

## INTRODUCTION AND OVERVIEW OF CLAIM

- A. This proceeding concerns a significant number of instances of unconscionable conduct by the respondent (**Optus**) involving inappropriate sales conduct and debt collection conduct directed towards consumers who were vulnerable or experiencing disadvantage (**Vulnerable Consumers**).
- B. The conduct exploited the Vulnerable Consumers, whose vulnerabilities or disadvantages variously included living with mental disability or diminished cognitive capacity, being unemployed, being financially dependent and indigent, English not being a first language, having limited financial literacy, and/or living with learning and comprehension difficulties. A significant number of the Vulnerable Consumers were First Nations Australians from regional, remote and very remote parts of Australia.
- C. By way of example, the inappropriate sales conduct included instances where Optus Staff:
- I. subjected the Vulnerable Consumers to undue pressure or influence, inducing those consumers to purchase a large number of goods and services that the consumers often did not want, did not need and/or could not afford;
  - II. failed to explain the terms and conditions of the contracts for sale to the Vulnerable Consumers in a manner that those consumers could understand or at all, with the result that the Vulnerable Consumers did not understand their ongoing payment obligations;
  - III. sold the Vulnerable Consumers goods and services that they did not want or could not use, including multiple instances where Optus Staff did not have regard to whether the Vulnerable Consumers had Optus coverage where they lived, and sold Vulnerable Consumers goods and services that they would not be able to use where they lived because of the lack of Optus coverage;
  - IV. sold Vulnerable Consumers goods and services Optus knew or ought reasonably to have been aware the Vulnerable Consumers could not afford following a credit check, including because Optus Staff engaged in credit manipulation to bypass credit controls in order to sell goods and services that the Vulnerable Consumers were otherwise not eligible for; and
  - V. misled the Vulnerable Consumers to erroneously believe that particular goods were “free” or included or part of a bundle at no additional cost.
- D. This conduct reached a peak when nearly all of the Optus Staff at two Optus Stores in Darwin engaged in an extensive pattern of the same types of inappropriate sales conduct during a two-year period to around July 2023, having been trained to do so by store managers and assistant store managers.
- E. When the instances of inappropriate sales conduct were brought to the attention of Optus’s complaints handling functions and, in some cases, Optus senior management, Optus generally failed to remediate the conduct for long periods of time, sometimes not until the matters were referred to the Telecommunications Industry Ombudsman for resolution. In several instances, Optus took steps to protect its own financial interests by clawing back commissions paid to Optus Staff and licensees/franchisees for inappropriate sales practices but did not take steps to remediate the consumer. These

failures took place in circumstances where Optus senior management was aware that there were significant deficiencies in how Optus dealt with vulnerable consumers, including because Optus did not have an effective vulnerable consumer strategy.

- F. In many instances, despite knowing about the alleged sales conduct and that the conduct was subject to ongoing internal and external investigations, Optus pursued debt collection activities in respect of many of the Vulnerable Consumers, including by referring and selling their debts to third party debt collection agencies.
- G. In respect of one store (the Optus Mount Isa Store), Optus pursued debt collection activities in circumstances where Optus senior management knew that those debts related to contracts for goods and services that appeared to be created by Optus Staff without the knowledge of the affected consumers. Optus senior management was aware that the majority of affected consumers were First Nations Australians from Mount Isa and the Northern Territory.
- H. The alleged conduct took place in circumstances in which Optus senior management became increasingly aware that Optus Staff were engaging in the inappropriate sales conduct and that its existing systems and controls were deficient to avoid or prevent that conduct. However, in most instances, Optus failed to take steps to fix the deficiencies in its systems which allowed the conduct to occur or continued to delay and/or deprioritise fixing those deficiencies.
- I. The sales practices were also incentivised by the commission-based remuneration structures adopted and endorsed by Optus, despite the best practice recommendations to which Optus was required to have regard from 17 June 2022 to review business practices to avoid conflicted remuneration policies due to the capacity of commission-based selling to exploit the vulnerability of consumers.
- J. In relation to the conduct at the Optus Mount Isa Store, the ACCC pleads that there are discrete contraventions of section 21 of the Australian Consumer Law in respect of each of the consumers whose debts were referred to debt collection and/or sold to factoring agencies in circumstances where Optus knew that those debts related to contracts for goods and services that appeared to be created by Optus Staff without the knowledge of the affected consumers. In the alternative, the ACCC pleads that the conduct involved a pattern of behaviour and/or system of conduct that was, in all the circumstances, unconscionable and in contravention of section 21 of the Australian Consumer Law.
- K. In relation to individual instances of conduct relating to 24 Vulnerable Consumers, the ACCC alleges that the conduct comprised 24 discrete instances of conduct each of which was, in all the circumstances, unconscionable and in contravention of section 21 of the Australian Consumer Law.
- L. Further, in relation to the individual instances of conduct relating to four Vulnerable Consumers, the ACCC alleges that Optus made one or more false or misleading representations to the consumer, in contravention of sections 18 and 29(1)(i) of the Australian Consumer Law.
- M. In relation to the conduct at the Optus Darwin Stores, the ACCC alleges the sales conduct directed towards the affected Vulnerable Consumers was a pattern of behaviour that was, in all the circumstances, unconscionable and in contravention of section 21 of the Australian Consumer Law.

- N. As a result of the unconscionable conduct, many of the Vulnerable Consumers suffered (i) financial harm, incurring thousands of dollars of debt whilst in many cases only receiving modest or extremely modest income, and (ii) non-financial harm, including shame, embarrassment, stress and emotional distress over how they would pay their debts to Optus. Being pursued by debt collectors caused distress and fear for at least some Vulnerable Consumers and the listing of defaults affected their credit scores and may have affected their ability to obtain other lines of credit and services.
- O. Further, it was only through the very significant time, effort and emotional stress expended by the carers, advocates and/or financial counsellors who supported the Vulnerable Consumers that some of those consumers were able to realise any resolution to Optus's conduct.