

# FEDERAL COURT OF AUSTRALIA

## Australian Securities and Investments Commission v RACQ Insurance Limited [2023] FCA 1503

File number(s): QUD 66 of 2023

Judgment of: **DOWNES J**

Date of judgment: 30 November 2023

Date of publication of reasons: 1 December 2023

Catchwords: **CONSUMER LAW** – admitted breaches of s 12DF(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) – representations by insurance company in product disclosure statements which misrepresented the manner in which discounts would be applied to the premiums charged for insurance – such conduct was liable to mislead the public as to the nature and characteristics of a financial service – conduct involved at least five million contraventions over a period of approximately five years – parties agreed on proposed form of declaratory relief, pecuniary penalty, terms of adverse publicity notice and payment of costs – orders made

Legislation: *Australian Securities and Investments Commission Act 2001* (Cth) s 12DF  
*Evidence Act 1995* (Cth) s 191  
*Federal Court Rules 2011* (Cth) r 2.32(2)

Cases cited: *Australian Building and Construction Commissioner v Pattinson* (2022) 274 CLR 450; [2022] HCA 13  
*Australian Competition & Consumer Commission v Real Estate Institute of Western Australia Inc* (1999) 95 FCR 114; [1999] FCA 1387  
*Australian Competition and Consumer Commission v Reckitt Benckiser (Australia) Pty Ltd* (2016) 340 ALR 25; [2016] FCAFC 181  
*Australian Securities and Investments Commission v Colonial First State Investments Ltd* [2021] FCA 1268  
*Australian Securities and Investments Commission v TPG Internet Pty Ltd (No 2)* [2012] FCA 629

Division: General Division

Registry: Queensland

National Practice Area: Commercial and Corporations

Sub-area: Regulator and Consumer Protection

Number of paragraphs: 33

Date of hearing: 30 November 2023

Counsel for the Plaintiff: Mr M Brady KC with Ms S Derrington

Solicitor for the Plaintiff: Australian Government Solicitor

Counsel for the Defendant: Mr J McKenna KC with Ms A Nicholas

Solicitor for the Defendant: King & Wood Mallesons

## ORDERS

QUD 66 of 2023

**BETWEEN:** AUSTRALIAN SECURITIES AND INVESTMENTS  
COMMISSION  
Plaintiff

**AND:** RACQ INSURANCE LIMITED ACN 009 704 152  
Defendant

**ORDER MADE BY:** DOWNES J

**DATE OF ORDER:** 30 NOVEMBER 2023

### PENAL NOTICE

**TO: RACQ Insurance Limited ACN 009 704 152**

**IF YOU (BEING THE PERSONS BOUND BY THIS ORDER):**

**(A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME SPECIFIED  
IN THIS ORDER FOR THE DOING OF THE ACT; OR**

**(B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER  
REQUIRES YOU NOT TO DO,**

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF  
PROPERTY OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING  
WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER  
MAY BE SIMILARLY PUNISHED.**

### THE COURT DECLARES THAT:

1. Between 23 February 2017 and 7 March 2022, RACQ in trade or commerce engaged in conduct in relation to financial services that was liable to mislead the public as to the nature and/or characteristics of those financial services, and thereby contravened s 12DF(1) of the ASIC Act, in that:

- (a) RACQ provided PDSs for RACQ Insurance Products, as they existed from time-to-time, to customers or potential customers in accordance with ss 1012A to 1012C of the Corporations Act at or about the time they acquired the relevant RACQ Insurance Product and otherwise allowed persons using its website to download the PDS as it existed from time-to-time from the RACQ Website;
- (b) the PDSs for RACQ Insurance Products as they existed from time-to-time contained (amongst other matters) statements by which RACQ represented that discounts for which the customer had qualified would apply to the entire premium payable by the customer for an RACQ Insurance Product, including any Optional Benefits Premiums and the Unoccupancy Premium, but excluding those fees and charges expressly excepted (Premium Discount Representations);
- (c) contrary to the Premium Discount Representations, RACQ did not in every case apply RACQ Discounts for which the customer had qualified to the total premium payable by the customer for an RACQ Insurance Product in the circumstances as set out in (d) to (f) below;
- (d) except in the circumstances described at (e) and (f) below, where a customer purchased an RACQ Insurance Product, RACQ calculated the premiums and discounts for the product by: first calculating the Base Premium; second applying any RACQ Discounts for which the customer had qualified; and third applying any Optional Benefits Premiums (if applicable) as an addition of a fixed amount;
- (e) for the Unoccupancy Premium, the Optional Benefits Premium for the Rental Car Option, and the Optional Benefits Premium for the No Claim Discount Protection Option, RACQ calculated the premiums and discounts by: first calculating the Base Premium; second applying any RACQ Discounts; and third by applying the optional premiums as a percentage increase (i.e. as a multiplier) unless the optional premium fell below a minimum (in which case the optional premium applied as an addition of a fixed amount to meet the relevant minimum);
- (f) for the Optional Benefits Premium for the Items Away From Home Option cover, the discounts were applied to the optional premium with the exception of the Apartment and Alarm Discounts which were applied to the Base Premium but not to the optional premium.

