachment, dated 20 December 2016 (CBG.513.011.2525).
- iii. ~~Local Ongoing Service Program Agreement signed by the Third Applicant on 23 December 2014 (CBG.572.001.0129), particularly Appendix A.~~

(c) held out that the Advisers as having expertise in providing financial advice;

#### Particulars

- i. Commonwealth Financial Planning Financial Services Guide dated 1 July 2016 (CBG.513.008.7596 at page 7597);
- ii. Commonwealth Bank website in the Relevant Period, including (at various points in time):
  - a. <https://www.commbank.com.au/personal/can/financial-planning/young-professionals.html>
  - b. <https://www.commbank.com.au/personal/can/financial-planning/couples-and-families.html>
  - c. <http://www.commbank.com.au/financial-planning.html>
  - d. <https://www.commbank.com.au/personal/can/financial-planning/preparing-to-retire.html>
  - e. <https://www.commbank.com.au/personal/financial-planning/financial-planning-v2.html>
- iii. Statement of Advice prepared for Mr Edward (Ed) Thomas on 19 December 2016 (CBG.500.001.0055);
- iv. Statement of Advice prepared for Edward Thomas by Benjamin Smith on 9 June 2017 (CBG.516.001.0001); and
- v. ~~Statement of Advice prepared for Carmel Angelilli Ms Galarza by a CFP Adviser on 10 December 2018. 23 December 2014 (CBG.572.001.0077).~~

- vi. ~~Local Ongoing Service Program Agreement signed by the Third Applicant on 23 December 2014 (CBG.572.001.0129),~~

47B During the Relevant Period, each of the Authorised Representatives within the FWL network:

(a) undertook, through the Advisers, to provide the Second Applicant and Group Members with personal financial advice;

**Particulars**

- i. Telephone conversation between the Second Applicant and Joseph Vitale on or about 6 November 2014 (CBG.519.001.0379); and
- ii. Application dated 1 August 2010 from the Second Applicant to CommInsure (CML.504.001.0035).

(b) gave, through the Advisers, personal financial advice;

**Particulars**

- i. Letter from Joe Vitale to Sean Tyrrell and the Second Applicant dated 6 November 2014 (CBG.519.001.0379);
- ii. Email from Joe Vitale to Sean Tyrrell and the Second Applicant dated 8 September 2016 (CBG.519.001.0540); and
- iii. Email from Joe Vitale to the Second Applicant dated 12 January 2017 (CBG.519.001.0568).

(c) held out that the Advisers as having expertise in providing financial advice;

**Particulars**

- i. 1 July 2014, Financial Wisdom Financial Services Guide, Version 2.00
- ii. Email dated 9 June 2015 from Vitale to Tyrrell, subject heading titled, "Insurance review" (CBG.519.001.0014)
- iii. Spring 2018 Joe Vitale Financial Services Newsletter Informing You (CBG.519.001.0880)
- iv. Summer 2018 Joe Vitale Financial Services Newsletter Insights (CBG.519.001.0914)

- i. Financial Wisdom website in the Relevant Period, including (at various points in time):
    - a. <http://www.financialwisdom.com.au/advice.html>
    - b. <http://www.financialwisdom.com.au/advice/what-we-offer.html>
48. By reason of the matters pleaded in paragraphs 18A, 18B, 18C, 19 and 20 above, each of CFP and the Authorised Representatives within the FWL network owed to the Applicants and Group Members a fiduciary duty to:
- (a) avoid the real or substantial possibility of conflicts between the interest of the Applicants and Group Members and CFP and FWL's own interests and the interests of the Advisers and CommInsure;
  - (b) not improperly use its position to gain an advantage for itself, the Advisers and/or CommInsure.

#### **Particulars**

In respect of the First Applicant:

- i. CFP undertook to provide the First Applicant with financial advice as pleaded and particularised in sub-paragraph 18A(a) above;
- ii. CFP gave financial advice as pleaded and particularised in sub-paragraphs 18A(b) and (c) above; and
- iii. CFP held out that its advisers or financial advisers had expertise in providing financial advice.

In respect of the Second Applicant:

- i. FWL through its Authorised Representatives undertook to provide the First Applicant with financial advice as pleaded and particularised in sub-paragraph 18B(a) above;
- ii. FWL through its Authorised Representatives gave financial advice as pleaded and particularised in sub-paragraphs 18B(b) and (c) above; and
- iii. FWL through its Authorised Representatives held out that its advisers or financial advisers had expertise in providing financial advice.

In respect of the Third Applicant:

- i. CFP undertook to provide the Third Applicant with financial advice as pleaded and particularised in sub-paragraph 18C(a) above;
- ii. CFP gave financial advice to the Third Applicant as pleaded and particularised in sub-paragraphs 18C(b) and (c) above; and
- iii. CFP held out that its advisers or financial advisers had expertise in providing financial advice.

Particulars relating to claims of Group Members will be provided following the initial trial of the common questions and the First, Second, and Third Applicants claims.

49. On or after 21 August 2014, there was an actual conflict between the interests of the Applicants and Group Members and interests of the Advisers, CFP and the Authorised Representatives within the FWL network, and CommInsure.

#### **Particulars**

- i. For each of the Applicants and Group Members, the conflict was between their interests and the interests of the relevant Adviser that was providing them with advice, CFP or FWL, and CommInsure.
- ii. It was in the interests of the Applicants and Group Members to obtain, renew or otherwise retain the insurance products with the lowest premiums.
- iii. It was in the interests of the Applicants and Group Members for the Advisers to act in their best interests in relation to the advice provided to them.
- iv. It was in the interests of the Applicants and the Group Members for their Adviser to give advice that was not affected, or potentially affected, by any financial interest of CFP or FWL, the Adviser or their associates.
- v. By reason of the receipt of the Commissions and Incentive Payments, it was in the interests of CFP and FWL and the Advisers for the relevant Applicants and Group Members to obtain, renew or otherwise retain CBA Life Products rather than insurance products issued by a third-party provider.
- vi. It was in the interests of CommInsure for the Applicants and Group Members to obtain, renew or otherwise retain CBA Life Products by reason of the premiums payable to CommInsure on those products including the Excess Premiums.



50. By reason of the prospect of CFP and FWL receiving the Commissions and/or the Incentive Payments (or some of them), CFP and the Authorised Representatives within the FWL network were influenced, or could reasonably be expected to be influenced, in ensuring that their Advisers recommended that the Applicants and Group Members obtain, renew or otherwise retain one or more CBA Life Products. In particular:

(a) CFP received Commissions in the amount of at least the following amounts during the Relevant Period by reason of the conduct alleged in this Third ~~Second~~ Further Amended Statement of Claim;

2014	2015	2016	2017	2018 (to 30 June 2018)
\$11,957,215	\$7,524,939	\$4,813,368	\$5,551,184	\$3,846,062

(b) FWL received Commissions and/or the Incentive Payments in the amount of at least the following amount during the Relevant Period by reason of the conduct alleged in this Third ~~Second~~ Further Amended Statement of Claim;

2014	2015	2016	2017	2018 (to 30 June 2018)
\$1,994,359	\$1,427,999	\$1,102,531	\$1,032,186	\$259,409

(c) The amounts alleged in sub-paragraphs (a) and (b) were a material component of the revenue earned by CFP and FWL during the relevant period.

