
Settlement Agreement

Between

Financial Markets Authority

and

AA Insurance Limited

Settlement agreement dated 6 August 2024

Parties

Financial Markets Authority, a Crown entity established under s 6 of the Financial Markets Authority Act 2011 (**FMA**); and

AA Insurance Limited, an incorporated company having its registered office at Level 17, AA Centre, 99 Albert Street, Auckland (**AAI**),

(collectively, the **Parties**).

1 Introduction

- 1.1 The FMA has been conducting an investigation into AAI's discounting practices and no claims bonuses as set out in clause 1.3 (the **Investigation**).
- 1.2 The FMA subsequently filed a Proceeding in the High Court against AAI alleging that AAI made false and misleading representations in relation to the price to be paid for its insurance services, and in respect of its rights to charge certain fees to its customers.
- 1.3 Once the Amended Statement of Claim is filed, the Proceeding will relate to:
- (a) AAI's failures to apply certain discounts to:
 - (i) customers who held two or more qualifying policies with AAI, who were entitled to receive a discount in respect of the premiums payable under the policies (the **Multi-Policy Discount**);
 - (ii) customers who held an active policy with AAI and also held an active NZAA membership, who were entitled to a discount in respect of the premiums payable under the policy (the **NZAA Discount**);
 - (iii) customers who held a comprehensive motor vehicle insurance policy and did not make any claims for accidents, loss or damage in a five-year period, who were entitled to a no claims bonus benefit on the premium payable under the policy (the **Guaranteed NCB**); and
 - (b) Representations that customers who were eligible for the Guaranteed NCB, would receive the benefit for life (the **Lifetime Representation**);
- 1.4 In the Proceeding, the FMA seeks a pecuniary penalty and declarations that the conduct breached s 22 of the Act.

- 1.5 The Parties have reached a settlement regarding the Investigation and the matters remaining to be determined in the Proceeding, on the terms set out in this Agreement.
- 1.6 This Agreement may be made public by the FMA (including by publication of it on the FMA's website) following the public release of the Penalty Judgment.

2 Interpretation

- 2.1 For the purposes of this Agreement:
- (a) **Act** means the Financial Markets Conduct Act 2013;
 - (b) **Admitted Causes of Action** means the first, second and third causes of action in the Amended Statement of Claim;
 - (c) **Agreed Recommended Penalty** means the pecuniary penalty set out in clause 4.4(a);
 - (d) **Agreement** means this settlement agreement and the schedules attached to it;
 - (e) **Amended Statement of Claim** means the amended statement of claim annexed as Schedule 1 to this Agreement;
 - (f) **Court** means the High Court of New Zealand or, on appeal, the Court of Appeal of New Zealand or the Supreme Court of New Zealand;
 - (g) **Defaulting Party** has the meaning as set out in clause 8.1;
 - (h) **Default Notice** means a written notice issued under clause 8.3 by one Party giving notice that the other Party is in breach of the Agreement;
 - (i) Dollar amounts stated are New Zealand dollars;
 - (j) **Information** includes all information, documents, material and evidence of any kind whatsoever, including all oral, written and electronic material in relation to the Proceeding;
 - (k) **Investigation** has the meaning as set out in clause 1.1;
 - (l) **Notice of Admissions** means the notice of admissions annexed as Schedule 2 to this Agreement;
 - (m) **Notifying Party** has the meaning set out in clause 8.1;
 - (n) **Penalty Hearing** means the hearing or fixture in the Proceeding at which the FMA and AAI will ask the Court to approve the order set out in clause 4.4;
 - (o) **Penalty Judgment** means a judgment of the Court determining the pecuniary penalty payable by AAI in the Proceeding. Where a Penalty Judgment of a particular Court is specified, it is the judgment of that Court;

- (p) **Person** extends to non-natural persons and includes any association of persons whether incorporated or not;
- (q) **Proceeding** means the civil proceeding brought by the FMA in the High Court of New Zealand in CIV-2023-404-1103 against AAI, and includes any appeals from that proceeding;
- (r) **Working Day** has the definition set out in r 1.3 of the High Court Rules.

3 Resolution

- 3.1 The Parties have reached a full and final settlement of the claims against AAI arising out of the Investigation and the Proceeding.
- 3.2 The Parties agree to resolve the Proceeding by:
 - (a) the FMA filing the Amended Statement of Claim within one Working Day of the execution of this Agreement;
 - (b) the next Working Day, AAI filing the Notice of Admissions;
 - (c) AAI paying any Penalty Judgment in accordance with clause 5; and
 - (d) otherwise on the basis set out in this Agreement.
- 3.3 For the avoidance of doubt, nothing in this Agreement shall be construed as:
 - (a) resolving any past, continuing, or future contraventions of the Act about which the FMA does not have reasonable notice; or
 - (b) preventing the FMA from commencing or continuing any civil or criminal proceedings against AAI or any other person in respect of the matters described in clause 3.3(a).

4 Imposition of the Agreed Recommended Penalty

Progression to Penalty Hearing

- 4.1 On the same day as AAI files the Notice of Admissions, the Parties will file the joint memorandum requesting a penalty hearing in the form attached as Schedule 3 to this Agreement.
- 4.2 The Parties will cooperate and use all reasonable endeavours to ensure that the Penalty Hearing proceeds on the first available date proposed by the Court that is convenient to counsel.

Consultation on penalty submissions

- 4.3 The FMA and AAI will:
 - (a) circulate to the other a draft of any submissions or memorandum they propose to file in relation to the Agreed Recommended Penalty at least

ten Working Days before that party is to file the submissions or memorandum with the Court;

- (b) provide any comments on a submission or memorandum received in accordance with clause 4.3(a) not more than five working days after receiving those submissions or that memorandum; and
- (c) consider in good faith any comments that the other Party may have in connection with the submission or memorandum.

Agreed Recommended Penalty and content of penalty submissions

4.4 The FMA and AAI agree and undertake that:

- (a) the Agreed Recommended Penalty for the Admitted Causes of Action is a final penalty of \$6,175,000;
- (b) the Agreed Recommended Penalty is an appropriate pecuniary penalty in view of the conduct and the circumstances;
- (c) in their respective written and oral submissions, the FMA will indicate that it is appropriate for a starting point to be in the range of \$9,500,000-\$10,000,000, and AAI will indicate a starting point of \$8,500,000-\$9,500,000 is appropriate;
- (d) they will make written and oral submissions recommending to the Court that it adopt a starting point of \$9,500,000, being the point of agreement arising from their respective submissions on the starting point;
- (e) they will make written and oral submissions recommending to the Court that it apply a discount of 35 percent to the starting point for all mitigating factors; and
- (f) they will otherwise support the Agreed Recommended Penalty before the Court.

