

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

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

**CIV-2023-404-1103  
[2024] NZHC 2869**

UNDER the Financial Markets Conduct Act 2013

BETWEEN FINANCIAL MARKETS AUTHORITY  
Plaintiff

AND AA INSURANCE LIMITED  
Defendant

Hearing: 19 September 2024

Appearances: J Carlyon and Y Fu for Plaintiff  
S J P Ladd and B A Keown for Defendant

Judgment: 3 October 2024

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**JUDGMENT OF O’GORMAN  
[Penalty hearing]**

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*This judgment was delivered by me on 3 October 2024 at 3 pm  
pursuant to r 11.5 of the High Court Rules 2016.*

*Registrar/Deputy Registrar*

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Solicitors/Counsel:  
Meredith Connell, Auckland  
S J P Ladd, Barrister, Auckland  
Bell Gully, Auckland

## Overview

[1] AA Insurance Ltd (AAI) has admitted contraventions of s 22 of the Financial Markets Conduct Act 2013 (FMCA). The contraventions relate to:

- (a) *The Multi-Policy Discount*: a multi-policy discount offered from September 2015 on the premiums it charged for its insurance policies if customers held more than one qualifying policy with AAI, including that it would be received on all policies immediately upon meeting the eligibility criteria (the Immediate Discount Representations).
- (b) *The NZAA Discount*: discounts on premiums offered since 1994 to customers who also held a New Zealand Automobile Association (NZAA) membership.
- (c) *The Guaranteed NCB*: offers between 2005 and 2015 of a guaranteed no claims benefit on comprehensive motor vehicle insurance policies (Guaranteed NCB), based on certain eligibility criteria (which changed over time).
- (d) *The Lifetime Representations*: representations that the Guaranteed NCB would apply for the life of qualifying customers (provided they remained insured with AAI), whereas while that was the initial intention, around December 2011 AAI amended its policy terms to state that the Guaranteed NCB would apply only for the “life of the policy”, yet some of the marketing material continued to use the same “for life” language without limitation.

[2] AAI has admitted breaching subs 22(d), (f) and/or (h) of the FMCA by making false and/or misleading representations. AAI did so by failing to apply the above Multi-Policy, NZAA and Guaranteed NCB discounts to some customers who were entitled to them (the Discount Issues),<sup>1</sup> and by making the Lifetime Representation when this misrepresented the policy terms at the time.

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<sup>1</sup> These breaches occurred when AAI issued incorrect amounts in the Affected Multi-Policy Discount Invoices (as defined in [19] of the Amended Statement of Claim dated 7 August 2024,

[3] The impact of the Discount Issues on customers was extensive, totalling approximately \$11.12 million:

- (a) the Multi-Policy Discount issue affected circa 112,463 customers, who were overcharged a total of approximately \$4.89 million;
- (b) the NZAA Discount issue affected circa 90,129 customers, who were overcharged a total of approximately \$2.95 million; and
- (c) the Guaranteed NCB issue affected circa 17,973 customers, who were overcharged a total of approximately \$3.28 million.

[4] Any further impact of the Lifetime Representation is more difficult to assess because it depends on whether the customers would have behaved differently (e.g. when taking out or renewing policies), had they properly understood the terms of the Guaranteed NCB offer.

[5] AAI has already paid compensation to all customers affected by the Discount Issues. In total, AAI has paid a total of \$15.6 million in compensation (including use of money interest). AAI is carrying out a further targeted remediation programme for customers that may have been affected by the Lifetime Representation.

[6] This hearing was to determine the pecuniary penalty that should be paid for the contraventions. The Financial Markets Authority (FMA) and AAI agreed to recommend that this Court impose a pecuniary penalty of \$6.175 million. They submitted that this figure accounts for all relevant matters:

- (a) the statutory considerations in s 492 of the FMCA;
- (b) the further relevant considerations identified in case law; and

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ASOC), the Affected NZAA Invoices ([30] of the ASOC), and the Affected Guaranteed NCB Invoices ([40] of the ASOC), and by making the Immediate Discount Representations.

