

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV-2024-404-2498
[2026] NZHC 434**

UNDER Financial Markets Conduct Act 2013
BETWEEN FINANCIAL MARKETS AUTHORITY
Plaintiff
AND ASB BANK LIMITED
Defendant

Hearing: 16 February 2026
Appearances: J Carlyon and E M McDowell for Plaintiff
T B Fitzgerald and H E C Dick for Defendant
Judgment: 4 March 2026

JUDGMENT OF O'GORMAN J

*This judgment was delivered by me on 4 March 2026 at 11 am
pursuant to r 11.5 of the High Court Rules 2016.*

Registrar/Deputy Registrar

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Solicitors/Counsel:
J Carlyon, Auckland
Meredith Connell, Auckland
Bell Gully, Auckland

Introduction

[1] This was a hearing about the imposition of a civil pecuniary penalty on ASB Bank Ltd (ASB) for contravening s 22 of the Financial Markets Conduct Act 2013 (FMCA).

[2] ASB has admitted making false and/or misleading representations in connection with the supply of financial services. In particular:

- (a) ASB failed to apply fee exemptions or fee reductions correctly to customers of its ASB FastNet Business service (FNB) and, in doing so, made false or misleading statements as to the price of its banking services and/or that it was entitled to charge those fees; and
- (b) ASB failed to apply multi-policy discounts (MPD) correctly for customers that were entitled to those discounts on ASB-branded insurance policies and/or ASB represented that customers were entitled to those discounts when they were not. Accordingly, ASB made false and/or misleading representations that those insurance services had particular benefits, with respect to the price to be paid for those insurance services and/or as to the rights of those customers.

[3] Both the Financial Markets Authority (FMA) and ASB have agreed to recommend a penalty of \$2.1 million, derived from a \$3 million starting point and a 30 per cent reduction for mitigating factors.

[4] I must determine whether the recommended penalty is appropriate in light of the statutory criteria, relevant case law, and the particular circumstances of ASB's conduct.

Facts

ASB's business

[5] ASB is one of New Zealand's four largest registered banks.

[6] ASB offers a range of banking services in the ordinary course of its business, including the provision of FNB, an internet banking service for business customers, by which they can transact on their accounts.

[7] ASB also markets and facilitates the provision of ASB-branded insurance products as the agent of IAG New Zealand (IAG). IAG issues and underwrites the insurance policies, but ASB is responsible for (among other things) communicating with customers at the point of sale, collecting and entering customers' details and arranging for the quoting and placing of ASB-branded insurance, and submitting a customer's details to IAG.

FNB issue

[8] From September 2009, ASB customers registered with FNB profiles were charged fees, consisting of monthly platform fees, and fees charged on certain FNB transaction types or services.

[9] From around 31 December 2011, ASB intended that customers holding certain types of business banking accounts were exempt from, or entitled to, reduced FNB fees (FNB exemptions). The FNB exemptions were intended to be applied to Business Focus, Society Cheque and Education Administration Accounts. The FNB terms and/or marketing material reflected this.

[10] The FNB exemptions had to be applied to each account manually. ASB did not have any processes in place to identify exempt accounts or check whether the FNB exemptions had been properly applied. Where a fee had been charged, a customer's account statement included a line item recording the combined total of the FNB fees charged in a given month. That total was not itemised in a way that would have allowed a customer to readily assess whether particular discounts or FNB exemptions had been applied.

[11] ASB did not apply the FNB exemptions to some eligible customers (it issued the Affected Statements to Affected FNB Customers, as those terms are defined in the statement of claim), resulting in fees being debited from those customers' accounts when ASB was not in fact entitled to do so. Between April 2007 and 31 October 2021,

a total of around \$1,402,162 was overcharged, involving 3,818 customers. As a subset of that, \$1,147,276 was overcharged after April 2014 (when pt 2 of the FMCA, which includes s 22, took effect), involving approximately 2,435 affected FNB customers. The affected FNB customers represented approximately 21.3 per cent of customers holding exempt accounts.

[12] In late 2018, a product review process identified that incorrect FNB fees had been charged on some accounts and that the application of the fee exemptions was a manual process without any reports being done to say whether the discount had been applied correctly. Then in August 2019, ASB identified that there was no exception reporting or other monitoring in place to ensure that the FNB exemptions were properly applied.