4.5 The Parties agree that all material facts for the purposes of the Proceedings are described in the Amended Statement of Claim and the affidavit given by AAI's Chief Financial Officer (in the form agreed between the parties).

Court Costs

4.6 The Parties:

- (a) acknowledge that the penalty ordered by the Court will be first applied to paying the FMA's actual costs in bringing the Proceeding, given the effect of s 493 of the Act; and
- (b) agree to ask the Court that there be no further order for costs.

4.7 The Parties agree that neither Party will seek any other costs award in the Proceeding, other than costs arising:

- (a) from any breach of this Agreement; and/or

(b) following the service of a Default Notice in accordance with clause 8.3.

5 Payment of penalty

- 5.1 If the High Court imposes the Agreed Recommended Penalty in the Penalty Judgment, AAI will pay the amount of the Agreed Recommended Penalty in cleared funds into the bank account nominated by the FMA within 15 Working Days of the Penalty Judgment.
- 5.2 If the High Court does not impose the Agreed Recommended Penalty in the Penalty Judgment, then AAI will pay into the bank account nominated by the FMA any pecuniary penalty ordered by the High Court within 15 Working Days of the date of the Penalty Judgment unless, prior to the expiration of that period, a stay of the Penalty Judgment pending determination of an appeal is granted.
- 5.3 If a Penalty Judgment is issued by an appellate Court, AAI or the FMA, as applicable, shall pay to the other any difference between the amount paid by AAI in accordance with clause 5.2 and the amount ordered by the appellate Court, together with any costs awarded by the appellate Court, into the other's nominated bank account. The payment will be made within the time period specified by the appellate judgment, or if no time is specified, within 15 Working Days of the date the appellate judgment is issued.
- 5.4 If a stay of the Penalty Judgment is granted pending determination of an appeal, AAI agrees to pay interest as prescribed by the Interest on Money Claims Act 2016 on any amount it has to pay to the FMA under clause 5.3. Interest will accrue from the date of the Penalty Judgment until payment is made in full.
- 5.5 For the avoidance of doubt, if the FMA is required to refund any amount under clause 5.3, the only interest to be paid is that actually earned, if any, on the amount to be refunded.

6 Confidentiality and comment

Comment after release of Penalty Judgment

- 6.1 Subject to clause 6.2, either Party may issue a press release or make a public comment in relation to this Agreement or the outcome of the Penalty Hearing after the public release of any Penalty Judgment. Any public statements relating to the Proceeding and this Agreement will be made in good faith and be consistent with the content, spirit and intent of this Agreement.
- 6.2 AAI will not issue any media release or make any public comment permitted by clause 6.1 until after the FMA has made a media release or public comment as permitted by clause 6.1.
- 6.3 In relation to any media release made by either Party under clause 6.1, the Party issuing the media release will provide a copy of the media release to the other Party at least one hour in advance of the release being published to allow the other party the opportunity to comment. The Parties agree that the purpose of providing an advance copy of a media release is to allow the other Party to have the opportunity to comment and provide advanced notice so as to inform its own position (but not for approval). A party is not obligated to accept the comments of the other party.

Comments to be consistent with Admissions and Agreement

- 6.4 No Party will issue any media release or make any public comment that is inconsistent with the Penalty Judgment, Admissions, this Agreement or the Amended Statement of Claim.

7 Appeals from the Penalty Judgment

- 7.1 If the Court imposes the Agreed Recommended Penalty, no party may appeal or apply to recall or set aside that Penalty Judgment on the basis that the Agreed Recommended Penalty should not have been imposed.
- 7.2 If, following submissions from the Parties consistent with clause 4.4, the Court imposes a penalty that differs from the Agreed Recommended Penalty, any Party may appeal the Penalty Judgment.
- 7.3 In the event that an appeal is brought under clause 7.2:
- (a) the terms of this Agreement will remain binding on the Parties, including, for the avoidance of doubt, clause 4.4; and
 - (b) the Parties will each bear their own costs on any appeal (subject to any order from the Court directing otherwise), and shall not apply for, or otherwise seek, costs to be ordered against the other.

8 Non-compliance with Agreement

Default Notice for breaches of the Agreement

- 8.1 If any Party (the **Notifying Party**) suspects or believes that the other party (the **Defaulting Party**) is in breach of the Agreement, or will in the future breach the Agreement, the Notifying Party must notify the Defaulting Party in writing:
- (a) of the grounds for the Notifying Party's view that a breach of the Agreement has occurred or will likely occur; and
 - (b) that the Notifying Party is contemplating issuing a Default Notice.
- 8.2 After notifying the Defaulting Party, the Notifying Party must:
- (a) give the Defaulting Party a reasonable opportunity to:
 - (i) respond to the grounds for the Notifying Party's view that a breach of the Agreement has occurred or will occur;
 - (ii) take steps to remedy any breach of the Agreement that has occurred or would otherwise occur; and
 - (b) have regard to the Defaulting Party's response, the nature of the suspected breach and the remedial action taken, if any.
- 8.3 If the Notifying Party has followed the process in clauses 8.1 and 8.2, and the Defaulting Party fails to comply with any term of this Agreement, the Notifying Party may give written notice that the Defaulting Party is in breach of the Agreement (a **Default Notice**).

Notifying Party may take steps and/or commence proceedings following a Default Notice

- 8.4 Following service of a Default Notice, the Notifying Party may:
- (a) take any further steps in or relating to the Proceeding, including taking steps in accordance with clause 5 applying to set aside or appeal the Penalty Judgment;
 - (b) take any steps to enforce the obligations outlined in this Agreement;
 - (c) seek an award of costs in respect of the matter giving rise to the Default Notice; and/or
 - (d) terminate the Agreement.
- 8.5 Upon termination of the Agreement, both Parties shall be released from any further obligations in relation to it and the position of both Parties in the Proceedings shall be at large.
- 8.6 The Parties agree that it shall not constitute a breach of this Agreement for either of them to make submissions in any Court, in any other proceedings, with respect to the relevance, weight or precedent value to be attributed to the Penalty Judgment.