- (c) the discounts appropriate for AAI's conduct, including its admissions, steps taken during the FMA's investigations, and its remediation of the breaches.

[7] For the reasons explained below, I am satisfied that the proposed pecuniary penalty of \$6.175 million satisfies the statutory objectives, properly reflects the circumstances of this case, and is within the proper range.

### **Legal principles**

[8] Part 2 of the FMCA came into force on 1 April 2014, introducing a range of "fair dealing" provisions. The wording of s 22 in pt 2 of the FMCA is similar to s 13 of the Fair Trading Act 1986 but is directed at financial products and financial services rather than goods and services more generally.

[9] Section 22 provides as follows:

#### **False or misleading representations**

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

- (a) that the products or services are of a particular kind, standard, quality, grade, quantity, composition, or value, or have had a particular history; or
- (b) that the products or services are offered, issued, transferred, or supplied by a particular person, by a person of a particular trade, qualification, or skill, or by a person who has other particular characteristics; or
- (c) that a particular person has agreed to acquire the products or services; or
- (d) that the products or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses, or benefits; or
- (e) that a person has any sponsorship, approval, endorsement, or affiliation; or
- (f) with respect to the price of the products or services; or
- (g) concerning the need for the products or services; or

- (h) concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy, including (to avoid doubt) in relation to any guarantee, right, or remedy available under the Consumer Guarantees Act 1993; or
- (i) concerning the place of origin of the products or services.

[10] For a breach of any civil liability provision under pt 2 (such as s 22),<sup>2</sup> the FMA may apply for a pecuniary penalty order under s 489(1) of the FMCA. When the FMA makes such an application, the Court:<sup>3</sup>

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

[11] The first pecuniary penalty under pt 2 of the FMCA was imposed in *Financial Markets Authority v ANZ Bank New Zealand Ltd*.<sup>4</sup> The Court adopted a three-stage framework:<sup>5</sup>

- (a) First, the Court should determine the maximum pecuniary penalty in accordance with ss 38(2) and 490 of the FMCA.

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<sup>2</sup> Financial Markets Conduct Act 2013, s 485(a).

<sup>3</sup> Section 489(2).

<sup>4</sup> *Financial Markets Authority v ANZ Bank New Zealand Ltd* [2021] NZHC 399, (2021) 16 TCLR 28.

<sup>5</sup> At [37], following the same approach as adopted for setting penalties under the Securities Markets Act 1988 and the Commerce Act 1986. This framework has since been applied in subsequent Financial Markets Conduct Act decisions such as *Financial Markets Authority v AIA New Zealand Ltd* [2022] NZHC 2444 at [52]; and *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd* [2022] NZHC 3610 at [49].

- (b) Second, the Court sets a starting point, having regard to the relevant statutory criteria that are provided in s 492 of the FMCA.
- (c) Third, the Court adjusts the starting point by applying an uplift or discount on the basis of circumstances personal to the individual defendant.

[12] The Court's role when asked to approve a pecuniary penalty agreed between the parties is well-settled:<sup>6</sup>

- (a) There is a significant public interest in such settlements bringing about the prompt and efficient resolution of penalty proceedings.
- (b) The Court must be satisfied that the proposed agreed pecuniary penalty satisfies the statutory objectives and reflects the particular circumstances of the case before it.
- (c) When assessing whether the final figure proposed is within the proper range, the Court need not accept each step of the methodology proposed — it is the final amount that matters.<sup>7</sup>

### **Further facts**

#### *AAI*

[13] AAI offers, administers and underwrites a range of general insurance products to individuals and companies based in New Zealand. AAI is a joint venture between two independent shareholders, the NZAA and Vero Insurance New Zealand Ltd (Vero). AAI is a separate business from Vero and actively competes with it in the general insurance market.

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<sup>6</sup> *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd*, above n 5 at [47]; and *Financial Markets Authority v Kiwibank Ltd* [2023] NZHC 2856 at [18].

<sup>7</sup> *Financial Markets Authority v ANZ Bank New Zealand Ltd*, above n 4, at [32]; and *Commerce Commission v Air New Zealand Ltd* [2013] NZHC 1414 at [27].