[13] Following identification of the issue in August 2019, various steps were taken, but the issue was variously identified as “low” risk, part of an action item to carry out a “deep dive into current pricing...[and] improve or automate manual discounting/waiver process”. That was delayed during the COVID-19 disruptions and then deferred to be addressed in August and September 2020.

[14] In November 2020, separate to the above process, an ASB staff member carried out an analysis of digital complaints. That identified a problem that some of the sample accounts reviewed were not properly receiving the FNB exemptions. The issue was ultimately escalated to senior management in December 2020.

[15] ASB then took the following steps:

- (a) establishment of a steering group in or around 20 April 2021;
- (b) escalation to ASB’s Board on 6 May 2021;
- (c) forming a remediating team in June 2021;
- (d) commencing the identify and initiate phases of remediation between mid-June 2021 and mid-July 2021;

- (e) commencing an analyse phase 1 in late July 2021;
- (f) manually applying the fee exemption to all affected Education Administration accounts in August 2021;
- (g) introducing an automated process to apply the fee exemption to all affected Society and Business Focus accounts between September 2021 and November 2021;
- (h) commencing remediation phase 1 between late November 2021 and mid-December 2021; and
- (i) reporting the issue to the FMA on 3 December 2021.

[16] ASB has remediated all customers, including by paying use of money interest.

[17] ASB has also implemented changes to ensure that the FNB discounts and exemptions are now applied correctly, including implementing an automated monthly report to identify errors, introducing control processes to prevent future errors and/or refund overcharges, implementing a robotic detection procedure, and undertaking preventative manual spot checks on newly registered customers.

MPD issue

[18] Since approximately 10 December 2003, ASB marketed and facilitated the provision of insurance products on behalf of and as agent of IAG. IAG's insurance products sold by ASB are ASB-branded. ASB was responsible for managing the customer relationship, collating and entering customer information, and creating an application for insurance that was submitted to IAG. ASB did that via its own ONYX software platform, which in turn accessed ONYX GI (the system owned and managed by IAG for the management and placing of insurance policies).

[19] From February 2009, certain customers were offered an MPD on the premium payable on policies. While the specific terms have varied over time, customers were generally eligible for a discount if they held more than one personal home, contents or

car policy. That discount was marketed by ASB through various channels and was applied by ASB staff who were required to determine eligibility for the discount and manually tick the “package discount” box within the ONYX GI system. In some cases, they failed to do so.

[20] Between February 2009 and May 2022, some customers that were entitled to the MPD did not receive it (Affected Invoices were issued to Affected MPD Customers, as those terms are defined in the statement of claim). Those errors arose from ASB staff errors in the largely manual process, and the absence of any process to identify whether the MPD was being correctly applied.

[21] Policies for non-car personal motor vehicles (i.e. motorbikes, caravans, boats and trailers) were not qualifying policies and, therefore, were not eligible for the MPD. Despite that, ASB staff told some customers that policies taken out on caravans and trailers were eligible for the MPD (the caravan and trailer representations) when that was not in fact the case and the ONYX GI system did not allow the MPD to be applied to trailer or caravan policies, even if a package discount box had been ticked by the relevant ASB staff member. That tick box had been checked on 89 per cent of caravan and trailer policies, which suggests that ASB staff considered those customers eligible for the discount and may have represented as much to those customers.

[22] Between 23 February 2009 and 27 May 2022, there were up to 34,768 customers affected by the MPD issue and caravan and trailer issue. Those customers were charged a total of up to around \$6 million in premiums over and above what they ought to have been charged and/or what they would have been charged had they received the benefit of the MPD on the caravan and trailer policies. As a subset of that, after April 2014 (when the pt 2 provisions took effect), there were up to 23,602 potentially affected customers who paid up to \$2.8 million over and above what they would have paid had they been charged the correct premium/received the benefit of the MPD in accordance with the caravan and trailer representations. Because the extent of the representations on the caravan and trailer issue is unknown, the value of the premiums involved with that issue cannot be determined with any certainty.

[23] As referred to in more detail below, issues with the application of the MPD were known to some staff from as early as 2013, but the issue was not escalated to ASB senior management until late 2020 and an investigation was not commenced until June 2021.

[24] ASB and IAG have remediated all customers affected by the MPD issues, including all customers who purchased a trailer and/or caravan policy in addition to other qualifying policies during the relevant period.