Breach of obligation to pay pecuniary penalty

- 8.7 If a Party fails to make all or part of the payments referred to in clause 5 within the time specified, after first providing seven Working Days for the Party to rectify that breach, the other Party (the **Enforcing Party**) is:
- (a) entitled to enforce the Penalty Judgment;
 - (b) entitled to claim interest as prescribed by the Interest on Money Claims Act 2016 on the balance payable until the penalty, or difference owing or any costs awarded under clauses 5.3 are paid in full; and
 - (c) entitled to its costs, including its legal costs on a solicitor-client basis, arising from the failure to comply with clause 5.
- 8.8 Nothing in clause 8.7 limits the ability of the Enforcing Party to also issue a Default Notice.

9 General

Entire Agreement

- 9.1 This Agreement constitutes the entire understanding and agreement between the Parties in relation to the Proceeding, and fully supersedes any and all prior agreements, arrangements, representations or understandings (whether orally or in writing) between the Parties pertaining to the Proceeding.
- 9.2 The Parties represent and agree that:

- (a) no oral contracts, arrangements, understandings, agreements or promises contrary to the terms of this Agreement exist;
- (b) they have carefully read and fully understand all of the provisions of this Agreement, including the Schedules; and
- (c) they are each voluntarily entering into this Agreement after having received independent legal advice.

Use and disclosure of Information

- 9.3 The FMA may use Information provided by AAI for the purpose of carrying out the FMA's functions or obligations under the Financial Markets Authority Act 2011, but may not disclose such Information to any third party other than in accordance with clauses 9.4 and 9.5 below.
- 9.4 Subject to legal professional privilege and settlement privilege, the FMA may disclose such Information provided by AAI in the following circumstances::
- (a) with AAI's prior written consent;
 - (b) to witnesses, solicitors, barristers and other advisers or consultants retained by the FMA in the Proceeding, or any other FMA initiated proceeding related to the Investigation, including proceedings instituted in accordance with clause 8.4;
 - (c) to any Court in the Proceeding, or any other FMA initiated proceeding related to the Investigation, including proceedings instituted in accordance with clause 8.4;
 - (d) for such purposes as are reasonably necessary to give effect to the Agreement;
 - (e) as required by law (including, for the avoidance of doubt, to comply with a request made under the Official Information Act 1982 or the Privacy Act 1993); or
 - (f) pursuant to section 30 of the Financial Markets Authority Act 2011.
- 9.5 Subject to clause 9.3, if the FMA wishes to disclose to a third party any Information provided to it by AAI during the Investigation or in the Proceeding or if any third party requests from the FMA disclosure of such Information, the FMA will use its best endeavours to notify AAI and provide AAI with a reasonable opportunity to oppose such a request, including by Court action.

Amendments in writing

- 9.6 No amendment to this Agreement will be effective unless it is in writing and signed by all Parties.

Authorities

- 9.7 Each person executing this Agreement warrants that they have the full authority to enter into this Agreement and bind the party for which they purport to enter into this Agreement.

Severance

- 9.8 Any provision in this Agreement that is unlawful will be severed and the remaining provisions remain enforceable, but only if the severed provision is not material to the purpose of this Agreement.

Parties to bear their own costs

- 9.9 Each party will meet its own expenses incurred in the course of performing its obligations under this Agreement.

Governing law

- 9.10 This Agreement will be governed by, and construed in accordance with, the laws of New Zealand.

Further assurances

- 9.11 The Parties agree to make all applications, execute all documents and do all acts and things as may be necessary to give effect to its obligations under this Agreement.

No waiver

- 9.12 Failure by a Party to enforce any provision of this Agreement at any time will not operate as a waiver of that provision in respect of that act or omission or any other act or omission.

Counterparts

- 9.13 The Parties may enter into this Agreement by signing any number of counterparts, each of which will be treated as an original. All of the counterparts taken together will constitute a single, binding and enforceable Agreement.

10 Communications

- 10.1 Any notice or communication pursuant to this Agreement will be delivered as follows:

- (a) if addressed to the FMA, by hand delivery or email to the following address:

Financial Markets Authority
Level 5, Ernst & Young Building, 2 Takutai Square, Britomart
Auckland

Attention: Margot Gatland, Head of Enforcement
Email: margot.gatland@fma.govt.nz

Copy to:
Meredith Connell

Level 7, MC Centre, 8 Hardinge Street

Auckland

Attention: Julia Carlyon | Yaren Fu

Email: julia.carlyon@mc.co.nz | yaren.fu@mc.co.nz

(b) If addressed to AAI, by hand delivery or email to the following address:

Bell Gully

Level 14, Deloitte Centre, 1 Queen Street

Auckland

Attention: Blair Keown | Hannah Cassone

Email: blair.keown@bellgully.com |
hannah.cassone@bellbully.com

Copy to:

AA Insurance Limited

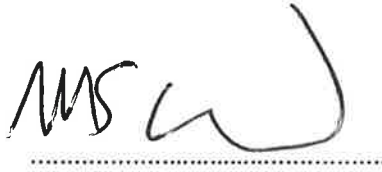
Level 17, AA Centre, 99 Albert Street

Auckland

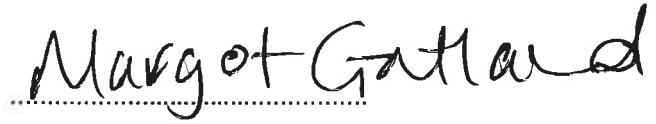
Attention:

Execution

**Signed by and on behalf of
Financial Markets Authority**



Authorised signatory



Name

In the presence of:

Witness Name: CHRISTOPHER REVELL

Witness Address: AUCKLAND .

Witness Occupation: MANAGER, LICENSING .

Signed by and on behalf of

AA Insurance Limited

.....

Authorised signatory

.....

Name

In the presence of:

Witness Name:

Witness Address:

Witness Occupation:

Execution

Signed by and on behalf of
Financial Markets Authority

.....

Authorised signatory

.....

Name

In the presence of:

Witness Name:

Witness Address:

Witness Occupation:

Signed by and on behalf of
AA Insurance Limited



.....

Authorised signatory

Michelle James

.....

Name

In the presence of:

Witness Name: Karley Feaver

Witness Address: Auckland

Witness Occupation: Executive Support Officer

Schedule 1: Amended Statement of Claim

In the High Court of New Zealand
Auckland Registry

I te Kōti Matua o Aotearoa
Tāmaki Makaurau Rohe

CIV-2022-

Under The Financial Markets Conduct Act 2013

Between **Financial Markets Authority** a Crown entity established under s 6 of the Financial Markets Authority Act 2011 having its offices at Level 2, 1 Grey Street, Wellington and Level 5, Ernst & Young Building, 2 Takutai Square, Britomart, Auckland
Plaintiff

And **AA Insurance Limited** an incorporated company having its registered office at Level 17, AA Centre, 99 Albert Street, Auckland
Defendant

Amended Statement of Claim

DD MM 2024

MC.

