

# FEDERAL COURT OF AUSTRALIA

## **Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited [2018] FCA 155**

File number: VID 35 of 2018

Judge: **MIDDLETON J**

Date of judgment: 23 February 2018

Catchwords: **CONSUMER LAW** – credit contracts with consumers – s 128, s 129 and s 130 of the *National Consumer Credit Protection Act 2009* (Cth) – assessment of credit – appropriateness of penalty – considerations to take into account in setting penalties – multiple contraventions

Legislation: *National Consumer Credit Protection Act 2009* (Cth)

Cases cited: *Australian Competition and Consumer Commission v Cement Australia Pty Ltd* [2017] FCAFC 159  
*Australian Securities and Investments Commission v Channic Pty Ltd (No 5)* [2017] FCA 363  
*Australian Securities and Investments Commission v The Cash Store Pty Ltd (in liq) (No 2)* [2015] FCA 93  
*Australian Securities and Investments Commission v Wealth & Risk Management Pty Ltd (No 2)* [2018] FCA 59  
*Make It Mine Finance Pty Ltd in the matter of Make It Mine Finance Pty Ltd (No 2)* [2015] FCA 1255

Date of hearing: 15 February 2018

Registry: Victoria

Division: General Division

National Practice Area: Commercial and Corporations

Sub-area: Corporations and Corporate Insolvency

Category: Catchwords

Number of paragraphs: 40

Counsel for the Applicant: Mr E Nekvapil

Solicitor for the Applicant: Australian Securities and Investments Commission

Counsel for the Respondent: Mr A C Archibald QC with Mr J Kirkwood

Solicitor for the Respondent: Herbert Smith Freehills

# REASONS FOR JUDGMENT

VID 35 of 2018

**BETWEEN:**            **AUSTRALIAN SECURITIES AND INVESTMENTS  
COMMISSION**  
Applicant

**AND:**                **AUSTRALIA AND NEW ZEALAND BANKING GROUP  
LIMITED (ACN 005 357 522)**  
Respondent

**MIDDLETON J:**

## INTRODUCTION

1 On 15 February 2018, the Court made the following declarations and orders:

**PURSUANT TO SECTION 166 OF THE *NATIONAL CONSUMER CREDIT PROTECTION ACT 2009* (Cth) THE COURT DECLARES THAT:**

### **Contraventions of s 128 of the Act**

- (1) The Respondent ('ANZ') contravened s 128(a) and (d) of the Act by entering into a credit contract with Consumer 1 (as identified in the Statement of Agreed Facts and Admissions that is annexure PDK1 to the Affidavit in Support ('the SOAF')) on 30 July 2013, without having first taken reasonable steps to verify the consumer's financial situation, as required by s 130(1)(c) of the Act.
- (2) ANZ contravened s 128(a) and (d) of the Act by entering into a credit contract with Consumer 2 (as identified in the SOAF) on 6 January 2014, without having first taken reasonable steps to verify the consumer's financial situation, as required by s 130(1)(c) of the Act.
- (3) ANZ contravened s 128(a) and (d) of the Act by entering into a credit contract with Consumer 3 (as identified in the SOAF) on 25 March 2014, without having first taken reasonable steps to verify the consumer's financial situation, as required by s 130(1)(c) of the Act.
- (4) ANZ contravened s 128(a) and (d) of the Act by entering into a credit contract with Consumer 4 (as identified in the SOAF) on 10 April 2014, without having first taken

reasonable steps to verify the consumer's financial situation, as required by s 130(1)(c) of the Act.

- (5) ANZ contravened s 128(a) and (d) of the Act by entering into a credit contract with Consumer 5 (as identified in the SOAF) on 3 July 2014, without having first taken reasonable steps to verify the consumer's financial situation, as required by s 130(1)(c) of the Act.
- (6) ANZ contravened s 128(a) and (d) of the Act by entering into a credit contract with Consumer 6 (as identified in the SOAF) on 29 September 2014, without having first taken reasonable steps to verify the consumer's financial situation, as required by s 130(1)(c) of the Act.
- (7) ANZ contravened s 128(a) and (d) of the Act by entering into a credit contract with Consumer 7 (as identified in the SOAF) on 8 November 2014, without having first taken reasonable steps to verify the consumer's financial situation, as required by s 130(1)(c) of the Act.
- (8) ANZ contravened s 128(a) and (d) of the Act by entering into a credit contract with Consumer 8 (as identified in the SOAF) on 29 January 2015, without having first taken reasonable steps to verify the consumer's financial situation, as required by s 130(1)(c) of the Act.
- (9) ANZ contravened s 128(a) and (d) of the Act by entering into a credit contract with Consumer 9 (as identified in the SOAF) on 4 March 2015, without having first taken reasonable steps to verify the consumer's financial situation, as required by s 130(1)(c) of the Act.
- (10) ANZ contravened s 128(a) and (d) of the Act by entering into a credit contract with Consumer 10 (as identified in the SOAF) on 15 April 2015, without having first taken reasonable steps to verify the consumer's financial situation, as required by s 130(1)(c) of the Act.
- (11) ANZ contravened s 128(a) and (d) of the Act by entering into a credit contract with Consumer 11 (as identified in the SOAF) on 29 April 2015, without having first taken reasonable steps to verify the consumer's financial situation, as required by s 130(1)(c) of the Act.
- (12) ANZ contravened s 128(a) and (d) of the Act by entering into a credit contract with Consumer 12 (as identified in the SOAF) on 12 May 2015, without having first taken

reasonable steps to verify the consumer's financial situation, as required by s 130(1)(c) of the Act.

**Contraventions of s 130(1) of the Act**

- (13) ANZ contravened s 130(1) of the Act by failing to take reasonable steps to verify the income of Consumer 1 (as identified in the SOAF), as required by s 130(1)(c) of the Act, before making the assessment required by ss 128(c) and 129 of the Act on or before 30 July 2013 in respect of the credit contract entered with that consumer.
- (14) ANZ contravened s 130(1) of the Act by failing to take reasonable steps to verify the income of Consumer 2 (as identified in the SOAF), as required by s 130(1)(c) of the Act, before making the assessment required by ss 128(c) and 129 of the Act on or before 6 January 2014 in respect of the credit contract entered with that consumer.
- (15) ANZ contravened s 130(1) of the Act by failing to take reasonable steps to verify the income of Consumer 3 (as identified in the SOAF), as required by s 130(1)(c) of the Act, before making the assessment required by ss 128(c) and 129 of the Act on or before 25 March 2014 in respect of the credit contract entered with that consumer.
- (16) ANZ contravened s 130(1) of the Act by failing to take reasonable steps to verify the income of Consumer 4 (as identified in the SOAF), as required by s 130(1)(c) of the Act, before making the assessment required by ss 128(c) and 129 of the Act on or before 10 April 2014 in respect of the credit contract entered with that consumer.
- (17) ANZ contravened s 130(1) of the Act by failing to take reasonable steps to verify the income of Consumer 5 (as identified in the SOAF), as required by s 130(1)(c) of the Act, before making the assessment required by ss 128(c) and 129 of the Act on or before 3 July 2014 in respect of the credit contract entered with that consumer.
- (18) ANZ contravened s 130(1) of the Act by failing to take reasonable steps to verify the income of Consumer 6 (as identified in the SOAF), as required by s 130(1)(c) of the Act, before making the assessment required by ss 128(c) and 129 of the Act on or before 29 September 2014 in respect of the credit contract entered with that consumer.
- (19) ANZ contravened s 130(1) of the Act by failing to take reasonable steps to verify the income of Consumer 7 (as identified in the SOAF), as required by s 130(1)(c) of the Act, before making the assessment required by ss 128(c) and 129 of the Act on or before 8 November 2014 in respect of the credit contract entered with that consumer.

