IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2025-404-000817
[2025] NZHC 2908

UNDER	the Financial Markets Conduct Act 2013
BETWEEN	FINANCIAL MARKETS AUTHORITY Plaintiff
AND	IAG NEW ZEALAND LIMITED Defendant

Hearing: 23 September 2025

Appearances: J Carlyon and G Wilkins for Plaintiff
J Billington KC, J Edwards and P Bogle for Defendant

Judgment: 3 October 2025

JUDGMENT OF ANDREW J

This judgment was delivered by Justice Andrew
on 3 October 2025 at 3.00 pm
pursuant to r 11.5 of the High Court Rules 2016

Registrar / Deputy Registrar

Date: ……..

Introduction

[1] The parties seek the imposition of an agreed penalty on the defendant, IAG New Zealand Ltd (IAG), of $19,500,000 for contravening s 22(d), (f) and/or (h) of the Financial Markets Conduct Act 2013 (FMCA).

[2] IAG is New Zealand's largest insurer. It plays a key role in a number of banks' and insurance brokers' insurance offerings. By its notice of admissions, IAG has admitted making false and/or misleading representations in connection with the supply of insurance services. In particular, IAG:

(a) failed to correctly price the premiums charged to customers; and

(b) failed to correctly advise and apply important discounts that are selling points for IAG insurance products.

[3] Between September 2021 and December 2024, IAG self-reported 41 issues to the FMA in progressive tranches. The eight pleaded causes of action relate to 10 of those issues, being the issues in respect of which the Financial Markets Authority (FMA) conducted a full investigation.

[4] The FMA says that the pleaded issues represent widespread failures of IAG's systems and processes. This is said to be the most wide-ranging and extensive failures seen in any other cases that have come before the Court under pt 2 of the FMCA.

Factual background

IAG's provision of insurance products

[5] The statement of claim sets out the detail of IAG's conduct and the consequent breaches of the FMCA. This has been admitted in full by IAG.

[6] IAG is a licensed insurer in New Zealand.[1] IAG offers, administrates and underwrites a range of general insurance products in the ordinary course of its business.

[7] IAG's insurance products are either promoted and distributed directly through its business divisions, or through its distribution partners or brokers in New Zealand, generally pursuant to distribution or broker agreements. In doing so, IAG enters into contracts of insurance with its customers which typically carry the branding of the intermediaries but are underwritten by IAG.

[8] IAG's insurance policies are marketed through a range of means, including online, and through direct mail and brochures.

[9] All intermediaries used IAG-owned systems to quote and place insurance. IAG would then administer those policies, either by communicating with customers directly or providing information to intermediaries who would then communicate with customers as to the administration of their policies, including the premiums payable.

[10] Any conduct engaged in by an intermediary was on behalf of IAG and is therefore deemed also to be conduct engaged in by IAG by virtue of s 536 of the FMCA.

Pleaded issues

ASB MPD issue

[11] The first cause of action in the FMA's claim covers two sub-issues relating to a multi-policy discount offered on ASB-branded insurance policies (ASB MPD) between 2009 and 2022. Generally, to be eligible for the ASB MPD, customers had to hold more than one personal home, contents or vehicle policy with ASB. Non-car personal vehicle policies (such as caravans and trailers) were not eligible.

[12] The first sub-issue involved staff failing to apply the ASB MPD to eligible customers' policies. IAG's ONYX-GI system did not automatically apply the ASB

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1 Under s 19 of the Insurance (Prudential Supervision) Act 2010.

MPD upon a customer meeting the eligibility criteria, meaning staff had to manually apply it, and neither ASB nor IAG had any processes in place for checking whether it had been correctly applied. As a result, many eligible customers did not receive the ASB MPD and paid higher premiums than they would have otherwise.

[13] The second issue was that ASB staff mistakenly told some customers that caravan and trailer policies were eligible for the ASB MPD (C&T representations). Even if staff tried to manually apply it to such policies, ONYX-GI prevented it from taking effect. As a result, some customers who had been told they would receive the ASB MPD did not.

[14] In the period from 1 April 2014, a total of up to 24,208 customers were affected across these two sub-issues. These customers were overcharged approximately $3.9 million in premiums as a result.

[15] Various managers at ASB and IAG discussed the issue between July 2013 and June 2016. A banking consultant at ASB identified more than 30 instances of the misapplication of the discount and arranged for IAG to backdate the ASB MPD in several cases. ASB asked in 2015 whether IAG would consider speaking to ASB staff about the correct application of the discount, but there was no response.

[16] In 2016, it was agreed that the issue should be kept contained until more was known. It was not until 2021 that a formal investigation took place and the issue was reported to the FMA.

No claims bonus issue

[17] The second cause of action covers three sub-issues relating to a no claims bonus (NCB) offered on certain IAG policies between 2007 and 2023. Eligibility for the NCB depended on the customer's NCB "grade", which would be impacted where a customer made a NCB-impacting claim.

[18] The first sub-issue involved staff wrongly penalising the NCB grade for some eligible customers and failing to reinstate it. As with the ASB MPD issue, this primarily arose from reliance on manual processes and a lack of systems/processes in

place to identify whether the NCB was being applied correctly. As a result, customers were charged higher premiums than if they had received the benefit of the NCB they were entitled to.

[19] The second sub-issue related to the loss of an associated benefit, "FreeBmax", where a customer's NCB grade was wrongly penalised. As a result, customers wrongly lost the ability to make two NCB-impacting claims per year without their NCB grade being affected (as well as having to pay higher premiums due to the loss of the NCB).