Julia Carlyon | Yaren Fu
PO Box 90750, Victoria Street West, Auckland 1142
DX CP24063
T: +64 9 336 7500
Julia.Carlyon@mc.co.nz | Yaren.Fu@mc.co.nz

Amended Statement of Claim

The Plaintiff by its solicitor says:

The Parties

- 1 The Plaintiff, the Financial Markets Authority (Te Mana Tatai Hokohoko) (**FMA**), is a Crown Entity established under s 6 of the Financial Markets Authority Act 2011, having its offices at Level 2, 1 Grey Street, Wellington and Level 5, Ernst & Young Building, 2 Takutai Square, Britomart, Auckland. Its functions include enforcement of the Financial Markets Conduct Act 2013 (**FMCA**).
- 2 The defendant, AA Insurance Limited (**AAI**):
 - (a) is an incorporated company having its registered office at Level 17, AA Centre, 99 Albert Street, Auckland;
 - (b) was incorporated on 25 July 1972;
 - (c) is a joint venture by the New Zealand Automobile Association Limited (**NZAA**) and Vero Insurance New Zealand Limited (a subsidiary of Suncorp Group Limited (**Suncorp**), a publicly-listed company registered in Australia);
 - (d) is a licensed insurer under s 19 of the Insurance (Prudential Supervision) Act 2010; and
 - (e) is in trade in New Zealand.

AAI's insurance services

- 3 AAI offers, administers and underwrites a range of general insurance products to individuals and companies based in New Zealand in the ordinary course of its business.
- 4 AAI promotes its insurance products through various channels, including digital, direct mail, email, television, and online materials.
- 5 AAI:
 - (a) enters into contracts of insurance (**Policy** and **Policies** as applicable) with its customers (**Customers**);
 - (b) administers those Policies, including by:
 - (i) issuing Policies;
 - (ii) advising each Customer of the premium payable (**Premium**) on new Policies by issuing policy notices with invoices;
 - (iii) offering Customers annual renewals of their Policies; and

- (iv) annually advising each Customer of the Premium under their Policy for the next yearly term by issuing renewal notices with invoices.

Policy Administration Systems and Invoicing

- 6 At all relevant times, AAI has used various computer systems to administer and manage the Policies (**Policy Administration Systems**).
- 7 At all relevant times, AAI's Policy Administration Systems have been responsible for:
 - (a) calculating Premiums;
 - (b) generating and issuing invoices to be sent to Customers, which include the Premium amounts due (**Invoices**); and
 - (c) providing a trigger for Invoices to be sent to Customers, including when a Customer's Policy is due for renewal.
- 8 The Invoices are issued by AAI to Customers directly on AAI branded letterhead.

The Multi-Policy Discount

- 9 From September 2015 onwards, AAI has offered Customers a multi-policy discount on Premiums (**Multi-Policy Discount**).
- 10 Since 2015, the eligibility criteria for the Multi-Policy Discount has varied, but generally Customers would be eligible if they held more than one qualifying Policy (**Eligible MPD Customers**).
- 11 The rate of the Multi-Policy Discount:
 - (a) was not generally communicated to Customers;
 - (b) has varied over time; and
 - (c) is currently set at 10% of the Premiums.

Immediate Discount Representations

- 12 At various times, the Multi-Policy Discount has been marketed by AAI through various channels, including digital, direct mail, email, television, and online materials.
- 13 AAI's marketing materials represented that Customers that held two or more Policies with AAI would receive the Multi-Policy Discount on all Policies they held immediately upon meeting the eligibility criteria (**Immediate Discount Representation**), including Policies held by Customers prior to meeting the eligibility criteria (**Existing Policies**).

- 14 However, AAI's internal business and systems processes were set up so that they:
- (a) did not apply the Multi-Policy Discount to Existing Policies immediately upon Customers meeting the eligibility criteria; and
 - (b) applied the Multi-Policy Discount to Existing Policies from their next renewal.

15 Accordingly, some customers did not receive the Multi-Policy Discount in accordance with the Immediate Discount Representation (**Affected Renewal Customers**).

16 By the Immediate Discount Representations, AAI incorrectly represented that Affected Renewal Customers would receive the Multi-Policy Discount in accordance with the Immediate Discount Representation.

Invoices – Multi Policy Discount

17 From approximately 28 September 2015, AAI did not correctly apply the Multi-Policy Discount to the Premiums owed by some Eligible MPD Customers (**Affected MPD Customers**).

18 AAI failed to correctly apply those Multi-Policy Discounts because:

- (a) of errors in its sales and fulfilment systems, including data entry errors made by employees of AAI;
- (b) of deficiencies in its Policy Administration Systems;
- (c) for Customers taking out more than one policy online at the same time, they were required to select 'yes' to the question 'do you have any other policies with AA Insurance?' for all policies in order for the Multi-Policy Discount to be applied to each new Policy, but:
 - (i) some Customers who did have other policies did not tick 'yes'; and
 - (ii) AAI did not have reporting in place to identify the Customers described in subparagraph (i) above and to ensure the Multi-Policy Discount was correctly being applied.

19 Where the Multi-Policy Discount had wrongly not been applied to the Premiums owed by the Affected MPD Customers, the Invoices issued to those Affected MPD Customers (**Affected MPD Invoices**) referred to a total Premium amount that was not owed by them (**Incorrect MPD Premiums**), instead of the actual amount that was in fact owed by them had the Multi-Policy Discount been correctly applied (**True MPD Premiums**).

20 By issuing the Affected MPD Customers with the Affected MPD Invoices, AAI incorrectly represented that:

- (a) the Incorrect MPD Premiums were the correct amounts owed by the Affected MPD Customers under their Policies; and

- (b) it was entitled to charge the Incorrect MPD Premiums that appeared on the Affected MPD Invoices.

