

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 27/05/2022 12:20:57 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
File Number:	VID285/2022
File Title:	AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION v AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink that reads 'Sia Lagos'.

Dated: 27/05/2022 12:27:03 PM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



**Originating Process**

No. of 2022

Federal Court of Australia  
District Registry: Victoria  
Division: General

**IN THE MATTER OF AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)**

**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**  
Plaintiff

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

**A DETAILS OF APPLICATION**

This application is made under ss 12DA, 12DB, 12GBA, 12GBB, 12GD, 12GLB and 12GNB of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**), s 1101B of the *Corporations Act 2001* (Cth) (**Corporations Act**) and ss 47(1)(a), 47(4), 166, 167, 177 and 182 of the *National Consumer Credit Protection Act 2009* (Cth) (**NCCPA**) and ss 21, 23 and 43 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**).

In this Originating Process, terms which are defined in the Concise Statement dated 27 May 2022 have the same meaning as they do in that document.

On the facts stated in the accompanying Concise Statement, the Plaintiff seeks:

**DECLARATIONS**

1 A declaration that the Defendant (**ANZ**) in the period from 27 May 2016 to 23 September 2021:

- a) in trade or commerce, in connection with the supply or possible supply of financial services, made false or misleading representations with respect to the price of the

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Filed on behalf of:	The plaintiff, Australian Securities and Investments Commission		
Prepared by:	John Fogarty, DLA Piper Australia		
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financial services, in contravention of s 12DB(1)(g) of the ASIC Act; further or alternatively

- b) in trade or commerce, in connection with the supply or possible supply of financial services, made false or misleading representations that the financial services have uses or benefits, in contravention of s 12DB(1)(e) of the ASIC Act,

by expressly or impliedly representing, on each occasion that credit amounts shown as 'Current Balance' and 'Available Funds' for a customer's credit card account were communicated, that the Current Balance (being the lower amount) could be withdrawn by the customer without incurring any fees or interest or any other adverse consequence (**First Representation**), in circumstances where that was not so because moneys paid into the account would not in fact be cleared and credited until the next business day.

- 2 A declaration that, since 24 September 2021 ANZ expressly or impliedly represented, on each occasion that credit amounts shown as 'Balance' and 'Funds' for a customer's credit card account were communicated, that the 'Balance' (being the lower amount) could be withdrawn by the customer without incurring any fees or interest or any other adverse consequence (**Second Representation**), ANZ engaged in conduct in trade or commerce, in relation to financial services, that was misleading or deceptive or likely to mislead or deceive, in contravention of s 12DA of the ASIC Act.

- 3 A declaration that ANZ contravened s 47(1)(a) of NCCPA in failing to do all things necessary to ensure that the credit activities authorised by its credit licence were engaged in efficiently, honestly and fairly, by:

- (a) the removal of the definition of 'Available Funds' from the ANZ website and the ANZ App from in or about May 2018;
- (b) the change to the description of 'Cash Advance Fee' in the Booklet and Letters of Offer in November 2018;
- (c) the conduct referred to in paragraph 1 above in the period up until 12 March 2019;
- (d) charging fees and interest to customers in the circumstances of the First Representation in the period from 27 May 2016 to 12 March 2019;
- (e) the conduct referred to in paragraph 1 above in the period from 13 March 2019 to 23 September 2021;
- (f) charging fees and interest to customers in the circumstances of the First Representation in the period from 13 March 2019 to 23 September 2021;



- (g) the conduct in the period commencing from about 24 September 2021 referred to in paragraph 2 above;
  - (h) charging fees and interest to customers in the circumstances of the Second Representation since 24 September 2021;
  - (i) the reversal of the amendments to the Booklet in September 2019, and the inconsistency in the definitions of Cash Advance Fee between the Booklet and Letters of Offer in the period until 30 September 2021 as referred to in paragraph 16 of the Concise Statement;
  - (j) reinserting the definition of 'Available Funds' on ANZ's digital channels in July 2019, until about 24 September 2021 when it was removed as referred to in paragraph 17 of the Concise Statement;
  - (k) removing the definition of 'Available Funds' from about 24 September 2021 and adding newly defined terms 'Balance' and 'Funds' to ANZ's digital channels and ATM transaction processing screen and receipts as referred to in paragraphs 18 and 19 of the Concise Statement;
  - (l) failing to implement adequate measures to prevent the First Representation in the period from 27 May 2016 up to 12 March 2019;
  - (m) failing to implement adequate measures to prevent the First Representation in the period from 13 March 2019 to 23 September 2021; and
  - (n) failing to implement adequate measures to prevent the Second Representation in the period since 24 September 2021.
- 4 A declaration that ANZ contravened s 47(4) of NCCPA by each species of conduct described in paragraphs 3(e) to (k) and (m) and (n) above.