[20] The third sub-issue involved a systems error on IAG's Guidewire system, whereby manual changes made to a customer's NCB grade in one field did not automatically update the NCB in another field that was used to calculate the actual premiums charged. As a result, the premiums that appeared on the quotes and invoices issued to these customers were incorrect and did not match the actual premiums that were deducted from customers' accounts (which were correct, but at times exceeded the amounts quoted or invoiced, resulting in overcharges).

[21] From 1 April 2014, a total of 30,262 customers were overcharged $9.7 million across these three sub-issues.

[22] The first sub-issue was known to IAG from at least 2017, due to a customer complaint. In August 2020, IAG received a notification of complaint from the Insurance & Financial Services Ombudsman Scheme regarding a customer who had lodged a claim in 2019 and not yet had his NCB reinstated. Even then, it was not until May 2021 that the issue was formally escalated, and December 2021 that it was reported to the FMA.

[23] The second sub-issue was identified in February 2022, while the third was identified in July 2021. Both were reported to the FMA in April 2022.

WOOD issue

[24] The third cause of action relates to a Westpac owner-occupied discount (WOOD) offered on certain Westpac policies from at least 2011. Eligibility arose

where a Westpac customer holding a home policy for their owner-occupier home took out a motor vehicle, contents or boat policy.

[25] Due to a combination of systems/algorithm deficiencies and human error – including failures of both the system and staff to enquire as to any existing policies held by the customer – some eligible customers did not receive the WOOD.

[26] As a result, from 1 April 2014, a total of 19,534 customers were overcharged $2.6 million in premiums.

[27] IAG was on notice of the WOOD issue from at least September 2017 due to a customer complaint. However, it did not formally identify the issue until it conducted a review of its pricing practices in 2019. The issue was incorporated into IAG's remediation project in 2020, reported to Westpac in September 2021 and to the FMA in December 2021.

Minimum premium issue

[28] The fourth cause of action relates to the minimum premium which was applied to a number of IAG-underwritten policies by IAG's pricing algorithms.

[29] IAG failed to specifically advise customers that their policies were subject to a minimum premium. Accordingly, such customers were under the impression from advertising material that they would be entitled to unencumbered discounts on their premiums. In actual fact, IAG's algorithms prevented the full discount, or in some cases any discount, from being applied due to the operation of the minimum premium.

[30] Accordingly, some customers did not receive discounts in accordance with IAG's representations in the advertising material. This issue affected 75,321 customers from 1 April 2014, who were overcharged $5.95 million in premiums.

[31] The issue was known to IAG from as early as 2012, when AMI raised concerns about potential misleading conduct. In both 2014 and 2016, IAG considered various business improvements, such as adding a disclaimer to customers' statements about the minimum premium, but agreed with ASB that this would be "overkill".

[32] The issue was not logged as a risk until December 2019, when Westpac raised "a concern we are being misleading". Even then, it was not incorporated into IAG's Pricing Remediation Project until October 2020, reported to IAG's Board until May 2021, or to the FMA until December 2021.

BNZ and Co-Op Multi Policy Discount issues

[33] The fifth cause of action covers two sub-issues relating to a multi-policy discount offered on BNZ and Co-Op policies (BNZ/Co-Op MPD), where a customer holds a contents policy and at least one other home or motor policy from the same brand.

[34] The first sub-issue involved a failure between 2012 and 2023 to apply the BNZ/Co-Op MPD to eligible customers – including due to reliance on a manual process, a lack of clarity among staff as to eligibility, and a systems issue in IAG's Datarich system where policies were under separate policy numbers.

[35] The second sub-issue related to the advertising material on Co-Op's website, which failed at various times between 2012 and 2022 to clearly specify the eligibility criteria.

[36] As a result of these issues, some customers did not receive the benefit of the BNZ/Co-Op MPD that they were entitled to or that IAG (via Co-Op) represented they were entitled to.

[37] From 1 April 2014, a total of 22,676 customers were affected across these sub-issues. These customers were overcharged $3.6 million in premiums.

[38] IAG was aware of the misapplication of the BNZ/Co-Op MPD at a senior management level from at least September 2018. The issue was discussed between various managers in early 2020 but it was agreed that nothing should be done about it at that time. One of those managers later acknowledged this was a mistake and escalated the issue in September 2021.

[39] In the intervening period, the sub-issue pertaining to Co-Op's website was identified (in June 2020). IAG formally notified BNZ and Co-Op of both sub-issues in December 2021, and the FMA in March 2022.

Multi-dwelling issue

[40] The sixth cause of action relates to the levies and premiums payable under AMI and ASB home policies, which are determined according to the number of "dwellings" insured.

[41] From at least 2013, some customers did not have the correct number of dwellings insured – including because staff had to manually enter the number on IAG's systems and because of other flaws within those systems, such as the ability to insure more dwellings than the number of dwellings in the building.

[42] As a result, IAG overcharged 271 customers $292,651.19 in levies and $35,193.59 in premiums from 1 April 2014.

[43] IAG first identified the multi-dwelling issue in October 2016, but deemed the risk acceptable. Further affected policies were identified in November 2019 and refunds approved, but no further steps were taken to address the issue at that time. It was not until July 2021 that the issue was escalated, further policies having been identified, and October 2022 that the first systems changes were implemented. IAG reported the issue to the FMA in April 2022.

