



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD1070/2021

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

Plaintiff

**INSURANCE AUSTRALIA LIMITED ACN 000 016 722**

Defendant

**ORDER**

**JUDGE:** JUSTICE ABRAHAM

**DATE OF ORDER:** 30 June 2023

**WHERE MADE:** Sydney

**BY CONSENT, THE COURT DECLARES THAT:**

**Note to orders:** Capitalised terms are defined at the end of the orders.

1. Between 16 March 2014 and 25 September 2019, on each occasion that IAL made a Renewal Offer to an Affected Customer in respect of an Affected Policy:
  - (a) IAL applied a Cupping Mechanism which operated such that after loyalty discounts and/or no claim bonuses (“Discounts”) were applied to a renewing customer’s proposed renewal premium, a process was triggered if the calculation resulted in a decrease of that premium greater than the percentage limit set in the algorithm when compared to the customer’s premium for the previous year and if that occurred, the customer’s premium before discounts were applied (the “Base Premium”) was recalculated and increased, so that when the customer’s applicable Discounts were applied, the final premium would fall within the cupping limit. The recalculated final premium amount was the renewal premium proposed to the customer in the customer’s Certificate of Insurance;
  - (b) IAL represented by the terms of the Premium, Excess and Discounts guide applicable to the Relevant Policies, and by implication from the terms of the proposed Certificate of Insurance, that the Affected Premium payable by the



customer on renewal of the policy had been calculated consistently with the information and process set out in the Premium, Excess and Discounts guide regarding calculation of the premium; that the Affected Premium payable included the full value of the Discounts which the customer would reasonably have expected to receive; and that the Discounts had been applied to the premium that would otherwise have been payable by the Affected Customer had the Discounts not been applied (the “Premium and Discounts Representation”);

- (c) by reason of the application of the Cupping Mechanism as set out in paragraph (a) above, IAL:
    - (i) limited the extent to which the Discounts (set out in the Premium, Excess and Discounts guide and purported to be provided to Affected Customers in their Certificate of Insurance) were actually provided to customers such that the Affected Customers did not receive the full value of the Discounts they would reasonably have expected to receive;
    - (ii) increased the Base Premium offered to the Affected Customers and then applied the Discounts to that Base Premium;
    - (iii) by increasing the Base Premium before Discounts were applied, charged Affected Customers higher premiums upon renewal than if the Cupping Mechanism had not applied;
    - (iv) did not calculate the premium payable on renewal for Affected Customers consistently with the information and process set out in the applicable Premium, Excess and Discounts guide;
    - (v) failed to disclose to customers the existence, application and/or consequences of the Cupping Mechanism; and
  - (d) the conduct of IAL described above was in trade or commerce and in connection with the supply or possible supply of financial services.
2. IAL engaged in misleading or deceptive conduct or conduct that was likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act in making the Premium and Discounts Representation on each occasion between 16 March 2014 and 25



September 2019 when it sent a Renewal Offer in respect of Affected Policies to Affected Customers, in the circumstances referred to in paragraph 1 above.

3. IAL contravened s 12DB(1)(g) of the ASIC Act by making a false and/or misleading representation in connection with the price of the Affected Policies on each occasion that IAL made the Premium and Discounts Representation to an Affected Customer between 16 March 2014 and 25 September 2019, in the circumstances referred to in paragraph 1 above.
4. IAL contravened s 12DB(1)(i) of the ASIC Act by making a false and/or misleading representation in connection with the existence or effect of a condition, right or remedy on each occasion that IAL made the Premium and Discounts Representation to an Affected Customer between 16 March 2014 and 25 September 2019, in the circumstances referred to in paragraph 1 above.
5. By its conduct in paragraphs 1 to 4 above, IAL breached its general obligation to comply with financial services laws in contravention of s 912A(1)(c) of the Corporations Act between 16 March 2014 and 25 September 2019.
6. Between 16 March 2014 and 25 September 2019 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 by:
  - (a) its conduct in paragraphs 1 to 4 above, by making the Premium and Discounts Representation when sending Renewal Offers to Affected Customers in respect of the Affected Policies; and
  - (b) introducing and applying the Cupping Mechanism, which had the effect that Affected Customers were charged a higher premium on renewal than they would have been charged if the Cupping Mechanism had not applied.



## **THE COURT ORDERS THAT:**

### **Penalties and costs**

7. Pursuant to s 12GBA(1) of the ASIC Act (as in force before 13 March 2019), within 30 days of this order, IAL pay to the Commonwealth of Australia \$40 million 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.
8. Pursuant to s 43 of the FCA Act, IAL pay ASIC's costs of and incidental to the proceeding, as assessed or agreed, within 28 days of such assessment or agreement.