#### **Particulars**

- i. Humphrey Statement paragraph 75.
- ii. Further particulars may be provided following receipt of the Respondent's discovery.

51. By reason of the Applicants and the Group Members following that recommendation to obtain, renew or otherwise retain their CBA Life Products:

- (a) CFP and FWL became eligible to receive some or all of the Commissions and/or Incentive Payments;
- (b) the Advisers became eligible to receive some or all of the Commissions and Incentive Payments; and
- (c) the Employee Advisers became eligible for the VRP; and
- (d) CommInsure became eligible to receive the premiums charged on the CBA Life Products, including the Excess Premiums.

52. By reason of the matters pleaded in paragraphs 49 - 51 above, CFP and the Authorised Representatives within the FWL network breached their fiduciary duties owed to the Applicants and Group Members by:

- (a) failing avoid the conflicts referred to in paragraphs 49 - 51 above; and/or

**Particulars**

CFP and the Authorised Representatives within the FWL network preferred their own interests and the interests of the Advisers and CommInsure over the interests of the Applicants and Group Members by reason of the Advisers advising them, on behalf of CFP and FWL, to obtain, renew or otherwise retain CBA Life Products that included the Excess Premiums.

- (b) improperly using their position to gain a benefit for themselves, the Advisers, and/or CommInsure.

**Particulars**

- i. The impropriety by CFP and the Authorised Representatives within the FWL network was in giving advice to the benefit of a related party rather than to the benefit of the Applicants and Group Members,
- ii. The benefits to the Advisers were the receipt of the Commissions and the Incentive Payments.
- iii. The benefit to CFP and the Authorised Representatives within the FWL network was the receipt of the Commissions and (in the case of the Authorised Representatives within the FWL network) the Incentive Payments.

- iv. ~~iii.~~ The benefit to CommInsure was the receipt of the premiums charged on the CBA Life Products including the Excess Premiums.

53. Further or in the alternative to paragraphs 48 – 52 above, by reason of the matters pleaded in paragraphs 19 and 20 above, on or after 21 August 2014 the Advisers owed the Applicants and Group Members a fiduciary duty to:

(a) avoid the real or substantial possibility of conflicts between the interest of the Applicants and Group Members and their own interests and the interests of CFP and FWL and CommInsure;

(b) not improperly use their position to gain an advantage for themselves, CFP or FWL, or CommInsure.

#### **Particulars**

The particulars at paragraph 19 - 20 above are repeated.

54. By reason of the prospect of the Advisers receiving ~~some or all of~~ the Commissions and the Incentive Payments, the Advisers were influenced, or could reasonably be expected to be influenced, to recommend that the Applicants and Group Members obtain, renew or otherwise retain CBA Life Products.

55. By reason of the Applicants and the Group Members following that recommendation to obtain, renew or otherwise retain their CBA Life Products:

(a) CFP and FWL became eligible to receive some or all of the Commissions and (in the case of FWL) Incentive Payments;

(b) the Advisers became eligible to receive some or all of the Commissions and the Incentive Payments; and

(c) the Employee Advisers became eligible for the VRP; and

(d) CommInsure became eligible to receive the premiums charged on the CBA Life Products, including the Excess Premiums.

56. On or after 21 August 2014, the Advisers breached their fiduciary duties owed to the Applicants and Group Members by:

(a) failing to avoid the conflicts referred to in paragraphs 49, 54 and 55 above; and/or

**Particulars**

The particulars at paragraph 49 are repeated.

(b) improperly using their position to gain a benefit for themselves, CFP, FWL and/or CommInsure.

**Particulars**

The particulars at paragraph 52(b) are repeated.

57. By reason of the matters pleaded in paragraphs 43 to 44 and 46, CFP and FWL are responsible for the conduct of their respective Advisers alleged at paragraph 56 and for any loss or damage suffered by the Applicants and Group Members as a result.

58. The Applicants and Group Members each suffered loss or damage by reason of the breaches of fiduciary duty by CFP and the Authorised Representatives within the FWL network as pleaded in paragraph 52 above and/or the Advisers as pleaded in paragraph 56 above:

(a) in respect of the First, Second, and Third Applicants and Group Members who had obtained, renewed or otherwise retained CBA Life Products through their superannuation funds as members:

(i) each of them had an equitable proprietary interest in the assets of their superannuation funds;

(ii) the value of their interest was recorded in their accounts in their superannuation funds;

(iii) the value of their interest was reduced by the amount of the premiums on their CBA Life Products, which included the Excess Premiums (as pleaded in paragraph 23 above), deducted from their accounts and paid to CommInsure.

(b) In respect of the Third Applicant and Group Members who had obtained, renewed or otherwise retained CBA Life Products in their own names each of them had paid to CommInsure the amount of the premiums on CBA Life Products, which included the Excess Premiums (as pleaded in paragraph 23 above).

### **Particulars**

Particulars relating to claims of Group Members will be provided following the initial trial of the common questions of the Applicants' claims.

59. Pursuant to s 917F(1) of the Corporations Act, CFP and FWL are liable to pay equitable compensation to each of the Applicants and the Group Members for such loss or damage.

### **I. KNOWING RECEIPT BY COMMINSURE**

60. At all material times, including each time that CommInsure received the Excess Premiums, it knew:

(a) the material facts giving rise to the existence of the fiduciary duties owed by the Advisers and/or CFP and the Authorised Representatives within the FWL Network to the Applicants and Group Members as pleaded in paragraphs 48 and 53 above; and

### **Particulars**

CommInsure's knowledge that CFP, FWL and the Advisers undertook to provide, and did provide, the Applicants and Group Members with financial advice is to be inferred from the following facts and documents:

- i. The Distributor agreement between FWL and CommInsure dated 29 February 2012 (CBA.600.005.2575), particularly clauses 5. The addendum to that agreement dated 16 January 2013 (CBA.600.005.2674), particularly clause 5A.
- ii. The standard form 'Adviser checklist' and 'Adviser details' forms issued by CommInsure, which:
  - a. was completed prior to the issuance of a CBA Life Product; and

- b. included the details of the 'Adviser' on the application form;
    - c. refer to the insurance Applicant as the 'client' of the Adviser.
  - iii. The CommInsure PDS documents, which included statements to the following effect:
    - a. Your financial adviser will be able to help you choose the most appropriate insurance for you. If you don't have a financial adviser, simply call ... or visit [commbank.com.au](http://commbank.com.au) to arrange for a financial adviser to contact you.
    - b. Your financial adviser can help you decide which types of insurance you need, taking into account your individual objectives and financial situation.
    - c. Your financial adviser can help you understand which options suit your needs.
    - d. The Applicants refer to CBG.501.008.0787.
  - iv. The annual renewal notices sent by CommInsure to Group Members, which:
    - a. Identified 'Your financial adviser'; and
    - b. If we can help you in any way, please contact our Customer Service Centre or your financial adviser at the numbers opposite.
    - c. the Applicants refer to CML.504.001.0010.

