

NOTICE OF FILING AND HEARING

Filing and Hearing Details

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File Number: VID666/2023
File Title: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v
INSURANCE AUSTRALIA LIMITED ACN 000 016 722 & ANOR
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing: To Be Advised
Time and date for hearing: To Be Advised
Place: To Be Advised



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 2

(Rules 2.2 and 15A.3)

Further Amended Originating Process
(Amended pursuant to order of Anderson J
18 December 2023 dated 6 August 2024)

Federal Court of Australia
District Registry: Victoria
Division: General

No. VID 666 of 2023

Australian Securities and Investments Commission
Plaintiff

Insurance Australia Limited (ACN 000 016 722) and another
Defendants

A. DETAILS OF APPLICATION

This application is made under sections 21 and 43 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), section 12GLB(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), section 12GBA(1) of the ASIC Act (as in force before 13 March 2019), sections 12GBA(1) and 12GBB(1) of the ASIC Act (as in force from 13 March 2019), section 1101B(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**) and sections 1317E and 1317G of the Corporations Act (as in force from 13 March 2019).

The Plaintiff seeks declarations of contraventions of the ASIC Act and the Corporations Act, pecuniary penalty orders, adverse publicity orders and costs.

Defined terms in this Further Amended Originating Process have the same meaning as those in the Further Amended Concise Statement dated ~~24 August 2023~~ 20 December 2023 7 August 2024.

On the facts stated in the Further Amended Concise Statement, the Plaintiff seeks:

Declarations

First Defendant - IAL

1. A declaration under s 21 of the FCA Act and/or s 12GBA of the ASIC Act (as in force from 13 March 2019) that, in making each of the Loyalty Discount Statements, IAL represented that:

Filed on behalf of:	Australian Securities and Investments Commission, Plaintiff
Prepared by:	Michael Hershan, Lawyer, ASIC
Tel:	(02) 9911 5865
Email:	Michael.Hershan@asic.gov.au
Address for service:	Australian Securities and Investments Commission, Level 5, 100 Market Street, Sydney, NSW 2000 Attention: Michael Hershan / Nicolette Bearup



- (a) in determining a premium for any customer eligible for a Loyalty Discount, the following factors will not be relied upon in a way that may offset, or impair, the benefit of the Loyalty Discount:
- (a) (i) the customer's likelihood of renewing their policy at different premiums (**IAL Elasticity Representations**);
 - (b) (ii) the length of time the customer has held an eligible same branded (SGIO or SGIC as applicable) insurance policy (**IAL Tenure Representations**);
 - (c) (iii) the number of other eligible same branded (SGIO or SGIC as applicable) insurance policies the customer holds (**IAL Number of Policies Representations**),
- (b) in determining an initial (or pre-discount) renewal premium for a customer, it will not employ processes that:
- (i) will allocate;
 - (ii) will tend to allocate; or
 - (iii) may tend to allocate,
- larger percentage price increases (relative to the premium previously charged) to customers who have held eligible same-branded (SGIO or SGIC as applicable) insurance policies for longer periods than it allocates to customers who have held eligible same-branded insurance policies for shorter periods (**IAL Further Tenure Representations**)

and thereby, in trade or commerce:

- (d) (c) engaged in conduct liable to mislead the public as to the nature and/or characteristics of a financial service, in contravention of s 12DF(1) of the ASIC Act; and
- (e) (d) made false and/or misleading representations in connection with the supply or possible supply of financial services:
 - (i) that the services were of a particular value, in contravention of s 12DB(1)(a) of the ASIC Act; and
 - (ii) with respect to the price of services, in contravention of s 12DB(1)(g) of the ASIC Act;

between 25 August 2017 and 29 January 2023 ~~24 August 2023~~ (in respect of the IAL Elasticity Representations and the IAL Further Tenure Representations) and between 25 August 2017 and 26 January 2020 (in respect of the IAL Number of Policies Representations and the IAL Tenure Representations).