## THE COURT ORDERS THAT:

2. Pursuant to s 12GBA(1) and s 12GBB(1) of the ASIC Act, within 30 days of this order, RACQ pay to the Commonwealth of Australia the sum of \$10,000,000 (Ten Million Dollars) in respect of RACQ's conduct declared in paragraph 1 hereof to be contraventions of s 12DF(1) of the ASIC Act occurring during the period from 23 February 2017 and 7 March 2022.
3. Pursuant to s 43 of the *Federal Court of Australia Act 1976* (Cth), RACQ pay ASIC's costs of and incidental to the proceeding, in the sum of \$130,000.00 within 30 days.
4. Pursuant to s 12GLB of the ASIC Act, RACQ is to cause to be published, at its own expense, a notice in the terms set out at Schedule 1 to these orders ("**Written Notice**") in the following manner:

Within 30 days of the date of this Order, for a period of 90 days, by displaying a link (in no less than 11 point font and no smaller than 50% of the size of the homepage banner, identified by the following crawlable text: "Notice ordered by Federal Court in ASIC case against RACQ for engaging in conduct that was liable to mislead the public in its product disclosure statements about the pricing discounts available for certain types of insurance cover") to a PDF and/or webpage copy of the Written Notice in an immediately visible area of RACQ's website homepage (<https://www.racq.com.au/>).

5. Pursuant to r 2.32(4) of the *Federal Court Rules 2011* (Cth), any non-party requesting access has leave to inspect the submissions which were accepted for filing on 14 November 2023 and 23 November 2023.

## THE COURT NOTES THAT:

In these declarations and orders, the following terms have the following meanings:

<b>ASIC</b>	means the Australian Securities and Investments Commission.
<b>ASIC Act</b>	means the <i>Australian Securities and Investments Commission Act 2001</i> (Cth).
<b>Base Premium</b>	means the premium payable for standard cover.
<b>Corporations Act</b>	means the <i>Corporations Act 2001</i> (Cth).
<b>PDS</b>	means product disclosure statement.

<b>Premium Discount Representations</b>	means the representations defined in paragraph 1(b) above.
<b>Optional Benefit Cover</b>	means those additional optional benefit covers set out in the second column of Schedule 2 to these orders in respect of each relevant RACQ Insurance Product.
<b>Optional Benefits Premium</b>	means additional premiums applicable in the event of Optional Benefit Cover being purchased with the relevant RACQ Insurance Product.
<b>RACQ</b>	means RACQ Insurance Limited.
<b>RACQ Discounts</b>	means those discounts available to customers in respect of the various RACQ Insurance Products, being those set out in Schedule 3 to these orders applicable to each class of RACQ Insurance Product.
<b>RACQ Insurance Product</b>	means those products set out in the first column of Schedule 2 to these orders.
<b>RACQ Website</b>	means the website at <a href="https://www.racq.com.au/">https://www.racq.com.au/</a> .
<b>Unoccupancy Premium</b>	means an additional premium payable in respect of household insurance products, on top of the base premium, where the relevant property was (or became) unoccupied, being a situation where no one would be occupying the home for a period of more than 60 days at any one time.

