FEDERAL COURT OF AUSTRALIA

Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited (Retail Cases Omnibus) [2025] FCA 1593

File numbers:	VID 1209 of 2025 VID 1210 of 2025 VID 1211 of 2025
Judgment of:	**BEACH J**
Date of judgment:	19 December 2025
Catchwords:	**CORPORATIONS** — retail banking operations — conduct of bank concerning processes for responding to customer hardship notices — conduct of bank concerning representations made to customers relating to the payment of bonus interest — conduct of bank concerning its failure to have adequate systems in place to deal with deceased estates of account holders and the inappropriate charging of or failure to refund fees — contraventions of various provisions of the *Corporations Act 2001* (Cth), the *Australian Securities and Investments Commission Act 2001* (Cth) and the *National Consumer Credit Protection Act 2009* (Cth) — admitted conduct — fixing of pecuniary penalties — penalty principles — orders made
Legislation:	*Australian Securities and Investments Commission Act 2001* (Cth) ss 5, 12BAA, 12BAB, 12BB, 12DA, 12DB, 12GBA, 12GBB, 12GBC, 12GBCA, 12GLB *Corporations Act 2001* (Cth) ss 5A, 9, 763A(1), 763B, 763C, 763D, 764A, 766A, 766C, 912A, 1101B, 1105, 1317E, 1317G *National Consumer Credit Protection Act 2009* (Cth) ss 4, 5, 6(1) (items 1 and 4), 29, 47, 166, 167, 167A, 167B, 175A, 182 *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Cth) Sch 8, Pt 2, s 3 *National Credit Code (Sch 1 to National Consumer Credit Protection Act 2009* (Cth)) ss 4, 5, 6, 72, 203A
Cases cited:	*Australian Building and Construction Commissioner v Pattinson* (2022) 274 CLR 450; [2022] HCA 13 *Australian Competition and Consumer Commission v Get Qualified Australia Pty Ltd (No 3)* (2017) ATPR 42-549; [2017] FCA 1125

Australian Competition and Consumer Commission v Reckitt Benckiser (Australia) Pty Ltd (2016) 340 ALR 25; [2016] FCAFC 181

Australian Securities and Investments Commission v AGM Markets Pty Ltd (in liquidation) (No 3) [2020] FCA 208, (2020) 275 FCR 57

Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited (No 3) [2020] FCA 1421

Australian Securities and Investments Commission v Australia and New Zealand Banking Group Ltd [2022] FCA 1251; (2022) 164 ACSR 428

Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited [2023] FCA 1150; (2023) 169 ACSR 649

Australian Securities and Investments Commission v AustralianSuper Pty Ltd [2025] FCA 102; (2025) 172 ACSR 615

Australian Securities and Investments Commission v Avestra Asset Management Limited (In Liquidation) (2017) 348 ALR 525; [2017] FCA 497

Australian Securities and Investments Commission v Camelot Derivatives Pty Limited (In Liquidation) (2012) 88 ACSR 206; [2012] FCA 414

Australian Securities and Investments Commission v Commonwealth Bank of Australia [2020] FCA 790

Australian Securities and Investments Commission v Commonwealth Bank of Australia [2022] FCA 1422

Australian Securities and Investments Commission v Darranda Pty Ltd (Liability) [2024] FCA 1015

Australian Securities and Investments Commission v Diversa Trustees Limited [2023] FCA 1267

Australian Securities and Investments Commission v Dover Financial Advisers Pty Ltd (2019) 140 ACSR 561; [2019] FCA 1932

Australian Securities and Investments Commission v Green County Pty Ltd (Penalty) [2025] FCA 1571

Australian Securities and Investments Commission v National Australia Bank Ltd (2022) 164 ACSR 358; [2022] FCA 1324

Australian Securities and Investments Commission v National Australia Bank [2025] FCA 947

Australian Securities and Investments Commission v RI Advice Group Pty Ltd (2022) 160 ACSR 204; [2022] FCA 496