Harm

21 Between approximately September 2015 and April 2020:

- (a) There were approximately 112,463 Affected MPD Customers and Affected Renewal Customers who either:
 - (i) were entitled to Multi-Policy Discounts, but did not receive them; or
 - (ii) did not receive Multi Policy Discounts on existing policies in accordance with the Immediate Discount Representation.
- (b) MPD Customers and Affected Renewal Customers were charged approximately \$39.54 million in Premiums, with approximately \$4.89 million in overcharged Premiums (**MPD Overcharges**), being:
 - (i) the difference between the Incorrect MPD Premiums and True MPD Premiums; and
 - (ii) the Premiums charged to Affected Renewal Customers over and above what they would have been charged if they had received the benefit of the Immediate Discount Representation; and
- (c) approximately 9.77% of Eligible MPD Customers were Affected MPD Customers or Affected Renewal Customers.

22 AAI introduced a daily exception reporting system in February 2020 to identify Incorrect MPD Premiums being charged and correct those errors.

The NZAA Discount

23 Since 1994, AAI has offered its Customers a discount on their Premiums if they also held a NZAA membership (**NZAA Discount**).

24 The NZAA Discount is a fixed dollar discount which is calculated on the basis of the tenure of the Customer's NZAA membership.

25 Customers are eligible for the NZAA Discount if they have an active Policy with AAI and are an active NZAA member (**Eligible NZAA Customers**).

26 At all material times, the NZAA Discount has been marketed by AAI through various channels, including mail, email, television, and digital.

27 From at least October 2008, AAI did not apply the NZAA Discount to the Premiums owed by some Eligible NZAA Customers (**Affected NZAA Customers**).

28 AAI did so due to:

- (a) errors in its sales and fulfilment systems, including data entry errors made by employees of AAI;

- (b) deficiencies in its Policy Administration Systems;
- (c) AAI's system not having the ability to identify Customers who held a NZAA membership;
- (d) Customers applying for a policy online were required to confirm they were a NZAA member and to enter their membership details, but:
 - (i) some Customers who were NZAA members did not confirm they were a NZAA member or enter their membership details; and
 - (ii) because of the issue described in subparagraph (c) above, AAI could not identify the Customers described in subparagraph d(i) above in order to ensure the NZAA Discount was being applied correctly.

29 It is likely that there were Affected NZAA Customers prior to October 2008, but limitations with AAI's systems mean that it has not been possible to identify them.

30 Where the NZAA Discount had wrongly not been applied to Eligible NZAA Customers, the Invoices issued to Affected NZAA Customers (**Affected NZAA Invoices**) referred to a total Premium amount that was not owed by them (**Incorrect NZAA Premiums**), instead of the actual amount that was in fact owed by them had the NZAA Discount been correctly applied (**True NZAA Premiums**).

31 By issuing the Affected NZAA Customers with the Affected NZAA Invoices, AAI incorrectly represented that:

- (a) the Incorrect NZAA Premiums were the correct amounts owed by the Affected NZAA Customers under their Policies; and
- (b) it was entitled to charge the Incorrect NZAA Premiums that appeared on the Affected NZAA Invoices.

Harm

32 Between approximately April 2014 and November 2020:

- (a) AAI issued Affected NZAA Invoices to approximately 90,129 Affected NZAA Customers who were entitled to the NZAA discounts, but did not receive them;
- (b) the Incorrect NZAA Premiums charged to Affected NZAA Customers totalled approximately \$92.92 million, with approximately \$2.95 million in overcharged Premiums, being the difference between the Incorrect NZAA Premiums and the True NZAA Premiums (**NZAA Overcharges**); and
- (c) approximately 6.4% of Eligible NZAA Customers were Affected NZAA Customers.

33 AAI introduced a daily exception reporting system in February 2020 to identify Incorrect NZAA Premiums being charged and correct those errors.

The Guaranteed NCB

- 34 Between 2005 and 2015, AAI offered a guaranteed no claims bonus benefit on comprehensive motor vehicle insurance Policies (**Guaranteed NCB**).
- 35 The Guaranteed NCB provided a benefit whereby no direct increase to Customers' Premiums would be applied as a result of an accident or claim on an insurance policy.
- 36 At all material times, the Guaranteed NCB has been marketed by AAI through various channels, including mail, email, television, and digital.

Eligibility Criteria

- 37 The eligibility criteria for the Guaranteed NCB varied over time, however generally a Customer was eligible if they:
- (a) had a five-year period during which the Customer did not make any claims for accidents, loss or damage; and
 - (b) were eligible for the Guaranteed NCB:
 - (i) on an existing motor vehicle Policy and continued to maintain that Policy; or
 - (ii) at the time they sold their vehicle and cancelled the existing motor vehicle Policy, but within a certain timeframe and conditions bought a new vehicle and took out a new Policy with respect to that new vehicle; or
 - (iii) on an existing motor vehicle insurance policy and took out a new eligible Policy in respect of an additional vehicle,

(Eligible GNCB Customers).

Invoices

- 38 From 2005, AAI did not apply the Guaranteed NCB to the Premiums owed by some Eligible GNCB Customers subsequent to a relevant accident or claim (**Affected GNCB Customers**). AAI did so due to:
- (a) errors in its sales and fulfilment systems, including data entry errors made by employees of AAI; and
 - (b) deficiencies in its Policy Administration Systems.
- 39 Where the Guaranteed NCB was not applied, Customers who had an accident or claim received an increase in their Premiums.
- 40 Where the Guaranteed NCB had wrongly not been applied, the Invoices issued to Affected GNCB Customers subsequent to an accident or claim (**Affected GNCB Invoices**) referred to a total Premium amount that was not owed by them (**Incorrect GNCB Premiums**), instead of the actual amount that was in fact owed

by them had the Guaranteed NCB been correctly applied (**True GNCB Premiums**).

- 41 By issuing the Affected GNCB Customers with the Affected GNCB Invoices, AAI incorrectly represented that:
- (a) the Incorrect GNCB Premiums were the correct amounts owed by the Affected GNCB Customers under their Policies; and
 - (b) it was entitled to charge the Incorrect GNCB Premiums that appeared on the Affected GNCB Invoices.
- 42 Between approximately April 2014 and November 2021:
- (a) AAI issued Affected GNCB Invoices to approximately 17,973 Affected GNCB Customers who were entitled to the Guaranteed NCB, but did not receive it; and
 - (b) the Incorrect GNCB Premiums charged to Affected GNCB Customers totalled approximately \$19.15 million, with approximately \$3.28 million in overcharged Premiums, being the difference between the Incorrect GNCB Premiums and the True GNCB Premiums (**GNCB Overcharges**).
- 43 AAI introduced an exception reporting system in November 2021 to identify Incorrect GNCB Premiums being charged and correct those errors.

