



ASIC
Australian Securities &
Investments Commission

M01700086

INFRINGEMENT NOTICE

Section 12GX of the *Australian Securities and Investments Commission Act 2001*

Day of issue: 6 February 2023

Unique identification code: M01700086

TO: Jacaranda Finance Pty Ltd
ACN 162 078 195

1. ASIC gives this infringement notice under section 12GX of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).
2. ASIC has reasonable grounds to believe that Jacaranda Finance Pty Ltd (**Jacaranda**) has contravened an infringement notice provision of the ASIC Act as follows:
 - (a) On or about 15 July 2022, Jacaranda contravened section 12DB(1)(g) of the ASIC Act by, in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion by any means of the supply or use of financial services, making a false or misleading representation with respect to the price of services.
 - (b) Jacaranda offers loans to consumers via its website, www.jacarandafinance.com.au (**Jacaranda Website**).
 - (c) On or about 15 July 2022, the Jacaranda Website contained a repayment calculator (the **Repayment Calculator**) which, for proposed loans of \$5,000 or above:
 - i. allowed a consumer who accessed the Repayment Calculator to select a proposed loan amount and loan term (**Proposed Loan Criteria**);
 - ii. based on the Proposed Loan Criteria selected by a consumer, calculated and displayed weekly, fortnightly and monthly repayment amounts which were described by the Repayment Calculator as "estimated repayments starting from" being the periodic repayments that a consumer would be required to make for a loan which met the Proposed Loan Criteria; and
 - iii. calculated the weekly, fortnightly and monthly repayment amounts described in subparagraph 2(c)ii above using an annual percentage rate of 10.48%.
 - (d) By its conduct described in subparagraphs 2(b) and 2(c) above, Jacaranda represented to consumers that the loan products offered by Jacaranda included a product pursuant to which Jacaranda provided credit to consumers for loans of \$5,000 or above at an annual percentage rate of 10.48% (the **Minimum Price Representation**).

- (e) The Minimum Price Representation was a representation with respect to the price of services, namely the minimum price of credit for loans of \$5,000 or above provided by Jacaranda.
- (f) The Minimum Price Representation was false or misleading in contravention of section 12DB(1)(g) of the ASIC Act because:

- i. as at 15 July 2022, the credit products offered by Jacaranda for loans by Jacaranda of \$5,000 or above did not include any product with an annual percentage rate of 10.48% or less;
- ii. between 28 June 2019 and 8 September 2022, for loans of \$5,000 or above, the only products offered by Jacaranda for the provision of credit by Jacaranda to consumers were at the following annual percentage rates:

Date Range	Annual Percentage Rate/s offered for loans of \$5,000 or above
28 June 2019 to 15 May 2022	21.24%
16 May 2022 to 3 July 2022	17%, 20%, 21.24%
4 July 2022 to 8 September 2022	18.95%, 22%, 24%, 27%

- iii. between 25 January 2021 and 21 August 2022, for loans of \$5,000 or above:
- a. Jacaranda did not enter into any credit contracts with consumers at an annual percentage rate of 10.48% or less; and
- b. 97.8% of the credit contracts entered into by Jacaranda with consumers were at an annual percentage rate of 20% or above;
- iv. Jacaranda tracked business data, including the number of loans of \$5,000 or above entered into and the applicable annual percentage rate of those loans and used that data to inform its business decisions;
- v. on or about 15 July 2022, the disclaimer displayed beneath the Repayment Calculator was not prominent or clear, or did not otherwise have the effect of correcting the false or misleading nature of the Minimum Price Representation including because it contained the following statement:
- "... For our personal loan product the APR [annual percentage rate] starts from a minimum of 10.48% (12.56% comparison rate) with a maximum of 24% (41.50% comparison rate)."*
- vi. the 'apply now' button on the Repayment Calculator encouraged immediate action without further reading; and
- vii. further and accordingly, for the reasons above, at the time the Minimum Price Representation was made, Jacaranda had no reasonable grounds for making the Minimum Price Representation.

