

NOTICE OF FILING

Details of Filing

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File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v INSURANCE AUSTRALIA LIMITED ACN 000 016 722 & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



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 NCF1

Second Further Amended Concise Statement

(Amended pursuant to order of

Anderson J 18 December 2023 dated 6 August 2024 29 September 2025)

(second further amendments are in blue, with additions in wavy underlining, deletions are in double line strikeout)

**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**

IMPORTANT FACTS GIVING RISE TO THE CLAIM

1. The First Defendant (**IAL**) issued insurance policies titled Home Buildings, Home Contents and Home Packages Building and Contents under the SGIO and SGIC brands during the period 25 August 2017 to 29 January 2023 ~~24 August 2023~~. The Second Defendant (**IMA**) issued insurance policies titled Buildings, Contents and Combined Building and Contents under the RACV brand during the period 25 August 2017 to 24 August 2023.
2. IAL operates under Australian Financial Services Licence (**AFSL**) number 227681 and IMA operates under AFSL number 227678. The ultimate holding company of each of IAL and IMA is Insurance Australia Group Limited (**IAG**), the largest provider of general insurance products in Australia.
3. This proceeding concerns:
 - (a) representations by IAL, and representations by or on behalf of IMA, concerning the manner in which the premiums for home insurance policies issued under the SGIO, SGIC and RACV brands would be calculated, that were false, misleading and liable to mislead in contravention of ss 12DB(1)(a) and (g) and 12DF(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**) and/or ss 1021E(1) and therefore 1021E(8) of the *Corporations Act 2001* (Cth) (**Corporations Act**);
 - (b) failure by IAL and IMA to do all things necessary to ensure that in issuing home insurance policies under the SGIO, SGIC and RACV brands they acted

efficiently, honestly and fairly, in contravention of ss 912A(1)(a) and 912A(5A) of the Corporations Act.

Discounts offered by IAL and IMA

4. IAL offered to customers who acquired SGIO or SGIC branded home insurance policies a “Loyalty Discount”, which was a percentage discount on customers’ premiums that was calculated by reference to the length of time the customer had held eligible insurance products with the same brand (SGIO or SGIC, as applicable), and the number of eligible insurance products with that brand the customer held (**Loyalty Discount**).
5. IMA offered to customers who acquired RACV branded home insurance policies:
 - (a) a “Years of Membership Benefit”, which was a percentage discount on customers’ premiums that was calculated by reference to the length of time the customer had been a member of RACV, including by holding eligible RACV branded insurance policies (**Years of Membership Discount**); and
 - (b) a “Multi-Policy Discount”, which was a percentage discount on customers’ premiums for customers who held multiple eligible RACV branded insurance policies (**Multi-Policy Discount**).
6. IAL made statements concerning customers’ entitlement to the Loyalty Discount:
 - (a) on the SGIO and SGIC websites;
 - (b) in proposed certificates of insurance (**COIs**) sent to customers which invited customers to renew their home insurance policies and which constituted the customers’ final COI if they did renew their policies on the proposed terms;
 - (c) in Premium, Excess, Discounts & Benefits Guides (**PEDs**), which were made available to customers on the SGIO and SGIC websites and were referred to in the COIs; and
 - (d) in other written and audiovisual communications to actual or potential customers.
7. The statements made by IAL have been extracted from the documents referred to in paragraph 6 and appear in Part 1 of Annexure A (**Loyalty Discount Statements**). The COIs referred to in Annexure A are examples of the COIs on which the Plaintiff relies. Part 2 of Annexure A contains samples of the Loyalty Discount Statements, which are shown in a red outline within screenshots of the documents.

8. IMA made statements concerning customers' entitlement to the Years of Membership Discount and the Multi-Policy Discount in COIs and PEDs. RACV Insurance Services Pty Ltd (**RACV Services**) and / or IMA made statements concerning customers' entitlement to the Years of Membership Discount and the Multi-Policy Discount on the RACV website and in other written communications to actual or potential customers. Where RACV Services made those statements it did so on IMA's behalf and with IMA's consent or agreement (for the purposes of each of s 12GH(2)(b) of the ASIC Act and s 769B(1) of the Corporations Act).
9. The statements made by, or on behalf of, IMA concerning the Years of Membership Discount (**Years of Membership Discount Statements**) and the Multi-Policy Discount (**Multi-Policy Discount Statements**) have been extracted from the documents referred to in paragraph 8 and appear in Part 1 of Annexure B. The COIs referred to in Annexure B are examples of the COIs on which the Plaintiff relies. Part 2 of Annexure B contains samples of the Years of Membership Discount Statements, which are shown in a red outline within screenshots of the documents, and samples of the Multi-Policy Discount Statements, which are shown in a blue outline within screenshots of the documents.