The Lifetime Representation

- 44 At various times, AAI represented that the Guaranteed NCB would apply for the life of qualifying customers (provided that they remained insured with AAI) (**Lifetime Representation**).

Particulars

- (a) The Lifetime Representation was communicated to customers through:
 - (i) online advertising on AAI's website;
 - (ii) brochures, including marketing letters sent to existing AAI or NZAA customers; and
 - (iii) packs sent to customers at the time of renewal of their Policies.
- (b) Marketing material described the Guaranteed NCB as:
 - (i) "The Guaranteed No Claim Bonus for life benefit";
 - (ii) "Once you have it, you can never lose it, even if you have an accident";
 - (iii) "If you've had no accidents for 5 years, you'll receive a No Claims Bonus, guaranteed for life"; and
 - (iv) "Your premiums will never go up as a result of a claim".

- 45 Prior to approximately December 2011:
- (a) Customers' Policies contained terms consistent with the Lifetime Representation (**Old Policy Wording**); and
 - (b) AAI applied the Guaranteed NCB to all Policies held by a qualifying Customer, consistently with the Old Policy Wording and Lifetime Representation.
- 46 In approximately December 2011, AAI amended the terms of the Guaranteed NCB by:
- (a) limiting the Guaranteed NCB to the life of any Policy that had originally qualified for the Guaranteed NCB (**Original Eligible Policies**) and any subsequent Policy that independently qualified for the Guaranteed NCB (**Subsequently Eligible Policies**); and
 - (b) amended the Old Policy Wording so that Policies stated that the Guaranteed NCB would apply for the "life of the policy" (**New Policy Wording**),

(**Lifetime Guarantee Change**).
- 47 Following the Lifetime Guarantee Change, AAI:
- (a) continued, until approximately September 2015, to publish marketing material that contained the Lifetime Representation, including in renewal packs sent to customers;
 - (b) included the New Policy Wording in updated policy terms sent to Customers, as part of renewal packs sent to Customers, on annual renewal of their Policies; and
 - (c) did not apply the Guaranteed NCB to any policies other than the Original Eligible Policies and the Subsequently Eligible Policies.
- 48 Accordingly, some customers did not receive the Guaranteed NCB in accordance with the Lifetime Representation (**Affected Representation Customers**).
- 49 By the Lifetime Representation, AAI incorrectly represented that Eligible GNCB Customers would receive the Guaranteed NCB in accordance with the Lifetime Representation.
- 50 From approximately September 2015:
- (a) AAI stopped offering the Guaranteed NCB; and
 - (b) prior to each Customer's subsequent renewal date, AAI informed all Customers that:
 - (i) the Guaranteed NCB would no longer be offered for any new policies; and
 - (ii) customers who had already qualified for the Guaranteed NCB on an existing policy would keep it for the life of that policy.

- 51 The Premiums charged to Affected Representation Customers totalled approximately \$20.2 million, with approximately \$3.7 million in Premiums over and above what they would have been charged if they had the benefit of the Guaranteed NCB in accordance with the Lifetime Representation on policies created before approximately 27 September 2015 (**Lifetime GNCB Overcharges**).

Particulars

- (a) The Premiums and Lifetime GNCB Overcharges include:
- (i) Lifetime GNCB Overcharges applied to Customers on the Old Policy Wording and included in the sums pleaded at paragraph 42 above; and
 - (ii) Lifetime GNCB Overcharges applied to Customers on the New Policy Wording until approximately September 2015.

AAI's knowledge of the Issues

Multi-Policy Discount and NZAA Discount

- 52 In 2017, AAI decided to conduct a sales and distribution audit to help ensure it was delivering good customer outcomes and had effective operational processes. Suncorp's internal audit team, in conjunction with PriceWaterhouseCoopers, was engaged to conduct the review, which included the application of discounts.
- 53 The start of the audit was delayed until 2018 due to the death of the Head of Finance, Risk and Compliance.
- 54 The audit report was issued on 15 March 2018.
- 55 An addendum to the March 2018 audit report was issued in August 2018. The addendum identified that:
- (a) Customers who were not entitled to the Multi-Policy Discount were receiving it;
 - (b) auditors had been unable to obtain a listing of NZAA members so could not identify if there were Customers receiving an NZAA discount but were not NZAA members; and
 - (c) AAI should also consider their financial conduct responsibilities to policy holders and determine steps to take in identifying Customers who should be receiving the Multi-Policy Discount and NZAA Discount but were not.

Particulars

"Sales and Services Distribution Internal Audit" report addendum dated 30 August 2018.

- 56 In early 2019, AAI undertook initial investigations, focussed on checking its data matching algorithms, its policy management software and database. Those checks did not identify any material issues.
- 57 In May 2019, AAI established a joint project team to carry out a review of the Multi-Policy Discount and NZAA Discount. The review involved extensive analysis of data, including NZAA membership data obtained from the NZAA, and a review of AAI's systems and marketing.
- 58 AAI was not aware of the scale of the NZAA Discount issue until September 2019.
- 59 AAI did not have insight into the scale of the Multi-Policy Discount issue until December 2019. At that stage, it had identified that potential overcharges amounted to approximately \$2.1 million, and by January 2020 it had estimated the value of the overcharges to be \$2.4 million.
- 60 The NZAA Discount Issue and Multi-Policy Discount Issue were reported to AAI's Board and Audit Risk Committee in October and December 2019, respectively.
- 61 At the meeting of AAI's Board Audit Risk and Compliance Committee (**BARCC**) on 5 December 2019, the Committee noted the sensitivity of the issue and the proposed timing of the notification to the regulator being as soon as practicable.
- 62 AAI's investigations to identify affected customers and quantify refunds continued in 2020.
- 63 On 29 January 2020:
- (a) At a meeting of AAI's BARCC:
 - (i) the BARCC considered a Remediation Update paper, which recorded that work was underway to develop an approach to either or both of the FMA and the Reserve Bank of New Zealand on the discounting issues; and
 - (ii) AAI's management recognised "the importance of balancing the urgency, demonstrating action and evidencing a good understanding and level of detail of the issues in the approach to the Regulator."
 - (b) At a meeting of AAI's Board of directors:
 - (i) AAI's management recommended that AAI's approach to the FMA, informing it of the discovery of the issues and proposed remediation actions be "brought forward" as AAI's remediation position would be stated in an investor pack being released to the market in February 2020; and
 - (ii) AAI's management considered it would be prudent to ensure that discussions with the FMA could confirm that AAI had a clear solution in place, that the solution would be swift in solving that problem and that – should AAI be audited – AAI could evidence that the issue had been resolved.