Relevant legal principles

[25] The FMCA was enacted in 2013 with its main purposes to:¹

- (a) promote the confident and informed participation of businesses, investors, and consumers in the financial markets; and
- (b) promote and facilitate the development of fair, efficient, and transparent financial markets.

[26] Part 2 of the FMCA came into force on 1 April 2014 and introduced a range of “fair dealing” provisions similar to the unfair conduct provisions in pt 1 of the Fair Trading Act 1986 (FTA). The FMCA’s fair dealing provisions, including s 22, recognise that those being offered financial products and financial services require special protection.

[27] Section 22 of the FMCA prohibits false and misleading representations in connection with financial products and financial services. It provides as follows:

22 False or misleading representations

A person must not, in trade, in connection with any dealing in financial products, the supply or possible supply of financial services, or the promotion by any means of the supply or use of financial services, make a false or misleading representation—

¹ Financial Markets Conduct Act 2013, s 3.

- (a) that the products or services are of a particular kind, standard, quality, grade, quantity, composition, or value, or have had a particular history; or
- (b) that the products or services are offered, issued, transferred, or supplied by a particular person, by a person of a particular trade, qualification, or skill, or by a person who has other particular characteristics; or
- (c) that a particular person has agreed to acquire the products or services; or
- (d) that the products or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses, or benefits; or
- (e) that a person has any sponsorship, approval, endorsement, or affiliation; or
- (f) with respect to the price of the products or services; or
- (g) concerning the need for the products or services; or
- (h) concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy, including (to avoid doubt) in relation to any guarantee, right, or remedy available under the Consumer Guarantees Act 1993; or
- (i) concerning the place of origin of the products or services.

[28] For a breach of any civil liability provision (defined in s 485(a) as including the fair dealing provisions in pt 2), the FMA may apply for a pecuniary penalty order under s 489(1) of the FMCA. When the FMA makes such an application, the Court:²

- (a) must determine whether the person has contravened, or been involved in a contravention of, a civil liability provision;
- (b) must make a declaration of contravention if it is satisfied that the person has contravened, or been involved in a contravention of, a civil liability provision; and
- (c) may order the person to pay to the Crown a pecuniary penalty that the Court considers appropriate if it is satisfied that the person has contravened, or been involved in a contravention of, a civil liability provision.

² Section 489(2).

[29] A penalty is set using a three-stage framework:³

- (a) First, the Court determines the maximum pecuniary penalty in accordance with ss 38(2) and 490 of the FMCA.
- (b) Second, the Court sets a starting point, having regard to the relevant statutory criteria that are provided in s 492 of the FMCA: the purposes of the Act; the nature and extent of the contravention; the loss or gain involved; compensation paid; the circumstances of the contravention; any prior similar conduct; and the relationship of the parties.
- (c) Third, the Court adjusts the starting point by applying an uplift or reduction on the basis of circumstances personal to the individual defendant, such as self-reporting, cooperation, admissions and remediation.

[30] The Court's role when asked to approve a pecuniary penalty agreed between the parties is well-settled:⁴

- (a) There is a significant public interest in such settlements bringing about the prompt and efficient resolution of penalty proceedings.
- (b) The Court must be satisfied that the proposed agreed pecuniary penalty satisfies the statutory objectives and reflects the particular circumstances of the case before it.
- (c) When assessing whether the final figure proposed is within the proper range, the Court need not accept each step of the methodology proposed — it is the final amount that matters.⁵

³ *Financial Markets Authority v ANZ Bank New Zealand Ltd* [2021] NZHC 399 at [37]; and *Financial Markets Authority v IAG New Zealand Ltd* [2025] NZHC 2908 at [67].

⁴ *Financial Markets Authority v IAG New Zealand Ltd*, above n 3, at [60]; *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd* [2022] NZHC 3610 at [47]; and *Financial Markets Authority v Kiwibank Ltd* [2023] NZHC 2856 at [18].

⁵ *Financial Markets Authority v ANZ Bank New Zealand Ltd*, above n 3, at [32]; and *Commerce Commission v Air New Zealand Ltd* [2013] NZHC 1414 at [27].

Party submissions

Maximum amount

[31] Sections 38(2) and 490(1) of the FMCA provide that the maximum amount of a pecuniary penalty for a breach of s 22 by a body corporate will be the greater of:

- (a) the consideration for the transaction that constituted the contravention (if any);
- (b) if it can be readily ascertained, three times the amount of the gain made or the loss avoided by the person who contravened the civil liability provision; or
- (c) \$5 million.