- (20) ANZ contravened s 130(1) of the Act by failing to take reasonable steps to verify the income of Consumer 8 (as identified in the SOAF), as required by s 130(1)(c) of the Act, before making the assessment required by ss 128(c) and 129 of the Act on or before 29 January 2015 in respect of the credit contract entered with that consumer.
- (21) ANZ contravened s 130(1) of the Act by failing to take reasonable steps to verify the income of Consumer 9 (as identified in the SOAF), as required by s 130(1)(c) of the Act, before making the assessment required by ss 128(c) and 129 of the Act on or before 4 March 2015 in respect of the credit contract entered with that consumer.
- (22) ANZ contravened s 130(1) of the Act by failing to take reasonable steps to verify the income of Consumer 10 (as identified in the SOAF), as required by s 130(1)(c) of the Act, before making the assessment required by ss 128(c) and 129 of the Act on or before 15 April 2015 in respect of the credit contract entered with that consumer.
- (23) ANZ contravened s 130(1) of the Act by failing to take reasonable steps to verify the income of Consumer 11 (as identified in the SOAF), as required by s 130(1)(c) of the Act, before making the assessment required by ss 128(c) and 129 of the Act on or before 29 April 2015 in respect of the credit contract entered with that consumer.
- (24) ANZ contravened s 130(1) of the Act by failing to take reasonable steps to verify the income of Consumer 12 (as identified in the SOAF), as required by s 130(1)(c) of the Act, before making the assessment required by ss 128(c) and 129 of the Act on or before 12 May 2015 in respect of the credit contract entered with that consumer.

**THE COURT ORDERS THAT:**

- (25) Pursuant to s 167 of the Act that ANZ pay to the Commonwealth of Australia pecuniary penalties in respect of the declared contraventions of s 130(1)(c) of the Act, in the total amount of \$5 million.
- (26) ANZ pay the Applicant's costs of and incidental to the proceedings, fixed in the sum of \$120,000.

2 These are the reasons for the declarations and orders.

3 In this proceeding, the Applicant ('ASIC') has alleged that the Respondent ('ANZ') contravened s 128 and s 130(1)(c) of the *National Consumer Credit Protection Act 2009* (Cth) ('the Act').

4 Between 25 July 2013 and 12 May 2015 ('the relevant period'), ANZ was a provider of "credit", as defined in s 5(1) of the Act, and was licensed under the Act as a credit provider.

5 Throughout the relevant period, ss 128 and 130(1)(c) of the Act (both of which are civil penalty provisions) prohibited ANZ, as a licensed credit provider, from entering into a credit contract with a consumer unless it had first:

- (1) made an assessment in accordance with s 129; and
- (2) before making that assessment, taken reasonable steps to verify the consumer's financial situation.

6 During the relevant period, ANZ entered into the 12 credit contracts specified below ('the **relevant contracts**'), each with a different consumer.

7 ASIC has alleged, and ANZ has admitted, that before entering into each of the relevant contracts, and before making an assessment in respect of each of the relevant contracts, ANZ failed to take reasonable steps to verify the financial situation of the consumer it contracted with.

8 More specifically, in each case ANZ failed to take reasonable steps to verify the income of the consumer (an essential component of the consumer's financial situation). In summary, that was because, in each case, ANZ relied for income verification solely on a document (or in one case two documents), which appeared to be the consumer's payslip(s), in circumstances where ANZ:

- (1) knew that payslips were a type of document that was easily falsified;
- (2) received the document(s) from a third party intermediary who introduced the application which resulted in a credit contract being entered into by ANZ; and
- (3) by reason of knowledge held by one or more employees within the organisation, it had reason to doubt the reliability of information received from that third party intermediary.

9 In respect of ANZ's conduct in entering into each of the 12 credit contracts, ASIC sought, and ANZ consented to:

- (1) a declaration under s 166 of the Act that ANZ contravened s 128 of the Act;
- (2) a declaration under s 166 of the Act that ANZ contravened s 130(1)(c) of the Act; and

(3) an order under s 167 of the Act that ANZ pay to the Commonwealth pecuniary penalties for the declared contraventions of s 130(1)(c), in the total amount of \$5 million.

10 Those orders were sought on the basis of the Statement of Agreed Facts and Admissions, agreed by the parties and filed in this proceeding, a copy of which is Annexure 1 to these Reasons.

### **RELEVANT STATUTORY PROVISIONS**

11 During the relevant period:

(1) s 128(a), (c)(i) and (d) of the Act relevantly provided that a licensee could not enter into a credit contract with a consumer who would be the debtor under the contract on a day, unless the licensee had, within 90 days before that day:

(a) made an assessment that was in accordance with s 129 of the Act; and

(b) made the inquiries and verification in accordance with s 130 of the Act;

(2) s 129(b) of the Act relevantly provided that, for the purposes of s 128(c), the licensee had to make an assessment whether the credit contract would be unsuitable for the consumer if the contract was entered in the period covered by the assessment; and

(3) s 130(1)(c) of the Act relevantly provided that, for the purposes of s 128(d), before making the assessment, the licensee had to take reasonable steps to verify the consumer's financial situation.

12 The statutory purpose of the obligation in s 130(1)(c) is to ensure that the assessment under s 129(b) is made on the basis of appropriately verified information about the person's financial situation.

13 Income is one of the most important parts of information about the consumer's financial situation in the assessment of unsuitability, as it will govern the consumer's ability to repay the loan. The core connection between the obligation under s 130(1)(c), the consumer's ability to repay and the assessment of unsuitability is evident in the terms of ss 131(1) and (2)(a) and (4) of the Act.

14 Section 166(1) of the Act provides that, within six years of a person contravening a civil penalty provision, ASIC may apply to this Court for a declaration that the person contravened the provision.



15 Section 167(1) of the Act provides that, within six years of a person contravening a civil penalty provision, ASIC may apply to this Court for an order that the person pay the Commonwealth a pecuniary penalty.

### **RELEVANT FACTS**

16 The relevant facts (including reference to the relevant contracts) are included in Annexure 1 to these Reasons. However, it is useful to refer to what is referred to as the intermediaries.

