

Settlement Agreement

Financial Markets Authority

Vero Insurance New Zealand Limited

Settlement Agreement dated June 2023

Parties

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

Vero Insurance New Zealand Limited a company incorporated in New Zealand, having its registered office at Level 13, Vero Centre, 48 Shortland Street, Auckland, New Zealand (**Vero**),

(together, the **Parties**).

1 Introduction

- 1.1 In December 2019, Vero advised the FMA of issues arising in relation to the misapplication of its multi-policy discount. The FMA subsequently commenced an investigation into Vero's discounting practices (**Investigation**).
- 1.2 Subsequently, the FMA filed proceedings in the High Court against Vero alleging that Vero made false and/or misleading representations in connection with the supply of insurance.
- 1.3 In the Proceeding, the FMA seeks a pecuniary penalty and declarations that the conduct breached s 22 of the Act.
- 1.4 The Parties have reached a settlement regarding the matters to be determined in the Proceeding, on the terms set out in this Agreement.
- 1.5 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 Cause of Action** means the cause of action contained in the Amended Statement of Claim;
 - (c) **Agreed Recommended Penalty** means the pecuniary penalty defined 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) Dollar amounts stated are New Zealand dollars;
- (i) **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;
- (j) **Information** includes all information, documents, material and evidence of any kind whatsoever, including all oral, written and electronic material in relation to the Investigation and the Proceeding;
- (k) **Investigation** has the meaning set out in paragraph 1.1;
- (l) **Notice of Admissions** means the notice of admissions attached as **Schedule 2** to this Agreement;
- (m) **Notifying Party** has the meaning set out in clause 8.1;
- (n) **Party** means any party to this Agreement;
- (o) **Penalty Hearing** means any hearing or fixture in the Proceeding at which the FMA and Vero will ask the Court to approve the order set out in clause 4.4;
- (p) **Penalty Judgment** means the judgment of the Court determining the pecuniary penalty payable by Vero in the Proceeding. Where a Penalty Judgment of a particular Court is specified, it is the judgment of that Court;
- (q) **Person** extends to non-natural persons and includes any association of persons whether incorporated or not;
- (r) **Proceeding** means the civil proceeding brought by the FMA in the High Court of New Zealand CIV-2022-404-2068 as amended by the filing of the Amended Statement of Claim, and includes any appeals;
- (s) **Working Day** has the definition set out in r 1.3 of the High Court Rules 2016.

3 Resolution

- 3.1 The Parties have reached a full and final settlement of the claims against Vero arising out of the Investigation.
- 3.2 The Parties agree to resolve the Proceeding and the Investigation 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, Vero filing the Notice of Admissions;
 - (c) Vero 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 arising in relation to the Investigation about which the FMA does not have reasonable notice; or
- (b) preventing the FMA from commencing or continuing any civil or criminal proceedings against Vero 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 Vero files the Notice of Admissions referred to at clause 3.2(b) above, 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 that the Court proposes that is convenient to counsel.

Consultation on penalty submissions

- 4.3 The FMA and Vero 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 Penalties and content of submissions

- 4.4 The Parties agree and undertake that:
 - (a) the Agreed Recommended Penalty for the Admitted Cause of Action is a final penalty of \$3,900,000;
 - (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 \$6,000,000 to \$7,000,000, and Vero will indicate a range of \$5,000,000 to \$6,000,000 is appropriate;

- (d) they will make written and oral submissions in recommending to the Court that it adopt a starting point of \$6,000,000, being the meeting point of their respective ranges;
 - (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;
 - (f) they will otherwise support the Agreed Recommended Penalty before the Court.
- 4.5 The Parties agree that matters relating to Vero's conduct are as described in the Statement of Claim and any evidence it files to corroborate matters contained in it (to which effect Vero's evidence will be strictly confined).

Court Costs

- 4.6 The Parties:
- (a) acknowledge that the final penalty 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;
 - (b) following the service of a Default Notice in accordance with clause 8.3; and/or
 - (c) in respect of a matter referred to in clause 3.3.

5 Payment of Penalty

- 5.1 If the High Court imposes the Agreed Recommended Penalty in the Penalty Judgment, Vero 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 Vero 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, Vero (on the one hand), or the FMA (on the other hand), as applicable, shall pay to the other any difference between any pecuniary penalty paid by Vero 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 bank account nominated by the FMA or Vero. For the avoidance of doubt, if no pecuniary penalty has been paid by Vero when a Penalty Judgment is issued by an appellate Court, this difference will be the total

amount ordered by the appellate Court. The payment will be made within 15 Working Days of the date of the appellate judgment or within any other time period specified by the appellate judgment, whichever is later.