2. In the alternative to the declaration in paragraph 1(e)(d), in respect of:



- (a) the IAL Elasticity Representations and the IAL Further Tenure Representation ~~and the IAL Tenure Representations~~ made between 13 March 2019 and 29 January 2023 ~~24 August 2023~~ in SGIO and SGIC branded PEDs prepared on or after 13 March 2019; and
- (b) the IAL Number of Policies Representations and IAL Tenure Representations made between 13 March 2019 and 26 January 2020 in SGIO and SGIC branded PEDs prepared on or after 13 March 2019,

a declaration under 1317E of the Corporations Act that IAL prepared those PEDs and gave them to another person in the circumstances set out in ss 1021E(1) or (2) of the Corporations Act, when those PEDs were defective as defined in s 1021B(1) of the Corporations Act as they contained misleading or deceptive statements, and thereby contravened ss 1021E(1) or 1021E(2), and therefore s 1021E(8), of the Corporations Act.

3. A declaration under:

- (a) s 21 of the FCA Act and/or s 1101B(1) of the Corporations Act in respect of conduct occurring in the period from 25 August 2017 to 12 March 2019; and
- (b) s 21 of the FCA Act and/or 1317E of the Corporations Act in respect of conduct occurring wholly in the period from 13 March 2019 to 29 January 2023 ~~24 August 2023~~,

that:

- (c) by making the Loyalty Discount Statements to entice customers to renew their SGIO or SGIC branded home insurance policies and to take out more SGIO or SGIC branded insurance policies;
- (d) by using:
 - (i) the Demand Model ~~to~~ in ~~determine~~ing the Initial Premiums for renewing customers where the use of the output of the Demand Model in the Renewal Optimisation process:
 - A. resulted in;
 - B. tended to result; or
 - C. may have tended to result,

~~in, some customers who were eligible for the Loyalty Discount receiving higher Initial Premiums than customers predicted to be less likely to renew at higher prices~~ held a larger number of eligible same branded policies or who held eligible policies for longer periods receiving larger percentage Initial Premium increases than customers who respectively held fewer eligible same branded policies or who held eligible policies for shorter periods;
 - (ii) until 27 January 2020, the IAL Discount Factors in the Demand



Model, in circumstances where IAL did not know whether, or to what extent, those factors affected individual customers' Initial Premiums;

- (e) by failing to disclose to customers the matters set out in sub-paragraph (d);

in circumstances where:

- (f) IAL:
- (i) knew that the Demand Model had the purpose of allocating a smaller relative price increase to the policies that were predicted to be less likely to renew at higher prices; and a larger relative price increase to the policies that were predicted to be more likely to renew at higher prices; and
 - (ii) unreasonably did not satisfy itself that the inclusion of the IAL Discount Factors in the Demand Model or the use of the output of the Demand Model in setting customers' Initial Premiums did not offset, or impair, the benefit of the Loyalty Discount; and
- (g) IAL owed a duty of utmost good faith to its customers,

IAL breached its obligation to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly and thereby contravened s 912A(1)(a) Corporations Act from 25 August 2017 to 12 March 2019 and s 912A(1)(a), and therefore 912A(5A), of the Corporations Act from 13 March 2019 to 29 January 2023 ~~24 August 2023~~.

Second Defendant - IMA

4. A declaration under s 21 of the FCA Act and/or s 12GBA of the ASIC Act (as in force from 13 March 2019) that, ~~between 25 August 2017 and 24 August 2023~~, in making each of the Years of Membership Discount Statements IMA represented that:

- (a) in determining a premium, for any customer eligible for a Years of Membership Discount, the following factors will not be relied upon in a way that may offset, or impair, the benefit of the Years of Membership Discount:
- ~~(a)~~ (i) the customer's likelihood of renewing their policy at different premiums (**IMA Elasticity Representations**);
 - ~~(b)~~ (ii) the length of time the customer has been a member of RACV, including by holding any eligible RACV branded policy (**IMA Tenure Representations**),
- (b) in determining an initial (or pre-discount) renewal premium for a customer, it will not employ processes that:
- (i) will allocate;



(ii) will tend to allocate; or

(iii) may tend to allocate.

larger percentage price increases (relative to the premium previously charged) to customers who have been members of RACV for longer periods than it allocates to customers who have been members of RACV for shorter periods (IMA Further Tenure Representations)

and thereby, in trade or commerce:

- (c) engaged in conduct liable to mislead the public as to the nature and/or characteristics of a financial service, in contravention of s 12DF(1) of the ASIC Act; and
- (d) made false and/or misleading representations in connection with the supply or possible supply of financial services:
 - (i) that the services were of a particular value, in contravention of s 12DB(1)(a) of the ASIC Act; and
 - (ii) with respect to the price of services, in contravention of s 12DB(1)(g) of the ASIC Act;

between 25 August 2017 and 24 August 2023 (in respect of the IMA Elasticity Representations and the IMA Further Tenure Representations) and between 25 August 2017 and 5 September 2021 (in respect of the IMA Tenure Representations).