17 During the relevant period, ANZ, trading as “Esanda” received offers from consumers to enter into a “credit contract” with ANZ, as that term is defined in s 5(1) of the Act, that were provided to ANZ by third party intermediaries, including:

- (1) Combined Motor Traders Pty Ltd (ACN 127 915 404) trading either at or out of 180-182 High Street, Cranbourne, Victoria (**‘CMT’**);
- (2) Motorcycle Finance and Insurance Pty Ltd (ACN 122 338 809) trading either at or out of “The Gateway Centre” at Suite 4, 320A Camden Valley Way, Narellan, New South Wales (**‘MFI’**) pursuant to an agreement between ANZ and F + I Management (ACN 074 537 036) trading as Westcorp Capital; and
- (3) United Financial Services Pty Ltd (ACN 072 442 445) trading either at or out of the Best Buys Auto car dealership at 296 or 323 Hume Highway, Cabramatta New South Wales (**‘UFS Best Buys’**).

### **PENALTIES**

18 As I have indicated, under s 166 of the Act, the Court may declare contraventions of civil penalty provisions in Chapter 3. Sections 128 and 130 are both civil penalty provisions. The maximum penalty stated for each of those provisions is 2,000 penalty units. A single penalty unit at the time of the contraventions was \$170.

19 Section 167(2) empowers the Court, if it has declared under s 166 that a person has contravened a civil penalty provision, to order the person to pay to the Commonwealth “a pecuniary penalty that the court considers is appropriate”.

20 Where the contravention is committed by a body corporate (such as ANZ), s 167(3)(b) allows the Court to order a pecuniary penalty in respect of that contravention which is up to five times the maximum number of penalty units referred to in the civil penalty provision (10,000 penalty units: \$1.7 million).

21 Section 167 of the Act is in Chapter 4, which contains the remedies available for contraventions of the Act. The nature of the power to impose pecuniary penalties for contraventions of the civil penalty provisions in Chapter 3 of the Act, and the correct approach to the exercise of that power, must be determined having regard to the text, context and purpose of the provisions imposing civil penalty obligations and the provisions empowering the Court to impose pecuniary penalties for contravention of those obligations.

22 In the Joint Submissions prepared by Mr E Nekvapil of Counsel for ASIC and Mr A C Archibald QC with Mr J Kirkwood of Counsel for the ANZ the following accurate and useful summary was provided as to the approach to be taken by the Court in assessing the appropriate pecuniary penalty, which I adopt (omitting footnotes and references to authorities):

- (1) *First, in assessing an appropriate pecuniary penalty under s 167, the Court must keep in mind the essential character of the balance the provisions seek to strike between the interests of the credit provider in providing the relevant services, on the one hand, and the protection of the interests of the consumer in being a party to only those contracts that are not unsuitable, in the statutory sense, on the other hand.*
- (2) *Second, the question of what amount constitutes an appropriate penalty in all the circumstances is a matter which Parliament has left for the Court to answer, having regard to its own independent opinion. Neither s 167 nor any other section of the Act sets out considerations that inform the appropriateness of a particularly pecuniary penalty. Ultimately, this will be a matter of judgment, not susceptible of scientific or mathematical formulation, but rather requiring an intuitive or instinctive synthesis by the Court of all relevant factors. It follows that the penalty imposed in other cases, especially under other legislative schemes, can only be of limited analogical value, and must even then be treated with caution.*
- (3) *Third, the power – although exercised in the Court’s civil jurisdiction – is exercised to impose a “penalty”. This distinguishes the power both from an order in the exercise of the civil jurisdiction for the payment of money “to prevent or redress a civil injury” (because “the whole and avowed object of the proceeding is the infliction of the penalty”), and from an order imposing a fine in the exercise of criminal jurisdiction. Although the power to impose a pecuniary penalty is in one sense “protective”, it may also be distinguished from the administrative powers available to ASIC for contravention of the obligations in s 47: see, for example, s 55(1).*
- (4) *Fourth, as their description suggests, pecuniary penalties are punitive in nature. From this characterisation, it follows that “the object of the penalties is general and specific deterrence. That is, the deterrence of those who might be tempted not to comply with the law and the deterrence of the particular contravenor who might be tempted to re-offend”.*
- (5) *Fifth, the object of deterrence and penalisation must be understood by reference to the specific civil penalty provision of the Act that has been contravened, in*

*light of its context and purpose and the objects of the Act as a whole. Guidance as to the appropriate penalty may be derived from the elements of the civil penalty provision declared to have been contravened and the maximum penalty set by Parliament for its contravention.*

- (6) Sixth, in order to achieve a penal effect of this kind, the power should be exercised in such a way that the penalties imposed do not come to be seen as a cost of engaging in Credit Activities without complying with the responsible lending obligations. It must be a sum that members of the public will recognise as significant and proportionate to the seriousness of the contravention.*
- (7) Seventh, the penalty must also be proportionate to achieve the objective of specific and general deterrence, because the punishment should reflect what the offender has done. It should therefore be no greater than necessary to achieve that objective. Nor should it be oppressive. Nor should it punish a person twice for effectively the same wrongdoing. In this regard, s 175 of the Act states that “[i]f a person is ordered to pay a pecuniary penalty under a civil penalty provision in relation to particular conduct, the person is not liable to be ordered to pay a pecuniary penalty under some other provision of a law of the Commonwealth in relation to that conduct”.*
- (8) Eighth, it is appropriate to consider whether, and the extent to which, the contravening conduct should be regarded as the same single course of conduct and penalised as one offence in relation to each category of contravention: on the principle that a contravenor should not be penalised more than once for the same conduct. However, this “course of conduct” principle represents a “tool of analysis” which a court is not necessarily compelled to use.*
- (9) Ninth, where there are numerous contraventions arising from separate acts, the starting point derived from the text of s 167 and the relevant civil penalty provision is that each contravention “should ordinarily attract the imposition of a separate penalty appropriate for [that] contravention”. However, where the acts giving rise to the contravention are related, then the requirement that the penalty be proportionate entails the need for the Court to consider how to punish several contraventions more seriously than one, while ensuring that the “total or aggregate penalty is not unjust or disproportionate to the circumstances of the case” and that the offender is not punished twice for what is essentially the same conduct. This requires judgment as to what amount is required to fairly reflect the substance of the offending conduct, not the application of a mathematical formula. This may require the Court in an appropriate case to (a) characterise the contraventions as one multi-faceted course of conduct and set the penalty as if there were one contravention; (b) impose a penalty for only the most serious contravention; (c) characterise the contraventions as falling into several classes or categories of contravention, and set separate penalties for each class or an overall penalty by reference to the maximum penalty for that number of contraventions; or (d) determine an appropriate amount for each contravention and then reduce the sum of those amounts in order to determine an appropriate amount to reflect the contraventions considered together and in “totality”.*

23 I have also obtained assistance from the considerations undertaken by Beach J in *Make It Mine Finance Pty Ltd in the matter of Make It Mine Finance Pty Ltd (No 2)* [2015] FCA 1255, Davies J in *Australian Securities and Investments Commission v The Cash Store Pty Ltd (in liq) (No 2)* [2015] FCA 93, Greenwood J in *Australian Securities and Investments*

*Commission v Channic Pty Ltd (No 5)* [2017] FCA 363, Moshinsky J in *Australian Securities and Investments Commission v Wealth & Risk Management Pty Ltd (No 2)* [2018] FCA 59 and the Full Court decision in *Australian Competition and Consumer Commission v Cement Australia Pty Ltd* [2017] FCAFC 159.