Representations by IAL

10. By making each of the Loyalty Discount Statements, IAL represented that 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) the customer's likelihood of renewing their policy at different premiums (**IAL Elasticity Representation**);
 - (b) the number of other eligible same branded (SGIO or SGIC as applicable) insurance policies the customer holds (**IAL Number of Policies Representation**);
 - (c) the length of time the customer has held an eligible same branded (SGIO or SGIC as applicable) insurance policy (**IAL Tenure Representation**).
- 10A. By making each of the Loyalty Discount Statements, IAL represented that, in determining an initial (or pre-discount) renewal premium for a customer, it will not employ processes that:
 - (a) will allocate;
 - (b) will tend to allocate; or

(c) 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 Representation).

Representations by IMA

11. By making each of the Years of Membership Discount Statements, IMA represented that, 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) the customer's likelihood of renewing their policy at different premiums **(IMA Elasticity Representation)**;
- (b) the length of time the customer has been a member of RACV, including by holding any eligible RACV branded policy **(IMA Tenure Representation)**.

11A. By making each of the Years of Membership Discount Statements, IMA represented that, in determining an initial (or pre-discount) renewal premium for a customer, it will not employ processes that:

- (a) will **allocate**;
- (b) will **tend to allocate**; or
- (c) 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 Representation).

12. By 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)**.

13. Each of the representations referred to in paragraphs 10 to 12 above was made in trade or commerce and in connection with the supply or possible supply of financial services.

14. Each of the representations conveyed by the Loyalty Discount Statements, the Years of Membership Discount Statements and the Multi-Policy Discount Statements were with respect to a future matter within the meaning of:
- (a) s 12BB(1) of the ASIC Act; and
 - (b) in the alternative, in the case of statements in PEDs, s 769C(1) of the Corporations Act.

Calculation of renewing customers' premiums

15. At all relevant times, the process IAL and IMA adopted for determining the premiums for renewing customers involved, broadly speaking, first, determining an initial premium (**Initial Premium**), then, deducting from that Initial Premium any applicable discounts, and finally, adding any government charges, to arrive at a final premium.
16. The process for determining the Initial Premium included a process IAL and IMA described as renewal optimisation, which involved seeking to set premiums at a level that would meet the cost of claims and achieve a desired level of profitability and other goals, including long term sustainability (**Renewal Optimisation**).
17. The output of a model known as a Demand Model was used in the Renewal Optimisation process. The Demand Model predicted each customer's likelihood to renew their policies at different premiums based on factors that IAL and IMA considered to be the most statistically significant.

17A. IAL and IMA used three Demand Models during the period 25 August 2017 to 29 January 2023, being:

<u>Demand model</u>	<u>Period when Demand Model live</u>	<u>Policy renewal date period covered</u>
<u>DM1</u>	<u>25 August 2017 to 26 January 2020</u>	<u>01 August 2019 to 31 January 2020</u>
<u>DM2</u>	<u>27 January 2020 to 5 September 2021</u>	<u>01 August 2020 to 31 January 2021</u>
<u>DM3</u>	<u>6 September 2021 to 29 January 2023</u>	<u>01 September 2022 to 28 February 2023</u>

18. The output of the Demand Model was used in the Renewal Optimisation process for 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.
19. [not used] The use of the output of the Demand Model in the Renewal Optimisation process resulted in at least some customers who were eligible for a Loyalty Discount, Multi Policy Discount or Years of Membership Discount:

~~(a) being predicted to be more likely to renew their policies at higher prices; and consequently,~~

~~(b) receiving larger relative price increases to their Initial Premiums than customers predicted to be less likely to renew at higher prices,~~

~~before the Loyalty Discount, Multi-Policy Discount or Years of Membership Discount (as applicable) was applied.~~

20. ~~[not used] In the alternative to paragraph 19, the use of the output of the Demand Model in the Renewal Optimisation process may have had the result referred to in that paragraph.~~