[14] AAI promotes its insurance products both to the world at large and in targeted form to its own customers. Multiple channels of advertising and marketing are used, such as online, direct letters to customers, material within policy renewal packs, digital and television.

[15] AAI's administration and management of its policies was performed by various computer systems. These were responsible for calculating premiums for customers and generating and issuing invoices to customers. The invoices included the premium amount owing to AAI. The systems also provided a trigger for this process, including when a policy was due for renewal.

#### *System errors*

[16] Failure to apply the Multi-Policy Discount correctly occurred when AAI's systems and its internal business processes were set up in such a way that it did not apply the Multi-Policy Discount immediately to existing policies when customers became eligible. Instead, the discount was only applied at the time of the customer's next policy renewal.

[17] Separately, from around 28 September 2015, AAI did not correctly apply the Multi-Policy Discount to the premiums of some customers that were eligible. This failure occurred because of errors in AAI's sales and fulfilment systems (including errors introduced by employees when entering data), deficiencies in its policy administration systems, and its lack of reporting in place to identify when customers did not correctly advise they had a pre-existing policy when taking out new policies online.

[18] Failure to apply the NZAA discounts correctly was caused by inherent errors in AAI's sales and fulfilment systems (including errors by employees when doing data entry), deficiencies in its policy administration systems, and an inability to identify when a customer held an NZAA membership, including its inability to identify when customers did not confirm and enter their NZAA membership details when taking out a new policy online. In 2018, auditors could not obtain a listing of NZAA members to identify whether the discount was being applied properly.

[19] Failure to apply the Guaranteed NCB was caused by errors in AAI's sales and fulfilment systems (including those made by employees in entering data) and the deficiencies of its policy administration systems.

*Discovery and self-reporting of Multi-Policy and NZAA Discount issues*

[20] Failure to properly apply the Multi-Policy and NZAA discounts was discovered following an audit process. An addendum to an audit report issued in August 2018 raised questions about the application of the discounts, noting that some customers had been identified as receiving the Multi-Policy Discount when they were not entitled to it. In early 2019, AAI's investigations focused on checking its data matching algorithms, policy management software and database. These checks did not identify any material problems. Despite that initial outcome, in May 2019 AAI established a joint project team to investigate further.

[21] As a result of those further investigations, by September 2019 AAI became aware of the scale of the NZAA Discount issue. It was reported to AAI's governance body, its Board Audit Risk and Compliance Committee (BARCC) in October 2019. By December 2019, AAI became aware of the scale of the Multi-Policy Discount issue, and that was reported to AAI's BARCC that same month. BARCC recognised that it needed to report the issues to its regulator, which it intended to do "as soon as practicable". However, AAI wanted to have the system fix in place and all available information before self-reporting to the FMA. AAI embarked on this next phase of work to develop comprehensive remediation programmes to correct the errors, which continued into 2020.

[22] In late January 2020, AAI recognised that accounting standards would require it to include an estimate for the NZAA and Multi-Policy Discount issues in its upcoming half-year financial statements. AAI therefore decided it needed to make notification to the FMA before it had all of the information required to give a comprehensive self-report to the regulator, so that the FMA heard directly from AAI about the issues and before there was any public statement about them in its half-year financial statements.



[23] Accordingly, AAI self-reported the Multi-Policy Discount and NZAA Discount issues to the FMA's supervision team on 7 February 2020.

*Discovery and self-reporting of Guaranteed NCB issue*

[24] From approximately September 2015, AAI stopped offering the Guaranteed NCB. Prior to each customer's policy renewal date, AAI informed all customers that the Guaranteed NCB would no longer be offered for any new policies, but that customers who had already qualified for the Guaranteed NCB would keep that benefit for the life of the policy.

[25] In November 2020, an AAI operational team was carrying out a programme of work to improve customer satisfaction. During that work, the team raised the query whether the Guaranteed NCB was operating as expected. The potential issue was promptly reported to the Executive Management team, and a project team was formed to investigate. The potential issue was also reported to AAI's BARCC on 28 January 2021.