Amount payable under this notice

3. The amount payable under this notice in relation to the alleged contravention is **\$13,320**. This amount can be paid using the method detailed in the covering letter accompanying this notice.
4. The payment period for the notice will be 28 days, beginning on the day after the notice is given, unless the period is extended, an arrangement is made for payment by instalments or the notice is withdrawn.

Consequences of complying with this notice

5. If Jacaranda pays the amount stated in this notice within the time for payment mentioned above then (unless this notice is subsequently withdrawn and any amount paid refunded) Jacaranda is not liable to be prosecuted in a court, and proceedings seeking a pecuniary penalty order will not be brought under Subdivision G of Division 2 of Part 2 of the consumer protection provisions of the ASIC Act (whether criminal or civil) against Jacaranda for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.
6. Jacaranda may, in writing, apply to ASIC to have the period in which to pay the amount extended or for an arrangement to pay the amount by instalments.
7. Payment of the amount payable under this notice is not an admission of guilt or liability.

Consequences of failing to comply with this notice

8. Jacaranda may choose not to pay the amount payable under the notice. If Jacaranda does not pay the amount specified in this notice within the time for payment mentioned above, and the notice is not withdrawn, the Commonwealth or ASIC may bring proceedings under Subdivision G of Division 2 of Part 2 of the consumer protection provisions of the ASIC Act (whether criminal or civil) against Jacaranda for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.
9. The maximum pecuniary penalty that a court may order Jacaranda to pay for the alleged contravention is the greatest of:
 - (a) \$11,100,000; and
 - (b) if the Court can determine the benefit derived and detriment avoided because of the contravention — that amount multiplied by 3; and
 - (c) either:
 - i. 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision; or
 - ii. If the amount worked out under subparagraph (i) is greater than an amount equal to \$555,000,000 — \$555,000,000.

Applying for more time to pay the amount under this notice

10. ASIC may extend the compliance period for this infringement notice if ASIC is satisfied that it is appropriate to do so.
11. If Jacaranda wishes to apply for an extension of time to pay the amount specified in this notice, it should do so in writing within 28 days after the day the notice is given to Jacaranda (see paragraph 18).

Applying to have this notice withdrawn

12. Within 28 days after the day on which this notice is given, Jacaranda may apply to ASIC in writing to have this notice withdrawn.
13. Evidence or information that Jacaranda or Jacaranda's representative gives to ASIC in the course of applying for this notice to be withdrawn is not admissible in evidence against Jacaranda or Jacaranda's representative in any proceedings (other than proceedings for an offence based on the evidence or information being false or misleading).

Withdrawal of this notice

14. ASIC may, by written notice given to Jacaranda, withdraw this infringement notice if ASIC is satisfied that it is appropriate to do so, whether or not Jacaranda has applied to have this notice withdrawn.
15. A withdrawal notice must be given to Jacaranda within the time for payment of this infringement notice to be effective.
16. If the withdrawal notice is given after Jacaranda has paid the amount specified in this infringement notice, ASIC will refund to Jacaranda the amount paid under the infringement notice.
17. If the infringement notice is withdrawn, the Commonwealth or ASIC may bring proceedings under Subdivision G of Division 2 of Part 2 of the consumer protection provisions of the ASIC Act (whether criminal or civil) against Jacaranda for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.

Requirements for applications

18. An application to have this notice withdrawn, or for more time to pay the amount specified under this notice:
 - (a) must be in writing;
 - (b) must include the unique identification code set out at the top of this notice;
 - (c) must include Jacaranda's reasons for making the application; and
 - (d) may be made by forwarding Jacaranda's application to ASIC at the address in paragraph 19.
19. Jacaranda may contact ASIC in relation to this notice by contacting:

Catherine Iles
Australian Securities and Investments Commission
GPO Box 9827
SYDNEY NSW 2000
or by email: ACLInfringementNotices@asic.gov.au (please copy to
tegan.collins@asic.gov.au)

A handwritten signature in blue ink that reads "Catherine Iles". The signature is written in a cursive style with a large initial 'C' and a distinct 'I'.

Catherine Iles
as a delegate of the Australian Securities and Investments Commission