5. A declaration under s 21 of the FCA Act and/or s 12GBA of the ASIC Act (as in force from 13 March 2019) that, between 25 August 2017 and 5 September 2021, in making each of the Multi-Policy Discount Statements, IMA represented that in determining a premium, for any customer eligible for a Multi-Policy Discount, the number of other eligible RACV branded policies the customer holds will not be relied upon in a way that may offset, or impair, the benefit of the Multi-Policy Discount (**IMA Number of Policies Representation**) and thereby, in trade or commerce:
 - (a) engaged in conduct liable to mislead the public as to the nature and/or characteristics of a financial service, in contravention of s 12DF(1) of the ASIC Act; and
 - (b) made false and/or misleading representations in connection with the supply or possible supply of financial services:
 - (i) that the services were of a particular value, in contravention of s 12DB(1)(a) of the ASIC Act; and
 - (ii) with respect to the price of services, in contravention of s 12DB(1)(g) of the ASIC Act.
6. In the alternative to the declarations in each of paragraph 4(d) and paragraph 5(b) above, in respect of:



- (a) the IMA Elasticity Representations and the IMA Further Tenure Representation and the IMA Tenure Representations made between 13 March 2019 and 24 August 2023 in RACV branded PEDs prepared on or after 13 March 2019; and
- (b) the IMA Number of Policies Representations and the IMA Tenure Representations made between 13 March 2019 and 5 September 2021 in RACV branded PEDs prepared on or after 13 March 2019,

a declaration under s 1317E of the Corporations Act, that IMA prepared those PEDs and gave them to another person in the circumstances set out in ss 1021E(1) or (2) of the Corporations Act, when those PEDs were defective as defined in s 1021B(1) of the Corporations Act as they contained misleading or deceptive statements, and thereby contravened ss 1021E(1) or (2), and therefore s 1021E(8), of the Corporations Act.

7. A declaration under:

- (a) s 21 of the FCA Act and/or s 1101B(1) of the Corporations Act in respect of conduct occurring in the period from 25 August 2017 to 12 March 2019; and
- (b) s 21 of the FCA Act and/or 1317E of the Corporations Act in respect of conduct occurring wholly in the period from 13 March 2019 to 24 August 2023,

that:

- (c) by making the Years of Membership Discount Statements and Multi-Policy Discount Statements to entice customers to renew their RACV branded home insurance policies and to take out more RACV branded insurance policies;
- (d) by using:
 - (i) the Demand Model to in determineing the Initial Premiums for renewing customers where the use of the output of the Demand Model in the Renewal Optimisation process:
 - A. resulted in;
 - B. tended to result; or
 - C. may have tended to result,

~~in some customers who were eligible for the Years of Membership Discount receiving higher Initial Premiums before the Years of Membership Discount was applied than customers predicted to be less likely to renew at higher prices were members of RACV for longer periods or who were eligible for the Multi-Policy Discount, receiving larger percentage Initial Premium increases than customers who respectively were members of RACV for shorter periods or who were not eligible for a Multi-Policy Discount;~~
 - (ii) until 5 September 2021, the IMA Discount Factors in the Demand



Model in circumstances where IMA did not know whether, or to what extent, those factors affected individual customers' Initial Premiums;

(e) by failing to disclose to customers the matters set out in sub-paragraph (d);

in circumstances where:

(f) IMA:

- (i) knew that the Demand Model had the purpose of allocating a smaller relative price increase to the policies that were predicted to be less likely to renew at higher prices; and a larger relative price increase to the policies that were predicted to be more likely to renew at higher prices; and
- (ii) unreasonably did not satisfy itself that the inclusion of the IMA Discount Factors in the Demand Model or the use of the output of the Demand Model in setting customers' Initial Premiums did not offset, or impair, the benefit of the Years of Membership Discount and Multi-Policy Discount; and

(g) IMA owed a duty of utmost good faith to its customers;

IMA breached its obligation to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly and thereby contravened s 912A(1)(a) of the Corporations Act from 25 August 2017 to 12 March 2019 and s 912A(1)(a), and therefore s 912A(5A), of the Corporations Act from 13 March 2019 to 24 August 2023.