[26] Between January and June 2021, AAI conducted a detailed review into the Guaranteed NCB, confirmed there was an issue (the benefit not being applied in all cases that it should have been) and identified the scale and scope.

[27] AAI self-reported the Guaranteed NCB issue to FMA on 23 June 2021.

[28] Based on the information from AAI about the Guaranteed NCB issue, in 2022 the FMA identified the Lifetime Representation issue. To assist FMA's enquiries into that, AAI built a new dataset across two policy administration systems, developed software coding to interrogate that new dataset, and undertook quality assurance testing of the resulting data. This took 14 weeks and three dedicated analysts.

**Maximum penalty**

[29] The first step of the penalty-setting exercise is to identify the maximum available amount of a pecuniary penalty. Sections 38(2) and 490(1) of the FMCA

provide that the maximum amount of a pecuniary penalty for a breach of s 22 by a body corporate will be the greater of:

- (a) the consideration for the relevant transaction;
- (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.

[30] In this case, the maximum under s 490(1) is determined by the consideration for the relevant transactions that constituted the contraventions.<sup>8</sup> This totals over \$151 million, comprised of:

- (a) \$39.54 million in total premiums charged in relation to the Multi-Policy Discount issue;
- (b) \$92.92 million in total premiums charged in relation to the NZAA Discount issue; and
- (c) \$19.15 million in total premiums charged in relation to the Guaranteed NCB issue.<sup>9</sup>

### **Starting point**

[31] In the circumstances of this case, the parties jointly suggest that a starting point of \$9.5 million is appropriate, including by reference to the criteria set out in subss 492(a)–(f) and (h) of the FMCA. This figure is the intersection between FMA’s proposed range of \$9.5 million to \$10 million and AAI’s proposed range of \$8.5 million to \$9.5 million.

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<sup>8</sup> Financial Markets Conduct Act, s 490(1)(a).

<sup>9</sup> The FMA notes that circa \$20.2 million in premiums were charged to the customers who did not receive the benefit as a result of the Lifetime Representation issue but acknowledges the overlap with the \$19.15 million in premiums paid by the Affected GNCB Customers. To avoid any duplication, the FMA considers that both sets of conduct fall under the one maximum.

[32] This would represent the highest individual starting point adopted for any breach of s 22 of the FMCA.<sup>10</sup> It compares with the following cases:

- (a) In *Financial Markets Authority v ANZ*,<sup>11</sup> the Court adopted a starting point of \$400,000 in respect of two separate systems-related issues regarding duplicate policies and ineligible cover, which affected 307 customers and involved \$199,120.76 of overcharges.<sup>12</sup>
- (b) In *Financial Markets Authority v AIA New Zealand Ltd*,<sup>13</sup> the Court adopted a starting point of \$1 million in respect of three separate systems-related issues (i.e., collecting premium after benefits had terminated, miscalculation of indexation increases, and failure to apply communicated benefits). These issues directly affected 383 customers, and indirectly affected at least 2,800 more, and involved overcharges of \$413,465.57.<sup>14</sup>
- (c) In *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd*,<sup>15</sup> the Court adopted a starting point of \$5.5 million in respect of decisions made by senior management to apply indexation to insurance policies at rates inconsistent with the underlying policy wording, which affected 52,363 policies and involved \$13,522,690 in additional premiums.<sup>16</sup>
- (d) In *Financial Markets Authority v Vero Insurance New Zealand Ltd*,<sup>17</sup> the Court adopted a starting point of \$6 million in respect of one system-related issue regarding the failure to apply the multi-policy

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<sup>10</sup> In *Financial Markets Authority v CBL Corporation Ltd (in liq)* [2023] NZHC 3842 five separate starting points totalling \$14.11 million were adopted for contraventions of ss 22 and 270 of the Financial Markets Conduct Act by CBL Corporation Ltd and for involvement in those contraventions by four former independent non-executive directors of CBL Corporation Ltd.

<sup>11</sup> *Financial Markets Authority v ANZ*, above n 4.

<sup>12</sup> At [54] and [85].

<sup>13</sup> *Financial Markets Authority v AIA*, above n 5.

<sup>14</sup> At [62].

<sup>15</sup> *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd*, above n 5.

