

NOTICE OF FILING

Details of Filing

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File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v RACQ INSURANCE LIMITED ACN 009 704 152
Registry:	QUEENSLAND 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.



Concise Statement

Federal Court of Australia
District Registry: Queensland
Division: General

No. QUD of 2023

IN THE MATTER OF RACQ INSURANCE LIMITED
ACN: 009 704 152

Australian Securities and Investments Commission

Plaintiff

RACQ Insurance Limited ACN 009 704 152

Defendant

A. INTRODUCTION

1. The Defendant (**RACQ**) is one of the largest providers of general insurance in Australia.
2. The Plaintiff (**ASIC**) alleges that, between at least 23 February 2017 and March 2022 (the **Relevant Period**), RACQ engaged in conduct that was liable to mislead the public as to the manner in which discounts offered by it would apply to premiums payable by customers for RACQ's general insurance products (and, therefore, was liable to mislead the public as to the nature and/or characteristics of those insurance products), in contravention of s 12DF(1) of the *Australian Securities and Investments Commission Act 2001* (Cth) (the **ASIC Act**).

B. IMPORTANT FACTS GIVING RISE TO THE CLAIM

Background

3. During the Relevant Period, RACQ offered customers a range of general insurance products, including Motor, Home, Caravan & Trailer, and Unique Vehicle insurance (**RACQ Insurance Products**). For each of these products, RACQ also offered various optional benefits covers (**Optional Benefits Covers**), the purchase of which would attract an additional premium on top of the base premium payable for that insurance product. The RACQ Insurance Products and Optional Benefits Covers relevant to this proceeding are set out in **Schedule 1** to this Concise Statement.

Filed on behalf of the Plaintiff, ASIC
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4. RACQ published information about the terms and conditions which applied to its products in Product Disclosure Statements (**PDSs**). These PDSs were communicated to customers:
 - (a) by RACQ including links to current versions, from time-to-time, of its PDSs on the website (<racq.com.au>), thereby allowing customers to download copies of the PDSs online, at their convenience; and
 - (b) by RACQ providing copies of its PDSs to current and prospective customers of its RACQ Insurance Products in accordance with Part 7.9 of the *Corporations Act 2001* (Cth).
5. The present proceeding concerns statements made by RACQ in 14 different PDSs throughout the Relevant Period concerning discounts which customers may be entitled to receive on their insurance premiums.

RACQ Pricing Engine and Algorithm

6. Since at least 2007, RACQ has used software (the **RACQ Pricing Engine**) to calculate the total premium payable by a customer for an RACQ Insurance Product. Information relevant to premium rating factors is input into the RACQ Pricing Engine, and the software in turn uses that information to determine the premium to be charged by RACQ to a given customer, based on the pre-set pricing algorithm which applies in respect of the chosen RACQ Insurance Product (the **RACQ Pricing Algorithm**).
7. RACQ's customers are not privy to the details of the RACQ Pricing Algorithms.
8. Throughout the Relevant Period, in the case of customers who chose one or more of the Optional Benefits Covers set out in Schedule 1, the RACQ Pricing Algorithm operated by: first, calculating the base premium payable for the relevant RACQ Insurance Product; second, applying any discounts for which the customer had qualified to the base premium; and third, adding any premium amounts relevant to those Optional Benefits Covers (**Optional Benefits Premiums**) to the total price payable.
9. In addition to the above, RACQ also charged an additional premium on all Household insurance products which were purchased in relation to a property for which the occupancy option was selected as "unoccupied" (the **Unoccupancy Premium**). As with the Optional Benefits Premiums, the Unoccupancy Premium was only taken into account by the RACQ Pricing Algorithm after any applicable discounts had already been applied.
10. The practical result of calculating premiums in this order was that discounts advertised by RACQ in its PDSs and on its website were not applied to either of the Optional Benefits Premiums or the Unoccupancy Premium, because those parts of the premium payable by a customer were taken into account by the RACQ Pricing Algorithm only *after* any discounts had already been applied.

Premium Discount Representations

11. During the Relevant Period, RACQ published various PDSs in respect of its Household, Motor, and Caravan & Trailer insurance products which contained the following statement, or a statement in substantially the same terms:

You may be entitled to the premium discounts shown in Table 8. When you apply for insurance or we send you an offer to renew your policy, we calculate your premium and apply the discounts that you're entitled to...

We won't apply any premium discounts we give you to Pay by the Month fee or to any government statutory charges, levies, duties GST or other taxes that are included in your premium.