64 AAI self-reported the Multi-Policy Discount Issue and NZAA Discount Issue to the FMA's Supervision Team on 7 February 2020. AAI continued to provide updates to the FMA's Supervision Team.

Guaranteed NCB Issue - Invoices

65 In November 2020, an AAI operational team queried whether the Guaranteed NCB was operating as expected during a programme of work designed to improve customer satisfaction. The potential issue was reported to AAI's Executive Management team and a project team was set up to analyse the Guaranteed NCB and understand the scope and scale of the potential issue.

66 The potential issue in relation to the Guaranteed NCB was referred to AAI's Board and Audit Risk Committee on 28 January 2021.

67 Between January 2021 and June 2021, a detailed review was conducted into the Guaranteed NCB and confirmed the scope and scale of the issue.

68 The Guaranteed NCB issue, as it related to the Affected GNCB Customers, was self-reported to the FMA on 23 June 2021. AAI continued to provide updates to the FMA's Supervision Team.

Lifetime Representation Issue

69 Following AAI's self-report of the Guaranteed NCB Issue in June 2021 and on the basis of information provided by AAI in the course of the FMA's investigation into the Guaranteed NCB Issue, the FMA identified in 2022 that there had been a potential breach of the FMCA in relation to the Lifetime Representation following the Lifetime Guarantee Change (**Lifetime Representation Issue**).

70 AAI's response to the FMA's investigation into the Lifetime Representation Issue included building a new data set across two policy administration systems and developing new software coding to interrogate that data. That work:

- (a) was initially undertaken outside of AAI's existing remediation programme into the other issues; and
- (b) went beyond the scope of the work required to support AAI's remediation programme referred to below in paragraph 75(b).

AAI's remediation

71 AAI's remediation programme for the NZAA Discount Issue and Multi-Policy Discount Issue applied the following principles:

- (a) remediation of all Customers who did not receive Multi-Policy Discounts or NZAA Discounts to which they were entitled;
- (b) payment of use of money interest to all affected Customers;
- (c) calculation of remediation payments on a conservative basis adopting customer-favourable assumptions;

- (d) AAI would not seek repayment from Customers who had received Multi-Policy Discounts or NZAA Discounts to which they were not entitled;
 - (e) engagement of an external third party to validate the affected population and calculation of remediation amounts;
 - (f) commencing remediation in March 2021 and completing remediation in May 2022 for the Multi-Policy Discount Issue;
 - (g) commencing remediation in December 2020 and completing remediation in May 2022 for the NZAA Discount Issue.
- 72 AAI's remediation programme in relation to the Guaranteed NCB applied the following principles:
- (a) remediation of all Customers who did not receive the Guaranteed NCB to which they were entitled;
 - (b) remediation of Customers who did not receive the Guaranteed NCB in accordance with the Lifetime Representation;
 - (c) adopting an overinclusive approach to identifying affected Customers;
 - (d) payment of use of money interest to all affected Customers;
 - (e) calculation of remediation payments on a conservative basis adopting customer-favourable assumptions;
 - (f) engagement of an external third party to validate the affected population and calculation of remediation amounts; and
 - (g) commencing remediation in February 2022 and completing remediation in September 2022.
- 73 To date, AAI has paid a total amount of \$15,666,596.18 for all time periods in respect of all three issues, including use of money interest of \$2.87 million.
- 74 To date, AAI has paid \$883,618.12 including use of money interest of approximately \$228,000 to charities, including in respect of Customers who could not be located or did not respond to contact from AAI.
- 75 With respect to the Lifetime Representation Issue, AAI:
- (a) Has remediated customers whose policy terms contained the Old Policy Wording and did not receive the Guaranteed NCB on policies created in accordance with the Lifetime Representation from 1 April 2014 up until September 2015.
 - (b) As a result of the FMA's investigation, AAI is also remediating Affected Representation Customers who held Policies with the New Policy Wording and did not receive the Guaranteed NCB in accordance with the Lifetime Representation where those Customers have not already been remediated on such policies.
- 76 As a result of the remediation at 75(b) above, AAI expects to remediate approximately 2,500 Affected Representation Customers a total of \$420,000,

plus use of money interest. AAI's remediation assumes that all such Customers saw and relied on the Lifetime Representation.

77 AAI expects to complete the remediation outlined in paragraph 76 above by the end of 2024.

78 AAI has not:

- (a) sought repayment of premiums by customers who received a NZAA Discount but were not entitled to it, which amounts to at least \$1,944,371 including GST solely for the period 27 September 2015 to 2 November 2020.
- (b) sought repayment of premiums by customers who received a Multi-Policy Discount when they were not entitled to it.
- (c) deducted premium rebates provided to customers in late 2020 arising from fewer claims being made during the COVID 19 lockdown period from remediation payments that were made to Customers who also received the rebates.

79 AAI has incurred costs of \$3,513,997.67 in carrying out investigations and remediation exercises in respect of the three issues, comprising external costs of \$1,053,904 and \$2,460,093 of costs for internal resources.

The FMCA

80 Section 22 of the FMCA came into force on 1 April 2014.

First cause of action: Multi Policy Discount

The plaintiff repeats paragraphs 1 to 22, 52 to 64, and 71 to 80 above and says further that:

81 AAI issued the Affected MPD Invoices and made the MPD Marketing Representations in connection with the supply of financial services, namely the supply of insurance services.

82 By issuing the Affected Invoices dated on or after 1 April 2014, AAI made false and/or misleading representations:

- (a) with respect to the price to be paid for its insurance services, in breach of s 22(f) of the FMCA; and/or
- (b) that it had a right to charge the Incorrect MPD Premiums to the Affected MPD Customers, in breach of s 22(h) of the FMCA.

- 83 By making the Immediate Discount Representations on or after 1 April 2014, AAI made false and/or misleading representations:
- (a) that the insurance services had particular benefits, namely that the Existing Policies would receive a Multi-Policy Discount immediately, in breach of s 22(d) of the FMCA;
 - (b) with respect to the price to be paid for its insurance services, in breach of s 22(f) of the FMCA; and/or
 - (c) as to the rights of the Affected Renewal Customers, in breach of s 22(h) of the FMCA.

