

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 25/11/2021 11:30:47 AM AEDT 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 Application - Form 15 - Rule 8.01(1)
File Number:	VID694/2021
File Title:	AUSTRALIAN SECURITIES AND INVESTMENT COMMISSION v AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD
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



Dated: 25/11/2021 1:28:29 PM AEDT

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

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.



Form 15
Rules 8.01(1); 8.04(1)

Originating application

No. VID of 2021

Federal Court of Australia
District Registry: Victoria
Commercial and Corporations National Practice Area
Regulator and Consumer Protection Sub-area

Australian Securities and Investments Commission

Applicant

Australia and New Zealand Banking Group Ltd (ACN 005 357 522)

Respondent

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne VIC

The Court ordered that the time for serving this application be abridged to

Date: 2021

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of the Applicant, Australian Securities and Investments
Commission

File ref: 19001326

Prepared by: James Docherty
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Details of claim

On the grounds stated in the accompanying concise statement, the Applicant (**ASIC**) claims:

Declarations

1. Pursuant to s 166(2) of the *National Consumer Credit Protection Act 2009* (Cth) (**Credit Act**), declarations that, in relation to each loan application referred to in column D of the confidential annexure (**Annexure**), the Respondent (**ANZ**) contravened s 31(1) of the Credit Act by:
 - (a) engaging in a credit activity within the meaning of the Credit Act, namely carrying on a business of providing credit, being credit the provision of which the *National Credit Code* applies to; and
 - (b) in the course of engaging in that credit activity, conducting business with the person referred to in column A of the Annexure who contravened s 29 of the Credit Act by engaging, without an Australian credit licence, in a credit activity within the meaning of the Credit Act, namely by providing a credit service with respect to the person referred to in column B of the Annexure.
2. Pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**), a declaration that, in the period from at least November 2015 to June 2020, in respect of referrals of potential home loan customers, and provision of information about such customers, by third parties, ANZ:
 - (a) contravened s 47(1)(a) of the Credit Act by failing to do all things necessary to ensure that the credit activities authorised by its Australian credit licence were engaged in efficiently, honestly and fairly; and
 - (b) contravened s 47(1)(e) of the Credit Act by failing to take reasonable steps to ensure that its representatives complied with s 31(1) of the Credit Act.

Pecuniary penalties

3. Pursuant to s 167(2) of the Credit Act, an order that ANZ pay to the Commonwealth such pecuniary penalties as the Court determines are appropriate in respect of ANZ's contraventions of s 31(1) of the Credit Act.

Injunction

4. Pursuant to s 177(1) of the Credit Act, an order that:
 - (a) within one month of the date of the order, ANZ must:
 - (i) engage an independent expert with expertise in regulatory compliance, with the identity of the expert to be agreed between ASIC and ANZ or,



failing agreement, as proposed by the parties and determined by the Court;
and

- (ii) instruct the expert to:
 - (A) conduct a review of ANZ's arrangements for ensuring that it complies with ss 31(1) and 47(1)(a) and (e) of the Credit Act in relation to referrals of potential home loan customers, and provision of information about such customers, by third parties; and
 - (B) prepare a report within six months of their engagement which:
 - (1) describes his or her expertise and confirms his or her independence;
 - (2) identifies any aspects of the arrangements referred to in sub-paragraph (a)(ii)(A) above that, in the opinion of the expert, are not appropriate or adequate to cause ANZ to comply with ss 31(1) and 47(1)(a) and (e) of the Credit Act in future; and
 - (3) provides recommendations to ANZ to remedy any aspects of ANZ's arrangements of the kind described in sub-paragraph (a)(ii)(B)(2) above identified in the course of the expert's review; and
- (b) within seven months of the date of the order, ANZ must provide to ASIC a copy of the report referred to in sub-paragraph (a)(ii)(B) above which has been signed by the expert; and
- (c) within thirteen months of the date of the order, ANZ must provide to ASIC a written report signed by the expert and the Chief Executive Officer of ANZ which:
 - (i) annexes a copy of the report referred to in sub-paragraph (a)(ii)(B) above;
 - (ii) states what steps ANZ has taken to give effect to the expert's recommendations;
 - (iii) annexes a copy of all internal documents that have been amended as a consequence of the expert's recommendations; and
 - (iv) identifies any of the expert's recommendations not given effect to by ANZ, and the reasons why ANZ did not give effect to those recommendations.



Other orders

5. A confidentiality order pursuant to ss 37AF and 37AG of the FCA Act and/or r 2.32(3)(a) of the *Federal Court Rules 2011* (Cth) with respect to the Annexure.
6. Costs.
7. Such further or other orders as the Court considers appropriate.

Applicant's address

The Applicant's address for service is:

Place: The Australian Government Solicitor

Level 34, 600 Bourke Street

MELBOURNE VIC 3000

Email: james.docherty@ags.gov.au

The Australian Government Solicitor's telephone and facsimile numbers are:

Tel: 03 9242 1214

Fax: 03 9242 1333

The Applicant's address is:

Level 20, 240 Queen Street

Brisbane QLD 4000

Service on the Respondent

It is intended to serve this application on the Respondent.

Date: 25 November 2021

Signed by James Rutherford Docherty
AGS Lawyer
for and on behalf of the Australian Government Solicitor
Solicitor for the Applicant