The Applicants provide the following further particulars of knowledge in respect of the First Applicant:

- i. Superannuation Benefit Statement dated July 2016 from the Customer Service Team, CommInsure to the First Applicant recording Valerie Lumby as the First Applicant's "Adviser" (CML.507.001.0303);

- ii. Email of 30 November 2016 from Jessica Holloway, Customer Service Consultant, CommInsure, to Valerie Lumby attaching a new insurance quote for the First Applicant (CBG 513.010.7820);
- iii. Email of 8 December 2016 from Valerie Lumby to Jessica Holloway, Customer Service Consultant, CommInsure, requesting 2 additional insurance quotes for the First Applicant (CBG 513.011.1241);
- iv. Email of 8 December 2016 from Jessica Holloway, Customer Service Consultant, CommInsure, to Valerie Lumby attaching 2 additional insurance quotes for the First Applicant (CBG 513.011.1241);
- v. Letter dated 8 December 2016 from the Customer Service Team, CommInsure, to the First Applicant recording Valerie Lumby as his "Adviser" (CBG 513.011.1258; CBG 513.011.1 401);

The Applicants provide the following further particulars of knowledge in respect of the Second Applicant:

- i. Application dated 1 August 2010 from the Second Applicant to CommInsure recording Joe Vitale as the Second Applicant's Adviser (CML.504.001.0035); and
- ii. the Payment Notices dated 31 August 2016, 11 August 2017, 13 August 2018 and 12 August 2019 issued by CommInsure to the Second Applicant and S. Tyrrell as trustees of the Tyrrell Superannuation Fund recording the amount of premium payable and that Joe Vitale was "Your financial adviser".

The applicants provide the following further particulars of knowledge in respect of the Third Applicant:

- i. Particular to be provided following further discovery. ~~Letters dated 28 April 2017 (CML.511.001.0103), 27 April 2018 (CML.511.001.0108), 26 April 2019 (CML.511.001.0114), and 29 April 2020 (CML.511.001.0124) from the Customer Service Team, CommInsure, to the Third Applicant recording her financial adviser and a summary of her policy;~~

- ii. ~~Letter dated 9 March 2018 from Commlnsure to the Third Applicant advising of an increase to her premium rates for Trauma Cover (CML.511.001.0107).~~

Commlnsure's knowledge that CFP, FWL held out the Advisers as having expertise in providing financial advice is to be inferred from:

- i. the PDS documents issued by Commlnsure, which included statements to the following effect:
  - a. Your financial adviser will be able to help you choose the most appropriate insurance for you. If you don't have a financial adviser, simply call ... or visit [commbank.com.au](http://commbank.com.au) to arrange for a financial adviser to contact you.
  - b. Your financial adviser can help you decide which types of insurance you need, taking into account your individual objectives and financial situation.
  - c. Your financial adviser can help you understand which options suit your needs.
  - d. "Your financial adviser may be able to help you choose the most appropriate insurance for you" (CBG 501.0017.5576)

Further particulars may be provided following receipt of the Respondents' discovery.

- (b) the material facts giving rise to the breaches of those fiduciary duties by the Advisers and/or CFP and FWL as pleaded in paragraphs 52 and 56 above.

#### **Particulars**

- i. Commlnsure's knowledge that CFP, FWL and the Advisers were conflicted by the receipt of Commissions is to be inferred from the following facts and documents:
  - a. Commlnsure had paid Commissions to CFP and FWL on the issuing and renewal of the CBA Life products, and such Commissions in part or in whole had been passed on to their Advisers;
  - b. The Distributor agreement between FWL and Commlnsure dated 29 February 2012



(CBA.600.005.2575), particularly clauses 5. The addendum to that agreement dated 16 January 2013 (CBA.600.005.2674), particularly clause 5A.

- c. The Commlnsure Commission Schedules for FWL and CFP: Commlnsure Commission Schedule – Financial dated 1 January 2014 (CML.500.001.0134); Commlnsure commission schedule - CFP & Pathways dated 1 January 2014 (CML.507.001.0016); Commlnsure Commission Schedule – Financial dated 1 January 2018 (CML.500.001.0021) dated 1 January 2018; Commlnsure Commission Schedule – Pathways Wisdom dated 1 January 2018 (CML.500.001.0041); Commlnsure Commission Schedule – CFP dated 1 January 2018 (CML.500.001.0113); Commlnsure Commission Schedule – CFP dated 1 January 2018 (CML.500.001.0113); Commlnsure Commission Schedule – CFP dated 1 January 2018 (CML.500.001.0177); Commlnsure Commission Schedule – Financial Wisdom dated 1 January 2018 (CML.500.001.0227); Commlnsure Commission Schedule – CFP dated 1 January 2019 (CML.500.001.0157).
- ii. The Applicants provide the following further particulars of knowledge in respect of the First Applicant: email of 8 December 2016 from Jessica Holloway, Customer Service Consultant, Commlnsure, to Valerie Lumby (CBG 513.011.1241) attaching insurance quotes (1414455) and (1414450) for the First Applicant both of which recording the Commissions details as “Initial 100%” and “Renewal:10.00% of premium” (CBG 513.011.1246; CBG 513.011.1252);
- iii. The Applicants provide the following further particulars of knowledge in respect of the Second Applicant: the Payment Notices dated 31 August 2016, 11 August 2017, 13 August 2018 and 12 August 2019 issued by Commlnsure to the Second Applicant and S. Tyrrell as trustees of the Tyrrell Superannuation Fund recording the amount of premium payable and that Joe vitale was “Your financial adviser”.

~~The Applicants provide the following further particulars of knowledge in respect of the Third Applicant: Letter from Commlnsure to the Third Applicant dated 28 November 2014 providing a quote in respect of Life Care, TPD and Trauma Cover (CML.511.001.0021); Letter from Commlnsure to the Third Applicant dated 26 March 2015 regarding the alteration of her cover (CML.511.001.0072); Letters dated 28 April 2017 (CML.511.001.0103), 27 April 2018~~

~~(CML.511.001.0108), 26 April 2019  
(CML.511.001.0114), and 29 April 2020  
(CML.511.001.0124) from the Customer Service Team,  
CommInsure, to the Third Applicant recording her  
financial adviser and a summary of the renewal of her  
policy.~~

- iv. CommInsure's knowledge of the Excess Premiums is to be inferred from the following facts:
  - a. the industry practice of life insurers comparing their rates against the rates provided by competitors prior to developing a product, and on a regular basis thereafter; and
  - b. the widely available life insurance comparative software such as Xplan, COIN and Midwinter which compared the features and premiums of life insurance products issued by all major life insurers in Australia.
- v. In respect of the claims of the Applicants, CommInsure received the Excess Premiums from the First, Second and Third Applicants as particularised in paragraph 22 above
- vi. Further particulars may be provided following receipt of the Respondents' discovery.