- 5.4 If a stay of the Penalty Judgment is granted pending determination of an appeal, Vero 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 media release or make a public comment in relation to this Agreement or the outcome of the Penalty Hearing after the public release of the Penalty Judgment.
- 6.2 Vero 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.

Principles applying to comments

- 6.3 In relation to any media release or public comment made by either Party under clause 6.1, the Parties agree:
 - (a) to make only media releases or public comments that are consistent with the content, spirit and intent of this Agreement including the schedules; and
 - (b) that the Party issuing the media release will provide a copy of the media release to the other Party twenty-four hours in advance of the release being published, for the purpose only of allowing the other Party to have advance notice so as to inform its own position (and not for approval).

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 the 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 any penalty that differs from the Agreed Recommended Penalty, either 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; and
 - (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, and 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 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 (without limitation) applying to set aside the Penalty Judgment or to appeal the Penalty Judgment in accordance with clause 7.2;
- (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 (including for the avoidance of doubt as to amendment of the pleadings inconsistent with the Amended Statement of Claim

attached in Schedule One, the withdrawal of the admissions set out in the Notice of Admissions set out in Schedule Two, or the imposition of a pecuniary penalty or other orders inconsistent with this Agreement).

- 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 in accordance with clauses 8.1 to 8.3 above.

9 General

Entire agreement

- 9.1 This Agreement constitutes the entire understanding and agreement between the Parties in relation to the Proceeding. It 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 Vero for the purpose of carrying out any of the FMA's functions or obligations under any enactment, but may not disclose such Information to any third party other than in accordance with clauses 9.4 and 9.7 below.

- 9.4 Subject to legal professional privilege and privilege for without prejudice settlement negotiations, the FMA may disclose Information provided by Vero in the following circumstances:
- (a) with Vero'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) pursuant to section 30 of the Financial Markets Authority Act 2011; or
 - (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 2020).
- 9.5 For the avoidance of doubt, the FMA may use any Information provided by Vero for such purposes as are reasonably necessary to give effect to the Agreement.
- 9.6 Any Party may use Information provided by the other Party in proceedings instituted in accordance with clause 8.4 except Information that has been provided by a Party on a without prejudice basis.
- 9.7 Subject to clause 9.4, if the FMA wishes to disclose to a third party any Information provided to it by Vero 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 Vero and provide Vero with a reasonable opportunity to oppose such a request, including by Court action.

Amendments in writing

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

Authorities

- 9.9 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

- 9.10 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

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

Governing law

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

Further assurances

- 9.13 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

- 9.14 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

- 9.15 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
New Zealand

Attention: Margot Gatland, Head of Enforcement

Email: margot.gatland@fma.govt.nz

Copy to:

Meredith Connell
Level 7, 8 Hardinge Street
Auckland

Attention: Nick Flanagan | Yaren Fu

Email: Nick.Flanagan@mc.co.nz | Yaren.Fu@mc.co.nz

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

Vero
Level 13, 48 Shortland Street
Auckland
New Zealand

Attention: Annette Quesado

Email: Annette.Quesado@suncorp.co.nz

Copy to:

Bell Gully
Level 21, 48 Shortland Street
Auckland
New Zealand

Attention: Blair Keown | Zavara Farquhar

Email: Blair.Keown@bellgully.com |
Zavara.Farquhar@bellgully.com

Execution

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



.....

Authorised signatory

Margot Gatland

.....

Name

**Signed by and on behalf of
Vero Insurance New Zealand Limited**

.....

Authorised signatory

.....

Name

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 2022-404-2068

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 **Vero Insurance New Zealand Limited** an
incorporated company having its registered office at Level 13,
Vero Centre, 48 Shortland Street, Auckland

Defendant

Amended statement of claim

June 2023

MC.

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DX CP24063
T: +64 9 336 7500
Nick.Flanagan@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, Vero Insurance New Zealand Limited (**Vero**):
 - (a) is an incorporated company having its registered office at Level 13, Vero Centre, 48 Shortland Street, Auckland;
 - (b) was incorporated on 7 February 1923;
 - (c) is a subsidiary of Suncorp Group Limited, 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.