Non-optional extension issue

[44] The seventh cause of action relates to a non-optional extension added to BNZ and Co-Op Home policies.

[45] The cost of the non-optional extension was intended to form part of the base premium, to which any discounts apply. However, IAG's pricing algorithm wrongly treated it as cost on top of the base premium (i.e. as an optional extension) to which discounts did not apply. As a result, some customers who were entitled to discounts

on the base premium did not receive the benefit of the discounts on the non-optional extension.

[46] This issue affected 95,843 customers from 1 April 2014, who were overcharged $10.6 million as a result.

[47] IAG identified the issue in November 2021 when checking the terms of a pricing disclaimer against the pricing algorithm. It notified BNZ in March 2022 and reported the issue to the FMA in April 2022.

High-value and Tesla vehicle multi-policy discount issue

[48] The eighth cause of action covers two sub-issues relating to specialist insurance policies for high value and Tesla motor vehicles (HVT Policies). These policies were subject to unique rules, and the premiums payable under such policies were set according to off-system bespoke calculators (HVT Calculators).

[49] The first sub-issue relates to marketing material which represented that customers would be eligible for a multi-policy discount where they took out more than one policy, without specifying that HVT Policies were not eligible and/or were subject to different eligibility criteria. Accordingly, some customers holding a HVT Policy together with another policy did not receive the benefit of the discount in accordance with IAG's representations.

[50] The second sub-issue relates to IAG's failure to update the rates on the HVT Calculators since 2017. This meant the rates used were incorrect and some customers were charged a higher premium than the system premium (i.e. than if the HVT Calculators had not been used).

[51] Between October 2015 and August 2023, a total of 639 customers were overcharged $438,000 across these two sub-issues.

[52] An IAG account executive raised the first sub-issue in December 2019, but was told by the Consumer Underwriting Team that there was no potential fair dealing issue. In December 2020, the issue was first logged as a risk, following a complaint

from ASB in September of that year. However, the investigation process took a further 18 months, with IAG notifying intermediaries and the FMA in August 2022.

Further issues

[53] During the course of its investigation IAG notified the FMA of a further 31 potential fair-dealing issues. These have been outlined in the statement of claim and further particularised in sch 2 of the claim. Although the further issues have not been the subject of a full investigation by the FMA, it has made enquiries and been provided with information from IAG as to the nature and extent of those issues, as well as details of the interim fixes implemented for the largest of the issues.

[54] In April 2025, the FMA and IAG entered into a settlement agreement in respect of both the pleaded and further issues. Under the terms of that agreement, the FMA is precluded from commencing or continuing any (other) proceedings against IAG in respect of any of those issues, with the exception of three of the further issues.

[55] The parties are agreed that although the further issues do not form part of the pleaded causes of action (and therefore the notice of admissions), they do provide context to IAG's conduct and the penalty agreed between the parties reflects this.

[56] The further issues are similar in nature to the pleaded issues, involving the overcharging of premiums due to reliance on manual data entry and flawed systems, and inconsistencies between how discounts/benefits are advertised and how they are applied.

[57] By way of example, the three largest further issues in terms of remediation were:

(a) Issue 32: the Westpac Specified Items Issue ($2 million), whereby IAG's systems did not prevent customers from specifying item cover when it was not required because the item was already covered by their Contents policy. As a result, those customers paid higher premiums than was necessary.

(b) Issue 35: the Westpac 50+ Age Discount Issue ($3.5 million), whereby historic versions of the Westpac website offered age-related discounts which may have led customers to believe they were eligible for a discount on their home and contents policies which was not applied.

(c) Issue 36: the BNZ Website General Insurance Discount Issue ($2.4 million), whereby a typographical error ("or" instead of "and") was identified on the BNZ website on Home and Contents insurance webpages which, between January 2021 and August 2022, resulted in the burglar alarm discount and the annual premium discounts being described as 10 per cent each, rather than in the aggregate.

[58] Overall, the further issues:

(a) affected at least 292,961 customers;

(b) involve known remediation amounts that:

(i) range from $1,383 to $3.5 million; and

(i) total an estimated $21 million (including GST and use of money interest and including overcharging which occurred prior to 1 April 2014).

The Court's approach to recommended penalties

[59] The parties jointly seek the imposition of a pecuniary penalty of $19,500,000. In doing so, they acknowledge that the amount of a pecuniary penalty is ultimately a matter for the Court.

[60] The Court's role when asked to approve a pecuniary penalty agreed between the parties is well-settled.[2] While there is significant public interest in bringing about the prompt and efficient resolution of penalty proceedings, the Court must be satisfied

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2 *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd* [2022] NZHC 3610 [*Cigna*] at [47].

that the proposed penalty satisfies the objectives of the FMCA and reflects the particular circumstances of the case.[3]

[61] The Court need not embark on its own enquiry of what would be an appropriate figure nor accept each step of the methodology proposed, so long as it is satisfied that the proposed penalty is within the appropriate range.[4]

The approach to fixing pecuniary penalties under the FMCA

Background to the FMCA

[62] The FMA was established in 2011[5] in response to the global financial crisis as part of an effort to improve regulation of, and rebuild public confidence in, financial markets and financial products.

[63] The FMCA was enacted shortly after and was intended to consolidate and reform the law relating to dealings in financial markets, as well as protect the interests of those who deal in such markets. Its main purposes are to:[6]

(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.