21. At the times and in respect of the SGIO and SGIC branded home insurance policies referred to in Annexure C, the factors used in the Demand Model to predict customers' likelihood of renewing at different premiums included the following factors related to whether a customer qualified for a Loyalty Discount (**IAL Discount Factors**):

- (a) the number of years since the customer's home insurance policy with SGIO or SGIC (as applicable) was first written;
- (b) the number of consecutive years the customer had held any same branded (SGIO or SGIC, as applicable) insurance policy;
- (c) the number of same branded (SGIO or SGIC as applicable) Contents, Building and/or comprehensive car insurance policies the customer held;
- (d) the number of same branded (SGIO or SGIC, as applicable) car, bike, home, landlord, caravan, boat, trailer, RBI, life, IP and roadside assistance insurance products the customer held; and
- (e) the amount of any Loyalty Discount the customer received (which was based on the customer's tenure and the number of same branded insurance products the customer held, as alleged in paragraph 4 above).

22. At all relevant times, IAL did not know whether, or the extent to which, the matters referred to in paragraph 21 affected individual customers' premiums.

23. At the times and in respect of the RACV branded home insurance policies referred to in Annexure D, the factors used in the Demand Model to predict customers' likelihood of renewing at different premiums included the following factors related to whether a customer qualified for a Years of Membership Discount or Multi-Policy Discount (**IMA Discount Factors**):

- (a) the number of years the customer had been a member of RACV;

- (b) the number of years the customer held their RACV branded home insurance policy; and
- (c) ~~[not used] the amount of any Years of Membership Discount the customer received (which was, in turn, based on the customer's tenure as alleged in paragraph 5(a) above); and~~
- (d) whether the customer received a Multi-Policy Discount (which was, in turn, based on the number of RACV branded insurance policies the customer held as alleged in paragraph 5(b) above).

24. At all relevant times, IMA did not know whether, or the extent to which, the matters referred to in paragraph 23 affected individual customers' premiums.

24A. In the case of customers who held SGIO or SGIC branded home insurance policies:

- (a) the Demand Model tended to predict that:
 - (i) customers who held eligible same branded (SGIO or SGIC as applicable) policies for longer periods ~~had a higher probability of renewing their policies at higher prices~~ were more likely to renew than customers who held eligible same branded policies for shorter periods (save for version DM3 for SGIO customers); and
 - (ii) customers who held a larger number of eligible same branded (SGIO or SGIC as applicable) policies were more likely to renew than customers who held fewer eligible same branded policies;
- (b) the use of the output of the Demand Model in the Renewal Optimisation process:
 - ~~(i) resulted;~~
 - ~~(ii) tended to result; or~~
 - ~~(iii) may have tended to result;~~
 - in:
 - (i) ~~(iv)~~ customers who held eligible same branded (SGIO or SGIC as applicable) policies for longer periods receiving larger percentage increases to their Initial Premiums than customers who held eligible same branded policies for shorter periods. (save for version DM3); and

- (ii) ~~(v)~~ customers who held a larger number of eligible same branded (SGIO or SGIC as applicable) policies receiving larger percentage increases to their Initial Premiums than customers who held fewer eligible same branded policies ~~(save for version DM3).~~

24B. In the case of customers who held RACV branded home insurance policies:

- (a) the Demand Model tended to predict that:
- (i) customers who had been members of RACV for longer periods ~~had a higher probability of renewing their policies at higher prices~~ were more likely to renew than customers who have been members of RACV for shorter periods; and
- (ii) customers who were eligible for a Multi-Policy Discount were more likely to renew than customers who were not eligible for a Multi-Policy Discount;
- (b) the use of the output of the Demand Model in the Renewal Optimisation process:
- ~~(i) resulted;~~
- ~~(ii) tended to result; or~~
- ~~(iii) may have tended to result;~~
- ~~in:~~
- (i) ~~(iv)~~ customers who had been members of RACV for longer periods receiving larger percentage increases to their Initial Premiums than customers who had been members of RACV for shorter periods- ~~(save for customers who held insurance policies titled Buildings under version DM3); and~~
- (ii) ~~(v)~~ customers who were eligible for a Multi-Policy Discount receiving larger percentage increases to their Initial Premiums than customers who were not eligible for a Multi-Policy Discount.

Falsity of representations

25. The IAL Elasticity Representation and the IMA Elasticity Representation were false, misleading and liable to mislead the public by reason of the matters referred to in paragraphs ~~19 and/or~~ 24A (in respect of IAL) and ~~19 and/or~~ 24B (in respect of IMA) above.