- 24 As far as legislative context is concerned, the relevant civil penalty provisions of the Act are contained in Chapter 3, which is headed “responsible lending conduct”. They impose specific obligations on credit assistance providers and credit providers beyond the general conduct obligations imposed on licence holders by s 47.
- 25 Chapter 3 has a specific purpose to create and enforce a new norm of conduct for credit providers and brokers when entering into credit contracts. This context explains the very specific and detailed requirements of the provisions of Parts 3-1 and 3-2, and the very significant penalties to which those contravening those requirements may be subjected. Each of the requirements – providing a credit guide, asking for information about requirements and objectives and financial situation, and verifying financial situation – is a critical part of a sequence leading up to the credit provider or credit assistance provider making an assessment of unsuitability, by reference to the consumer’s financial situation and requirements and objectives.
- 26 The civil penalty provisions in Chapter 4 of the Act are a key aspect of a regulatory regime imposing prescriptive procedural obligations on the credit provider under Chapter 3. The legislative intention for strict compliance with these prescriptive procedural requirements of Chapter 3 is reflected in the fact that a failure to comply with each of the requirements exposes the contravener to a pecuniary penalty. This makes it evident that Parliament intended for the credit providers themselves to follow in a step-by-step way the responsible lending obligations in Chapter 3 of the Act.
- 27 As mentioned in the Joint Submissions as a general proposition, in this situation the various penalties given in other cases are of even more limited assistance as comparators. This is primarily due to the size and financial standing of ANZ, which is in contrast to each of the other respondents in previous civil penalty cases commenced under the Act, and the other significant factual differences in those cases, including the number and circumstances of the particular contraventions.

28 Looking then to the circumstances confronting the Court in determining penalties, there are 24 contraventions in total. However, for each of the relevant contracts, the “particular conduct” giving rise to the contravention of s 128(a) and (d) is the same as that giving rise to the contravention of s 130(1)(c). Whether by operation of the common law, or as a result of the operation of s 175 of the Act, ANZ should be liable to be ordered to pay a pecuniary penalty only in respect of one contravention for each of the relevant contracts.

29 The maximum penalty for each contravention is \$1.7 million. Thus, the total possible penalty is \$20.4 million.

30 A total penalty of \$5 million has been proposed by the parties, and is in my view appropriate, for the following main reasons:

- (1) ANZ did not completely fail to take steps to verify the financial situation of the consumers. However, to verify the income of the consumers, it inappropriately relied entirely on payslips received from the intermediaries. The conduct, independently of other factors, warrants a penalty towards or around the middle of the range for each contravention (around \$10.2 million in total).
- (2) ANZ’s co-operation, and the operation of the “totality principle”, should be recognised, which ASIC accepted warranted a further reduction to \$5 million.
- (3) A total penalty of \$5 million is sufficient as a deterrent, and ensures that the penalty for contravening the Act is not seen as a “cost of doing business”.

31 I have taken into account a number of contextual factors in determining an appropriate pecuniary penalties.

32 On the one hand, the contraventions represent significant failures to comply with ss 128 and 130(1)(c), and by reason of the following matters, they warranted significant penalties:

- (1) most importantly, the need for general deterrence, in circumstances where ANZ is a very substantial and profitable enterprise;
- (2) ANZ was aware of what was required of it and had the capacity to fulfil its obligations;
- (3) the effectiveness of the statutory scheme depends on lenders like ANZ taking their obligations seriously;

- (4) the obligation to verify a consumer's income is important in ensuring that lenders and consumers do not enter into contracts that may be unsuitable;
- (5) the contraventions were repeated and occurred over a period of two years; and
- (6) ANZ management did not ensure that relevant policies were complied with and, in the case of the contraventions involving MFI in particular, no action was taken despite management personnel having become aware of the issues affecting MFI.

33 On the other hand, by reason of the following matters, the contraventions are not the most egregious examples of contravening conduct:

- (1) ANZ took some steps towards satisfying its statutory obligation but failed to take reasonable steps in that respect;
- (2) ASIC does not allege that ANZ deliberately set out to breach its statutory obligations;
- (3) the involvement of individuals with management responsibilities was limited; and
- (4) loss or damage is not alleged.

34 Having regard to the above matters, I considered that each of the contraventions would appropriately be penalised by a figure towards or around the middle of the applicable range (about \$850,000 per contravention, or \$10.2 million in total), before the application of the "totality principle", and before recognition of ANZ's co-operation with ASIC throughout the investigation.

35 Having regard to the legal and factual overlap between the individual contraventions, and ANZ's co-operation throughout the investigation, a further reduction in the order of 50 per cent was appropriate.

36 It should be recalled, the determination of an appropriate penalty is a matter of judgment, not susceptible of scientific or mathematical formulation, but rather requiring an intuitive or instinctive synthesis of all relevant factors. Where there are multiple contraventions, there have been a range of approaches adopted by the courts to determining an appropriate penalty.

37 The table below sets out individual penalties that may be appropriate for each contravention, taking into account the differences between the contraventions and bearing in mind that the fixing of individual penalties is not susceptible of mathematical precision.

38 In considering the table below it is to be recalled that:

- The relationship between ANZ and CMT was such that, ANZ ought to have exercised particular care when dealing with information received from CMT. This supports the imposition of higher penalties for the contraventions involving CMT.
- Before entering into each of the five contracts with CMT, and each of the four contracts with UFS Best Buys, ANZ became aware of circumstances, or formed a belief, that gave it specific reason to doubt the reliability of the information it was receiving from those intermediaries. With each successive piece of information, the level of ANZ's awareness increased. This should be regarded as a progressively increasing aggravating factor through time, in respect of the set of relevant contracts entered into with each of the intermediaries.
- The MFI contraventions evidence a lack of attention by ANZ through the omissions by employees within the ANZ's Commercial Broker team, some of whom held positions involving management responsibility. This justifies the imposition of higher penalties for the contraventions involving MFI.

39 In general terms, taking into account these observations:

- (1) the starting penalty for each of CMT and MFI (\$400,000) is higher than that for UFS Best Buys (\$385,000); and
- (2) for each intermediary, the individual penalties for each intermediary increase by \$20,000 as ANZ progressively became aware of each of the matters relating to that intermediary.