[64] Part 2 of the FMCA came into force on 1 April 2014 and introduced a range of "fair dealing" provisions – many of which are modelled on the unfair conduct provisions in pt 1 of the Fair Trading Act 1986. The FMCA's fair dealing provisions, including s 22, recognise that those being offered financial products and financial services require special protection.

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3 *Financial Markets Authority v ANZ Bank New Zealand Ltd* [2021] NZHC 399 [*ANZ*] at [30], citing *Commerce Commission v Alstom Holdings SA* [2009] NZCCLR 22 (HC) at [18].

4 *ANZ*, above n 3, at [32] citing *Commerce Commission v Air New Zealand Ltd* [2013] NZHC 1414 at [27].

5 By s 6 of the Financial Markets Authority Act 2011.

6 Financial Markets Conduct Act 2013, s 3.

Approach to fixing pecuniary penalties

[65] Section 489 of the FMCA provides that the FMA may apply for a pecuniary penalty order where a person has breached a civil liability provision, such as s 22. If satisfied that a contravention has occurred, the Court must make a declaration of breach and may, if appropriate, make a pecuniary penalty order.[7]

[66] In *Financial Markets Authority v ANZ Bank New Zealand Ltd*, the first pecuniary penalty case under the FMCA, the Court declined to "lay down a broad framework for the purpose of future cases" but nonetheless provided useful guidance on the appropriate approach to setting such penalties.[8] In particular, it confirmed that the general approach to setting penalties under the Securities Markets Act 1988 continues to apply, as do the principles applicable to setting penalties under the Commerce Act 1986.[9]

[67] Accordingly, the Court adopted a three-stage framework:[10]

(a) first, the Court must determine the maximum pecuniary penalty in accordance with ss 38(2) and 490 of the FMCA;

(b) secondly, the Court must set a starting point, having regard to the relevant statutory criteria set out in s 492 of the FMCA; and

(c) finally, the Court must adjust the starting point by applying an uplift or discount on the basis of circumstances personal to the defendant.

Step 1: The maximum penalty

[68] 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 greatest of:[11]

(a) the consideration for the relevant transaction;

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7 Financial Markets Conduct Act 2013, s 489(2).
8 *Financial Markets Authority v ANZ Bank New Zealand Ltd*, above n 3, at [36].
9 *Financial Markets Authority v ANZ Bank New Zealand Ltd*, above n 3, at [37].
10 *Financial Markets Authority v ANZ Bank New Zealand Ltd*, above n 3, at [37].
11 *Financial Markets Authority v ANZ Bank New Zealand Ltd*, above n 3, at [40].

(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.

Step 2: The starting point

[69] Pursuant to s 492 of the FMCA, the starting point must be set having regard to "all relevant matters", including, but not limited to, the statutory criteria set out in s 492(a)–(h).

[70] In the context of pecuniary penalties, the Court in *Financial Markets Authority v ANZ Bank New Zealand Ltd* stated that "deterrence will always be a relevant consideration", perhaps even "the overriding objective".[12]

[71] Further relevant considerations identified by the Court in such cases include the defendant's knowledge of the breaches and the circumstances of the self-report,[13] and the defendant's size and resources.[14]

Maximum penalty in this case (i.e. step 1)

[72] I agree and adopt the submission of the FMA that the appropriate approach here is to set a global maximum, comprised of the maximum penalties in respect of each of the pleaded issues/causes of action. That was the approach adopted by O'Gorman J in *Financial Markets Authority v AA Insurance Ltd*.[15]

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12 At [45], citing *Department of Internal Affairs v Ping An Finance (Group) New Zealand Co Ltd* [2017] NZHC 2363; [2018] 2 NZLR 552 at [92].

13 See for example *Financial Markets Authority v ANZ Bank New Zealand Ltd*, above n 3, at [66]–[69]; and *Financial Markets Authority v AIA New Zealand Ltd* [2022] NZHC 2444 [*AIA*] at [92]–[97].

14 *Financial Markets Authority v Medical Assurance Society New Zealand Ltd* [2023] NZHC 3312 [*MASNZ*] at [32(i)].

15 *Financial Markets Authority v AA Insurance Ltd* [2024] NZHC 2869 [*AAI*] at [30].

[73] Three of the pleaded issues allege more than one breach. Although the breaches are founded on separate facts and therefore not captured by s 506 (which prevents more than one pecuniary penalty for the same conduct), the FMA has treated each pleaded issue as a single breach for the purposes of the maximum penalty.[16]

[74] The FMA's approximate calculation of the maximum penalty for each pleaded issue, on the information that is available to it, is indicated in green below:

Issue	Consideration	Three times gain	$5 million
ASB MPD		$6,733,432.08	$5 million
NCB		$27,487,673.25	$5 million
WOOD	$30,044,797.96	$7,205,734.83	$5 million
Min Prem		$16,507,321.74	$5 million
BNZ/Co-op MPD	$9,776,330.09 for Co-Op alone	$9,338,807.37	$5 million
Multi-Dwelling		$105,580.77	$5 million
Non-Optional Extension		$25,900,961.22	$5 million
High Value/Tesla MPD		$1,207,872.33	$5 million

[75] The above chart demonstrates that the maximum penalty would exceed $5 million for all but two of the issues. The consideration for each transaction is apparently not known for every issue, but the FMA says it is likely to be significant given that it represents the total premiums charged in relation to the affected policies. On the information that is available, however, the aggregate maximum penalty is at least $126 million. That is calculated by adding up the sums highlighted in green above.