Australian Securities and Investments Commission v

	Westpac Banking Corporation (No 2) (2018) 266 FCR 147; [2018] FCA 751 *Australian Securities and Investments Commission v Westpac Banking Corporation (No 3)* (2018) 131 ACSR 585; [2018] FCA 1701 *Australian Securities and Investments Commission v Westpac Banking Corporation (Omnibus)* [2022] FCA 515; (2022) 407 ALR 1 *Australian Securities and Investments Commission v Westpac Securities Administration Ltd and Another* (2019) 272 FCR 170; [2019] FCAFC 187 *Commonwealth v Director, Fair Work Building Industry Inspectorate* (2015) 258 CLR 482; [2015] HCA 46 *Secretary, Department of Health v Oxymed Australia Pty Ltd* [2021] FCA 1518; (2021) 397 ALR 241
Division:	General Division
Registry:	Victoria
National Practice Area:	Commercial and Corporations
Sub-area:	Regulator and Consumer Protection
Number of paragraphs:	457
Date of hearing:	2 and 3 December 2025
VID 1209 of 2025	
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VID 1210 of 2025	
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VID 1211 of 2025	
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ORDERS

VID 1209 of 2205

BETWEEN:	**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION** Plaintiff
AND:	**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)** Defendant

ORDER MADE BY: **BEACH J**

DATE OF ORDER: **19 DECEMBER 2025**

DEFINITIONS:

In this Order, the following definitions apply:

(a) **ACL** means the Respondent's Australian Credit Licence Number 234527.

(b) **ANZ** means the Respondent, Australia and New Zealand Banking Group Limited (ACN 005 357 522).

(c) **ASIC** means the Applicant, the Australian Securities and Investments Commission.

(d) **Credit Act** means the *National Consumer Credit Protection Act 2009* (Cth).

(e) **Credit Code** means the National Credit Code, being Schedule 1 to the Credit Act.

(f) **Frontline Channels** means ANZ's:

a. Australian Branch Network;

b. Customer Contact Centre, which relevantly comprises:

(i) ANZ staff members in call centres; and

(ii) ANZ staff members who respond to messages sent by customers via the Message Us function on the ANZ App (the Message Us channel);

and

c. external Mobile Lending representatives.

(g) **Hardship notice** means a notice within the meaning of s 72(1) of the Credit Code.

(h) **Response notice** means a notice within the meaning of s 72(4) of the Credit Code.

THE COURT DECLARES THAT:

1. Between September 2019 and September 2023, by failing to have adequate processes in place to record and respond to certain Hardship notices received through its Frontline Channels within the period specified by s 72(5) of the Credit Code, ANZ failed to do all things necessary to ensure that the credit activities covered by its ACL were engaged in efficiently, honestly and fairly, and contravened ss 47(1)(a) and (4) of the Credit Act.

2. In respect of Hardship notices received through the Message Us channel between May 2022 and September 2024, ANZ contravened s 72(4) of the Credit Code on at least 488 occasions (and on as many as 668 occasions) by failing to give the debtor a Response notice before the end of the period specified by s 72(5) of the Credit Code.

3. Further, in respect of Hardship notices received through the Message Us channel between May 2022 and September 2024, by operation of s 175A of the Credit Act, ANZ contravened s 72(4) of the Credit Code on at least 185,283 occasions (and on as many as 248,546 occasions) by failing to give the debtor a Response notice on the day after ANZ contravened s 72(4) of the Credit Code as referred to in paragraph 2 above, and on each day thereafter until the date on which ANZ gave the debtor a Response notice.

AND THE COURT ORDERS THAT:

4. Within 30 days of the date of this order, ANZ pay to the Commonwealth of Australia a pecuniary penalty of $15 million in respect of ANZ's contravention of ss 47(1)(a) and (4) of the Credit Act referred to in paragraph 1 above.