Vero's insurance services

- 3 Vero offers, underwrites and administers a range of general and specialist insurance products to individuals and companies based in New Zealand in the ordinary course of its business.
- 4 Vero's insurance products are promoted and distributed predominantly through brokers and distribution partners throughout New Zealand (**Intermediaries**), generally pursuant to the terms of broker agreements or distribution agreements. (A copy of the template agreement of the Insurance Brokers Association of New Zealand is annexed to this statement of claim as Schedule A).
- 5 Where Vero's insurance products are promoted and distributed through the Intermediaries, Vero:
 - (a) enters into contracts of insurance (**Policies**) with customers (**Customers**), including some Policies which carry the branding of Intermediaries but are underwritten by Vero;
 - (b) receives information regarding the Customers and the risks to be insured that is necessary to enter into the Policies;
 - (c) administers those Policies, including by communicating with some Customers directly or by providing information to Intermediaries who communicate to their Customers about the administration of the Policies, including the premiums payable (**Premiums**),

but, in a relatively smaller number of instances, such as for Vero Schemes customers, Vero carries out the matters at sub-paragraphs (a) to (c) above itself.

Intermediaries

- 6 The Intermediaries are comprised of:
- (a) ANZ Bank New Zealand Limited (**ANZ**), which markets and sells ANZ-branded insurance products that are underwritten by Vero;
 - (b) other channels (**Channels**), which are comprised of:
 - (i) AMP Services (NZ) Limited (**AMP**), which markets and sells AMP-branded insurance products that are underwritten by Vero;
 - (ii) a large network of approximately 1,450 brokers, which quote and sell insurance products that are underwritten by Vero and may be Vero-branded or broker-branded; and
 - (c) various organisations who advertise Vero-branded insurance to their members, who are then instructed to contact Vero directly to obtain a quote for and buy insurance (**Schemes**).
- 7 Brokers are independent businesses that range from small broking businesses, networks of broking businesses (such as NZbrokers and PSC Connect), to large national and international broking businesses such as Rothbury, Crombie Lockwood, AMP, Aon and Marsh.
- 8 Brokers:
- (a) source, quote and advise on insurance from a number of insurers;
 - (b) act as the agent of their Customers when sourcing, quoting and advising on their Customers' insurance needs; and
 - (c) have obligations to act in their Customers' best interests.
- 9 Brokers can be either:
- (a) "gross brokers" which receive commission from Vero, which receives premium directly from the Customers (**Gross Brokers**); or
 - (b) "net brokers" which collect premium and other fees directly from their Customers and remit the premium less commission and other fees to Vero (**Net Brokers**).
- 10 Vero does not communicate directly, or have contact with, the Customers of Net Brokers, in relation to entering into the Policies of those Customers, payment of Premiums or administering those Policies.
- 11 Intermediaries are entitled to and receive commissions on Policies sold to Customers (**Commissions**). The Commissions generally consist of a percentage of the total premiums paid by Customers on Policies distributed by the Intermediary.

- 12 A small number of Intermediaries are also entitled to and receive a share of the profit made by Vero on the sale of the Policies distributed by the Intermediary.

Multi-Policy Discount

- 13 From 2009 onwards, Vero has offered a multi-policy discount on Premiums (**Multi-Policy Discount**).
- 14 At all material times, the Multi-Policy Discount has been offered and promoted by both Vero and Intermediaries.
- 15 Since 2009, the eligibility criteria for the Multi-Policy Discount has varied over time and depending on the Intermediary or type of Policy involved, but in general terms Customers were eligible if they met the following criteria:
- (a) they had taken out insurance on more than one qualifying asset such as house, boat, vehicle, or home contents (**Risks**); and
 - (b) with respect to ANZ and AMP branded Policies, the Risks were insured together under ANZ or AMP branded Policies (as applicable),
(Eligible Customers).
- 16 The amount of the Multi-Policy Discount has varied over time and depending on the Intermediary or type of Policy involved, but generally, the Multi-Policy Discount has been set at either 10% or 15% of the applicable Premium.