[16] IAG has admitted to breaching s 22(d), (f) and/or (h) of the FMCA by, in the period on or after 1 April 2014: issuing the affected ASB MPD invoices; making the C&T representations; issuing the affected NCB and Westpac Guidewire invoices; issuing the affected WOOD invoices; making the discount representations; issuing the affected BNZ/Co-Op MPD invoices; making the Co-op MPD representations; issuing the affected multi-dwelling invoices; issuing the affected non-optional extension invoices; issuing the affected HVT invoices; and making the HVT MPD representations.

The starting point in this case (i.e. step 2)

[76] Before fixing a starting point, I address each of the relevant statutory considerations under s 492.

Section 492(a): Purposes of the FMCA

[77] Section 492(a) requires the purposes of the FMCA – set out in ss 3 and 4 – to be taken into account in determining the appropriate penalty. The following purposes are of particular relevance here:

(a) promoting the confident and informed participation of consumers in financial markets;

(b) promoting and facilitating the development of fair, efficient and transparent financial markets; and

(c) providing for accurate and understandable information to be provided to persons to assist them to make decisions about financial products or financial services.

[78] IAG's conduct undermined all these statutory purposes and, in my view, more so than in any previous New Zealand cases involving breaches of s 22. It is the sheer scale of the wrongdoing here and IAG's position as market leader that distinguishes this case from others. IAG insures almost one out of two households and businesses in New Zealand.

[79] IAG's dominance in the general insurance market (its intermediary, AIA, is New Zealand's largest life insurer) increases the risk of damage to the integrity and reputation of that market.

[80] I find that the undermining of the statutory purposes aggravates IAG's conduct to a greater extent than in any other New Zealand case to date.

Section 492(b): Nature and extent of the contraventions

[81] I find the nature and extent of IAG's contraventions to be the most aggravating feature of its conduct. It is a feature which sets it well apart from any other market participants that have come before a New Zealand court in this context.

[82] In this case, IAG's conduct constitutes widespread systems and process failures. The nature and extent of the contraventions provides a compelling reason for the imposition of a significantly higher penalty than in any other previous New Zealand case.

[83] It is not in dispute that I can have regard to the further issues, by way of context, in assessing the nature and extent of IAG's conduct and determining whether the agreed penalty is within the appropriate range.

[84] IAG's failures across these further issues are of a broadly similar nature, arising from reliance on inadequate systems, including manual processes prone to error, coupled with a lack of specific quality assurance. I accept that IAG's conduct was not intentional or deliberate. However, IAG displayed a level of carelessness and there is evidence that some of the issues persisted for close to a decade.

[85] I also note that the impact of IAG's conduct on its customers was extensive, affecting at least 250,000 customers on the pleaded issues, with further customers affected by the further issues.

Section 492(c): Nature and extent of any loss, damage or gain

[86] The aggregate effect of the pleaded issues is that IAG's customers were overcharged approximately $35 million in premiums and levies after the date pt 2 of the FMCA took effect. Of this, $31 million represented IAG's net gain after commissions and profit shares paid to intermediaries.

[87] On the evidence before me, the total known remediation amount for the further issues was $21 million.

[88] On the pleaded issues alone, IAG's gain on the pleaded issues ($31 million) takes this case well beyond the realm of any similar case to date.[17] I accept that IAG has fully remediated its customers and excised the gain. That is, of course, commendable. However, as the FMA submitted, that does not detract from the fact that the harm occurred. In this regard, I note the compensation and harm are two distinct considerations under s 492. It should also be noted that harm cannot be readily quantified. It does not, for example, account for the opportunity cost where a customer was induced by IAG's representations to take out more than one policy on the understanding that they would receive a multi-policy discount (when they may have taken their business or spent their money elsewhere).

[89] In the circumstances, I find that the extent of the loss/gain factor here should be treated as an aggravating feature of IAG's conduct.

Section 492(d): Compensation

[90] The remediation processes carried out by IAG to compensate customers has been comprehensive. The FMA "readily acknowledges" as much. All of the pleaded issues, and all but four of the further issues required remediation. They were incorporated into IAG's Customer Refund and Remediation Programme (CRRP).

[91] I also note that IAG provided the FMA with regular updates as to the progress under the CRRP.

[92] Furthermore, IAG engaged Deloitte to carry out an independent assessment of its remediation processes in August/September 2024. This found that IAG's processes were appropriate to prevent reoccurrence and deliver suitable compensation to impacted customers. It did, however, identify some residual risks of errors occurring.

[93] In March 2025, IAG advised the FMA that the complexity and scale had greatly reduced since Deloitte's report with only six remediation issues remaining open by the

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[17] It is more than double that of $13.5 million in *Cigna* (above n 2); and three to five times higher than the next highest overcharges of: $11.12 million in *AAI* (above n 15), $9.9 million in *Vero* (*Financial Markets Authority v Vero Insurance New Zealand Ltd* [2023] NZHC 2837 [*Vero*]), and $6.6 million in *MASNZ* (above n 14).

end of April 2025. It also advised that further progress had been made such that there was reduced reliance on manual controls and processes.

Section 492(e): Circumstances in which the contraventions took place

[94] IAG's contraventions involved a combination of human and systems errors. The failures were widespread across its many systems which its intermediaries used and relied on in quoting and placing insurance.