<b>Consumer</b>	<b>Broker</b>	<b>Date of contravention</b>	<b>Penalty Amount</b>
Consumer 1	MFI (First Contravention)	30 July 2013	\$400,000
Consumer 2	MFI (Second Contravention)	6 January 2014	\$420,000
Consumer 3	UFS Best Buys (First Contravention)	25 March 2014	\$385,000
Consumer 4	MFI (Third Contravention)	10 April 2014	\$440,000
Consumer 5	UFS Best Buys	3 July 2014	\$405,000

	(Second Contravention)		
Consumer 6	UFS Best Buys (Third Contravention)	29 September 2014	\$425,000
Consumer 7	UFS Best Buys (Fourth Contravention)	8 November 2014	\$445,000
Consumer 8	CMT (First Contravention)	29 January 2015	\$400,000
Consumer 9	CMT (Second Contravention)	4 March 2015	\$400,000
Consumer 10	CMT (Third Contravention)	15 April 2015	\$420,000
Consumer 11	CMT (Fourth Contravention)	29 April 2015	\$420,000
Consumer 12	CMT (Fifth Contravention)	12 May 2015	\$440,000
Total			\$5,000,000.00

## CONCLUSION

40 Therefore, in my view the amount of the pecuniary penalties totalling \$5 million sought by ASIC appropriately reflected the significance of the repeated distinct contraventions by ANZ of Chapter 3 of the Act, and gave effect to the purpose of the statutory scheme.



I certify that the preceding forty (40) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Middleton.

Associate:

A handwritten signature in black ink, consisting of a series of connected loops and a long horizontal stroke at the end.

Dated: 23 February 2018

**ANNEXURE 1**

No. VID 35 of 2018

Federal Court of Australia  
District Registry: Victoria  
Division: General

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

Applicant

**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED  
(ACN 005 357 522)**

Respondent

**Statement of Agreed Facts and Admissions**

1. This Statement of Agreed Facts and Admissions contains facts agreed by the Applicant, the Australian Securities and Investments Commission (**ASIC**), and the Respondent, Australia and New Zealand Banking Group Limited (**ANZ**), and admissions by ANZ.
2. The document is filed in support of the proposed orders sought by the parties in this proceeding. ANZ and ASIC have agreed that each fact recorded in this document is not, for the purposes of this proceeding, to be disputed.

**Parties**

3. ASIC:
  - a. is a body corporate established by s 7 of the *Australian Securities Commissions Act 1989* (Cth) and continued by s 261 of the *Australian Securities & Investments Commission Act 2001* (Cth) (**ASIC Act**);
  - b. is able to sue in its corporate name by reason of s 8 of the ASIC Act.
4. At all relevant times ANZ:
  - a. is and was a corporation registered for the purposes of the *Corporations Act 2001* (Cth) and capable of being sued;
  - b. held Australian credit licence number 234527 granted by ASIC under the *National Consumer Credit Protection Act 2009* (Cth) (**NCCP Act**); and
  - c. was either the third or fourth largest bank in Australia.
5. During the relevant period ANZ employed approximately 50,000 employees across its business.

6. ANZ's net profit after tax, total assets and market capitalisation for the 2012-13, 2013-14 and 2014-15 financial years were as set out in the following table.

Financial Year	2012-13	2013-14	2014-15
Net profit after tax	\$6.31 billion	\$7.27 billion	\$7.49 billion
Total Assets	\$703 billion	\$772 billion	\$890 billion
Market Capitalisation	\$84.5 billion	\$85.2 billion	\$78.6 billion

#### **Esanda credit activities**

7. At all relevant times, ANZ held transaction information about its existing customers in its Customer Account Processing (**CAP**) system. That information included a record of payments made into its customers' bank accounts.
8. At all relevant times, ANZ, trading as "Esanda" (**Esanda**), provided credit facilities to consumers seeking to purchase, primarily, a motor vehicle.
9. At all relevant times, Esanda had policies and procedures for the assessment and verification of all consumer motor vehicle finance applications.

#### **The conduct in issue in the proceeding**

10. During the period from 25 July 2013 to 12 May 2015 (the **relevant period**), Esanda received consumer motor vehicle finance applications from third party intermediaries accredited by Esanda, including:
- a. United Financial Services Pty Ltd (ACN 072 442 445) trading either at or out of the Best Buys Auto car dealership at 296 or 323 Hume Highway, Cabramatta New South Wales (**UFS Best Buys**);
  - b. Motorcycle Finance and Insurance Pty Ltd (ACN 122 338 809) trading either at or out of "The Gateway Centre" at Suite 4, 320A Camden Valley Way, Narellan, New South Wales (**MFI**) pursuant to an agreement between ANZ and F + I Management Pty Ltd (ACN 074 537 036) trading as Westcorp Capital (**Westcorp Capital**); and
  - c. Combined Motor Traders Pty Ltd (ACN 127 915 404) trading either at or out of 180-182 High Street, Cranbourne, Victoria (**CMT**).
11. During the relevant period, UFS Best Buys held Australian credit licence 386927, MFI held Australian credit licence 389410, and Westcorp Capital held Australian credit licence 378293.
12. CMT submitted consumer credit applications to Esanda relying upon the exemption in regulation 23 of the *National Consumer Credit Protection Regulations 2010* (Cth), and

pursuant to an agreement with Esanda permitting CMT to act on behalf of Esanda in relation to credit used to pay for goods and services supplied by CMT.

13. On 13 May 2015, as a result of mandatory disclosures initiated by ANZ, ASIC commenced an investigation into ANZ's compliance with Part 3-2 of the NCCP Act.
14. ANZ has fully co-operated with ASIC throughout the investigation.
15. The investigation focused on 377 consumer credit contracts entered into by Esanda, each of which was submitted to Esanda on behalf of a consumer by one of UFS Best Buys, MFI or CMT.
16. ASIC seeks relief in the present proceeding in respect of 12 of the consumer credit contracts that were the subject of the investigation. The contracts are listed in the following table.

<b>Consumer</b>	<b>Third party intermediary</b>	<b>Approximate date on which Esanda entered into the contract</b>
Consumer 1	MFI	30 July 2013
Consumer 2	MFI	6 January 2014
Consumer 3	UFS Best Buys	25 March 2014
Consumer 4	MFI	10 April 2014
Consumer 5	UFS Best Buys	3 July 2014
Consumer 6	UFS Best Buys	29 September 2014
Consumer 7	UFS Best Buys	8 November 2014
Consumer 8	CMT	29 January 2015
Consumer 9	CMT	4 March 2015
Consumer 10	CMT	15 April 2015
Consumer 11	CMT	29 April 2015
Consumer 12	CMT	12 May 2015

17. Each of those credit contracts was secured by the relevant goods the consumer financed under that contract.
18. Agreed particulars of the circumstances giving rise to each of those credit contracts are set out in Annexure A.
19. Prior to entry into each of these consumer credit contracts, Esanda received a signed declaration (as part of the loan application form) from the consumer that:
  - a. the information given was true and correct;
  - b. the income and expenditure details were true and correct; and
  - c. the consumer had the financial capacity to meet the commitments being entered into under the transaction.

This declaration appeared immediately above the applicant's signature.

#### **Practices, policies, procedures and training**

20. The persons employed by ANZ to process consumer motor vehicle finance applications included:
  - a. assessment officers; and
  - b. settlements officers.
21. During the relevant period, Esanda's practices, policies and procedures permitted it to use information in payslips, or banks statements, or both, to verify the income of consumers who offered to enter into a credit contract with Esanda.
22. The steps required to be taken by assessment and settlements officers under Esanda's practices, policies and procedures varied depending on the information provided with each application.
23. Prior to entry into each of the consumer credit contracts set out in the table at paragraph 16 above, Esanda received (among other documents) a settlement fax checklist, which was in a form approved by Esanda, and which required submission of one of the following by way of proof of income:
  - a. a payslip showing 3 months' pay for the financial year to date (not applicable for payslips issued in July, August or September); or
  - b. two payslips covering 3 months of employment; or
  - c. transaction history for 3 months of salary deposits in the consumer's bank account;  
or
  - d. two of the following documents: payslip; tax agent prepared tax return; ATO notice of assessment; PAYG Summary.