Penalties

First Defendant - IAL

8. An order under s 12GBA(1) of the ASIC Act (as in force before 13 March 2019) and s 12GBB(1) of the ASIC Act (as in force from 13 March 2019) that, within 30 days of the date of the order, IAL pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of IAL's conduct declared to be contraventions of ss 12DB(1)(a) and (g) and 12DF(1) of the ASIC Act occurring from 25 August 2017.
9. An order under s 1317G(1) of the Corporations Act (as in force from 13 March 2019) that, within 30 days of the date of the order, IAL pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of IAL's conduct declared to be contraventions of ss 1021E(1) or (2) and s 1021E(8) and ss 912A(1)(a) and 912A(5A) of the Corporations Act occurring wholly from 13 March 2019.



Second Defendant - IMA

- 10. An order under s 12GBA(1) of the ASIC Act (as in force before 13 March 2019) and s 12GBB(1) of the ASIC Act (as in force from 13 March 2019) that, within 30 days of the date of the order, IMA pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of IMA’s conduct declared to be contraventions of ss 12DB(1)(a) and (g) and 12DF(1) of the ASIC Act occurring from 25 August 2017.
- 11. An order under s 1317G(1) of the Corporations Act (as in force from 13 March 2019) that, within 30 days of the date of the order, IMA pay to the Commonwealth of Australia such pecuniary penalties as the Court determines to be appropriate in respect of IMA’s conduct declared to be contraventions of ss 1021E(1) or (2) and s 1021E(8) and ss 912A(1)(a) and 912A(5A) of the Corporations Act occurring wholly from 13 March 2019.

Other orders

- 12. An order under s 12GLB(1) of the ASIC Act that, within 30 days of the date of the order, IAL publish at its own expense a notice stating that it has been ordered to pay a pecuniary penalty in the terms and in the manner which the Court determines to be appropriate.
- 13. An order under s 12GLB(1) of the ASIC Act that, within 30 days of the date of the order, IMA publish at its own expense a notice stating that it has been ordered to pay a pecuniary penalty in the terms and in the manner which the Court determines to be appropriate.
- 14. An order that the Defendants pay the Plaintiff’s costs of and incidental to the proceeding.
- 15. Such further or other orders as the Court considers appropriate.

Date: ~~24 August~~ 20 December 2023 7 August 2024

.....
Nicolette BearupMichael Hershan

Lawyer
Australian Securities and Investments Commission

This application will be heard by at [address of Court] at *am/*pm on



B. NOTICE TO DEFENDANT(S)

TO: Insurance Australia Limited (ACN 000 016 722)
 Tower Two Darling Park
 Level 13, 201 Sussex Street
 Sydney NSW 2000

Insurance Manufacturers of Australia Pty Limited (ACN 004 208 084)
 Tower Two Darling Park
 Level 13, 201 Sussex Street
 Sydney NSW 2000

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. FILING

Date of filing: [*date of filing to be entered by Registrar*]

.....

Registrar

This Further Amended Originating Process is filed by Michael Hershan, Litigation Counsel, Australian Securities and Investments Commission, for the Plaintiff.

D. SERVICE

The plaintiff's address for service is:

Australian Securities and Investments Commission



Level 5, 100 Market Street
Sydney NSW 2000
Attention: Michael Hershman / Nicolette Bearup
Email: Michael.Hershman@asic.gov.au
Telephone: (02) 9911 5865

It is intended to serve a copy of this Further Amended Originating Process on each Defendant.

SCHEDULE OF PARTIES



Federal Court of Australia
District Registry: Victoria
Division: General

No. VID 666 of 2023

Australian Securities and Investments Commission
Plaintiff

and

Insurance Australia Limited (ACN 000 016 722)
First Defendant

Insurance Manufacturers of Australia Pty Limited (ACN 004 208 084)
Second Defendant