61. Further or in the alternative to paragraph 60 above, at the time that CommInsure received the Excess Premiums, it knew of the circumstances that would have indicated to an honest and reasonable person the material facts referred to in sub-paragraphs (a) and (b) to 60 above.

#### **Particulars**

The particulars at sub-paragraphs (a) and (b) to paragraph 60 are repeated.

62. By reason of the matters pleaded in paragraphs 60 and 61 above, CommInsure is liable to account for and pay to the Applicants and each of the Group Members all benefits, profits and gains made or derived by CommInsure from its receipt and use of the Applicants' and Group Members' Premiums, including the Excess Premiums.

#### **Particulars**

CommInsure received, and made or derived profits from, the premiums paid on the Applicants' and Group Members' CBA Life Products, including the Excess Premiums.

63. Further or in the alternative, each of the Applicants and the Group Members suffered loss or damage by reason of CommInsure knowingly receiving the Excess Premiums paid by the Applicant or Group Member, as a result of the breach of fiduciary duty by CFP and FWL and/or the Authorised Representatives within the FWL Network and/or the Advisers.

#### **Particulars**

The particulars at paragraph 58 are repeated.

64. By reason of the matters pleaded in paragraphs 60, 61 and 63 above, CommInsure is liable to pay equitable compensation to the Applicants and Group Members for such loss or damage.

#### **J. FUTURE OF FINANCIAL ADVICE**

65. Further to paragraphs 48 - 64 above, each of the CBA Life Products was a financial product within the meaning of s 764A(1) of the Corporations Act.

66. The advice received by the Applicants and Group Members from the Advisers, referred to in paragraph 19 above, was financial product advice within the meaning of s766B(1) of the Corporations Act, in that the advice contained recommendations that:

- (a)were intended to influence the Applicants and Group Members in making a decision in relation to policies of insurance; or
- (b)could reasonably be regarded as being intended to have such an influence.

#### **Particulars**

The particulars at paragraph 19 above are repeated.

67. That financial product advice was personal advice within the meaning of s 766B(3) of the Corporations Act, in that it was given to the Applicants and Group Members in circumstances where:

- (a)the Advisers had considered one or more of the objectives, financial situation or needs of the Applicants and Group Members; or

(b)a reasonable person might expect the Advisers to have considered one or more of the objectives, financial situation or needs of the Applicants and Group Members.

#### **Particulars**

The particulars at paragraph 19 above are repeated.

68. By providing financial product advice to the Applicants and each of the Group Members, the Advisers were providing a financial service within the meaning of s 766A(1) of the Corporations Act.
69. The financial services were provided to the Applicants and each of the Group Members as retail clients within the meaning of s 761G(1) of the Corporations Act.
70. In relation to the provision of those financial services, the Advisers were providers within the meaning of s 961(2) of the Corporations Act.

#### **K. BEST INTERESTS**

71. By reason of the matters pleaded in paragraphs 65 - 70 above, at all material times each of the Advisers were under an obligation to act in the best interests of the Applicants and each of the Group Members in relation to the personal advice.

#### **Particulars**

Corporations Act, s 961B(1).

72. By reason of the prospect of the Advisers receiving some or all of the Commissions, Incentive Payments and VRP the Advisers were influenced, or could reasonably be expected to be influenced, to recommend that the Applicants and Group Members obtain, renew or otherwise retain CBA Life Products.
73. By reason of the Applicants and the Group Members following that recommendation to obtain, renew or otherwise retain their CBA Life Products:

(a)the Advisers became eligible to receive some or all of the Commissions and Incentive Payments;

(b) CFP and FWL became eligible to receive some or all of the Commissions and (in the case of FWL) the Incentive Payments;

(c) the Employee Advisers became eligible for the VRP; and

(d) CommInsure became eligible to receive the premiums payable, including the Excess Premiums.

74. On or after 21 August 2014, the Advisers failed to act in the best interests of the Applicants and Group Members by:

(a) failing to take reasonable steps to investigate, consider and assess insurance products which were substantially equivalent or better than the CBA Life Products and available to be obtained from third-party insurers for a lower premium;

**Particulars**

- i. The Advisers failed to benchmark the CBA Life Products against one or more insurance products that were substantially equivalent or better than the CBA Life Products and available to be obtained from third-party insurers for a lower premium; failed to use research reports by external research providers.
- ii. In respect of the Applicants, they refer to and repeat paragraphs 18A, 18B and 18C and paragraph 23 and their particulars.

(b) giving personal advice to the Applicants and Group Members which included recommendations that the Applicant or relevant Group Member obtain, renew or otherwise retain CBA Life Products at premiums which included the Excess Premiums;

**Particulars**

- i. The particulars to paragraph 19 are repeated.
- ii. In respect of the Applicants, they refer to and repeat paragraphs 18A, 18B and 18C and paragraph 23 and their particulars.

(c) failing to recommend one or more insurance products that were substantially equivalent or better than the CBA Life Products and available to be obtained from third-party insurers for a lower premium;

### Particulars

In respect of the Applicants, they refer to and repeat paragraphs 18A, 18B and 18C and paragraph 23 and their particulars.

- (d) failing to take reasonable steps to ensure that the financial interests of the Applicants and Group Members would not be adversely affected by the conflicts of interest referred to in paragraph 49 above;
- (e) failing to take reasonable steps to ensure that the Advisers' duties to the Applicants and Group Members would be met despite the conflicts of interest referred to in paragraph 49 above;
- (f) failing to disclose to the Applicants and Group Members that:
  - (i) the premiums charged on the CBA Life Products included the Excess Premiums;
  - (ii) the nature or amount of the Excess Premiums; and/or
  - (iii) substantially equivalent or better insurance products were available for which a premium was payable that did not include the Excess Premiums.
- (g) further and in the alternative to (a) – (f) above, failing to decline to advise the client.

75. By reason of paragraphs 71 to 74 above, the Advisers contravened s 961B(1) of the Corporations Act.

### L. CLIENT PRIORITY

76. The Advisers knew, or reasonably ought to have known, of the conflict between the interests of the Applicants and Group Members, and the Advisers' own interests and the interests of CFP and FWL and CommInsure.

### Particulars

- i. The matters in paragraph 49 are repeated.

- ii. Further particulars relating to claims of the Group Members will be provided following the initial trial of the common questions and the Applicants' claims.

77. By reason of the matters pleaded in paragraphs 65 - 70 above, the Advisers were under an obligation to give priority to the interests of the Applicants and Group Members when giving the personal advice.

### **Particulars**

Corporations Act, s 961J(1).

78. By reason of the prospect of the Advisers receiving some or all of the Commissions and the Incentive Payments, the Advisers were influenced, or could reasonably be expected to be influenced, in advising that the Applicants and Group Members obtain, renew or otherwise retain CBA Life Products.