<sup>16</sup> At [30] and [55]–[62].

<sup>17</sup> *Financial Markets Authority v Vero Insurance New Zealand Ltd* [2023] NZHC 2837.

discount to some eligible customers. The issue affected 42,256 customers and involved \$9.9 million in overcharged premiums.<sup>18</sup>

- (e) In *Financial Markets Authority v Kiwibank Ltd*,<sup>19</sup> the Court adopted a starting point of \$1.25 million in respect of one system-related issue regarding the failure to waive fees as promised for certain customers (this included home loan fees, set-up fees and everyday account fees). The issue affected 28,881 customers and involved overcharges of \$671,784.<sup>20</sup>
- (f) In *Financial Markets Authority v Medical Assurance Society New Zealand Ltd*,<sup>21</sup> the Court adopted a starting point of \$3 million in respect of four system-related issues (i.e., misapplication of the multi-policy discount, incorrect inflation adjustments, calculation of benefit payments and misapplication of the no claims bonus). The issues affected 16,470 customers and \$5.6 million in overcharged premiums.<sup>22</sup>

[33] I consider that the proposed starting point of \$9.5 million is appropriate, having regard to the above cases and all relevant matters, including the statutory criteria in s 492:

- (a) *Statutory purpose*: A breach of s 22 undermines the purposes set out in ss 3 and 4 of the FMCA, including promoting confidence in financial markets. Customers are entitled to feel secure that insurance premiums will be charged, and discounts applied, in accordance with policy terms and as represented in marketing material. Customers cannot be expected to double check the precise details of transactions. They are entitled to trust the accuracy of their insurer's systems and processes.<sup>23</sup>

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<sup>18</sup> At [10] and [37].

<sup>19</sup> *Financial Markets Authority v Kiwibank Ltd*, above n 6.

<sup>20</sup> At [15] and [35].

<sup>21</sup> *Financial Markets Authority v Medical Assurance Society New Zealand Ltd* [2023] NZHC 3312, [2023] NZCCLR 14.

<sup>22</sup> At [32] and [35].

<sup>23</sup> *Financial Markets Authority v ANZ Bank New Zealand Ltd*, above n 4, at [49].

- (b) *Nature and extent of contraventions:* The contraventions were not intentional.<sup>24</sup> They were nevertheless very serious in nature. The contraventions arose from weaknesses in AAI's systems and processes that amounted to systemic failures, rather than one-off errors. They occurred over an extended time and affected a significant number of customers. The starting point needs to hold financial service providers to high standards, so they are committed to investing in appropriate processes and systems that ensure customers are not overcharged or misled.
- (c) *Extent of loss or damage:* Although the average overcharge per customer was lower than most other FMCA penalty cases,<sup>25</sup> the overall impact on customers was greater. A total overcharge to customers of \$11.12 million is higher than any previous cases to date under pt 2 of the FMCA, so a correspondingly high starting point is needed to reflect that.
- (d) *Reparation:* AAI has already taken all appropriate steps to remediate the breaches in full.<sup>26</sup> It has paid in excess of \$15.6 million to customers, including use of money interest. It has also paid \$883,618, including use of money interest, to charities in respect of customers who could not be located or did not respond. Further remediation of \$420,000 (plus use of money interest) has been paid for 2,500 customers in respect of the Lifetime Representation.
- (e) *Circumstances of contravention:* The circumstances of the contravention have already been assessed under s 492(b) (above at (b)), addressing the nature and extent of the contravening conduct. Once the

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<sup>24</sup> This is evident from the fact that, in some cases, the error was applying the discount to customers who were ineligible — the amount of this undercharging was some \$1.94 million.

<sup>25</sup> AAI's contraventions involved \$11.54 million in overcharges in respect of 223,065 affected customers, equating to an average overcharge of \$52 per customer across all issues (\$43 per customer for the Multi-Policy Discount, \$33 for the NZAA Discount, and \$183 for the Guaranteed NCB).

<sup>26</sup> AAI did not reduce the amount of any remediation payment to take into account the premium it refunded as COVID-19 rebates.

systems and process issues were identified, AAI has taken responsible and comprehensive steps to fix the issues.