**ANZ's knowledge or belief about falsification of payslips**

24. By, and from, the beginning of the relevant period, ANZ knew or believed that:
- a. payslips were a type of document that could be easily falsified; and
  - b. some third party intermediaries had provided Esanda with falsified payslips in connection with offers by consumers to enter into credit contracts with Esanda.

**ANZ's knowledge or belief concerning conduct of UFS Best Buys, MFI and CMT**

25. ANZ formed the belief, or became aware of the matter, identified in column 3 of the table below, on or about the date in column 1 of that row.

Date (Column 1)	Third party intermediary (Column 2)	ANZ's awareness or belief (Column 3)
20 June 2013	MFI	ANZ formed the belief that another credit provider had investigated MFI and concluded that more than 100 offers to enter into a credit contract submitted by MFI to that credit provider had involved fraud.
2 August 2013	MFI	ANZ formed the belief that an offer by Consumer 13 to enter into a credit contract with Esanda, which had been submitted by MFI, contained false employment details and was accompanied by fraudulent payslips, in circumstances where Consumer 13 was a pensioner and had never provided MFI with a payslip.
31 January 2014	MFI	ANZ became aware that the directors of MFI were involved in the provision of falsified payslips to ANZ in connection with submission of the offer by Consumer 13 (referred to in the previous row), and may have been involved in fraudulent conduct in connection with multiple offers by consumers to enter into credit contracts with other credit providers.
14 March 2014	UFS Best Buys	ANZ became aware that a payslip provided to Esanda by UFS Best Buys in support of an offer to enter into a credit contract by Consumer 14 was likely to have been falsified as the relevant employer did not prepare employee payslips.

Date (Column 1)	Third party intermediary (Column 2)	ANZ's awareness or belief (Column 3)
2 June 2014	CMT	ANZ was informed by an independent third party (the consumer's named employer) that they had reason to doubt the authenticity of the payslip provided to Esanda by CMT in support of an offer to enter into a credit contract by a consumer, Consumer 15.
23 June 2014	UFS Best Buys	ANZ became aware that an independent third party (the consumer's named employer) raised doubts about the authenticity of a payslip provided to Esanda by UFS Best Buys in support of an offer to enter into a credit contract by Consumer 16.
2 September 2014	UFS Best Buys	ANZ became aware that incorrect information had been included in an application received from UFS Best Buys and provided to Esanda in support of an offer to enter into a credit contract by Consumer 17.
17 October 2014	UFS Best Buys	ANZ became aware that a UFS Best Buys Consumer 18 alleged that UFS Best Buys had changed a payslip provided to Esanda by UFS Best Buys in support of an offer by Consumer 18 to enter into a credit contract.
23 March 2015	CMT	ANZ formed the belief that it had reason to doubt the authenticity of a payslip provided by CMT in support of an offer to enter into a credit contract by Consumer 19. The basis for this belief was that the employer stated on the customer's application was not contactable using the contact details provided in that application.
5 May 2015	CMT	ANZ formed the belief that CMT may have engaged in fraudulent conduct in connection with an offer to enter into a credit contract by Consumer 20.

26. The matters in column 3 of the rows with MFI in column 2 are evidenced by information disseminated, in particular cases, to senior and/or experienced members of ANZ's broker management team. Persons to whom information was disseminated in particular cases included:

- a. the National Accounts Manager, Commercial Broker;
- b. the State Manager, Commercial Broker, NSW/ACT;

- c. the Senior Broker Manager, NSW/ACT;
  - d. the Regional Broker Manager, NSW/ACT;
  - e. four Broker Managers, NSW/ACT;
  - f. a Broker Manager, WA;
  - g. an Acquisition Fraud Senior Officer; and
  - h. an Application Fraud Officer.
27. The most senior of these employees, the State Manager, Commercial Broker, NSW/ACT:
- a. held a position which was five reporting levels below that of ANZ's Chief Executive Officer; and
  - b. managed a team of five employees.
28. In view of the knowledge or belief identified in paragraph 24 above, ANZ agrees that from on or about the dates listed in the table at paragraph 25 above, it had reason to doubt the reliability of the information it was receiving from MFI, UFS Best Buys and CMT in connection with offers to enter into consumer credit contracts.

**Failure to take reasonable steps to verify income before entering into credit contracts**

29. In respect of 8 of the 12 credit contracts listed in the table in paragraph 16 above, after receiving the offer to enter into the credit contract, but before receiving a payslip, Esanda conducted a check of its CAP system. In none of those cases did Esanda identify information in its CAP system that verified the income stated in the application.
30. Before entry into each of the consumer credit contracts listed in a row of the table in paragraph 16 above, Esanda:
- a. received from the third party intermediary identified in the third column of that row a document purporting to be a payslip (or payslips) for the consumer;
  - b. did not verify the consumer's income other than by reference to the purported payslip or payslips; and
  - c. did not request or obtain bank statements recording the consumer's income.
31. In all of the circumstances described in paragraphs 7 to 28 above, reasonable steps to verify a consumer's income included:
- a. requesting from the relevant consumer a bank statement showing the history of salary deposits into the consumer's bank account; or
  - b. (for existing ANZ customers) conducting a check of the CAP system to substantiate salary deposits.



32. ANZ agrees that, in circumstances where:
- a. Esanda had the policies described in paragraphs 20 to 23 above, which permitted it to rely on bank statements rather than (or in addition to) payslips;
  - b. ANZ knew that payslips were a type of document that could be easily falsified, and had been falsified in connection with offers to enter into credit contracts with Esanda, as per paragraph 24 above;
  - c. ANZ was aware of or believed the matters about each of UFS Best Buys, MFI and CMT in the table in paragraph 25 above, and consequently, from on or about the date of those matters it had reason to doubt the reliability of information from those intermediaries (as per paragraph 26 above);
  - d. Esanda relied solely on a payslip for verification of each consumer's income, as per paragraphs 29 and 30 above; and
  - e. Esanda failed to request from each consumer a bank statement showing the history of salary deposits into the consumer's bank account or, by using its CAP system, identify information to verify the consumer's stated income,

ANZ failed, before making an assessment in respect of, and before entering into, each of the consumer credit contracts in a row of the table in paragraph 16 above, to take reasonable steps to verify the financial situation of the consumer named in the second column of that table.

#### **Admissions**

33. ANZ admits that, by reason of the above facts, it contravened each of ss 128 and 130(1)(c) of the NCCP Act when it entered into each of the consumer credit contracts referred to in a row of the table in paragraph 16 above.