Vero's Policy Administration Systems

- 17 At all material times:
- (a) Vero has used various computer systems to administer and manage the Policies (**Vero's Policy Administration Systems**).
 - (b) In the case of the Policies, Intermediaries (other than the Schemes) access parts of Vero's Policy Administration Systems in order to quote and place policies for Customers.
 - (c) Intermediaries (other than the Schemes) otherwise use their own computer systems to complete the steps necessary to source, quote, and advise their Customers and, in some cases (including Net Brokers) to invoice their customers.
- 18 For Intermediaries other than Net Brokers, Vero's Policy Administration Systems were responsible for:
- (a) quoting and placing insurance;
 - (b) amending, cancelling, and renewing Policies;
 - (c) calculating Premiums;
 - (d) issuing invoices or renewal notices to be sent to Customers, which included the Premium amounts due, or provided the basis on which invoices or renewal notices are issued by the Intermediaries that use

their own system to generate invoices or renewal notices (together, **Vero's Invoices**); and

- (e) providing a trigger for communications to be sent to Customers, including when a Customer's Policy was due for renewal.

19 For Net Brokers:

- (a) Vero's Policy Administration Systems were responsible for: calculating Premiums; issuing quotes and pre-expiry notices to Net Brokers, which included the Premium amounts due (**Vero's Quotes**); and recording the information provided by the Net Brokers regarding their Customers and the risks to be insured that was necessary to enter into the Policies.
- (b) Vero's Quotes were used by the Net Brokers in order to quote insurance to Customers and issue invoices or renewal notices to be sent to their Customers, which may have included additional commissions or fees charged by the Net Brokers.
- (c) In order to place, amend, cancel, and renew Policies:
 - (i) Net Brokers accessed Vero's Policy Administration Systems directly; or
 - (ii) Net Brokers contacted Vero on their Customers' behalf to perform these steps manually within Vero's Policy Administration Systems.
- (d) Subject to sub-paragraphs (a) - (c) above, their own systems completed the steps for:
 - (i) quoting and placing insurance, amending, cancelling and renewing Policies;
 - (ii) calculating total charges to their Customers (including Premium amounts calculated by Vero and any commissions or fees charged by the Net Brokers);
 - (iii) issuing invoices or renewal notices to be sent to their Customers, which included Premium amounts calculated by Vero; and
 - (iv) providing communications to their Customers, including when a Customer's Policy was due for renewal.

20 In each case:

- (a) when seeking a quote and placing policies for Customers, Vero's Policy Administration Systems required Intermediaries to check and confirm whether or not the Customer had existing insurance with Vero;
- (b) if this information was not correctly provided for a Customer eligible for the Multi-Policy Discount, the Multi-Policy Discount would not be applied; and

- (c) if this information was not correctly provided, Vero's Policy Administration Systems did nevertheless contain sufficient information for Vero to ascertain whether a Customer was eligible for the Multi-Policy Discount and, if so, to apply the discount.

Vero's invoicing and payment of Vero's Premiums

- 21 Vero's Invoices and Vero's Quotes are generally issued each time a new Risk is insured, or when an existing Policy is due for renewal.
- 22 Invoices for Vero's Premiums (and any other charges) are issued by:
 - (a) Vero to Customers directly on Vero branded letterhead or an Intermediary's branded letterhead; or
 - (b) the Intermediaries to Customers based on information supplied by Vero, on the Intermediaries' branded letterhead.
- 23 Vero's Quotes were issued by Vero to Net Brokers and the Net Brokers issued invoices to their Customers, based on Premium information supplied by Vero.
- 24 Customers paid the Premiums either:
 - (a) directly to Vero, who paid Commissions, and in some cases profit shares, to the Intermediaries; or
 - (b) to the Intermediaries, which collected the Premiums on Vero's behalf and subsequently aggregated all transactions into a single financial transaction (known as a "bordereaux payment") and paid the aggregate amount of the Premiums to Vero, and retained Commissions and, in some cases, profit shares.

Vero failed to apply the Multi-Policy Discount

- 25 From approximately 2009 onwards, Vero did not apply the Multi-Policy Discount to the Premiums owed by some Eligible Customers (**Affected Customers**) due to:
 - (a) Intermediaries failing to correctly check and confirm whether or not the Customer had existing insurance with Vero when seeking a quote and placing policies for Customers;
 - (b) errors in Vero's systems, including data entry errors made by employees of Vero and Intermediaries; and
 - (c) deficiencies in Vero's Policy Administration Systems.
- 26 Where the Multi-Policy Discount had wrongly not been applied, the Invoices issued to Affected Customers (**Affected Invoices**) referred to amounts of Premium that were not owed by them (**Incorrect Premiums**), instead of the actual amounts that were in fact owed by them (**True Premiums**).
- 27 The Affected Invoices falsely represented to the Affected Customers that:
 - (a) the Incorrect Premiums were the correct amounts owed by the Affected Customers under their Policies; and