[32] The parties agree that a global maximum is \$10 million, comprising the sum of a maximum penalty of \$5 million for each cause of action.⁶

Starting point

[33] The parties jointly submit that a \$3 million starting point is appropriate, reflecting the following factors:

- (a) *Section 492(a) — purposes of the FMCA*: ASB's conduct plainly undermined recognised purposes of:
 - (i) promoting the confident and informed participation of consumers in financial markets;
 - (ii) promoting and facilitating the development of fair, efficient and transparent financial markets;

⁶ This was the approach taken in *Financial Markets Authority v AA Insurance Ltd* [2024] NZHC 2869 at [30].

- (iii) providing for accurate and understandable information to be provided to persons to assist them to make decisions about financial products or financial services; and
 - (iv) giving consumers confidence that they need not double-check the details of every transaction with their bank,⁷ because they should be able to trust the accuracy of any bank's communications and systems.⁸
- (b) *Section 492(b) — nature and extent of the contravention:* The FMA says that the nature and extent of the contravention is an aggravating feature of the conduct. The MPD issue occurred from as early as 2009, while the FNB issue occurred since at least 2011. Approximately 38,586 accounts/policy holders were affected across both issues for the full period and approximately 25,497 accounts/policy holders from 1 April 2014. The FMA says that these are reasonably fundamental systematic problems, spanning both ASB's core business (providing bank account services), as well as ancillary services (being the provision of insurance policies through IAG). ASB accepts that its contraventions concerned an extended timeframe and affected a significant number of customers, but says the issues were confined to the products involved rather than evidencing any fundamental systematic and aggravating problem. Counsel for both parties made submissions about how to compare these facts with other analogous penalty cases.
- (c) *Section 492(c) — nature and extent of any loss, damage or gains:* ASB's conduct (together with IAG) resulted in a total overcharge or loss to customers of approximately \$7.4 million overall, but the overcharge/loss for the contravention period after 1 April 2014 was \$3.94 million. ASB's gain from the FNB issue was \$1.4 million

⁷ In this case, it was difficult for the customers to do so anyway because the discounts or fees applied were identified on a global basis rather than being separately identified.

⁸ *Financial Markets Authority v ANZ Bank New Zealand Ltd*, above n 3, at [49].

overall, of which \$1.14 million relates to the period from 1 April 2014. The balance relates to the MPD issue, but gains from that would have been shared between ASB and IAG. While the exact shares are not identified, ASB contributed approximately \$2.9 million to remediation.

- (d) *Section 492(d) — whether compensation has been paid:* Full remediation has been provided in respect of both issues, including the payment of use of money interest. Customers with a caravan and trailer policy and another qualifying policy have received remediation regardless of whether or not the misrepresentations were made.
- (e) *Section 492(e) — circumstances in which the contravention occurred:* The processes whereby ASB staff applied the FNB exemption or MPD were manual and not supported by any specific quality assurance. The FMA submits that ASB’s reliance on manual processes presented a clear risk of such issues occurring, and that a bank of ASB’s size and resources ought to have had more robust systems in place to prevent and detect errors. While largely accepting those criticisms, ASB emphasises that the conduct was entirely unintentional and not pursued for financial gain.
- (f) *Section 492(f) — prior contraventions:* ASB has not previously breached the FMCA. Prior contraventions of the Fair Trading Act and a warning from the Commerce Commission in respect of responsible lending failures are treated as “neutral” factors.⁹
- (g) *Section 492(h) — relationship of the parties to the transaction:* The relevant relationship is that of banker and customer. The ability of customers to trust “the robustness of bank systems ... goes to the very heart of the legislative purpose”.¹⁰

⁹ At [86].

¹⁰ At [64].

- (h) *Deterrence*: Where contraventions of the FMCA are the result of process or system failures, the penalty must be set at a level that creates a strong incentive for financial institutions to maintain adequate systems and processes. The penalty needs to be at a level that clearly signals manual processes without adequate quality assurance and proactive problem detection and escalation is unacceptable. ASB accepts that general deterrence is relevant but emphasises the steps it has taken once the issues were properly escalated within ASB. ASB submits that its constructive and positive approach from that point demonstrates that there is no requirement for specific deterrence in this case.