## **SCHEDULE 1: DRAFT NOTICE**

### **Adverse Publicity Notice ordered by the Federal Court of Australia**

*The Federal Court of Australia finds that RACQ Insurance Limited (RACQ) engaged in conduct that was liable to mislead the public in its product disclosure statements about the pricing discounts available for certain types of insurance cover.*

On 30 November 2023, the Federal Court of Australia ordered RACQ to pay a penalty of \$10 million to the Commonwealth for promising certain discounts on optional benefit covers but failing to deliver the full value of those discounts to some customers.

Between 23 February 2017 and 7 March 2022, for RACQ Motor, Household, Caravan and Unique Vehicle insurance policies, RACQ provided product disclosure statements (PDSs) stating that any discounts for which the customers qualified would apply to the entire premium payable (including to any optional benefits premiums). But, this was not the case. RACQ did not, in all cases, apply the discounts to the optional benefits premiums.

RACQ contravened the law on at least 5,088,261 occasions when it issued policies for RACQ Motor, Household, Caravan and Unique Vehicle insurance. Approximately 458,746 customers missed out on a total of around \$86,476,339 in discounts they should have received. Additional policies were also impacted from March 2015 to 23 February 2017.

RACQ admitted that it had contravened laws prohibiting it from engaging in conduct liable to mislead the public as to the nature and the characteristics of a financial service. RACQ has apologised for its conduct.

RACQ is in the process of remediating those customers who were affected between the period March 2015 and March 2022.

### **Further information**

The Court found that RACQ engaged in conduct liable to mislead the public as to the nature and characteristics of a financial service in making a number of representations in its PDSs for certain general insurance products regarding the manner in which discounts offered by it would apply to premiums payable by customers. These representations did not accurately convey to the public the manner in which all of the discounts offered by it would, in fact, be applied.

For more information, [read ASIC's media release](#) and the [Court's judgment](#).

**SCHEDULE 2: RELEVANT RACQ INSURANCE PRODUCTS AND OPTIONAL BENEFIT COVERS**

<b>#</b>	<b>RACQ Insurance Product</b>	<b>Available Optional Benefit Covers</b>
1.	Household (Contents)	<ul style="list-style-type: none"><li>• Unoccupancy</li><li>• Small Business Contents</li><li>• Pet Cover</li><li>• Mobile Phone Cover</li><li>• Items Away From Home</li></ul>
2.	Motor	<ul style="list-style-type: none"><li>• No Claim Discount Protection</li><li>• Rental Car Option</li><li>• Windscreen Excess</li></ul>
3.	Caravan & Trailer	<ul style="list-style-type: none"><li>• Increased Caravan Contents</li></ul>
4.	Unique Vehicle	<ul style="list-style-type: none"><li>• No Claim Discount Protection</li></ul>



### SCHEDULE 3: RELEVANT RACQ DISCOUNTS

RACQ Insurance Product	Household	Motor & Unique Vehicle	Caravan & Trailer
Applicable RACQ Discounts	Apartment Discount	No Claim Discount	Multi Policy Discount
	Alarm Discount	Multi Policy Discount	Roadside Assistance Loyalty
	Senior Card Discount	Roadside Assistance Loyalty	Combined Discount
	Over 55 Discount	Driver Excellence Bonus	No Claim Discount
	Combined Discount	Combined Discount	
	No Claim Discount	Car Alarm Discount	
	Household Excellence Bonus		
	Multi Policy Discount		
	Roadside Assistance Loyalty		

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

## REASONS FOR JUDGMENT

(Revised from Transcript)

### DOWNES J:

1 The defendant, RACQ Insurance Limited (**RACQ**), is one of the top three largest general  
insurers in Queensland by gross premiums. During the period between 23 February 2017 and  
7 March 2022 (the **Relevant Period**), it offered a range of general insurance products to  
customers throughout Queensland and within a limited number of postcodes in northern New  
South Wales. Those products were Motor Vehicle Insurance; Household Insurance; Caravan  
and Trailer Insurance; and (until the product was discontinued on or around 29 March 2021)  
Unique Vehicle Insurance (**RACQ Insurance Products**).

2 The RACQ Insurance Products were advertised to the public and were purchased by a broad  
range of customers, comprised of both individuals and businesses, from a variety of different  
socio-economic backgrounds, and with differing levels of sophistication and experience.