Accordingly, the Plaintiff seeks:

- A. a declaration that AAI contravened ss 22(f) and/or (h) of the FMCA by issuing the Affected MPD Invoices dated on or after 1 April 2014;
- B. a declaration that AAI contravened ss 22(d), (f), and/or (h) of the FMCA by making the Immediate Discount Representations on or after 1 April 2014;
- C. an order under s 489 of the FMCA that AAI pay a pecuniary penalty to the Crown; and
- D. an order under s 493 of the FMCA that the pecuniary penalty be first applied to the FMA's actual costs in bringing the proceedings.

Second cause of action: NZAA Discount

The plaintiff repeats paragraphs 1 to 8, 23 to 33, 52 to 64, and 71 to 80 above and says further that:

- 84 AAI issued the Affected NZAA Invoices in connection with the supply of financial services, namely the supply of insurance services.
- 85 By issuing the Affected NZAA Invoices dated on or after 1 April 2014, AAI made false and/or misleading representations:
- (a) with respect to the price to be paid for its insurance services, in breach of s 22(f) of the FMCA; and/or
 - (b) that it had a right to charge the Incorrect NZAA Premiums to the Affected NZAA Customers, in breach of s 22(h) of the FMCA.

Accordingly, the Plaintiff seeks:

- A. a declaration that AAI contravened ss 22(f) and/or (h) of the FMCA by issuing the Affected NZAA Invoices dated on or after 1 April 2014;
- B. an order under s 489 of the FMCA that AAI pay a pecuniary penalty to the Crown; and
- C. an order under s 493 of the FMCA that the pecuniary penalty be first applied to the FMA's actual costs in bringing the proceedings.

Third cause of action: Guaranteed NCB

The plaintiff repeats paragraphs 1 to 8, 34 to 51, 65 to 80 above and says further that:

- 86 AAI issued the Affected GNCB Invoices in connection with the supply of financial services, namely the supply of insurance services.
- 87 By issuing the Affected GNCB Invoices dated on or after 1 April 2014, AAI made false and/or misleading representations:
- (a) with respect to the price to be paid for its insurance services, in breach of s 22(f) of the FMCA; and/or
 - (b) that it had a right to charge the Incorrect GNCB Premiums to the Affected GNCB Customers, in breach of s 22(h) of the FMCA.
- 88 By making the Lifetime Representations, AAI made false and/or misleading representations:
- (a) that the insurance services had particular benefits, namely that Customers would be entitled to the Guaranteed NCB for their lifetime, in breach of s 22(d) of the FMCA;
 - (b) with respect to the price to be paid for its insurance services, in breach of s 22(f) of the FMCA; and/or
 - (c) as to the rights of the Affected Representation Customers, in breach of s 22(h) of the FMCA.

Accordingly, the Plaintiff seeks:

- A. a declaration that AAI contravened ss 22(f) and/or (h) of the FMCA by issuing the Affected GNCB Invoices dated on or after 1 April 2014;
- B. a declaration that AAI contravened ss 22(d), (f), and/or (h) of the FMCA by making the Lifetime Representations on or after 1 April 2014;
- C. an order under s 489 of the FMCA that AAI pay a pecuniary penalty to the Crown; and
- D. an order under s 493 of the FMCA that the pecuniary penalty be first applied to the FMA's actual costs in bringing the proceedings.

This statement of claim is filed on behalf of the Plaintiff by its solicitor **Julia Carlyon** whose address for service is at the offices of MC, Level 7, 8 Hardinge Street, Auckland.

Documents for service on the Plaintiff may be left at that address for service or may be:

- (a) posted to PO Box 90750, Victoria Street West, Auckland 1142; or
- (b) left at a document exchange for direction to DX CP24063; or
- (c) transmitted by facsimile to +64 9 336 7629; or
- (d) emailed to julia.carlyon@mc.co.nz, with a copy to yaren.fu@mc.co.nz.

Schedule 2: Notice of Admissions

In the High Court of New Zealand | I Te Kōti Matua o Aotearoa
Auckland Registry | Tāmaki Makaurau Rohe
CIV 2023-404-001103

Under the Financial Markets Conduct Act

Between **Financial Markets Authority**
Plaintiff

And **AA Insurance Limited**
Defendant

Notice of admissions

[xx] August 2024

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BELL GULLY

B A Keown / H E Cassone
Counsel for the defendant
blair.keown@bellgully.com / hannah.cassone@bellgully.com

1 Queen Street
PO Box 4199
Auckland 1140
+64 9 916 8800

Notice of admissions

The Defendant, by its solicitors, says–

For the purposes of rules 15.15 and 15.16 of the High Court Rules 2016, and only for the purposes of this proceeding, the Defendant admits the facts pleaded and cause of action in the amended statement of claim dated 31 July 2024.

B A Keown / H E Cassone
Counsel for the defendant
[xx] August 2024

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Schedule 3: Joint memorandum

In the High Court of New Zealand
Auckland Registry

I te Kōti Matua o Aotearoa
Tāmaki Makaurau Rohe

CIV-2023-404-001103

Under the Financial Markets Conduct Act 2013

Between **Financial Markets Authority**
Plaintiff

And **AA Insurance Limited**
Defendant

Joint memorandum of counsel requesting penalty hearing

DD July 2024

MC.

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Julia.Carlyon@mc.co.nz | Yaren.Fu@mc.co.nz

Joint memorandum of counsel requesting penalty hearing

May it please the Court

- 1 The parties have entered into a settlement agreement for resolution of this matter. Accordingly, the parties have filed the following documents with the Court, along with this memorandum:
 - (a) Amended Statement of Claim;
 - (b) Notice of Admissions; and
 - (c) Affidavit of Martin Chisholm affirmed [date] 2024.
- 2 The parties have agreed that initial disclosure following the filing of the Amended Statement of Claim is not required, in accordance with r 8.4(3) of the High Court Rules 2016.
- 3 As part of the resolution, the parties have agreed to jointly approach the Court seeking the imposition of a pecuniary penalty at an agreed level.
- 4 The parties therefore respectfully seek directions that:
 - (a) a one and a half hour fixture is scheduled for determination of the appropriate pecuniary penalty (in consultation with counsel as to their availability);
 - (b) the Plaintiff's submissions are filed 10 working days prior to the hearing; and
 - (c) the Defendant's submissions are filed five working days prior to the hearing.

Dated: DD July 2024

.....
Julia Carlyon | Yaren Fu
Counsel for the Plaintiff

.....
Blair Keown | Hannah Cassone
Counsel for the Defendant