[95] IAG's systems tended to be set up in a way that relied on manual data entry and lacked specific quality assurance, thereby creating a large margin for error. IAG should have been alive to the fact that reliance on manual processes would lead to errors, including inconsistencies in how discounts were applied.

[96] This Court held in *Financial Markets Authority v ANZ Bank New Zealand Ltd* that it was "essentially unarguable" that a bank of ANZ's size and resources ought to have had more robust systems in place in order to prevent the issues from occurring and/or detect them at an earlier stage.[18] That comment is equally applicable here. IAG is New Zealand's largest insurer, forming part of the Insurance Australia Group, which had a net profit of AUD 1,359 million in the financial year 2025.

[97] IAG has responsibly acknowledged that its conduct was careless and accepts that it should have done better. I accept that it has not engaged in any knowingly or deliberately misleading conduct and nor has there ever been any such allegation.

[98] I acknowledge too that the errors giving rise to IAG's contraventions and resulting in overcharging of around $35 million in premiums also resulted in some of IAG's customers being undercharged around $27.2 million as a result of the same systems and process errors. As Mr Billington KC submitted, these undercharges demonstrate the inadvertence of IAG's contraventions. I note that IAG has not sought to recover any undercharges.

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18 *Financial Markets Authority v ANZ Bank New Zealand Ltd*, above n 3, at [59].

[99] I acknowledge too that IAG has grown substantially by acquisition and has inherited systems used by a number of businesses. This has meant that, in the relevant period, IAG used a wide variety of different systems and platforms across its various brands and insurance products. This has given rise to compatibility issues with different systems and consequent reliance on manual processes. However, these factors are all by way of explanation rather than a lawful excuse for the contraventions.

[100] I also record IAG's acknowledgement that its historical conduct in the period in question fell below its own standards. I note it has previously apologised publicly and to affected customers. It has done so again in its written submissions.

Section 492(f): No similar contravening conduct

[101] IAG has not previously breached the FMCA.

[102] I treat the prior history (in this case, none) as a neutral factor rather than one which aggravates the present offending.[19]

Section 492(h): relationship of the parties to the transaction

[103] The relevant relationship here is that of insurer and customer. As this Court held in *Financial Markets Authority v AIA New Zealand Ltd*:[20]

> … an insurer's customers are entitled to trust that the insurer will: accurately calculate and communicate above cover and premiums; fix any errors promptly; and stop collecting premiums when policies terminate. … its customers should be able to rely on the robustness of their insurer's systems.

[104] Equally here, customers taking out IAG-underwritten insurance were entitled to trust and rely on the accuracy of their invoices; on the fact that IAG would only charge them premiums when it was contractually entitled to do so; and on the accuracy of representations made to them regarding the discounts available on their policies (these were often key selling points). Equally, customers were entitled to trust that any errors would be promptly identified and rectified.

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19 At [86].
20 *AIA*, above n 13, at [85].

[105] This is particularly the case given IAG's size, resources, experience and position as market leader. All of these factors should have given customers a high degree of assurance in the robustness of IAG's systems and that such basic errors would not occur.

[106] I find that this factor, namely the relationship of the parties, is an aggravating feature of this case. IAG's failings significantly undermined the relationship of trust and reliability between insurer and customer.

Knowledge of the breaches and the circumstances of any self-report

[107] IAG failed to respond to and report many of the issues in a timely manner. As the FMA submitted, this suggests a troubling compliance culture and a distinct lack of quality assurance processes.

[108] An example is the minimum premium issue, for which IAG was on notice for approximately nine years before it was reported to the FMA. At various points between 2012 and 2021, IAG considered but failed to implement measures that would go some way towards addressing this issue.

[109] A further example is the ASB MPD issue. Various managers at ASB and IAG were aware of the issue from at least 2013, but it was not until a staff member was observed misapplying the ASB MPD in June 2021 that a formal investigation was undertaken.

[110] I also note that when IAG participated in the FMA's industry-wide review in 2019, it did not report any systemic conduct or culture issues. The identification of some 41 issues shortly thereafter – many of which date back several years – underscores that IAG's systems were so lacking that it did not even identify the possibility of such issues when it specifically commented to the regulator on its compliance.

[111] I agree with the submission of the FMA that IAG's knowledge of the breaches and the delay in reporting them to the FMA, particularly following the culture and conduct review, is an aggravating factor.

IAG's size and resources

[112] I agree and adopt the findings of this Court in *Financial Markets Authority v Medical Assurance Society New Zealand Ltd* that:[21]

> To achieve deterrent aims, the starting point must be of an appropriate size and scale in relation to the particular defendant on which the penalty is being imposed.

[113] As noted above, IAG is New Zealand's largest general insurer, insuring around one in two New Zealand households. In the financial year ended 30 June 2025, it reported an insurance profit of AUD 606 million after tax. IAG also insures over NZD 1.07 trillion in assets.

[114] It is clear that a higher penalty than would be imposed on a smaller market participant is necessary here in order to meet the objectives of deterrence.

Deterrence

[115] In the context of pecuniary penalties, deterrence is always a very important and relevant consideration.[22] Any penalty must create a strong incentive for financial institutions to maintain adequate systems and processes.

[116] As Muir J observed in *Financial Markets Authority v ANZ Bank New Zealand Ltd*,[23] deterrence may be specific to the defendant or more general, in the sense of incentivising financial institutions and particularly "large and well-resourced ones" to maintain adequate processes and systems.