Dated: 17 January 2018

## Statement of Agreed Facts and Admissions

### ANNEXURE A

#### Consumer 1

- 1.1 On 25 July 2013, Esanda was contacted by MFI about a potential offer by Consumer 1 to enter into a credit contract (within the meaning of s 5 of the NCCP Act) with Esanda to fund Consumer 1's purchase of a jet ski and trailer priced at \$22,000.00.
- 1.2 At or around 9:28am Australian Eastern Standard Time (**AEST**) on 30 July 2013, Esanda received from MFI (among other things):
  - 1.2.1 an offer from Consumer 1 to enter into a credit contract for the purchase of the jet ski and trailer; and
  - 1.2.2 a document that appeared to be a payslip for Consumer 1 for the period 22 June 2013 to 28 June 2013.
- 1.3 By approximately 10:13am AEST on 30 July 2013, ANZ had made an assessment of the unsuitability of the credit contract Consumer 1 had offered to enter into with Esanda, within the meaning of s 129 of the NCCP Act.
- 1.4 Following this assessment, on or around 30 July 2013, Esanda entered into a credit contract with Consumer 1, under which Consumer 1:
  - 1.4.1 incurred a deferred debt of \$17,366.00 to ANZ; and
  - 1.4.2 was liable to repay that amount, together with interest and a loan administration charge, in 130 fortnightly repayments of \$183.74.

#### Consumer 2

- 2.1 On 30 December 2013, Esanda was contacted by MFI about a potential offer by Consumer 2 to enter into a credit contract (within the meaning of s 5 of the NCCP Act) with Esanda to fund Consumer 2's purchase of a motorcycle priced at \$18,500.00.
- 2.2 At or around 10:25am Australian Eastern Daylight Time (**AEDT**) on 6 January 2014, ANZ received from MFI (among other things):
  - 2.2.1 an offer from Consumer 2 to enter into a credit contract for the purchase of a motorcycle priced at \$18,500.00;
  - 2.2.2 a document that appeared to be a payslip for Consumer 2 for the period 16 December 2013 to 22 December 2013.

- 2.3 By approximately 10:57am AEDT on 6 January 2014, ANZ had made an assessment of the unsuitability of the credit contract Consumer 2 had offered to enter into with ANZ, within the meaning of s 129 of the NCCP Act.
- 2.4 Following this assessment, on or around 6 January 2014, Esanda entered into a credit contract with Consumer 2, under which Consumer 2:
- 2.4.1 incurred a deferred debt of \$17,118.00 to Esanda; and
  - 2.4.2 was liable to repay that amount, together with interest and a loan administration charge, in 48 monthly repayments of \$507.75.

### **Consumer 3**

- 3.1 On 22 March 2014, Esanda was contacted by UFS Best Buys about a potential offer by Consumer 3 to enter into a credit contract with Esanda to fund Consumer 3's purchase of a car priced at \$22,089.00.
- 3.2 At or around 3:06pm AEDT on 25 March 2014, Esanda received from UFS Best Buys (among other things):
- 3.2.1 an offer from Consumer 3 to enter into a credit contract for the purchase of the car; and
  - 3.2.2 a document that appeared to be a payslip for Consumer 3 for the period 17 March 2014 to 23 March 2014.
- 3.3 By approximately 5:22pm AEDT on 25 March 2014, ANZ had made an assessment of the unsuitability of the credit contract Consumer 3 had offered to enter into with Esanda, within the meaning of s 129 of the NCCP Act.
- 3.4 Following this assessment, on or around 25 March 2014, Esanda entered into a credit contract with Consumer 3, under which Consumer 3:
- 3.4.1 incurred a deferred debt of \$25,468.00 to Esanda; and
  - 3.4.2 was liable to repay that amount, together with interest and a loan administration charge, in 173 fortnightly repayments of \$261.73.

### **Consumer 4**

- 4.1 On 7 April 2014, Esanda was contacted by MFI about a potential offer by Consumer 4 to enter into a credit contract (within the meaning of s 5 of the NCCP Act) with Esanda to fund Consumer 4's purchase of a car priced at \$31,990.00.
- 4.2 At or around 12:40pm AEST on 10 April 2014, Esanda received from MFI (among other things):
- 4.2.1 an offer from Consumer 4 to enter into a credit contract for the purchase of a car priced at \$31,990.00;

- 4.2.2 a document that appeared to be a payslip for Consumer 4 for the period 24 March 2014 to 30 March 2014.
- 4.3 By approximately 1:16pm AEST on 10 April 2014, ANZ had made an assessment of the unsuitability of the credit contract Consumer 4 had offered to enter into with ANZ, within the meaning of s 129 of the NCCP Act.
- 4.4 Following this assessment, on or around 10 April 2014, Esanda entered into a credit contract with Consumer 4, under which Consumer 4:
  - 3.4.1 incurred a deferred debt of \$27,373.00 to Esanda; and
  - 3.4.2 was liable to repay that amount, together with interest and a loan administration charge, in 130 fortnightly repayments of \$308.20.

#### **Consumer 5**

- 5.1 On 2 July 2014, Esanda was contacted by UFS Best Buys about a potential offer by Consumer 5 to enter into a credit contract with Esanda to fund Consumer 5's purchase of a car priced at \$19,089.
- 5.2 At or around 5:58pm AEST on 2 July 2014, Esanda received from UFS Best Buys (among other things):
  - 5.2.1 an offer from Consumer 5 to enter into a credit contract for the purchase of the car; and
  - 5.2.2 a document that appeared to be a payslip for Consumer 5 for the period 16 June 2014 to 22 June 2014.
- 5.3 By approximately 7:15am AEST on 3 July 2014, ANZ had made an assessment of the unsuitability of the credit contract Consumer 5 had offered to enter into with Esanda, within the meaning of s 129 of the NCCP Act.
- 5.4 Following this assessment, on or around 3 July 2014, Esanda entered into a credit contract with Consumer 5, under which Consumer 5:
  - 5.4.1 incurred a deferred debt of \$20,217.00 to Esanda; and
  - 5.4.2 was liable to repay that amount, together with interest and a loan administration charge, in 130 fortnightly repayments of \$242.62.

#### **Consumer 6**

- 6.1 On 28 September 2014, Esanda was contacted by UFS Best Buys about a potential offer by Consumer 6 to enter into a credit contract with Esanda to fund Consumer 6's purchase of a car priced at \$25,089.00.
- 6.2 At or around 5:06pm AEST on 28 September 2014, Esanda received from UFS Best Buys (among other things):

- 6.2.1 an offer from Consumer 6 to enter into a credit contract for the purchase of the car priced at \$25,089.00; and
- 6.2.2 documents that appeared to be payslips for Consumer 6 for the periods:
  - 23 June 2014 to 29 June 2014; and
  - 8 September 2014 to 14 September 2014.
- 6.3 By approximately 8:09am AEST on 29 September 2014, ANZ had made an assessment of the unsuitability of the credit contract Consumer 6 had offered to enter into with Esanda, within the meaning of s 129 of the NCCP Act.
- 6.4 Following this assessment, on or around 29 September 2014, Esanda entered into a credit contract with Consumer 6, under which Consumer 6:
  - 6.4.1 incurred a deferred debt of \$27,247.00 to Esanda; and
  - 6.4.2 was liable to repay that amount, together with interest and a loan administration charge, in 156 fortnightly repayments of \$302.37.