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

28 Between 1 April 2014 and May 2022:

(a) Affected Invoices were issued to approximately 42,256 Affected Customers who were entitled to Multi-Policy Discounts, but did not receive them;

(b) the Incorrect Premiums charged to Affected Customers totalled approximately \$88.1 million, with approximately \$9.9 million in overcharged Premiums, being the difference between the Incorrect Premiums and the True Premiums (**Overcharges**);

(c) of the Affected Customers:

(i) 26,644 were Customers of Intermediaries other than Net Brokers, to whom Incorrect Premiums totalling approximately \$47,738,084 were charged, with approximately \$6.1 million of Overcharges;

(ii) 15,753 were Customers of Net Brokers, to whom Incorrect Premiums totalling approximately \$40,386,431 were charged, with approximately \$3.8 million of Overcharges; and

(d) approximately 12-15% of Eligible Customers were Affected Customers.

29 Between 2009 and 1 April 2014, the extent of Vero's failure to apply the Multi-Policy Discount to Premiums owed by some eligible customers is unknown. It is expected to have caused less financial impact than that pleaded at paragraph 28 above in relation to Premiums issued through ANZ (in particular because the ANZ relationship only began in 2009). However, in relation to the Channels, Vero has only been able to obtain reliable data for the period commencing 15 March 2013.

Vero's knowledge of the issue

30 In 2010, Vero identified that approximately 600 ANZ or National Bank Customers had been affected by a Multi-Policy Discount issue. Vero remediated those Customers at the time and implemented an update to Vero's systems to facilitate automatic application of multi policy discounts when eligible risks were quoted on the same policy. But Vero did not amend its systems to implement any checking or auditing of the proper application of the Multi-Policy Discount, still otherwise relied on complete accuracy by Intermediaries, and carried out no further investigation on the issue (because Vero considered the immediate issue had been adequately resolved on its terms).

31 In March 2018, Vero separately discovered a similar issue when it improved its customer modelling tools, and at the time understood the Multi-Policy Discount issue to affect approximately 150 Customers who held ANZ- branded Policies (**ANZ Issue**).

- 32 In August 2018, Vero's Product Pricing Committee identified that an investigation was needed to understand whether the ANZ Issue also affected the other Channels (**Channels Issue**).

Particulars

Minutes of Product Pricing Committee dated 7 August 2018

Vero's investigations and remediation exercises

- 33 Between March and April 2018, during a review of data from a customer engagement study, Vero identified approximately 150 customers eligible for, but not receiving, a Multi-Policy discount.
- 34 During 2018, Vero initially sought to identify affected customers through a largely manual programme of work and, in November 2018, after process development, approval and testing, remediation payments totalling \$112,304 were made to 147 customers.
- 35 In January 2019, Vero and ANZ engaged about the remediation exercise and in March 2019, Vero commenced a review of all in-force and out-of-force ANZ customer data for the full period of Vero's relationship with ANZ (2009 to 2019).
- 36 In March 2019, ANZ asked that the analysis and remediation of the out-of-force customers be given priority by the Vero project team, given:
- (a) the time that had elapsed (11 months since the issue was discovered, and four months since in-force customers were remediated); and
 - (b) the FMA's expectation of timely remediation.
- 37 In April 2019, ANZ asked that Vero complete its data analysis sooner so that Vero and ANZ could progress more quickly to understanding the customer impact.
- 38 Between March and October 2019, Vero investigated the scope of the ANZ Issue working with ANZ where necessary, developing software to extract and interrogate the necessary data from Vero's Policy Administration Systems to ascertain Customer eligibility across the entire ANZ Customer population of 385,695 and to calculate remediation amounts for each Affected Customer. Vero's ANZ remediation programme applied the following principles:
- (a) remediation of all ANZ Customers who did not receive Multi-Policy Discounts to which they were entitled;
 - (b) payment of use of money interest to all Affected Customers;
 - (c) payment of remediation to customers with current policies, policies close to renewal, and policies with larger refund amounts to be prioritised first;
 - (d) Vero would not seek repayment from Customers who had received Multi-Policy 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 (after a trial run) in February 2020, to be completed by December 2020; and
 - (g) development of a communication plan and agreement of that plan with ANZ to be used to contact ANZ Customers.
- 39 In October 2019, ANZ expressed concern with the speed of the resolution of the issue, and advised Vero that the FMA would be looking for a fast customer solution.
- 40 Between October and December 2019, Vero developed an exception reporting process, which is:
- (a) run at inception of all new risks to identify and correct any errors in the information provided about the eligibility of Customers for Multi-Policy Discounts and to correct those errors;
 - (b) run using analytics software across all new business to identify eligible risk types that do not have the Multi-Policy Discount applied;
 - (c) generated daily for new business placed in Vero's Policy Administration Systems on the previous day;
 - (d) reviewed by an allocated team member on the day received, with an escalation process in place for any report that is not completed that day, so that the report is completed on the following day;
 - (e) and, where the information provided regarding eligibility was incorrect, that information is corrected in Vero's Policy Administration Systems and any correction required to the Premium is made.
- 41 In December 2019, Vero reported the Multi-Policy Discount issue to the FMA and RBNZ.
- 42 At the same time, Vero advised the FMA that it would also investigate whether other Channels were affected by the Multi-Policy Discount issue once it had completed remediation of Customers affected by the ANZ Issue. At that point, the remediation was expected to be completed in December 2020, Vero did not know whether or not the issue affected other Channels, and had not taken steps to investigate this since identifying an investigation was needed in August 2018 (because Vero focused first on the ANZ Issue that had been identified and on taking the steps set out at paragraphs 38 and 40 above).