26. Alternatively:

- (a) IAL did not have reasonable grounds for making the IAL Elasticity Representation; and
- (b) IMA did not have reasonable grounds for making the IMA Elasticity Representation,

by reason of the matters referred to in paragraphs 18, ~~and 20~~ and/or 24A (in respect of IAL) and 18, ~~20~~ and/or 24B (in respect of IMA) above.

27. IAL did not have reasonable grounds for making:

- (a) the IAL Tenure Representation by reason of the matters referred to in paragraphs 18 ~~20~~, 21(a), 21(b), 21(e), 22 and/or 24A above; and
- (b) the IAL Number of Policies Representation by reason of the matters referred to in paragraphs 21(c), 21(d), 21(e), 22 and/or 24A above.

28. IMA did not have reasonable grounds for making:

- (a) the IMA Tenure Representation by reason of the matters referred to in paragraphs 18 ~~20~~, 23(a), ~~to 23(e)~~ 23(b), 24 and/or 24B above;
- (b) the IMA Number of Policies Representation by reason of the matters referred to in paragraphs 23(d), 24 and/or 24B above.

28AA. The IAL Further Tenure Representation was false, misleading and liable to mislead the public by reason of the matters referred to in paragraph 24A(a)(i) and (b)(i) above.

28A. Alternatively, IAL did not have reasonable grounds for making the IAL Further Tenure Representation by reason of the matters referred to in paragraph 24A(a)(i) and (b)(i) above.

28AB. The IMA Further Tenure Representation was false, misleading and liable to mislead the public by reason of the matters referred to in paragraph 24B(a)(i) and (b)(i) above.

28B. Alternatively, IMA did not have reasonable grounds for making the IMA Further Tenure Representation by reason of the matters referred to in paragraph 24B(a)(i) and (b)(i) above.

Failure to act efficiently, honestly and fairly

29. IAL failed to do all things necessary to ensure that the financial services covered by its AFSL were provided efficiently, honestly and fairly, by reason of the following matters:

- (a) the matters referred to in paragraphs 4, 6, 7, ~~and~~ 15 to 18, 21, 22 and 24A (or in the alternative 24A(a)) above;
 - (b) IAL failed to disclose to customers the matters referred to ~~in~~ paragraphs 15 to 22 and 24A above;
 - (c) IAL made the Loyalty Discount Statements to entice customers to renew their home insurance policy and to take out more SGIO or SGIC (as applicable) branded policies;
 - (d) knowing that the Demand Model had the purpose set out in paragraph 18 above, IAL 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
 - (e) IAL owed a duty of utmost good faith to its customers.
30. IMA failed to do all things necessary to ensure that the financial services covered by its AFSL were provided efficiently, honestly and fairly, by reason of the following matters:
- (a) the matters referred to in paragraphs 5, 8, 9, 15 to ~~20~~18, 23, ~~and~~ 24 and 24B (or in the alternative 24B(a)) above;
 - (b) IMA failed to disclose to customers the matters referred to in paragraphs 15 to ~~20~~18, 23, 24 and 24B above;
 - (c) IMA offered the Years of Membership Discount and the Multi-Policy Discount to entice customers to renew their RACV branded home insurance policy and to take out more RACV branded insurance policies;
 - (d) knowing that the Demand Model had the purpose set out in paragraph 18 above, IMA 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 benefits of the Years of Membership Discount and Multi-Policy Discount;
 - (e) IMA owed a duty of utmost good faith to its customers.

PRIMARY GROUNDS FOR THE RELIEF SOUGHT

31. By making the IAL Elasticity Representations and the IAL Further Tenure Representations in the period between 25 August 2017 and 29 January 2023 ~~24 August~~

2023, and the IAL Tenure Representations and the IAL Number of Policies Representations in the period between 25 August 2017 and 26 January 2020, in trade or commerce, IAL contravened:

- (a) s 12DF(1) of the ASIC Act by engaging in conduct liable to mislead the public as to the nature and/or characteristics of a financial service;
- (b) s 12DB(1)(a) of the ASIC Act by making false and/or misleading representations that services were of a particular value; and
- (c) s 12DB(1)(g) by making false and/or misleading representations with respect to the price of services.

