

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 14/10/2021 3:59:19 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	NSD1070/2021
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v INSURANCE AUSTRALIA LIMITED ACN 000 016 722
Registry:	NEW SOUTH WALES 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

Dated: 14/10/2021 4:31:02 PM AEDT

Registrar

Important Information

As required by the Court's Rules, 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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 2
Rules 2.2 and 15A.3

ORIGINATING PROCESS

**FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NEW SOUTH WALES
DIVISION: GENERAL**

NO NSD OF 2021

**IN THE MATTER OF INSURANCE AUSTRALIA LIMITED
ACN 000 016 722**

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

INSURANCE AUSTRALIA LIMITED ACN 000 016 722

Defendant

A. DETAILS OF APPLICATION

This application is made under sections 19 and 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), sections 12GBA(1), 12GJ(1) and 12GLB(1)(a) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**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) and section 1101B of the *Corporations Act 2001* (Cth) (**Corporations Act**).

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

In this originating process, terms which are defined in the Concise Statement dated 14 October 2021 have the same meaning in this document as they do in that document.

On the facts stated in the accompanying Concise Statement, the Plaintiff seeks:

Declarations

1. A declaration under s 21 of the FCA Act that, between 16 March 2014 and 25 September 2019, on each occasion that IAL sent a renewal letter or offer of renewal to customers in respect of those Relevant Policies set out in Schedule 1, by which IAL offered a renewal of the customer's existing insurance policy on terms set out in the offer (**Renewal Offer**):

Filed on behalf of the Plaintiff, ASIC

File ref: 21003453

Prepared by: Jody Marshall
AGS lawyer within the meaning of s 551 of the *Judiciary Act 1903*

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- 1.1. IAL represented to those customers (collectively, the **Representations**):
 - 1.1.1. in the proposed certificate of insurance (**COI**), that the premium payable by the customer on renewal of the policy included a stated percentage (and in some cases a dollar value) Loyalty Discount, and a stated percentage (and in some cases a dollar value) NCB Discount, that had been applied to the premium that would otherwise have been payable by the customer had the discounts not been applied (the Discounts Representation);
 - 1.1.2. in the COI and the Premium, Excess and Discounts Guide (**PED**) that applied to the relevant policy, that the premium payable by the customer on renewal of the policy had been calculated based on the information and process set out in the PED regarding calculation of the premium (the Premium Calculation Representation); and
 - 1.1.3. in circumstances where IAL had introduced percentage limits on reductions on renewal premiums for the Relevant Policies (**Cup**), which, when triggered, had the effect of recalculating the gross premium and re-applying the relevant discounts to that higher gross premium such that the net premium (with discounts applied) was not lower than the minimum set by the Cup (**Cupping Mechanism**), having regard to the matters stated in the COI and the PED as referred to in paragraphs 1.1.1 and 1.1.2 above, and the relationship between IAL and its customers as insurer and insured, and the duty of utmost good faith on the part of IAL in that respect:
 - i. in all of the above circumstances, it was implicit that IAL would have disclosed to the customer, as part of or within the documentation provided in the Renewal Offer, the existence, application and/or consequences of the Cupping Mechanism; and
 - ii. by not disclosing any information in relation to the existence, application and/or consequences of the Cupping Mechanism, IAL represented by its silence that no such process was occurring (the Silence Representation);
 - 1.2. in making each of the Representations to customers, IAL engaged in conduct in relation to financial services that was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act.
2. A declaration under s 21 of the FCA Act that, between 16 March 2014 and 12 March 2019, on each occasion that IAL made a Renewal Offer to customers in respect of the Relevant Policies and made each of the Representations, IAL made false and/or misleading representations in connection with the supply or possible supply of financial services concerning:



- 2.1. the price of the Relevant Policies in contravention of s 12DB(1)(g) of the ASIC Act; and/or
- 2.2. the existence or effect of a condition, right or remedy, in relation to the Relevant Policies in contravention of s 12DB(1)(i) of the ASIC Act.
3. Further, a declaration under s 21 of the FCA Act or s 12GBA(1) of the ASIC Act that, between 13 March 2019 and 25 September 2019, on each occasion that IAL made a Renewal Offer in respect of the Relevant Policies and made each of the Representations, IAL made false and/or misleading representations in connection with the supply or possible supply of financial services concerning:
 - 3.1. the price of the Relevant Policies in contravention of s 12DB(1)(g) of the ASIC Act; and/or
 - 3.2. the existence or effect of a condition, right or remedy, in relation to the Relevant Policies in contravention of s 12DB(1)(i) of the ASIC Act.
4. A declaration under s 1101B of the Corporations Act or s 21 of the FCA Act that, by IAL's conduct in each of paragraphs 1 to 3 above in contravention of ss 12DA(1), 12DB(1)(g) and 12DB(1)(i), IAL breached its general obligation to comply with financial services laws in contravention of s 912A(1)(c) of the Corporations Act.
5. A declaration under s 1101B of the Corporations Act or s 21 of the FCA Act that by IAL's conduct between 16 March 2014 and 25 September 2019 in:
 - 5.1. introducing an automated system for the express purpose of applying the Cupping Mechanism to the Relevant Policies from 16 March 2014;
 - 5.2. expressly purporting, in the COIs, to apply the Loyalty Discount and the NCB Discount to the affected customers' Relevant Policies, without limitation, but in fact charging higher premiums on renewal than if the Cup had not been triggered;
 - 5.3. charging the affected customers premiums for the Relevant Policies that were calculated by use of the Cupping Mechanism, which charging continued until 3 November 2019 for customers paying on an annual basis, and 2 November 2020 for those paying on a monthly basis; and
 - 5.4. additionally, or alternatively, failing to disclose to any of the affected customers that it was using the Cupping Mechanism to calculate the premiums on the Relevant Policies,

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) of the Corporations Act.



Penalties

- 6. 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 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 s 12DB(1) of the ASIC Act occurring during the period from 15 October 2015 and 25 September 2019.

Other orders

- 7. An order under s 12GLB(1)(a) of the ASIC Act that, within 30 days of the order, IAL take all reasonable steps to cause to be published, at its own expense, a notice stating that it has been ordered to pay a pecuniary penalty because it has made false or misleading representations in a manner and form approved by the Court.
- 8. An order that the Defendant pay the Plaintiff’s costs of and incidental to the proceeding.
- 9. Such further or other orders as the Court considers appropriate.

Date: 14 October 2021

J. Marshall
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Jody Marshall
AGS lawyer
for and on behalf of the Australian Government Solicitor
Lawyer for the Plaintiff

This application will be heard by at 184
Phillip Street, Sydney NSW 2000 at *am/*pm on

B. NOTICE TO DEFENDANT

TO: Insurance Australia Limited
‘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.

D. FILING

Date of filing:

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Registrar

This originating process is filed by Jody Marshall for the Plaintiff.

E. SERVICE

The plaintiff's address for service is:

Australian Government Solicitor
Level 11, 145 Ann St, Brisbane, QLD 4000
Email: Jody.Marshall@ags.gov.au

The Australian Government Solicitor's telephone, facsimile and document exchange numbers are:

Tel: 07 3360 5751
Fax: 07 3360 5795
DX 119 Brisbane

It is intended to serve a copy of this originating process on the Defendant.