79. By reason of the Applicants and the Group Members following that recommendation to obtain, renew or otherwise retain their CBA Life Products:

(a) the Advisers became eligible to receive some or all of the Commissions and the Incentive Payments;

(b) CFP and FWL became eligible to receive some or all of the Commissions and/or (in the case of FWL) the Incentive Payments; and

(c) the Employee Advisers became eligible for the VRP; and

(d) CommInsure became eligible to receive the premiums payable, including the Excess Premiums.

80. The Advisers failed to give priority to the interests of Applicants and Group Members in circumstances where there was a conflict between those interests, and the Advisers' own interests and the interests of CFP, FWL and CommInsure, by:

(a) giving the advice referred to at paragraph 19 above to the Applicants and each of the Group Members which include a recommendation that they obtain, renew or otherwise retain CBA Life Products at premiums which included the Excess Premiums;

(b) failing to avoid the conflicts of interest referred to in paragraph 49 above;

(c) improperly using their position to gain a benefit for themselves, CFP, FWL and/or Commlnsure;

**Particulars**

The particulars at paragraph 52(b) above are repeated.

(d) failing to disclose to the Applicants and Group Members that:

(i) the premiums charged on the CBA Life Products included the Excess Premiums;

(ii) the nature or amount of the Excess Premiums; and/or

(iii) substantially equivalent or better policies of insurance were available for which a premium was payable that did not include the Excess Premiums.

81. By reason of paragraphs 77 to 80 above, the Advisers contravened s 961J(1) of the Corporations Act.

**M. REASONABLE STEPS TO ENSURE COMPLIANCE**

82. Further or in the alternative, by reason of the matters pleaded in paragraph 6(b), at all material times CFP and FWL were under an obligation to take reasonable steps to ensure the Advisers in their respective networks complied with ss 961B and 961J of the Corporations Act.

**Particulars**

Corporations Act, s 961L.

83. During the Relevant Period, CFP and FWL:

(a) had in place policies;

(b) required advisers to undergo mandatory biannual training sessions;



(c)from time to time sent formal communications to advisers, including by email; and

(d)had in place Licensee Standards and Corporate Guidance documents,

in relation to the obligations of the Advisers with respect to acting in their clients' best interests and avoidance of conflicts.

### Particulars

i. Humphrey Statement at paragraphs 41 to 44 and the documents referred to.

ii. Ballantyne Statement pages 6 to 8 and paragraphs 22 to 24 and the documents referred to.

iii. Ballantyne Statement pages 4 and 5 and paragraphs 22 to 24 and the documents referred to therein.

iv. Documents listed in Annexure A to this Third ~~Second~~ Further Amended Statement of Claim

84. None of the documents or processes referred to in paragraph 83 above:

(a)gave adequate guidance as to how the Advisers should ensure that they acted in the best interests of their clients in relation to when advising on products which carried Commissions; or

(b)gave adequate guidance as to how the Advisers should manage the conflict between the interests of the client and those of the relevant Authorised Representative, requiring preference to be given to the client's interests; or

(c)instructed Advisers not to accept, or to rebate, remuneration pursuant to the Commissions, Incentive Payments and/or VRP.

85. On and from 21 August 2014, CFP and FWL failed to take reasonable steps to ensure that the Advisers in their respective networks complied with ss 961B and 961J of the Corporations Act by:

- (a) failing to take reasonable steps to remove (or request CommInsure remove) the incentive created by the Commissions for the Advisers to recommend that the Applicants and Group Members obtain, renew or otherwise retain CBA Life Products;

**Particulars**

The matters in paragraphs 29 - 38 above are repeated.

- (b) (in the case of FWL) failing to take reasonable steps to remove the incentive created by the Incentive Payments for the Advisers to recommend that the Applicants and Group Members obtain, renew or otherwise retain CBA Life Products;

**Particulars**

The matters in paragraphs 39 - 42 above are repeated.

- (c) failing to take reasonable steps to manage or address the conflict created between the Applicant and Group Members' interests, and CFP and FWL's own interests and the interests of the Advisers and CommInsure, as, and to manage or address how this conflict influenced, or could reasonably be expected to influence, advice provided by the Advisers to the Applicants and Group Members to obtain, renew or otherwise retain CBA Life Products;

- (d) failing to take reasonable steps to ensure that there were adequate policies and systems in place designed to safeguard against the Advisers engaging in conduct (as alleged at paragraph 74 above) that would contravene 961B of the Corporations Act, and that those policies and systems were followed, enforced and regularly reviewed;

**Particulars**

The matters in paragraphs 82 to 84 are repeated.

- (e) failing to take reasonable steps to ensure that there were policies and systems in place designed to safeguard against the Advisers engaging in conduct (as alleged at paragraph 80 above) that would contravene 961J of the Corporations Act, and that those policies and systems were followed, enforced and regularly reviewed;

- (f) failing to take reasonable steps to ensure that:

- (i) the Advisers were adequately trained and competent to provide advice which did not cause them to contravene their obligations under ss 961B and 961J;
- (ii) CFP and FWL had in place adequate processes and systems to monitor and supervise the Advisers to ensure compliance with ss 961B and 961J; and
- (iii) CFP and FWL had in place adequate processes and systems to manage risks in their advice businesses as a consequence of the conflicts created by reason of the Commissions, Incentive Payments and VRP.

86. By reason of the matters in paragraph 85 above, CFP and FWL contravened s 961L of the Corporations Act.

87. By reason of the matters alleged in paragraph 6(b) above, CFP and FWL were the responsible licensees in relation to the contraventions of ss 961B and 961J by their respective Advisers alleged at paragraphs 75 and 81 above.

**Particulars**

Sections 960 and 961P of the Corporations Act.

88. The Applicants and Group Members each suffered loss or damage as a result of the contraventions pleaded at paragraphs 75, 81 and 86 above.

**Particulars**

The matters at paragraph 58 are repeated.

89. By reason of the matters pleaded in paragraphs 65 to 88 above, CFP and FWL are liable to compensate the Applicants and Group Members for such loss or damage resulting from the alleged contraventions by CFP and FWL and their Authorised Representatives.

**Particulars**

Section 961M(2) of the Corporations Act.

**N Transfer from Commlnsure to AIAA**

89A On 15 March 2021, the Federal Court of Australia confirmed a life insurance scheme pursuant to Part 9 of the *Life Insurance Act 1995* (Cth) (**Scheme**) which from 1 April 2021 provided that AIAA was liable for and assumed certain liabilities of Commlnsure as specified in the Scheme.

89B If (which is not admitted) any liability of Commlnsure as alleged in the Third ~~Second~~ Further Amended Statement of Claim has been transferred to, and assumed by, AIAA under the Scheme, then AIAA is liable for the relief claimed against Commlnsure in the Amended Originating Application.

**NO Relief**

90. The Applicants claim on their own behalf and on behalf of each of the Group Members the relief set out in the accompanying Further Amended Originating Application.