- (f) *Prior contraventions:* AAI has not previously been involved in proceedings under the FMCA, nor found by the Court to have engaged in any similar conduct before.
- (g) *Relationship of the parties:* AAI acknowledges that its relationship with customers is one of trust, and its customers are entitled to place trust in AAI's systems.

[34] In this case, I consider the objective of general deterrence is important.<sup>27</sup> There is no particular need for specific deterrence in circumstances where the breaches were unintentional, AAI has proactively identified the issues, self-reported them, paid full compensation, and taken comprehensive measures to fix its systems and processes to prevent any future breaches.

### **Discount**

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

[36] The FMA acknowledges that there are no aggravating factors specific to AAI.

[37] The FMA and AAI each suggest that a 35 per cent discount is appropriate to reflect steps by AAI to self-report the breaches, its co-operation with the FMA and timely admissions, and its remediation efforts.

- (a) The FMA acknowledges that AAI's admissions were made at the earliest possible opportunity, and it fully cooperated with the FMA's investigation and took appropriate remediation steps, including a remediation programme with use-of-money interest, and donations to charities.

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<sup>27</sup> *Financial Markets Authority v ANZ Bank New Zealand Ltd*, above n 4, at [45]; and *Financial Markets Authority v AIA*, above n 5, at [90] and [91].

- (b) The FMA’s position is that AAI’s self-reporting of the Multi-Policy Discount and NZAA Discount issues could have been done more promptly, but the FMA acknowledges that any delay was not significant. I accept that AAI intended to report the issues to the regulator “as soon as practicable”, and the time taken between December 2019 and 7 February 2020 was to assemble information AAI reasonably assumed the regulator would immediately want about the scale and scope of the issues and intended remediation programmes. While the eventual timing of the self-reporting was impacted by its half-year financial statements, AAI had already committed to taking that step, and I do not consider that this short delay undermines in any way the credit that AAI should receive for self-reporting.
- (c) There was no self-reporting of the Lifetime Representation issue, but only because this was something identified by the FMA during its investigations of Guaranteed NCB based on the information provided by AAI. The FMA acknowledges that AAI deserves credit for investing significant resources to expand its remediation programme once the Lifetime Representation issue was identified.

[38] A discount of 35 per cent is comparable to other cases in similar circumstances (for self-reporting, co-operation, early admissions, and remediation).<sup>28</sup>

### **Overall assessment**

[39] Standing back and looking at the matter overall, having regard to the relevant considerations, I accept that a starting point of \$9.5 million is appropriate, as is the 35 per cent discount for the AAI’s conduct of self-reporting, co-operation, early admissions, and remediation. It follows that I accept an end penalty of \$6.175 million satisfies the statutory objectives, properly reflects the circumstances of this case, and is within the proper range.

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<sup>28</sup> Discounts of 35 per cent were considered available in *Financial Markets Authority v Kiwibank Ltd*, above n 6, at [37]; and *Financial Markets Authority v Vero Insurance New Zealand Ltd*, above n 17, at [38]–[39]. See also *Financial Markets Authority v Cigna Life Insurance New Zealand Ltd*, above n 5, at [68] and [69] in which the Court considered that a discount in the range of 30–40 per cent was available.

## **Result**

[40] Accordingly, I declare that AAI contravened:

- (a) subss 22(f) and/or (h) of the FMCA by issuing the Affected Multi-Policy Discount Invoices;
- (b) subss 22(f) and/or (h) of the FMCA by issuing the Affected NZAA Invoices;
- (c) subss 22(f) and/or (h) of the FMCA by issuing the Affected Guaranteed NCB Invoices;
- (d) subss 22(d), (f) and/or (h) of the FMCA by making the Immediate Discount Representations; and
- (e) subss 22(d), (f) and/or (h) of the FMCA by making the Lifetime Representation;

[41] I impose a penalty of \$6.175 million on AAI.

[42] 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.

[43] I record that the FMA does not seek any further order as to costs.

[44] This judgment is to be circulated to counsel 24 hours before it is made publicly available.

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O'Gorman J