3 In this proceeding, RACQ admits that, during the Relevant Period, the Product Disclosure  
Statements which it provided to customers in relation to RACQ Insurance Products (**RACQ  
PDSs**) contained representations which did not accurately convey to the public how certain  
discounts offered by it would, in fact, be applied.

4 Specifically, certain representations contained in the RACQ PDSs would have been understood  
by ordinary and reasonable customers, or potential customers, as meaning that any discounts  
for which they qualified would apply to the *entire* premium payable for an RACQ Insurance  
Product, when that was not always the case. These discounts were described by the parties as  
the **RACQ Discounts** and the representations were described as the **Premium Discount  
Representations**.

5 By reason of this conduct, RACQ admits that, during the Relevant Period, it contravened  
s 12DF(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (the **ASIC  
Act**) by engaging in conduct that was liable to mislead the public as to the nature and  
characteristics of a financial service.

6 It is not practicable to ascertain with precision the total number of contraventions of s 12DF(1)  
during the Relevant Period, but there were at least five million contraventions.

7 Pursuant to s 191 of the *Evidence Act 1995* (Cth), ASIC and RACQ filed a statement of agreed facts and admissions, and a supplementary statement of agreed facts and admissions, as well as amended versions of both of those documents. These documents set out facts and admissions sufficient to support the declaration that the parties seek. I accept the agreed facts as having been proved, and I also accept that the admissions by RACQ are properly made.

8 ASIC and RACQ have agreed on the proposed form of declaratory relief, the amount of an aggregate pecuniary penalty, the terms of an adverse publicity notice and payment of costs.

9 The parties also prepared and filed comprehensive written submissions. In particular, the submissions by ASIC contain a detailed analysis of why the conduct of RACQ contravened s 12DF(1) of the ASIC Act, the relevant legal principles relating to the relief which is sought and the application of those principles to the agreed facts. RACQ accepts the accuracy of the statement of facts, legal principles and analysis contained in ASIC's written submissions.

10 I have carefully considered the written submissions and I am satisfied that the agreed facts support the declaratory relief which is sought, and that the declaratory relief is appropriate. There is a real interest in the making of the declaration in light of the public interest in deterring contraventions of a similar kind in the future. Even though RACQ's contraventions in this case were not deliberate, they nonetheless call for the marking of the Court's disapproval of those contraventions. The proposed declaration would function as a warning to others of the risk of engaging, whether carelessly or deliberately, in conduct liable to mislead the public as to the nature and characteristics of financial products.

11 ASIC and RACQ jointly submit that an aggregate pecuniary penalty of \$10 million is an appropriate penalty having regard to all relevant matters. I agree, for the following reasons.

12 Civil penalties are imposed primarily, if not solely, for the purpose of deterrence: *Australian Building and Construction Commissioner v Pattinson* (2022) 274 CLR 450; [2022] HCA 13 (Kiefel CJ, Gageler, Keane, Gordon, Steward and Gleeson JJ) at [15]. In other words, the imposition of a civil penalty is an attempt to put a price on contravention that is sufficiently high to deter repetition by the contravener and by others who might be tempted to contravene the relevant legislation. The amount of penalty imposed should represent a reasonable assessment of what is necessary to ensure that it cannot be regarded by the offender or others as an acceptable cost of doing business, and that the continuation of non-compliance becomes too expensive to maintain.