[34] Both parties agree that the closest analogous case is *Kiwibank*, in which the Court adopted a starting point of \$1.25 million.¹¹ In both cases:

- (a) the issues were founded in reliance on manual processes and were not intentional;
- (b) the breaches were self-reported;
- (c) the defendant has undertaken extensive remediation programmes to ensure that the harm is remedied;
- (d) the defendant is a large trading bank, with the resources at its disposal to have invested in system improvements that would have prevented the issues from occurring; and
- (e) the defendant failed to have systems in place that allowed for the identification and management of these types of errors arising out of manual processes.

¹¹ *Financial Markets Authority v Kiwibank Ltd*, above n 4.

[35] A penalty higher than *Kiwibank* is justified because:

- (a) the harm to consumers is almost five times higher;
- (b) while ASB's financial gain cannot be readily determined, it appears to be higher;
- (c) ASB was on notice of both issues for an extended period yet failed to treat such issues as systemic.

[36] On that final aspect, the FMA emphasises the following:

- (a) The FNB issue dates to at least December 2011. The issue was identified in a product review in late 2018, and the absence of exception reporting was identified again in August 2019, but the issue was not substantively addressed until it was identified again in November 2020, following which it was raised with the ASB Board in May 2021 — approximately two and a half years later — and a further seven months passed before it was reported to the FMA.
- (b) The delay was worse with the MPD issue. In 2013, a banking consultant working in ASB's Wealth and Protection Team raised concerns about staff not taking the time to provide customers with their correct MPD entitlements. That same consultant raised the issue 61 times to his direct line manager. Those emails were forwarded to the sales teams in ASB and in IAG, but the problem was not escalated to management. Ultimately the banking consultant recorded that he was requested to reduce his reporting of the issue. Between July 2013 and June 2016, the MPD issue was considered from time to time by employees with various levels of managerial responsibility, but no steps were taken to investigate more fully or put systems in place to identify and manage errors. In March 2019, it was proposed that the issues be investigated in the wake of the "recent Australian Royal Commission on banking". Despite that, no investigation was undertaken by IAG or

ASB until June 2021, when a staff member raised the issue with ASB's Retail Risk Team. When ASB notified the FMA of the MPD issue, it initially said it was first identified in June 2021, which understated the full history.

- (c) Accordingly, FMA submits it is an aggravating factor that ASB was not only on notice of these issues for years, but nothing was done to escalate, investigate or remedy the issues in the face of repeated and regular reporting of the issue and despite the issues being discussed between various staff members at various levels of seniority. FMA submits this indicates significant and serious system failures, which should be treated as a significantly aggravating factor.

[37] ASB reiterates that the problems were confined to these two issues and do not reflect more systematic failures. Once the issues were properly escalated within ASB, it acted promptly, comprehensively and responsibly, including its voluntary notification of the FMA, its remediation of all customer losses, its overall investment in fixing the problems and improving its systems, and its proper response to the FMA's investigation. ASB acknowledges that if the MPD issues raised by a banking consultant had been escalated appropriately, the issue would have been addressed and self-reported at an earlier stage. However, it was not the case of senior management choosing to turn a blind eye to contraventions, or to delay remediation and self-reporting.

Mitigating factors

[38] ASB is entitled to discounts to reflect the timing of its admissions and the extent of its cooperation. In line with other cases, the parties are agreed that a discount of 30 per cent is appropriate, in recognition of:

- (a) its self-report on both issues, acknowledging that the MPD issue (as it relates to the invoices) was reported to the FMA reasonably promptly after the issue was escalated in June 2021;
- (b) its cooperation with the investigation;

- (c) remediation efforts; and
- (d) early admissions.

Conclusion

[39] Accordingly, both parties submit that a penalty of \$2.1 million is appropriate and within the available range, reflecting a \$3 million starting point and a 30 per cent reduction for mitigation.

Analysis

Maximum amount

[40] I accept that \$10 million is the appropriate global maximum penalty, comprising the \$5 million statutory minimum for each of the two issues:

- (a) Customers were overcharged approximately \$1.147 million in FNB fees, so \$5 million is greater than three times that gain.
- (b) With respect to the MPD issue (including the potential caravan and trailer misrepresentations), it is estimated that affected customers potentially paid a total of up to \$2 million over and above premiums that they might otherwise have. However, the gain cannot be readily ascertained nor is the consideration for the transaction readily identifiable, so the maximum penalty on the second cause of action is properly treated as \$5 million.