Date: ~~9 February 2022~~ 10 October 2023



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Signed by Craig Allsopp  
Lawyer for the Applicants

This amended pleading was prepared by Thomas Bagley of counsel, and settled by Michael Hodge KC

**Certificate of lawyer**

I, Craig Allsopp, certify to the Court that, in relation to the Third ~~second~~ further amended statement of claim filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 9 February 2022 ~~10 October 2023~~



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Signed by Craig Allsopp  
Lawyer for the Applicants

**Schedule**

No. 559 of 2020

Federal Court of Australia  
District Registry: Victoria  
Division: General

**Applicants**

Second Applicant: Diana Tyrrell

Third Applicant Notre Dame Saez Gomez Galarza

**Respondents**

Second Respondent Financial Wisdom Limited (ACN 006 646 108)

Third Respondent: Colonial Mutual Life Assurance Society Pty Limited,  
CommInsure (ACN 004 021 809)

Fourth Respondent: AIA Australia Limited (ACN 004 837 861)

Date: 10 October 2023

## Annexure A

	Document Reference ID	Date	Document Description
1.	CBG.523.001.0044	Undated	Licensee Terms and Conditions Effective from 1 January 2016 Financial Wisdom
2.	CBG.523.001.0052	Undated	Licensee Terms and Conditions Effective from 1 January 2016 Financial Wisdom
3.	CBG.523.001.0071	Undated	Licensee Terms and Conditions Effective from 11 November 2016 Financial Wisdom
4.	CBG.523.001.0205	Undated	Licensee Terms and Conditions Effective from 1 July 2017 Financial Wisdom
5.	CBG.523.001.0249	Undated	Licensee Terms and Conditions Effective from 1 January 2018
6.	CBG.523.001.0271	28 April 2014	Licensee Standards > CFP > Training, Supervision & Monitoring > Issues and Breach Management
7.	CBG.523.001.0275	22 June 2015	Licensee Standards > CFP > Training, Supervision & Monitoring > Instance, Issue, Incident and Breach Management
8.	CBG.523.001.0279	14 March 2016	Licensee Standards > CFP > Training, Supervision & Monitoring > Instance, Issue, Incident and Breach Management
9.	CBG.523.001.0294	3 July 2017	Licensee Standards > CFP > Training, Supervision & Monitoring > Expertise & CPD
10.	CBG.523.001.0308	29 June 2015	Licensee Standards > CFP > Training, Supervision & Monitoring > Adviser Expertise & CPD
11.	CBG.523.001.0321	2 June 2014	Licensee Standards > CFP > Training, Supervision & Monitoring > Adviser Education & Professional Development
12.	CBG.523.001.0451	9 March 2015	Licensee Standards > CFP > Training, Supervision & Monitoring > Adviser Supervision
13.	CBG.523.001.0460	28 November 2016	Licensee Standards > CFP > Pre Advice > Financial Product Advice & Best Interest Duty
14.	CBG.523.001.0466	28 September 2015	Licensee Standards > CFP > Pre Advice > Financial Product Advice & Best Interest Duty
15.	CBG.523.001.0472	23 March 2015	Licensee Standards > CFP > Pre Advice > Financial Product Advice & Best Interest Duty
16.	CBG.523.001.0478	29 June 2015	Licensee Standards > CFP > Training, Supervision & Monitoring > Education & Registrations
17.	CBG.523.001.0484	22 June 2015	Licensee Standards > CFP > Training, Supervision & Monitoring > Pre-Vet Policy
18.	CBG.523.001.0490	2 March 2015	Licensee Standards > CFP > Training, Supervision & Monitoring > Pre-Vet Policy

## Annexure A

	Document Reference ID	Date	Document Description
19.	CBG.523.001.0520	4 July 2016	Licensee Standards > CFP > Training, Supervision & Monitoring > Consequence Management
20.	CBG.523.001.0522	27 April 2015	Licensee Standards > CFP > Training, Supervision & Monitoring > Consequence Management
21.	CBG.523.001.0525	15 December 2014	Licensee Standards > CFP > Training, Supervision & Monitoring > Consequence Management
22.	CBG.523.001.0546	28 September 2015	Licensee Standards > CFP > Pre Advice > Scaling of Advice
23.	CBG.523.001.0550	30 March 2015	Licensee Standards > CFP > Pre Advice > Scaling of Advice
24.	CBG.523.001.0554	14 March 2016	Licensee Standards > CFP > Pre Advice > Step 1 - Engagement
25.	CBG.523.001.0557	30 March 2015	Licensee Standards > CFP > Pre Advice > Step 1 - Engagement
26.	CBG.523.001.0571	Undated	Licensee Standards > CFP > Training, Supervision & Monitoring > Pre-Vet Policy
27.	CBG.523.001.0578	Undated	Licensee Standards > CFP > Training, Supervision & Monitoring > Adviser Supervision
28.	CBG.523.001.0583	Undated	Licensee Standards > CFP > Pre Advice > Financial Product Advice
29.	CBG.523.001.0599	Undated	Licensee Standards > CFP > Training, Supervision & Monitoring > Consequence Management
30.	CBG.523.001.0611	Undated	Licensee Standards > CFP > Pre Advice > Scaling of Advice
31.	CBG.523.001.0618	Undated	Licensee Standards > CFP > Pre Advice > Step 1 - Engagement
32.	CBG.523.001.0647	14 December 2015	Licensee Standards > CFP > Pre Advice > Step 2 - Collect Client Information
33.	CBG.523.001.0656	27 April 2015	Licensee Standards > CFP > Pre Advice > Step 2 - Collect Client Information
34.	CBG.523.001.0666	12 March 2014	Licensee Standards > CFP > Pre Advice > Step 2 - Collect Client Information
35.	CBG.523.001.0676	Undated	Licensee Standards > CFP > Analyse & Research > Step 3 - Analyse and Assess
36.	CBG.523.001.0679	Undated	Licensee Standards > CFP > Analyse & Research > Step 4 - Suitable Strategies and Recommendation
37.	CBG.523.001.0693	14 March 2016	Licensee Standards > CFP > Analyse & Research > Step 3 - Analyse and Assess
38.	CBG.523.001.0696	30 March 2015	Licensee Standards > CFP > Analyse & Research > Step 3 - Analyse and Assess
39.	CBG.523.001.0699	14 March 2016	Licensee Standards > CFP > Analyse & Research > Step 4 - Suitable Strategies and Recommendation