[117] The parties agree (and I concur) that the specific deterrence is not a particularly illuminating feature of the penalty assessment here. There was no question that IAG has taken (and is taking) extensive measures to rectify the harm and ensure future compliance.

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21 *MASNZ*, above n 14, at [32(i)].
22 *Financial Markets Authority v ANZ Bank New Zealand Ltd*, above n 3, at [45].
23 *Financial Markets Authority v ANZ Bank New Zealand Ltd*, above n 3, at [45].

[118] The need for general deterrence, on the other hand, is readily apparent and, in my view, a critical factor here. As New Zealand's largest general insurer and a central force in a large web of insurance brands, bank partners and brokers, IAG has a vital role to play in setting and upholding market standards. I find that a penalty must be set at a level that sends a clear message to the financial market – and particularly similarly large and well-resourced institutions – as to the importance of investing in robust systems and making good on the promises made to customers.

[119] I agree with the submission of the FMA that deterrence can be met here by a starting point broadly on par with IAG's net gain of $31 million on the pleaded issues. That is because a penalty at this level is likely to carry significant deterrent weight in and of itself. General deterrence is likely to be achieved by a penalty commensurate with the scale of IAG's offending and net gain.

The starting point in this case

[120] The parties jointly suggest that a starting point of $30 million is appropriate.

[121] This would represent the highest individual starting point adopted to date for any breach of s 22 of the FMCA. It compares with the following cases:

(a) $9.5 million in *Financial Markets Authority v AA Insurance Ltd*[24] in respect of four systems-related issues, which led to the failure to apply discounts in accordance with policy wording and/or advertising, affecting 220,565 customers and involving $11.12 million in overcharges.

(b) $6 million in *Financial Markets Authority v Vero Insurance New Zealand Ltd*[25] in respect of one system-related issue leading to failure to apply a multi-policy discount to some eligible customers, affecting 42,256 customs and involving $9.9 million in overcharges.

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24 *AAI*, above n 15.
25 *Vero*, above n 17.

(c) $5.5 million in *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd*[26] in respect of one overarching issue involving decisions made by senior management to apply indexation to insurance policies at rates inconsistent with the underlying policy wording, affecting 52,363 policies and involving $13.5 million in overcharges.

(d) $3 million in *Financial Markets Authority v Medical Assurance Society New Zealand Ltd*[27] in respect of four system-related issues (misapplication of the multi-policy discount, incorrect inflation adjustments, calculation of benefit payments and misapplication of the no claims bonus), affecting 16,470 customers and $6.6 million in overcharges.

(e) $1 million in *Financial Markets Authority v AIA New Zealand Ltd*[28] in respect of three systems-related issues (collecting premiums after benefits had terminated, miscalculation of indexation increases, and failure to apply communicated benefits), directly affecting 383 customers and indirectly at least 2,800 more, and involving overcharges of $413,000.

[122] At a broad level, this case has similarities to all of the above. In each case:

(a) aside from *Cigna*, the contraventions arose from reliance on inadequate systems, including manual processes prone to error;

(b) the defendants had the resources at their disposal to invest in systems that would have prevented the issues from occurring;

(c) the breaches were self-reported; and

(d) the defendants have undertaken extensive remediation programmes to ensure that the harm is remedied.

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26 *Cigna*, above n 2.
27 *MASNZ*, above n 14.
28 *AIA*, above n 13.

[123] I find that the proposed starting point of $30 million is appropriate, having regard to the relevant statutory criteria, in particular the statutory purpose and the nature and extent of the contraventions and the starting points set in the above cases. It is clear that the penalty here must be significantly higher than any previous cases. That is because of:

(a) the nature extent of the contraventions – 10 self-reported issues on the pleaded issues alone. Taken together with the further issues, there has clearly been a widespread systems failure across IAG's core services (that compares to four issues in *AAI*);

(b) the highly intermediated nature of IAG's business. This meant that the impacts of its systems failures were felt more broadly by its various brands, bank partners and brokers. I note that that was not a feature of the conduct in *AAI*); and

(c) the harm to consumers of at least $31 million across the pleaded issues (this is nearly three times higher than in *AAI*).

[124] I find that a significantly higher starting point here is necessary to recognise the truly different scale on which IAG's conduct occurred. A starting point of $30 million is also consistent with the important role of deterrence; the need to ensure that any well-resourced market participant in New Zealand is not incentivised to run the risk of underinvestment.

[125] I also find that a starting point here of $30 million would be broadly consistent with the approach taken in Australia where civil pecuniary penalties are more established and have been the subject of much debate over recent years.

[126] The maximum penalty for a company under the Australian Securities and Investments Commission Act 2001 (ASIC Act) is now capped at AUD 525 million and can be determined by reference to 10 per cent of the company's annual turnover during the relevant period (where this is greater than three times the gain made/detriment avoided, or 50,000 "penalty units").

[127] Under the Australian Consumer Law Act (ACL) and the Competition and Consumer Act 2010 (CCA), the maximum penalties for a company are now the greater of:

(a) $50 million (up from $1.1 million, then $10 million);

(b) three times the value of benefits obtained or attributable to the breach (if quantifiable); or

(c) 30 per cent of the corporation's "adjusted turnover" during the "breach turnover period" (up from 10 per cent).