- 13 For all conduct which occurred before 13 March 2019, the maximum penalty for a contravention of s 12DF by a body corporate is 10,000 penalty units. This equates to \$1.8 million per contravention for conduct up to 30 June 2017, and \$2.1 million per contravention for conduct which occurred between 1 July 2017 and 12 March 2019. For all conduct which occurred on or after 13 March 2019, the maximum penalty for each contravention of s 12DF by RACQ would potentially be higher than \$11.1 million. Even if one was to use only the lowest applicable maximum penalty available throughout the Relevant Period (being \$1.8 million), five million contraventions would still produce a total theoretical maximum penalty of approximately \$9 billion.
- 14 In the circumstances of this proceeding, that figure is so high as to have no real meaning such that the assessment of the appropriate range for penalty is best assessed by reference to other factors: see *Australian Competition and Consumer Commission v Reckitt Benckiser (Australia) Pty Ltd* (2016) 340 ALR 25; [2016] FCAFC 181 (Jagot, Yates and Bromwich JJ) at [157].
- 15 As to the nature and extent of the contraventions:
- (1) the precise number of contraventions by RACQ is not known but is at least five million which occurred over a period of approximately five years;
  - (2) RACQ's contraventions concern the making of false, misleading or deceptive representations in relation to common home and motor insurance policies concerning the premiums and discounts consumers would receive;
  - (3) consumers were at a relative disadvantage when compared to RACQ, in that they had no means of knowing how discounts were, in fact, applied to the premiums payable by them for RACQ Insurance Products;
  - (4) while there is no detailed information about what proportion of RACQ's customers were low- or middle-income earners, it is accepted that the RACQ Insurance Products were purchased by a broad range of customers, comprising both individuals and businesses, with different socio-economic circumstances, and with different levels of sophistication and experience in acquiring insurance products;
  - (5) as one of the largest general insurers in Queensland, RACQ owed its customers a duty of utmost good faith, and customers would have reasonably relied upon RACQ to deal with them honestly and transparently, and to take all reasonable care to ensure that representations made by it to the public (particularly in legislatively-mandated disclosure documents) were accurate.

16 RACQ's conduct was not dishonest or deliberate in that RACQ did not have any intention to  
mislead its customers. Rather, this is a case where the contraventions arose from weaknesses  
in the historical controls which RACQ had in place to ensure that its PDSs were compliant with  
applicable laws.

17 While there appears to have been at least three separate occasions between 2012 and 2021  
when RACQ had an opportunity to detect the problems with the Premium Discount  
Representations but failed to do so, there is no evidence that anyone within RACQ's senior  
management (or any other employee of RACQ) had actual knowledge that the Premium  
Discount Representations were potentially misleading until the issue was first identified in  
November 2021.

18 Once the issue was identified, RACQ responded with a view to avoiding future contraventions,  
including by:

- (1) candidly and sincerely apologising to its insureds and members through its most senior  
representatives, its Chair and CEO;
- (2) self-reporting the matter to ASIC and working co-operatively with ASIC in its  
investigation;
- (3) adjusting the wording of its PDSs;
- (4) taking steps to improve and invest in its regulatory systems and processes. It has been  
seeking to identify opportunities for improvement, including using external advisers,  
with oversight from ASIC and Australian Prudential Regulation Authority.

19 As a result of the Premium Discount Representations, some RACQ customers:

- (1) did not receive the total value of the discounts on premiums payable for their RACQ  
Insurance Products which they had been led to believe they would receive. A total of  
458,746 customers did not receive approximately \$86.5 million in RACQ Discounts  
which they ought to have received (which total does not include GST, duty or interest);
- (2) may have formed mistaken views about the attractiveness of, or value offered by,  
RACQ Insurance Products – either in absolute terms, or in comparison to similar  
products offered by RACQ's competitors;
- (3) as a result of the above misconceptions, may have entered into negotiations with RACQ  
about purchasing RACQ Insurance Products, or made decisions about whether to

continue acquiring RACQ Insurance Products, which they otherwise would not have made had the true position been known;

- (4) may have been induced to act differently than they otherwise would have on the basis of mistaken beliefs about the value of any discounts for which they would qualify by taking those actions.

20 Having said that, this is not a category of case where any member of the public has complained that they were actually misled by the contravening conduct. Indeed, no evidence has been found by RACQ of any customer making a complaint regarding the failure of RACQ to pass on discounts, either before or after the contraventions were made known to the public in June 2022. Nor is this a category of case where it has been established that any member of the public suffered losses because they could have obtained an alternative policy from another insurer which was in fact giving discounts of the kind which were represented.

21 During each financial year between 1 July 2016 and 30 June 2022, RACQ earned gross premiums of between approximately \$758.7 million and \$1.13 billion. However, RACQ has voluntarily chosen to undertake a remediation program and to impose remuneration consequences upon its executives because of the Premium Discount Representations and the remediation program. By that program, RACQ has or will remediate customers on a full contractual basis, making good the promise which was inadvertently conveyed in the PDSs. As a consequence, the manner in which RACQ has undertaken remediation has resulted in very serious financial consequences for RACQ – and its parent mutual organisation The Royal Automobile Club of Queensland Limited.