Starting point

[41] As reflected in the submissions, under s 492 of the FMCA the starting point must be set having regard to “all relevant matters” including the statutory criteria set out in s 492(a)–(h) and deterrence.¹² Any penalty must create a strong incentive for

¹² *Financial Markets Authority v IAG New Zealand Ltd*, above n 3, at [115], referring to *Financial Markets Authority v ANZ Bank New Zealand Ltd*, above n 3, at [45].

financial institutions to maintain adequate systems and processes, including for error prevention, detection and appropriate problem escalation.

[42] Given that s 22 of the FMCA came into force on 1 April 2014, I focus primarily on the impact of the conduct since that time, with earlier conduct relevant to assessing the degree to which the failures were systemic or should have been detected earlier. With just over 25,000 affected customers, these contraventions are significant, but that figure is still lower than many other comparator cases, and ASB's average overcharge per customer (an average of \$155 across both issues) is lower than most.¹³ Although hard to quantify, for the period after 1 April 2014, ASB's gain (before repayment) appears to have been something around or less than \$4 million,¹⁴ which is lower than most other similar cases.¹⁵ The closest comparison is *Kiwibank*, where the gain (before repayment) was \$954,224.37 and the penalty starting point was \$1.25 million. Another comparison is *Financial Markets Authority v Medical Assurance Society New Zealand Ltd*, where the gain (before repayment) was \$6.2 million and the penalty starting point was \$3 million.¹⁶ I am satisfied that the proposed starting point is reconcilable with those cases (see [34]–[35] in respect of *Kiwibank*), and with others that had higher penalties reflecting more extensive consequences and more culpable conduct.

[43] In my view, the proposed starting point fairly reflects that the problems occurred over a long period of time and they should have been picked up earlier. Reliance on manual systems prone to human error without adequate checks and balances was below the standards expected of the banking sector. Numerous opportunities were missed to identify the scale of the problems and escalate to senior management earlier. ASB bears the responsibility for that. However, the contraventions were the result of system and process failures for these products, rather than evidencing any intentional breach, wider systematic problems or wilful blindness/complacency on the part of senior management. I am satisfied that ASB acted responsibly and comprehensively once the issues were escalated to that level, so

¹³ See *Financial Markets Authority v Tower Ltd* [2025] NZHC 3771 at [39].

¹⁴ See [33(c)] above.

¹⁵ *Financial Markets Authority v Tower Ltd*, above n 13.

¹⁶ *Financial Markets Authority v Medical Assurance Society New Zealand Ltd* [2023] NZHC 3312, [2023] NZCCLR 14.

specific deterrence is not required. General deterrence is more important, to demonstrate that financial institutions must invest in and maintain adequate systems and processes designed to prevent and detect errors, and to redress problems promptly and comprehensively once identified, including escalation to appropriate levels. I consider that the starting point is set at a level that supports that purpose, and the broader purposes outlined at [33(a)] above.

Reduction for mitigating factors

[44] I accept the joint submission that a 30 per cent reduction is consistent with analogous cases,¹⁷ reflecting the mitigating factors of early admission, cooperation and full remediation of overcharges with interest.

- (a) ASB has paid remediation amounts for the FNB issue of \$1.84 million, including use of money interest.
- (b) ASB and IAG have shared the cost of remediating all affected customers for the MPD issue. In total, IAG and ASB have paid a total of \$6.6 million in compensation, including use of money interest.

Conclusion

[45] Standing back and looking at the matter overall, I find that the proposed pecuniary penalty of \$2.1 million reflects the particular circumstances of this case and satisfies the objectives of the FMCA. I am satisfied that the proposed penalty is within the appropriate range.

Result

[46] I make declarations that ASB contravened:

- (a) s 22(f) and/or s 22(h) of the FMCA by issuing the Affected Statements dated on or after 1 April 2014; and

¹⁷ *Financial Markets Authority v Tower Ltd*, above n 13, at [47].

- (b) s 22(f) and/or s 22(h) of the FMCA by issuing the Affected Invoices on or after 1 April 2014; and
- (c) s 22(d), s 22(f), and/or s 22(h) of the FMCA by making the caravan and trailer representations on or after 1 April 2014.

[47] I impose on ASB a pecuniary penalty of \$2,100,000 under s 489(2) of the FMCA.

[48] I make an order under s 493 of the FMCA that the penalty be applied first to the FMA's costs in bringing the proceedings.

O'Gorman J