12. RACQ's PDSs in respect of its Motor, Caravan & Trailer, and Unique Vehicle insurance products also contained statements to the effect that a customer's 'No Claim Discount', if applicable, would reduce "the premium you pay for your policy".
13. A 'premium' was defined in each relevant PDS in the following, or similar, terms:

The amount you pay for the cover we give you under your policy. It includes any government statutory charges, levies, duties, GST or other taxes that may apply.

14. Nowhere in the PDSs did RACQ disclose that it treated the 'premium' payable in respect of any Optional Benefits Covers selected by customers, or the additional Unoccupancy Premium applied by RACQ, as distinct from the base 'premium' payable for an insurance product.
15. In the premises, the statements referred to in paragraphs 11 and 12 above 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, including any Optional Benefits Premiums and the Unoccupancy Premium, but excluding those fees and charges expressly excepted (**Premium Discount Representations**).
16. However, as explained in paragraphs 8 to 10 above, that was not, in fact, the case.
17. Each of the PDSs alleged by ASIC to contain a Premium Discount Representation, together with extracts of those representations, are set out in **Schedule 3** to this Concise Statement.

C. RELIEF SOUGHT

18. ASIC seeks the relief set out in the accompanying Originating Process, comprising declarations, pecuniary penalties, adverse publicity orders, and costs.

D. PRIMARY LEGAL GROUNDS FOR RELIEF SOUGHT

19. The consumer protection provisions under Part 2, Division 2 of the ASIC Act are engaged, as RACQ's conduct occurred in trade or commerce, and an RACQ Insurance Product is a 'financial product', and therefore a 'financial service', within the meaning of ss 12BAA and 12BAB of the ASIC Act.
20. For the reasons set out in this Concise Statement, ASIC alleges that each publication by RACQ to a customer, or prospective customer, of a Premium Discount Representation in its PDSs during the Relevant Period constituted conduct that was liable to mislead the public as to the nature and/or characteristics of a financial service (in the form of an RACQ Insurance Product), in contravention of s 12DF(1) of the ASIC Act.
21. Section 12DF(1) is a civil penalty provision. Accordingly, the Court has the power to make declarations that RACQ has contravened these provisions, and to make orders imposing pecuniary penalties in respect of those contraventions, pursuant to ss 12GBA and 12GBB of the ASIC Act and s 21 of the *Federal Court of Australia Act 1976* (Cth).
22. Although some of the relevant PDSs are dated 1 December 2015, they remained in use by RACQ until around 1 March 2017. ASIC therefore seeks remedies in respect of these representations insofar as they were communicated to customers between 23 February 2017 and 1 March 2017.

E. ALLEGED HARM

23. The Premium Discount Representations published in RACQ's PDSs were made to the public at large. As a result of RACQ's conduct, customers:
 - (a) did not receive the total value of the discounts on premiums payable for their RACQ Insurance Products which they ought to have received, or were led to believe they would receive;
 - (b) 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;
 - (c) 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; and/or
 - (d) may have been induced to act differently than they otherwise would have acted on the basis of mistaken beliefs about the value of any discounts for which they would qualify by taking those actions (e.g. by acquiring a complementary insurance product from

RACQ, instead of from a competitor, in order to qualify for RACQ's 'multi-policy discount').

24. Following a media release issued by ASIC in October 2021 calling on all general insurers to review their pricing practices, systems, and controls, RACQ engaged KPMG to conduct an internal review of its own pricing practices. The KPMG review identified the issues discussed in this Concise Statement (but, at that stage, only in relation to the Optional Benefits Premiums), and RACQ subsequently submitted a breach report in respect of the Premium Discount Representations to ASIC pursuant to s 912D of the Corporations Act.
25. Between March and April 2022, RACQ issued Supplementary PDSs and updated the language on its website in order to rectify the issues previously identified in respect of the Premium Discount Representations.
26. RACQ's own investigations have determined that there were multiple occasions on which it could have previously detected, and corrected, the issues concerning the Premium Discounts Representations – including in 2012, 2013, 2016, 2017, and 2020.
27. During each financial year from 1 July 2017 to 30 June 2022, RACQ issued between approximately 280,000 to 345,000 Motor insurance policies; 90,000 to 92,500 Household insurance policies; and 6,700 to 10,000 Caravan and Trailer insurance policies which included an Optional Benefits Cover.

CERTIFICATE OF LAWYER

I, James Rutherford Docherty, certify to the Court that, in relation to the 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: 23 February 2023



James Rutherford Docherty
AGS lawyer, for and on behalf of the Australian Government Solicitor
Solicitor for the Plaintiff

SCHEDULE 1: RELEVANT RACQ INSURANCE PRODUCTS AND OPTIONAL BENEFITS COVERS

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

SCHEDULE 2: RELEVANT RACQ PRICING ALGORITHMS

Key: Green = Available Discounts, Blue = Relevant Optional Benefits Cover premiums, Yellow = Unoccupancy Premium.