Particulars

Vero notified the FMA of the Multi-Policy Discount issue as it related to the ANZ Issue in a phone call with a representative of the FMA on 10 December 2019. Representatives of the FMA's Supervision Team, RBNZ and Vero also met on 16 December 2019 to discuss the Multi-Policy Discount issue.

- 43 In a letter dated 13 February 2020, the FMA requested that Vero “bring forward the establishment of a remediation plan for non-ANZ customers (non-ANZ remediation plan) and provide the FMA within 10 business days after the last day of each month with an update on Vero’s progress toward the establishment and implementation of a non-ANZ customer remediation plan.”

Particulars

Letter from the FMA to Vero dated 13 February 2020.

- 44 Vero complied with the FMA’s request and carried out remediation of ANZ customers and investigation of whether other Channels were affected by the Multi-Policy Discount issue from February 2020 onwards.
- 45 Vero’s investigation of whether other Channels were affected by the Multi-Policy Discount issue identified that further Customers were affected.
- 46 Between February 2020 and June 2020, Vero investigated the scope of the issue for the other Channels, reviewing customer collateral in relation to each Channel to identify whether a Multi-Policy Discount had been offered and developing software to extract and interrogate the necessary data from Vero’s Policy Administration Systems to ascertain Customer eligibility across the entire Channels Customer population of 507,182 and to calculate remediation amounts for each Affected Customer.
- 47 Vero’s remediation of other Channels applied the following principles:
- (a) utilising and building on the experience of the ANZ remediation programme;
 - (b) remediation of all Affected Customers who did not receive Multi-Policy Discounts to which they were entitled;
 - (c) payment of use of money interest to all Affected Customers;
 - (d) prioritisation of payment of remediation to customers with current policies, policies close to renewal, and policies with larger refund amounts;
 - (e) for Affected Customers of Net Brokers (for whom Vero did not have customer contact or bank account details), Vero would pay the remediation sums to each Net Broker who would make payment to their customers;
 - (f) Vero would not seek repayment from Customers who had received Multi-Policy Discounts to which they were not entitled;
 - (g) Vero would not seek repayment from Intermediaries of any Commissions or profit shares;
 - (h) engagement of an external third party to validate the affected population and calculation of remediation amounts;
 - (i) commencing remediation with Schemes then Gross Brokers then Net Brokers;

- (i) commencing remediation (after a trial run) in March 2021, to be completed by October 2021 for Gross Brokers; and
- (j) development of a communication plan to contact Channels customers and engagement with Intermediaries in relation to that plan with Intermediaries.

48 Vero's remediation of Net Broker Channels also applied the following additional principles:

- (a) engaging with Net Brokers to design remediation of Affected Customers;
- (b) provision of schedules of each Affected Customer to their Net Broker;
- (c) provision of a proposed remediation communication to each Net Broker to send to their Affected Customers;
- (d) employment of a full time staff member dedicated to facilitating remediation via Net Brokers; and
- (e) Net Brokers would report to Vero on the remediation of each Affected Customer.