[128] In *ASIC v Westpac Banking Corporation (Omnibus)*,[29] pecuniary penalties totalling AUD 113 million were imposed on Westpac and its subsidiaries for breaches of the ASIC Act and Corporations Act 2001, including for misleading or deceptive conduct. The contraventions arose from system failures, the Court describing the defendants' policies and systems as "inadequate to prevent wrongdoing".[30]

[129] On one of the issues alone, Westpac was ordered to pay AUD 15.95 million for wrongly accepting over AUD 800,000 in fees over "many years", affecting "many hundreds of customers."[31]

[130] In *ASIC v AustralianSuper Pty Ltd*,[32] a penalty of AUD 27 million was imposed for failures to promptly identify and remediate customers who had multiple superannuation accounts (and therefore paid duplicate fees and premiums). The breaches, which occurred over a nine-year period, affected 90,788 customers and led to approximately AUD 69 million in losses.[33]

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29 *Australian Securities and Investments Commission (ASIC) v Westpac Banking Corporation (Omnibus)* [2022] FCA 515.

30 At [324].

31 At [333].

32 *ASIC v AustralianSuper Pty Ltd* [2025] FCA 102.

33 AustralianSuper is Australia's largest superannuation fund and has the largest market share, turning over AUD 467 million. As such, the Court held it was "inexcusable for it to not have had processes and systems in place to ensure compliance" (at [180]).

[131] In *Australian Competition and Consumer Commission (ACCC) v We Buy Houses Pty Ltd (No 2)*,[34] the total penalty of AUD 18 million was imposed for misleading or deceptive conduct under the ACL, arising from representations made to customers regarding property investment (including that they were able to buy a house for AUD 1). The conduct was systematic; the representations had been made to thousands of customers over a four-year period. The Court identified the primary purpose of the penalty regime as deterrence.

Adjustments to the starting point (i.e. step 3)

[132] The third step of the penalty-setting exercise requires the Court to adjust the starting point for defendant-specific factors.

[133] The parties agree that there are no aggravating factors here that are specific to IAG (albeit there are a number of aggravating features of the conduct, as I have identified above). IAG does not have any previous contraventions of the FMCA and, as the FMA has acknowledged, has acted responsibly in carrying out its remediation programme and efforts to remedy the causes of the issues.

[134] The parties are agreed that a global discount of 35 per cent is appropriate to reflect IAG's self-reporting of the relevant misconduct, the timing of its admissions, the extent of its cooperation with the FMA's investigation and proceeding, and its remediation efforts.[35]

[135] I agree with and adopt that same global discount of 35 per cent. While the contraventions of the legislation were significant and widespread, the proactive and responsible approach of IAG should be given appropriate recognition.

[136] I record the FMA's acknowledgement that IAG's overall conduct since reporting the first tranche of issues to the FMA "has been exemplary and is to be

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34 *Australian Competition and Consumer Commission (ACCC) v We Buy Houses Pty Ltd (No 2)* [2018] FCA 1748.

35 That is apparent from the letter from Russell McVeagh to the FMA dated 11 December 2023 and filed by IAG at the hearing. That letter contained express indication of IAG's wish to cooperate with the FMA "to the fullest extent and provide the information that it required with a view to any proceedings being undefended".

commended". The FMA has also acknowledged that IAG has engaged significant resources to respond to the FMA's information requests, accepted liability at the earliest stage and has been responsive to the FMA's queries and investigation team. The FMA has acknowledged "there can be no question" that IAG has invested heavily in improving its systems and processes to address the harm and prevent future harm (i.e. it has taken steps well beyond simple financial compensation).

[137] I acknowledge that any discount from the starting point should not be so large as to remove the deterrent objective of the pecuniary penalty.[36] However, I find that a global discount of 35 per cent is the appropriate discount to be adopted here.

Conclusion

[138] I find that the proposed and agreed pecuniary penalty of $19,500,000 satisfies the objectives of the FMCA and reflects the particular circumstances of this case. I am satisfied that the proposed penalty is within the appropriate range.

Result

[139] I make the following orders and directions:

(a) I impose a penalty of $19,500,000 on IAG under s 489(2) of the FMCA;

(b) I make declarations that IAG contravened:

(i) s 22(f) and/or (h) of the FMCA by issuing the affected ASB MPD invoices;

(ii) s 22(d), (f) and/or (h) of the FMCA by making the C&T Representations;

(iii) s 22(f) and/or (h) of the FMCA by issuing the Affected NCB and Westpac Guidewire Invoices;

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36 *Cigna*, above n 2, at [71].

(iv) s 22(f) and/or (h) of the FMCA by issuing the Affected WOOD Invoices;

(v) s 22(f) and/or (h) of the FMCA by making the Discount Representations;

(vi) s 22(f) and/or (h) of the FMCA by issuing the Affected BNZ and Co-Op MPD Invoices;

(vii) s 22(d), (f) and/or (h) of the FMCA by making the Co-Op MPD Representations;

(viii) s 22(f) and/or (h) of the FMCA by issuing the Affected Multi-Dwelling Invoices;

(ix) s 22(f) and/or (h) of the FMCA by issuing the Affected Non-Optional Extension Invoices;

(x) s 22(f) and/or (h) of the FMCA by issuing the Affected HVT Invoices;

(xi) s 22(d), (f) and/or (h) of the FMCA by making the HVT MPD Representations; and

(c) 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.

[140] There is no issue as to costs.[37]

Andrew J

[37] The FMA does not separately seek a costs order.