32. In the alternative to paragraphs 31(b) and (c) above, by making the IAL Elasticity Representations ~~and IAL Tenure Representations~~ and IAL Further Tenure Representation in the period between 13 March 2019 and 29 January 2023 ~~24 August 2023~~, and the IAL Tenure Representations and the IAL Number of Policies Representations in the period between 13 March 2019 and 26 January 2020, in SGIO and SGIC branded PEDs, prepared on or after 13 March 2019:

- (a) IAL engaged in conduct in relation to a disclosure statement or document for the purposes of s 12DB(2)(c) of the ASIC Act;
- (b) 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;
- (c) the PEDs were defective within the meaning s 1021B(1) of the Corporations Act as they contained misleading or deceptive statements; and
- (d) IAL contravened ss 1021E(1) or (2), and therefore s 1021E(8), of the Corporations Act.

33. By failing to do all things necessary to ensure that in issuing home insurance policies under the SGIO and SGIC brands it acted efficiently, honestly and fairly, IAL 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 29 January 2023 ~~24 August 2023~~.

34. By making the IMA Elasticity Representations and the IMA Further Tenure Representations in the period between 25 August 2017 and 24 August 2023, and the IMA Tenure Representations and the IMA Number of Policies Representations in the period between 25 August 2017 and 5 September 2021, IMA contravened:

- (a) s 12DF(1) of the ASIC Act by engaging in conduct liable to mislead the public as to the nature and/or characteristics of a financial service;

- (b) s 12DB(1)(a) of the ASIC Act by making false or misleading representations that services were of a particular value;
 - (c) s 12DB(1)(g) by making false or misleading representations with respect to the price of services.
35. In the alternative to paragraphs 34(b) and (c) above, by making the IMA Elasticity Representations ~~and the IMA Tenure Representations~~ and IMA Further Tenure Representation in the period between 13 March 2019 to 24 August 2023, and the IMA Tenure Representations and the IMA Number of Policies Representations in the period between 13 March 2019 to 5 September 2021, in RACV branded PEDs prepared on or after 13 March 2019:
- (a) IMA's conduct was in relation to a disclosure statement or document for the purposes of s 12DB(2)(c) of the ASIC Act;
 - (b) ~~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;
 - (c) the PEDs were defective within the meaning of s 1021B(1) of the Corporations Act as they contained misleading or deceptive statements; and
 - (d) IMA contravened ss 1021E(1) or (2), and therefore s 1021E(8), of the Corporations Act.
36. By failing to do all things necessary to ensure that in issuing home insurance policies under the RACV brand it acted efficiently, honestly and fairly, IMA 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.

RELIEF SOUGHT FROM THE COURT

37. The Plaintiff seeks the relief sought in the accompanying Further Amended Originating Application Process. ASIC only seeks pecuniary penalties for the alleged contraventions of ss 912A(1)(a) and 912A(5A) and ss 1021E(1) or (2) and 1021E(8) of the Corporations Act insofar as the contraventions occurred by conduct that occurred wholly on or after 13 March 2019.

ALLEGED HARM SUFFERED AND PROFITS EARNED FROM THE CONDUCT

38. As a result of the impugned conduct actual and potential acquirers of home insurance policies issued under the SGIO, SGIC and RACV brands were denied the opportunity to make properly informed decisions about whether to acquire them. Customers were discouraged from shopping around on the basis that they were receiving discounts that would not be available if they moved to another insurer and accordingly may have been denied the opportunity to seek cheaper quotes. Some acquirers of the relevant policies paid, or may have paid, premiums that were higher than the premiums they would have paid, had their premiums been calculated in accordance with the statements and representations made by IAL and IMA to customers.

Date: ~~24 August 20 December 2023~~ 7 August 2024 29 September 2025

Signed by ~~Nicolette Bearup~~ Michael Hershan Kim MacKay
Lawyer for the Plaintiff

This Second Further Amended Concise Statement was prepared by Philip Solomon KC and ~~Andrew Barraclough~~ Helen Tiplady of Counsel.

Certificate of lawyer

I, Kim MacKay, certify to the Court that, in relation to the Further Amended Concise Statement filed on behalf of the Plaintiff, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 29 September 2025

A handwritten signature in blue ink that reads "K. MacKay." The signature is written in a cursive, flowing style.

Signed by Kim MacKay
Lawyer for the Plaintiff

SCHEDULE OF PARTIES

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)
First Defendant

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