RACQ Insurance Product	Household (Contents at Home)	Household (Contents Away)	Motor & Unique Vehicle ¹	Caravan & Trailer
Relative order in which relevant premium components calculated ²	Apartment Discount	Senior Card Discount	No Claim Discount	Multi-Product Discount
	Home Alarm Discount	Over 55's Discount	Roadside Assistance Loyalty	Roadside Assistance Loyalty
	Senior Card Discount	Combined Discount	Multi-Product Discount	Combined Discount
	Over 55's Discount	No Claim Discount	Driver Excellence Bonus	No Claim Discount
	Combined Discount	Household Excellence Bonus	Combined Discount	Increased Caravan Contents
	No Claim Discount	Roadside Assistance Loyalty	Car Alarm Discount	
	Household Excellence Bonus	Multi-Product Discount	No Claim Discount Protection	
	Multi-Product Discount	Mobile Phone Cover	Rental Car Option	
	Roadside Assistance Loyalty	Items Away From Home Cover	Windscreen Excess	
	Unoccupancy			
Small Business Contents Cover				
Pet Cover				

¹ Although the Unique Vehicle insurance product utilises the same RACQ Pricing Algorithm as the Motor insurance product, the only Optional Benefits Cover available under the Unique Vehicle product is 'No Claim Discount Protection'.

² For ease of understanding, this schedule omits other premium components which were taken into account by the RACQ Pricing Algorithms during the Relevant Period, but which are not relevant to the present proceedings.

SCHEDULE 3: PREMIUM DISCOUNT REPRESENTATIONS

#	Date	PDS	Premium Discount Representation(s)	Document ID
1.	01-Dec-15	Motor	<p>“Your no claim discount (NC) reduces the premium you pay for your policy. When you first take out insurance with us, we decide whether to give you a NC based on your claims and driving history. If we decide that you qualify for a NC, we apply your NC to reduce your premium.”</p> <p>“You may be entitled to the premium discounts shown in Table 8.2. When you apply for insurance or we send you an offer to renew your policy, we calculate your premium and apply the discounts that you're entitled to. We show your discounts on your Certificate of Insurance.”</p> <p>“We don't apply any premium discounts to the Pay by the Month fee or to any government statutory charges, levies, duties, GST or other taxes that are included in your premium.”</p>	RAC.0001.0001.2425
2.	01-Dec-15	Caravan & Trailer	<p>“Your no claim discount (NC) reduces the premium you pay for your policy. When you first take out insurance with us, we decide whether to give you a NC based on your claims and driving history. If we decide that you qualify for a NC, we apply your NC to reduce your premium.”</p> <p>“You may be entitled to the premium discounts shown in Table 5.2. When you apply for insurance or we send you an offer to renew your policy, we calculate your premium and apply the discounts that you're entitled to. We show your discounts on your Certificate of Insurance.”</p> <p>“We don't apply any premium discounts to the Pay by the Month fee or to any government statutory charges, levies, duties, GST or other taxes that are included in your premium.”</p>	RAC.0001.0001.4025

#	Date	PDS	Premium Discount Representation(s)	Document ID
3.	01-Dec-15	Household	<p>“You may be entitled to the premium discounts shown in Table 8. When you apply for insurance or we send you an offer to renew your policy, we calculate your premium and apply the discounts that you're entitled to. We show your discounts on your Certificate of Insurance.”</p> <p>“We don't apply any premium discounts we give you to the Pay by the Month fee or to any compulsory government statutory charges, levies, duties, GST or other taxes that are included in your premium.”</p>	RAC.0001.0001.3447
4.	01-Dec-15	Unique Vehicle	<p>“We allow you a no claim discount on your premium when you renew your policy if you have not made a claim during a prior period of insurance.”</p>	RAC.0001.0001.4360
5.	01-Mar-17	Motor	<p>“You may be entitled to the premium discounts shown in Table 8.2. When you apply for insurance or we send you an offer to renew your policy, we calculate your premium and apply the discounts that you're entitled to. We show your discounts on your Certificate of Insurance.”</p> <p>“Your no claim discount (NC) reduces the premium you pay for your policy. When you first take out insurance with us, we decide whether to give you a NC based on your claims and driving history. If we decide that you qualify for a NC, we apply your NC to reduce your premium.”</p>	RAC.0001.0001.2637
6.	01-Mar-17	Caravan & Trailer	<p>“You may be entitled to the premium discounts shown in Table 8.2. When you apply for insurance or we send you an offer to renew your policy, we calculate your premium and apply the discounts that you're entitled to. We show your discounts on your Certificate of Insurance.”</p>	RAC.001.001.4087