## Annexure A

	Document Reference ID	Date	Document Description
40.	CBG.523.001.0704	30 March 2015	Licensee Standards > CFP > Analyse & Research > Step 4 - Suitable Strategies and Recommendation
41.	CBG.523.001.0710	Undated	Licensee Standards > CFP > Implement & Review > Step 6 - Review the Client's Situation
42.	CBG.523.001.0800	16 October 2017	Licensee Standards > CFP > Implement & Review > Step 6 - Review the Client's Situation
43.	CBG.523.001.0803	28 February 2017	Licensee Standards > CFP > Implement & Review > Step 6 - Review the Client's Situation
44.	CBG.523.001.0807	21 November 2016	Licensee Standards > CFP > Implement & Review > Step 6 - Review the Client's Situation
45.	CBG.523.001.0811	14 December 2015	Licensee Standards > CFP > Implement & Review > Step 6 - Review the Client's Situation
46.	CBG.523.001.0815	30 March 2015	Licensee Standards > CFP > Implement & Review > Step 6 - Review the Client's Situation
47.	CBG.523.001.0857	13 June 2016	Licensee Standards > CFP > Conduct, Conflicts & Complaints > Conflicts of Interest Including Alternative Remuneration
48.	CBG.523.001.0867	23 February 2015	Licensee Standards > CFP > Conduct, Conflicts & Complaints > Conflicts of Interest Including Alternative Remuneration
49.	CBG.523.001.0876	1 July 2014	Licensee Standards > CFP > Conduct, Conflicts & Complaints > Conflicts of Interest Including Alternative Remuneration
50.	CBG.523.001.1069	19 June 2017	Licensee Standards > CFP > Strategy > Self Managed Super Funds
51.	CBG.523.001.1080	28 September 2015	Licensee Standards > CFP > Strategy > Self Managed Super Funds
52.	CBG.523.001.1089	18 August 2014	Licensee Standards > CFP > Strategy > Self Managed Super Funds
53.	CBG.523.001.1880	Undated	Licensee Standards > CFP > Strategy > Gearing
54.	CBG.523.001.1900	14 March 2016	Licensee Standards > CFP > Strategy > Gearing
55.	CBG.523.001.1907	27 April 2015	Licensee Standards > CFP > Strategy > Gearing
56.	CBG.523.001.1971	1 January 2018	Licensee Standards > CFP > Strategy > Personal Insurance
57.	CBG.523.001.1981	28 November 2016	Licensee Standards > CFP > Strategy > Gearing
58.	CBG.523.001.1990	30 March 2015	Licensee Standards > CFP > Strategy > Personal Insurance
59.	CBG.523.001.1999	Undated	Licensee Standards > CFP > Strategy > Personal Insurance

## Annexure A

	Document Reference ID	Date	Document Description
60.	CBG.523.001.2029	Undated	Licensee Standards > CFP > Strategy > Super Rollover and Retirement Strategies
61.	CBG.523.001.2050	19 June 2017	Licensee Standards > CFP > Strategy > Super Rollover and Retirement Strategies
62.	CBG.523.001.2063	13 June 2016	Licensee Standards > CFP > Strategy > Super Rollover and Retirement Strategies
63.	CBG.523.001.2074	27 April 2015	Licensee Standards > CFP > Strategy > Super Rollover and Retirement Strategies
64.	CBG.523.001.2083	6 October 2014	Licensee Standards > CFP > Strategy > Super Rollover and Retirement Strategies
65.	CBG.523.001.2091	19 June 2017	Licensee Standards > CFP > Strategy > Super Rollover and Retirement Strategies
66.	CBG.523.001.2242	22 June 2015	Licensee Standards > CFP > Pre Advice > Types of Clients
67.	CBG.523.001.2250	28 April 2014	Licensee Standards > CFP > Pre Advice > Types of Clients
68.	CBG.523.001.2260	3 July 2017	Licensee Standards > CFP > Conduct, Conflicts & Complaints > Prohibited Conduct
69.	CBG.523.001.2265	9 March 2015	Licensee Standards > CFP > Conduct, Conflicts & Complaints > Prohibited Conduct
70.	CBG.523.001.2299	22 June 2015	Licensee Standards > CFP > Analysis & Research > Research & Product Replacement
71.	CBG.523.001.2305	28 April 2014	Licensee Standards > CFP > Analysis & Research > Research & Product Replacement
72.	CBG.523.001.2311	14 March 2016	Licensee Standards > CFP > Analysis & Research > The Approved Product List (APL)
73.	CBG.523.001.2322	22 June 2015	Licensee Standards > CFP > Analysis & Research > The Approved Product List (APL)
74.	CBG.523.001.2333	28 April 2014	Licensee Standards > CFP > Analysis & Research > The Approved Product List (APL)
75.	CBG.523.001.2356	29 April 2013	Licensee Standards > CFP > Conduct, Conflicts & Complaints > Prohibited Conduct
76.	CBG.523.001.2365	Undated	Licensee Standards > CFP > Implement & Review > Step 5 - Implement Recommendations
77.	CBG.523.001.2386	Undated	Licensee Standards > CFP > Conduct, Conflicts & Complaints > AFSL & FPA Obligations and Standards
78.	CBG.523.001.2403	28 September 2015	Licensee Standards > CFP > Implement & Review > Step 5 - Implement Recommendations
79.	CBG.523.001.2408	27 April 2015	Licensee Standards > CFP > Implement & Review > Step 5 - Implement Recommendations

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	Document Reference ID	Date	Document Description
80.	CBG.523.001.2413	27 April 2015	Licensee Standards > CFP > Conduct, Conflicts & Complaints > AFSL & FPA Obligations and Standards
81.	CBG.523.001.2418	10 July 2017	Instance, Issue, Incident and Breach Management
82.	CBG.523.001.2423	19 February 2018	Expertise & CPD
83.	CBG.523.001.2434	10 July 2017	Education & Registration
84.	CBG.523.001.2442	10 July 2017	Adviser Supervision
85.	CBG.523.001.2446	19 February 2018	Consequence Management
86.	CBG.523.001.2449	19 February 2018	Pre-Vet Policy
87.	CBG.523.001.2456	19 February 2018	Financial Product Advice & Best Interests Duty
88.	CBG.523.001.2463	10 July 2017	Step 1 - Engagement
89.	CBG.523.001.2466	19 February 2018	Step 2- Collect Customer Information
90.	CBG.523.001.2479	19 February 2018	Types of Customers
91.	CBG.523.001.2506	10 July 2017	Research and Product Replacement
92.	CBG.523.001.2514	19 February 2018	Step 3 - Analyse & Assess
93.	CBG.523.001.2519	19 February 2018	Step 4 - Suitable Strategies and Recommendation
94.	CBG.523.001.2526	19 February 2018	The Approved Product List (APL)
95.	CBG.523.001.2550	10 July 2017	Step 5 - Implement Recommendations
96.	CBG.523.001.2555	19 February 2018	Step 6 - Review the Customer's Situation
97.	CBG.523.001.2559	10 July 2017	Conflicts of Interest including Alternative Remuneration
98.	CBG.523.001.2567	10 July 2017	Prohibited Conduct
99.	CBG.523.001.2625	10 July 2017	Gearing
100.	CBG.523.001.2649	19 February 2018	Personal Insurance
101.	CBG.523.001.2661	10 July 2017	Self-Managed Super Funds (SMSF)
102.	CBG.523.001.2677	10 July 2017	Super Rollover & Retirement Strategies
103.	CBG.523.001.2971	Undated	Licensee Terms and Conditions Financial Wisdom effective from 1 July 2018
104.	CBG.523.001.3062	Undated	Licensee Terms and Conditions Financial Wisdom effective from 1 October 2018
105.	CBG.523.001.3115	22 October 2018	Appropriate Advice Licensee Standard
106.	CBG.523.001.3121	22 October 2018	Prioritising Clients' Interests