49 Between June and September 2020, Vero developed, tested and implemented an exception reporting process for Channels that was the same as that pleaded at paragraph 40 above.

Number of Affected Customers, amount of Overcharges and remediation payments

50 Between 1 April 2014 and May 2022:

- (a) the total number of Affected Customers was 42,256;
- (b) the total number of Affected Policies was 47,992;
- (c) the total Incorrect Premiums charged to Affected Customers was approximately \$88.1 million; and
- (d) the total Overcharges were \$9.9 million (on a gross basis).

51 To date, Vero has paid a total amount of \$13.97 million for all time periods, including use of money interest of \$3.02 million at monthly compounding rates of between 4.6% and 9.9% per annum to Affected Customers (through direct payments to Customers or payments to Net Brokers for payment to Customers).

52 Vero has committed to payment and provisioned the funds to pay \$95,845 to charities where Affected Customers could not be located or did not respond to contact from Vero, with the final amount to be confirmed and paid following confirmation from Net Brokers of Affected Customers who could not be located or did not respond to contact. Vero expects that final amount will be somewhat higher than \$95,845.

- 53 Vero has not sought repayment of Commissions or profit shares paid to Intermediaries in relation to Affected Policies.
- 54 Vero has not sought repayment of premiums by customers who received a Multi-Policy Discount but were not entitled to it, which amounts to at least \$16 million in undercharges.
- 55 Vero has incurred costs of \$4,836,757 in carrying out investigation and remediation of the Multi-Policy Discount issues, comprising external costs of \$2,217,520 and \$2,619,237 of costs for internal resources (very predominantly technology specialists who are charged to the remediation project).

Cause of action: breach of s 22 of the FMCA

- 56 The plaintiff repeats paragraphs 1 to 55 above.
- 57 Vero, in trade, in connection with the supply of financial services, namely the supply of insurance services., issued the Affected Invoices (either itself or through the Intermediaries).
- 58 Under s 536 of the FMCA, the Intermediaries were acting on behalf of Vero in issuing the Affected Invoices and this conduct is treated as conduct also engaged in by Vero.
- 59 By issuing the Affected Invoices dated on or after 1 April 2014, Vero 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 Vero had a right to charge the Incorrect Premiums to the Affected Customers, in breach of s 22(h) of the FMCA.

Accordingly, the Plaintiff seeks:

- (A) a declaration that Vero contravened ss 22(f) and/or (h) of the FMCA by issuing the Affected Invoices dated on or after 1 April 2014;
- (B) an order under s 489 of the FMCA that Vero 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.

This statement of claim is filed on behalf of the Plaintiff by its solicitor **Nicholas Fraser Flanagan** whose address for service is at the offices of MC, Level 7, 8 Hardinge Street, Auckland 1010.

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

- (a) posted to the Solicitor at PO Box 90750, Victoria Street West, Auckland 1142; or
- (b) left for the Solicitor at a document exchange for direction to DX CP24063; or
- (c) transmitted to the Solicitor by facsimile to +64 9 336 7629; or

- (d) emailed to the solicitor at litigation@mc.co.nz, with a copy sent to nick.flanagan@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 2022-404-2068

Under the Financial Markets Conduct Act 2013

Between **Financial Markets Authority**
Plaintiff

And **Vero Insurance New Zealand Limited**
Defendant

Notice of admissions

[xx] June 2023

BELL GULLY

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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 [xx] June 2023.

S J P Ladd / B A Keown
Counsel for the defendant
[xx] June 2023

Schedule 3: Joint Memorandum of Counsel

**In the High Court of New Zealand
Auckland Registry**

**I te Kōti Matua o Aotearoa
Tāmaki Makaurau Rohe**

CIV-2022-404-2068

Under The Financial Markets Conduct Act 2013

Between **Financial Markets Authority**
Plaintiff

And **Vero Insurance New Zealand Limited**
Defendant

Joint memorandum of counsel requesting penalty hearing

June 2023

MC.

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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 Gail Tania Saipani [sworn / affirmed] [date] June 2023.
- 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.
- 5 In case there is a prospect of the Court being able to accommodate an early hearing, counsel respectfully indicate that they have good availability during June.

Date: June 2023

.....
Nick Flanagan | Yaren Fu
Counsel for the Plaintiff

.....
Simon Ladd | Blair Keown
Counsel for the Defendant