#	Date	PDS	Premium Discount Representation(s)	Document ID
			<p>“Your no claim discount (NC) reduces the premium you pay for your policy. When you first take out insurance with us, we decide whether to give you a NC based on your claims and driving history. If we decide that you qualify for a NC, we apply your NC to reduce your premium.”</p>	
7.	01-Mar-17	Household	<p>“You may be entitled to the premium discounts shown in Table 8. When you apply for insurance or we send you an offer to renew your policy, we calculate your premium and apply the discounts that you’re entitled to. We show your discounts on your Certificate of Insurance.”</p>	RAC.0001.0001.3544
8.	01-Mar-17	Unique Vehicle	<p>“We allow you a no claim discount on your premium when you renew your policy if you have not made a claim during a prior period of insurance.”</p>	RAC.0001.0001.4460
9.	01-Mar-21	Motor	<p>“You may be entitled to the premium discounts shown in the table below. When you apply for insurance or we send you an offer to renew your policy, we calculate your premium and then reduce the premium by applying the discounts that you’re entitled to. We will show the types of discounts applied to your premium on your Certificate of Insurance.”</p> <p>“Your no claim discount (NC) reduces the premium you pay for your policy. When you first take out insurance with us, we decide whether to give you a NC based on your claims and driving history. If we decide that you qualify for a NC, we apply your NC to reduce your premium.”</p>	RAC.0001.0001.2525
10.	01-Mar-21	Caravan & Trailer	<p>“You may be entitled to the premium discounts shown in the table below. When you apply for insurance or we send you an offer to renew your policy, we calculate your premium and then reduce the premium by applying the discounts that you’re entitled to. We will show the types of discounts applied to your premium on your Certificate of Insurance.”</p>	RAC.0001.0001.3986

#	Date	PDS	Premium Discount Representation(s)	Document ID
			<p>“Your no claim discount (NC) reduces the premium you pay for your policy. When you first take out insurance with us, we decide whether to give you a NC based on your claims and driving history. If we decide that you qualify for a NC, we apply your NC to reduce your premium.”</p>	
11.	01-Mar-21	Household	<p>“You may be entitled to the premium discounts shown in the table below. When you apply for insurance or we send you an offer to renew your policy, we calculate your premium and then reduce the premium by applying the discounts that you’re entitled to. We will show the types of discounts applied to your premium on your Certificate of Insurance.”</p> <p>“Your no claim discount (NC) reduces the premium you pay for your policy. When you first take out insurance with us, we decide whether to give you a NC based on your claims and driving history. If we decide that you qualify for a NC, we apply your NC to reduce your premium.”</p>	RAC.0001.0001.3866
12.	01-Sep-21	Motor	<p>“You may be entitled to the premium discounts shown in the table below. When you apply for insurance or we send you an offer to renew your policy, we calculate your premium and then reduce the premium by applying the discounts that you’re entitled to. We will show the types of discounts applied to your premium on your Certificate of Insurance.”</p> <p>“Your no claim discount (NC) reduces the premium you pay for your policy. When you first take out insurance with us, we decide whether to give you a NC based on your claims and driving history. If we decide that you qualify for a NC, we apply your NC to reduce your premium.”</p>	RAC.0001.0001.2737
13.	01-Sep-21	Caravan & Trailer	<p>“You may be entitled to the premium discounts shown in the table below. When you apply for insurance or we send you an offer to renew your policy, we calculate your premium and then</p>	RAC.0001.0001.4231

#	Date	PDS	Premium Discount Representation(s)	Document ID
			<p>reduce the premium by applying the discounts that you're entitled to. We will show the types of discounts applied to your premium on your Certificate of Insurance.”</p> <p>“Your no claim discount (NC) reduces the premium you pay for your policy. When you first take out insurance with us, we decide whether to give you a NC based on your claims and driving history. If we decide that you qualify for a NC, we apply your NC to reduce your premium.”</p>	
14.	01-Sep-21	Household	<p>“You may be entitled to the premium discounts shown in the table below. When you apply for insurance or we send you an offer to renew your policy, we calculate your premium and then reduce the premium by applying the discounts that you're entitled to. We will show the types of discounts applied to your premium on your Certificate of Insurance.”</p> <p>“Your no claim discount (NC) reduces the premium you pay for your policy. When you first take out insurance with us, we decide whether to give you a NC based on your claims and driving history. If we decide that you qualify for a NC, we apply your NC to reduce your premium.”</p>	RAC.0001.0001.3746