### **Adverse publicity notice**

9. IAL is to cause to be published, at its own expense, a notice in the terms set out at Schedule 2 to these orders ("Written Notice") in the following manner:
  - (a) 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 IAL for failures to honour discount promises made to some consumers who held NRMA Insurance policies issued by IAL" to a PDF and/or webpage copy of the Written Notice in an immediately visible area of NRMA Insurance's website homepage (<https://www.nrma.com.au/>);
  - (b) Commencing within 90 days of the date of this order, and for a period of no more than 6 months from commencement, include the following words, within the body of an email to customers (at least once per customer) who:
    - (i) held a Relevant Policy between 28 April 2014 and 3 November 2019; and
    - (ii) who continue to hold one or more of those policies (who have a preference for being communicated with by email),stating "Please find attached for your information a Notice ordered by the Federal Court in ASIC case against IAL for failures to honour discount promises made to some consumers who held NRMA Insurance policies issued



by IAL” and attach a pdf copy of the Written Notice to such correspondence;  
and

- (c) Commencing within 90 days of the date of this order, and for a period of no more than 6 months from commencement, include the following words, within the body of a covering letter to customers (at least once per customer) who:
- (i) held a Relevant Policy between 28 April 2014 and 3 November 2019;  
and
  - (ii) who continue to hold one or more of those policies (who have a preference for being communicated with by post, or otherwise have not nominated a preference),

stating “Please find enclosed for your information a Notice ordered by the Federal Court in ASIC case against IAL for failures to honour discount promises made to some consumers who held NRMA Insurance policies issued by IAL” and enclose a printed copy of the Written Notice to such correspondence.

**THE COURT NOTES THAT:**

10. In these Declarations and orders, the following terms have the following meanings:
- (a) **Affected Customer** means a customer who held a Relevant Policy in the period from 16 March 2014 to 25 September 2019 (of which there were 611,000 groups of customers) where: a Renewal Offer was made in that period in relation to that Relevant Policy; the Certificate of Insurance sent to the customer as part of that Renewal Offer provided for a Discount; and, the premium offered in the Certificate of Insurance was an Affected Premium with the effect that the full value of the Discounts to which the customer was eligible, and described in the Certificate of Insurance, was not passed onto that customer.
  - (b) **Affected Premium** means the renewal premium amount set out in the Certificate of Insurance, where the Cupping Mechanism applied in the calculation of that amount.
  - (c) **Affected Policy** means a Relevant Policy held by an Affected Customer.



- (d) **ASIC** means the Australian Securities and Investment Commission.
- (e) **ASIC Act** means the *Australian Securities and Investments Commission Act 2001* (Cth).
- (f) **Corporations Act** means the *Corporations Act 2001* (Cth).
- (g) **Cupping Mechanism** means the mechanism described at paragraph [38] of the Statement of Agreed Facts filed by the parties on 23 September 2022.
- (h) **FCA Act** means the *Federal Court of Australia Act 1976* (Cth).
- (i) **IAL** means Insurance Australia Limited.
- (j) **Relevant Policy** means any one of the 13 insurance policy products offered by IAL under the NRMA Insurance brand as identified in Schedule 1 to these orders.
- (k) **Renewal Offer** means, in the period between 16 March 2014 and 25 September 2019, a renewal letter or offer of renewal sent by IAL prior to the expiry of each existing Relevant Policy of an existing customer, offering a renewal of the customer's existing insurance policy on the terms set out in the offer.

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

Date that entry is stamped: 30 June 2023

  
Registrar



## SCHEDULE 1 – RELEVANT POLICIES

<b>Product Category and Code</b>	<b>Description</b>
<b>Home</b>	
BLDG	Home Buildings
CONT	Home Contents
HPAC	Home Package Buildings (BLDG) and/or Contents (GNCT)
LAND	Landlords – Buildings (BLDG) and/or Contents (GNCT)
<b>Motor</b>	
CRCP	Comprehensive Motor
CRFT	Car Fire, Theft (Third Party)
C RTP	Car Third Party Property Damage
BKCP	Bike Comprehensive
BKTP	Bike Third Party Property Damage
<b>Boat</b>	
BOT	Boat Contents (CONT) and Boat Hull (HULL), or standalone Boat Hull, with layup cover applied to boat hull
<b>Caravan</b>	
ONS	Onsite Caravan (ONST CARA) and/or Onsite Caravan Contents (ONST CONT)
CVT	Caravan Touring (CVT CARA) and/or Caravan Touring Contents (CVT CONT)
TRLR	Trailer



## SCHEDULE 2 – WRITTEN NOTICE

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

*The Federal Court of Australia finds that Insurance Australia Limited (IAL) made false or misleading representations to some consumers about applicable discounts for policy renewals.*

On 30 June 2023, the Federal Court of Australia ordered IAL (the issuer of products under the NRMA insurance brand) to pay a penalty of \$40 million to the Commonwealth for making false and misleading representations to certain customers about certain loyalty and no claims bonus discounts they would receive, but failing to deliver the full value of those discounts.

This affected about 466,000 NRMA branded Motor, Home, Boat and Caravan insurance policies between 15 October 2015 and 25 September 2019. Customers did not receive \$35,393,000 of discounts they should have received. An additional 239,000 policies were also impacted in an earlier period from March 2014; however, the Court was unable to impose a penalty in relation to those policies due to limitations periods (but affected customers have been remediated by IAL, and have already been contacted and refunded as part of that process).

IAL sent renewal offer documents to affected customers representing that the discounts IAL promised had been passed on to them, but those discounts were actually applied to a higher base premium than those customers would otherwise have been charged.

IAL admitted that it had broken laws prohibiting it from making false, misleading or deceptive representations shortly after ASIC commenced proceedings against it and has apologised for its conduct.

IAL has completed issuing payments to all affected customers who are receiving payment as part of the remediation program.

### **Further information**

The Court found that IAL made false or misleading representations to the affected customers that their renewal premiums:

- had been calculated as set out in IAL's Premium, Excess and Discounts guide;
- included the full value of discounts that the customers expected to receive; and
- that the discounts were applied to the base premium that IAL would have otherwise charged them.

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