#### **Consumer 7**

- 7.1 On 7 November 2014, Esanda was contacted by UFS Best Buys about a potential offer by Consumer 7 to enter into a credit contract with Esanda to fund Consumer 7's purchase of a car priced at \$21,089.00.
- 7.2 At or around 12:54pm AEDT on 8 November 2014, Esanda received from UFS Best Buys (among other things):
  - 7.2.1 an offer from Consumer 7 to enter into a credit contract for the purchase of the car; and
  - 7.2.2 a document that appeared to be a payslip for Consumer 7 for the week ending 28 October 2014.
- 7.3 By approximately 5:10pm AEDT on 8 November 2014, ANZ had made an assessment of the unsuitability of the credit contract Consumer 7 had offered to enter into with Esanda, within the meaning of s 129 of the NCCP Act.
- 7.4 Following this assessment, on or around 10 November 2014, Esanda entered into a credit contract with Consumer 7, under which Consumer 7:
  - 7.4.1 incurred a deferred debt of \$15,747.00 to Esanda; and
  - 7.4.2 was liable to repay that amount, together with interest and a loan administration charge, in 130 fortnightly repayments of \$186.18.

### Consumer 8

- 8.1 On or about 19 January 2015, Esanda was contacted by CMT about a potential offer by Consumer 8 to enter into a credit contract with Esanda to fund Consumer 8's purchase of a car priced at \$23,230.00.
- 8.2 At or around 2:30pm AEDT on 29 January 2015, Esanda received from CMT (among other things):
  - 8.2.1 an offer from Consumer 8 to enter into a credit contract for the purchase of a different car priced at \$24,130.00; and
  - 8.2.2 a document that appeared to be a payslip for Consumer 8 for the period 9 January 2015 to 15 January 2015.
- 8.3 By approximately 5:04pm AEDT on 29 January 2015, ANZ had made an assessment of the unsuitability of the credit contract Consumer 8 had offered to enter into with Esanda, within the meaning of s 129 of the NCCP Act.
- 8.4 Following this assessment, on or around 29 January 2015, Esanda entered into a credit contract with Consumer 8, under which Consumer 8:
  - 8.4.1 incurred a deferred debt of \$17,133.00 to Esanda; and
  - 8.4.2 was liable to repay that amount, together with interest and a loan administration charge, in 130 fortnightly repayments of \$192.44.

### Consumer 9

- 9.1 On 3 March 2015, Esanda was contacted by CMT about a potential offer by Consumer 9 to enter into a credit contract with Esanda to fund Consumer 9's purchase of a car priced at \$11,452.00.
- 9.2 At or around 2:31pm AEDT on 4 March 2015, Esanda received from CMT (among other things):
  - 9.2.1 an offer from Consumer 9 to enter into a credit contract for the purchase of the car, which was now priced at \$13,202.00; and
  - 9.2.2 a document that appeared to be a payslip for Consumer 9 for the period 22 February 2015 to 28 February 2015.
- 9.3 By approximately 5:10pm AEDT on 4 March 2015, ANZ had made an assessment of the unsuitability of the credit contract Consumer 9 had offered to enter into with ANZ, within the meaning of s 129 of the NCCP Act.
- 9.4 Following this assessment, on or around 4 March 2015, Esanda entered into a credit contract with Consumer 9, under which Consumer 9:
  - 9.4.1 incurred a deferred debt of \$15,079.00 to Esanda; and

- 9.4.2 was liable to repay that amount, together with interest and a loan administration charge, in 180 fortnightly repayments of \$130.36.

#### **Consumer 10**

- 10.1 On 15 April 2015, Esanda was contacted by CMT about a potential offer by Consumer 10 to enter into a credit contract with Esanda to fund Consumer 10's purchase of a car priced at \$10,456.00.
- 10.2 At or around 12:38pm AEST on 15 April 2015, Esanda received from CMT (among other things):
- 10.2.1 an offer from Consumer 10 to enter into a credit contract for the purchase of the car; and
- 10.2.2 a document that appeared to be a payslip for Consumer 10 for the period 23 March 2015 to 27 March 2015.
- 10.3 By approximately 1:24pm AEST on 15 April 2015, ANZ had made an assessment of the unsuitability of the credit contract Consumer 10 had offered to enter into with Esanda, within the meaning of s 129 of the NCCP Act.
- 10.4 Following this assessment, on or around 15 April 2015, Esanda entered into a credit contract with Consumer 10, under which Consumer 10:
- 10.4.1 incurred a deferred debt of \$11,584.00 to Esanda; and
- 10.4.2 was liable to repay that amount, together with interest and a loan administration charge, in 76 fortnightly repayments of \$182.59.

#### **Consumer 11**

- 11.1 On or before 27 April 2015, Esanda was contacted by CMT about a potential offer by Consumer 11 to enter into a credit contract with Esanda to fund Consumer 11's purchase of a car priced at \$25,888.00.
- 11.2 At or around 10:24am AEST on 28 April 2015, Esanda received from CMT (among other things):
- 11.2.1 an offer from Consumer 11 to enter into a credit contract for the purchase of a car priced at \$25,888.00; and
- 11.2.2 a document that appeared to be a payslip for Consumer 11 for the period 16 April 2015 to 23 April 2015.
- 11.3 By approximately 10:08am AEST on 29 April 2015, ANZ had made an assessment of the unsuitability of the credit contract Consumer 11 had offered to enter into with ANZ, within the meaning of s 129 of the NCCP Act.
- 11.4 Following this assessment, on or around 29 April 2015, Esanda entered into a credit contract with Consumer 11, under which Consumer 11:

11.4.1 incurred a deferred debt of \$25,323.00 to Esanda; and

11.4.2 was liable to repay that amount, together with interest and a loan administration charge, in 84 monthly repayments of \$428.67.

#### **Consumer 12**

12.1 On 11 May 2015, Esanda was contacted by CMT about a potential offer by Consumer 12 to enter into a credit contract with Esanda to fund Consumer 12 purchase of a car priced at \$13,500.00.

12.2 At or around 8:58am AEST on 12 May 2015, Esanda received from CMT (among other things):

12.2.1 an offer from Consumer 12 to enter into a credit contract for the purchase of the car; and

12.2.2 a document that appeared to be a payslip for Consumer 12 for the period 22 April 2015 to 28 April 2015.

12.3 By approximately 10:25am AEST on 12 May 2015, ANZ had made an assessment of the unsuitability of the credit contract Consumer 12 had offered to enter into with Esanda, within the meaning of s 129 of the NCCP Act.

12.4 Following this assessment, on or around 12 May 2015, Esanda entered into a credit contract with Consumer 12, under which Consumer 12:

12.4.1 incurred a deferred debt of \$15,273.00 to Esanda; and

12.4.2 was liable to repay that amount, together with interest and a loan administration charge, in 128 fortnightly repayments of \$159.95.