5. Within 30 days of the date of this order, ANZ pay to the Commonwealth of Australia a pecuniary penalty of $25 million in respect of ANZ's contraventions of s 72(4) of the Credit Code referred to in paragraphs 2 and 3 above.

6. Pursuant to s 1101B(1)(a)(i) of the Corporations Act and s 182(1) of the Credit Act, within 30 days of the date of these orders, ANZ take all reasonable steps to cause to be published, at its own expense, a notice in the terms set out in the Annexure to this Order in Arial font no less than 10 point (Written Notice), by:

   (a) for a period of no less than 90 days, maintaining a link to a PDF and/or webpage copy of the Written Notice in a visible area of ANZ's website home page (https://www.anz.com.au/personal/) and news room (https://www.anz.com.au/newsroom/), ensuring that the link to the notice is identified by text as follows: "Notice Ordered by the Federal Court of Australia"; and

   (b) for a period of no less than 90 days, maintaining a link to a PDF copy of the Written Notice in a visible area of ANZ's secure online banking login page (https://login.anz.com/internetbanking), ensuring that the link to the notice is identified by text as follows: "Notice ordered by Federal Court of Australia"; to be visible to current customers the next five times they visit the page.

7. ANZ pay ASIC's costs of and incidental to the proceeding within 30 days of these orders.

ANNEXURE: PROPOSED FORM OF NOTICE TO BE PUBLISHED BY ORDER OF THE FEDERAL COURT

Notice Ordered by the Federal Court of Australia

The Federal Court of Australia has ordered Australia and New Zealand Banking Group Limited to publish this adverse publicity notice.

[The full notice appears as an annexure to the authenticated order available on the Commonwealth Courts Portal]

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

ORDERS

VID 1210 of 2205

BETWEEN:	**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION** Plaintiff
AND:	**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)** Defendant

ORDER MADE BY: **BEACH J**

DATE OF ORDER: **19 DECEMBER 2025**

DEFINITIONS:

In this Order, the following definitions apply:

(a) **ANZ** means the defendant, Australia and New Zealand Banking Group Limited (ACN 005 357 522).

(b) **ASIC Act** means the *Australian Securities and Investments Commission Act 2001* (Cth).

(c) **Business Account** means either an ANZ Business Online Saver Account or an ANZ Business Premium Saver Account.

(d) **Bonus Interest Contravention Period** means the period from 15 September 2019 to 31 January 2024.

(e) **Bonus Interest Issue** means the issue whereby ANZ did not always pay bonus interest to Relevant Accounts who had satisfied the relevant eligibility criteria.

(f) **Bonus Interest Process Representation** means the implied representation that ANZ had adequate processes in place to ensure that the promoted bonus interest payments would be made in accordance with the Bonus Interest Representation.

(g) **Bonus Interest Representation** means the representation that customers would receive a specified bonus interest rate for a specified duration if they opened a

Relevant Account and satisfied the eligibility criteria.

(h) **Corporations Act** means the *Corporations Act 2001* (Cth).

(i) **Process Deficiencies** means certain deficiencies in ANZ's processes subsisting during the Bonus Interest Contravention Period, as a consequence of which it failed to pay bonus interest to certain Relevant Accounts who had satisfied the relevant eligibility criteria.

(j) **Rate Promotion Contravention Period** means the period from 27 August 2024 to 17 March 2025.

(k) **Rate Promotion Representation** means the representation made in the explanatory notes on the application form for Retail Accounts during the Rate Promotion Contravention Period that the terms of the promoted product provided for the customer to receive specified base variable and bonus fixed introductory interest rates.

(l) **Relevant Account** means a Business Account or a Retail Account.

(m) **Retail Account** means an ANZ Online Saver Account.