## **PECUNIARY PENALTIES**

### **5 Orders:**

- (a) pursuant to s 12GBA (as applicable up until 12 March 2019) and s 12GBB of the ASIC Act (as applicable from 13 March 2019) that ANZ pay to the Commonwealth of Australia pecuniary penalties in such amounts as the Court determines to be appropriate, in respect of ANZ's contraventions of ss 12DB(1)(g) and 12DB(1)(e) of the ASIC Act; and



- (b) pursuant to s 167 of the NCCPA that ANZ pay to the Commonwealth of Australia a pecuniary penalty in such amount as the Court determines to be appropriate, in respect of ANZ's contraventions of s 47(4) of the NCCPA.

## **INJUNCTION**

- 6 Orders pursuant to s 12GD of the ASIC Act, s 1101B(1) of the Corporations Act and/or s 177 of the NCCPA, that ANZ, at its cost:
- a) within such period as the Court determines, implement a system change that is adequate to prevent payments made to customers' credit card accounts being immediately included in the display of that customer's 'Funds' or 'Balance', until such time as the funds are cleared by ANZ and are available to the customer for withdrawal or use without incurring cash advance fees; and
  - b) appoint a suitably qualified independent expert agreed between ANZ and the plaintiff (or, failing agreement, determined by the Court), to prepare and provide to ASIC a written report on the outcome of the implementation of the system change, including as to whether and to what extent the system change has been fully and effectively implemented in accordance with these orders.

## **OTHER ORDERS**

- 7 An order pursuant to s 12GNB of the ASIC Act and s 1101B of the Corporations Act that ANZ, at its cost:
- a) establish and implement a remediation program to identify, remediate (including by refunding fees and interest and compensating for the time value of money) and notify, all past and present customers who are affected by ANZ's contravening conduct described in paragraphs 1 and 2 above in the period since 27 May 2016, but have not yet been fully remediated in a manner substantially consistent with these orders; and
  - b) appoint a suitably qualified independent expert agreed between ANZ and the plaintiff (or, failing agreement, determined by the Court), to prepare and provide to ASIC a written report on the outcome of the remediation program, including as to whether and to what extent the remediation program has been fully and effectively implemented in accordance with these orders.
- 8 An order pursuant to s 12GLB(1)(a) of the ASIC Act and/or s 182 of the NCCPA that ANZ cause to be published, at its own expense and in a manner and form approved by the Court, a notice stating that ANZ has been ordered to pay pecuniary penalties because it has



made false or misleading representations and failed to do all things necessary to ensure that its credit services are engaged in efficiently, honestly and fairly.

9 Costs.

10 Such further or other orders as the Court thinks fit.

Date: 27 May 2022

A handwritten signature in black ink, appearing to read 'J. Fogarty'.

John Fogarty  
for and on behalf of DLA Piper  
Lawyer for the Plaintiff

This application will be heard by the Federal Court of Australia at 305 William Street  
Melbourne at \*am/\*pm on 2022.

## **B NOTICE TO DEFENDANT**

TO: Australia and New Zealand Banking Group Limited  
ANZ Centre Melbourne, Level 9 833 Collins Street, Docklands, VIC 3008

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.



**C APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY**

Not applicable

**D FILING**

Date of filing:

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Registrar

This originating process is filed by John Fogarty for the Plaintiff.

**E SERVICE**

The Plaintiff's address for service is:

DLA Piper

Level 14, 80 Collins Street, Melbourne VIC 3000

Email: John.Fogarty@dlapiper.com

It is intended to serve a copy of this originating process on the Defendant.