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107.	CBG.523.001.3126	22 October 2018	Product Research & Replacement Licensee Standard
108.	CBG.523.001.3138	1 January 2018	Time Critical Advice - Under Review effective 22 February 2019
109.	CBG.523.001.3142	13 May 2019	Financial Product Advice
110.	CBG.523.001.3146	13 May 2019	Statements of Advice
111.	CBG.523.001.3158	13 May 2019	CFP > Transaction without Advice
112.	CBG.523.001.3207	4 July 2019	Records of Advice
113.	CBG.523.001.3213	1 September 2019	Statements of Advice
114.	CBG.523.001.3221	21 November 2016	Step 6 - Review the Client's Situation
115.	CBG.523.001.3225	28 February 2017	Step 6 - Review the Client's Situation
116.	CBG.523.001.3229	16 October 2017	Step 6 - Review the Client's Situation
117.	CBG.523.001.3260	19 February 2018	Review the Customer's Situation
118.	CBG.523.001.3268	10 July 2017	Step 6 - Review the Customer's Situation
119.	CBG.523.001.3271	1 September 2019	Transaction without Advice
120.	CBG.523.001.3275	3 February 2020	Records of Advice
121.	CBG.523.001.3281	3 February 2020	Statements of Advice
122.	CBG.523.001.3299	20 July 2020	Commonwealth Financial Planning Professional Standard Supervision & Monitoring
123.	CBG.523.001.3317	28 July 2020	Commonwealth Financial Planning Professional Standard Discovery & Scoping
124.	CBG.523.001.3332	28 July 2020	Commonwealth Financial Planning Professional Standard Conflicts and Prioritising Clients' Interests
125.	CBG.523.001.3348	28 July 2020	Commonwealth Financial Planning Professional Standard Superannuation & Retirement Income Streams
126.	CBG.523.001.3371	28 July 2020	Presentation of advice and implementation
127.	CBG.523.001.3380	28 July 2020	Commonwealth Financial Planning Professional Standard Planner Conduct

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128.	CBG.523.001.3394	28 July 2020	Commonwealth Financial Planning Professional Standard Education & Professional Associations
129.	CBG.523.001.3418	28 July 2020	Commonwealth Financial Planning Professional Standard Best Interests Duty & related obligations
130.	CBG.523.001.3435	28 July 2020	Commonwealth Financial Planning Professional Standard The Advice Document
131.	CBG.523.001.3459	28 July 2020	Commonwealth Financial Planning Professional Standard Personal Insurance
132.	CBG.523.001.3476	28 July 2020	Commonwealth Financial Planning Professional Standard Complex & Specialist Strategies
133.	CBG.523.001.3510	28 July 2020	Commonwealth Financial Planning Professional Standard Product research, replacement & portfolio construction
134.	CBG.523.001.3537	28 July 2020	Commonwealth Financial Planning Professional Standard Expertise and CPD
135.	CBG.523.001.3558	28 July 2020	Commonwealth Financial Planning Professional Standard Customer Engagement & Services
136.	CBG.523.001.3792	1 July 2013	Statements of Advice
137.	CBG.523.001.3799	2 March 2015	Statements of Advice
138.	CBG.523.001.3806	14 March 2016	Statements of Advice
139.	CBG.523.001.3813	3 July 2017	Statements of Advice
140.	CBG.523.001.3822	16 December 2013	Records of Advice
141.	CBG.523.001.3829	27 April 2015	Records of Advice
142.	CBG.523.001.3838	28 February 2017	Records of Advice
143.	CBG.523.001.3852	18 August 2014	Strategy only SoA
144.	CBG.523.001.3857	14 March 2016	Strategy only SoA
145.	CBG.523.001.3862	1 July 2013	Time Critical Advice
146.	CBG.523.001.3865	27 April 2015	Time Critical Advice
147.	CBG.523.001.3869	24 June 2017	Time Critical Advice

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148.	CBG.523.001.3874	1 July 2013	Transaction without Advice
149.	CBG.523.001.3877	27 April 2015	Transaction without Advice
150.	CBG.523.001.3881	13 January 2014	Using CFS Paraplanning Service
151.	CBG.523.001.3884	13 January 2014	Using WM Advice Paraplanning Service
152.	CBG.523.001.3887	28 September 2015	Using WM Advice Paraplanning Service
153.	CBG.523.001.3973	2 July 2018	Step 1 - Engagement
154.	CBG.523.001.3977	25 June 2018	Step 2 - Collect Client Information
155.	CBG.523.001.4006	12 March 2014	Client File Notes
156.	CBG.523.001.4011	2 March 2015	Client File Notes
157.	CBG.523.001.4032	2 July 2018	Initial Engagement
158.	CBG.523.001.4036	25 June 2018	Step 2 - Collect Client Information - *Under Review*
159.	CBG.523.001.4046	19 February 2018	Types of Customers
160.	CBG.524.001.0001	25 February 2019	CFP > The Approved Product List (APL) - *Under Review*
161.	CBG.524.001.0018	25 February 2019	CFP > Gearing
162.	CBG.524.001.0048	25 February 2019	CFP > Step 4 - Suitable Strategies and Recommendation - *Under Review*
163.	CBG.524.001.0053	25 February 2019	CFP > Step 6 - Review the Customer's Situation - *Under Review*
164.	CBG.524.001.0057	25 February 2019	CFP > Types of Customers
165.	CBG.524.001.0078	31 March 2019	CFP > Expertise & CPD
166.	CBG.524.001.0085	13 May 2019	CFP > Implement Recommendations
167.	CBG.524.001.0089	19 November 2018	CFP > Planner Supervision
168.	CBG.524.001.0097	1 September 2019	Review the Customer's Situation
169.	CBG.524.001.0116	1 September 2019	Transaction without Advice
170.	CBG.524.001.0132	14 October 2019	Conflicts of Interest including Alternative Remuneration

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171.	CBG.524.001.0151	15 July 2019	Instance, Issue, Incident and Breach Management
172.	CBG.524.001.0168	17 December 2019	Conduct (including Code of Ethics)
173.	CBG.524.001.0176	22 October 2018	Prioritising Client's Interests
174.	CBG.524.001.0181	3 February 2020	Product Research & Replacement Licensee Standard
175.	CBG.524.001.0210	8 October 2018	Personal Insurance
176.	CBG.524.001.0235	19 February 2018	The Approved Product List (APL)
177.	CBG.524.001.0243	8 October 2018	Records of Advice
178.	CBG.524.001.0264	31 March 2019	CFP > Education & Registration
179.	CBG.524.001.0271	19 February 2018	Consequence Management
180.	CBG.524.001.0273	19 February 2018	Pre-Vet Policy
181.	CBG.524.001.0001	25 February 2019	CFP > The Approved Product List (APL) - *Under Review*
182.	CBG.524.001.0018	25 February 2019	CFP > Gearing
183.	CBG.524.001.0048	25 February 2019	CFP > Step 4 - Suitable Strategies and Recommendation - *Under Review*
184.	CBG.524.001.0053	25 February 2019	CFP > Step 6 - Review the Customer's Situation - *Under Review*