

ASIC to prioritise enforcement action for breach of pricing promises

The corporate regulator's renewed focus on pricing practices will see general insurers under scrutiny in 2023 to ensure that they are keeping promises made to consumers.

ASIC has signaled in its 2023 Enforcement Priorities and Corporate Plan for 2022-26 that it will be focusing on pricing misconduct in the general insurance sector as part of a more interventionist agenda. This approach is already evident in proceedings brought by ASIC against a general insurer in relation to alleged pricing discount failures in February 2023

ASIC has already identified industry wide failures and insurers have already repaid more than AUD 400 million since 2018. ASIC has brought proceedings for pricing failures, and we expect it will continue to do so in 2023. Although it is likely that those proceedings will be brought on the basis of engaging in misleading or deceptive conduct and making false or misleading representations (**in a similar manner to the proceedings commenced by ASIC in February 2023**), recent experience suggests that ASIC will also be seeking to rely on the general obligation in section 912A(1)(a) of the *Corporations Act 2001* (Cth) for Australian financial services licensees to do all things necessary to provide services efficiently, honestly and fairly.

A similar focus has been seen in recent years in the United Kingdom with the Financial Conduct Authority (**FCA**) implementing an increasingly comprehensive package of new rules to address poor pricing practices in the general insurance market. Following a detailed study by the FCA in relation to problematic pricing practices with an

estimated cost to consumers of an equivalent of AUD2 billion per year, since the start of 2022, insurers in the UK have been required to offer renewing home and motor insurance customers the equivalent price that would be offered to a new customer with the same risk profile coming through the same channel.

In addition, the UK will shortly introduce a 'consumer duty' which requires that fair value in pricing models is a fundamental component to the overarching requirement to deliver good outcomes to retail customers.

Recommendations

In light of ASIC's pledge to ensure that general insurers deliver on pricing promises to consumers, insurers should review their existing pricing systems and controls in order to identify areas of possible consumer harm as a consequence of unfair pricing practices. This may include price-optimisation structures.

General insurers should continuously review their pricing systems to ensure that customers receive pricing promises and pricing practices in general do not result in unfair customer outcomes. If any pricing failures are identified, insurers should ensure that they comply with their breach reporting obligations, remediate customers and remedy any deficiencies in their systems to prevent future pricing misconduct.