22 The total cost of the remediation by RACQ based on the Premium Discount Representations (including taxes and interest) is presently estimated to be approximately \$162 million. In undertaking remediation, RACQ has applied beneficial assumptions to customers, which includes remediation beyond the statutory limitation period.

23 Prior to remediation, RACQ obtained a benefit from its contravening conduct in that it avoided passing on the total value of RACQ Discounts. However, it is expected that the remediation program undertaken by RACQ will, once complete, negate the value of any such benefit obtained.

24 Importantly, RACQ has not been found to have engaged in any contraventions of a similar nature to the subject matter of this proceeding. Further, prior to this proceeding, RACQ has never been issued with proceedings against it by ASIC or any other regulator.

25 Further, RACQ has provided significant cooperation to ASIC beyond that strictly required by law. In particular, RACQ has:

- (1) provided voluntary notifications to ASIC in addition to formal breach reports;
- (2) waived legal professional privilege over a number of (external and internal) legal advices, and internal investigation reports, and shared those with ASIC to assist its understanding of the contraventions and how they occurred;
- (3) facilitated ASIC's access to its employees for the purposes of ASIC conducting private interviews with witnesses, including by providing briefs of relevant documents in respect of each employee nominated by ASIC;
- (4) since December 2021, engaged constructively with ASIC in relation to voluntary requests for information and documents;
- (5) since the filing of these proceedings, continued to cooperate with ASIC to seek to minimise the legal and factual issues in dispute between the parties. This process ultimately resulted in the filing of the statement of agreed facts and the supplementary statement of agreed facts, and reaching agreement about the appropriate relief.

26 RACQ's conduct in this regard is to be commended.

27 In all of the circumstances, I am satisfied that a penalty of \$10 million appropriately balances these various considerations and falls within the permissible range, and that is the amount of penalty which will be the subject of my order.

28 Turning then to the proposed adverse publicity orders, the purpose of such orders is to alert consumers to the fact that a court has found that the respondent has contravened the law (in this case, by engaging in misleading or deceptive conduct), protect the public interest by dispelling the incorrect or false impressions that were created by the misleading or deceptive conduct, support the primary orders made in the proceeding and assist in preventing repetition of the contravening conduct: see *Australian Securities and Investments Commission v Colonial First State Investments Ltd* [2021] FCA 1268 (Murphy J) at [84].

29 It has also been recognised that adverse publicity orders, or “corrective advertising”, may serve an important function of informing the relevant markets of the outcome of the litigation so that those in the market may have at least a broad understanding of the ways in which the contravener has been required to change their conduct: see *Australian Securities and Investments Commission v TPG Internet Pty Ltd (No 2)* [2012] FCA 629 (Murphy J) at [153] citing *Australian Competition & Consumer Commission v Real Estate Institute of Western Australia Inc* (1999) 95 FCR 114; [1999] FCA 1387 (French J) at [49].

30 The agreed adverse publicity orders in this case are appropriately directed towards achieving the purposes set out above. Given the conduct involved, it is appropriate that information correcting the representations be provided to the public at large.

31 That is because, while RACQ’s remediation program will have the effect of bringing its conduct to the attention of those customers most directly harmed by it, the RACQ PDSs were also communicated to customers who purchased RACQ Insurance Products but did not (on that occasion) make decisions which attracted the application of such premiums, as well as those who did not ultimately go on to purchase an RACQ Insurance Product on that occasion. Those customers may consider purchasing RACQ Insurance Products in the future.

32 The making of the adverse publicity orders will also support the primary orders in this proceeding by bringing RACQ’s conduct to the attention of other industry participants and assisting in the achievement of specific and general deterrence by sending a message that contraventions of financial services law have reputational, as well as monetary, consequences.

33 As there is public interest in this case, I will also direct that the written submissions which were accepted for filing on 14 November 2023 and 23 November 2023 be made available to any person requesting access to them, notwithstanding that they are not otherwise listed in r 2.32(2) of the *Federal Court Rules 2011* (Cth). I am grateful to both counsel and their instructing solicitors for their work in preparing these submissions.

I certify that the preceding thirty-three (33) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Downes.

Associate:



Dated: 1 December 2023