THE COURT DECLARES THAT:

1 During the Bonus Interest Contravention Period, ANZ, in trade or commerce and in connection with the supply, or possible supply, of financial services:

(a) engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act; and

(b) made false or misleading representations that financial services had benefits in contravention of s 12DB(1)(e) of the ASIC Act,

on each occasion that it made the Bonus Interest Representation, in circumstances where:

(c) ANZ did not have reasonable grounds for making the Bonus Interest Representation by reason of its knowledge of the Bonus Interest Issue in respect of Business Accounts and Retail Accounts from 1 April 2015 and October 2022 respectively, its failure to investigate and remedy the relevant matters once known

and the Process Deficiencies; and

(d) in respect of 8,301 customers who opened Relevant Accounts and satisfied the relevant eligibility criteria but did not receive bonus interest, ANZ failed to pay the bonus interest to those customers due to the Process Deficiencies.

2. During the Bonus Interest Contravention Period, ANZ, in trade or commerce and in connection with the supply, or possible supply, of financial services:

(a) engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act; and

(b) made false or misleading representations that financial services had benefits in contravention of s 12DB(1)(e) of the ASIC Act,

on each occasion that it made the Bonus Interest Process Representation, in circumstances where:

(c) ANZ did not have reasonable grounds for making the Bonus Interest Process Representation by reason of its knowledge of the Bonus Interest Issue in respect of Business Accounts and Retail Accounts from 1 April 2015 and October 2022 respectively, its failure to investigate and remedy the relevant matters once known and the Process Deficiencies; and

(d) in respect of 8,301 customers who opened Relevant Accounts and satisfied the relevant eligibility criteria but did not receive bonus interest, ANZ failed to pay the bonus interest to those customers due to the Process Deficiencies.

3. During the Rate Promotion Contravention Period, ANZ, in trade or commerce, and in connection with the supply, or possible supply, of financial services:

(a) engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act; and

(b) made false or misleading representations that the services had benefits in contravention of s 12DB(1)(e) of the ASIC Act,

on each occasion it made the Rate Promotion Representation, in circumstances where:

(c) the terms of the promoted product provided for payment by ANZ of rates which were different from those specified in the Rate Promotion Representation;

(d) in respect of customers who proceeded to open an account through the application form, ANZ failed to pay the promoted base and bonus interest to consumers of 26,917 Retail Accounts; and

(e) ANZ did not have reasonable grounds for making the Rate Promotion Representation by reason of the fact that at the time it made that representation, it did not have adequate processes in place to ensure that the correct rates were displayed.

4. During the Bonus Interest Contravention Period, ANZ failed to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened ss 912A(1)(a) and (5A) of the Corporations Act by:

(a) failing to maintain adequate processes to pay bonus interest to Relevant Accounts by reason of the Process Deficiencies;

(b) failing to conduct adequate monitoring of its processes and therefore not identifying in a timely manner instances of bonus interest not being paid to Relevant Accounts;

(c) failing to investigate and rectify, in a timely manner, its failure to apply bonus interest to Relevant Accounts; and

(d) by making the Bonus Interest Representation and Bonus Interest Process Representation in the circumstances described in paragraphs 1(c) and (d) and 2(c) and (d) above.

AND THE COURT ORDERS THAT:

5. Within 30 days of the date of this order, ANZ pay to the Commonwealth of Australia a pecuniary penalty of $30 million in respect of ANZ's contraventions of s 12DB(1)(e) of the ASIC Act, being:

(a) $25 million in respect of the conduct detailed in paragraphs 1 and 2 of the

declarations above; and

(b) $5 million in respect of the conduct detailed in paragraph 3 of the declarations above.

6. Within 30 days of the date of this order, ANZ pay to the Commonwealth of Australia a pecuniary penalty of $10 million in respect of ANZ's contravention of ss 912A(1)(a) and (5A) of the Corporations Act detailed in paragraph 4 of the declarations above.

7. Pursuant to s 1101B(1)(a)(i) of the Corporations Act, within 30 days of the date of this order, ANZ take all reasonable steps to cause to be published, at its own expense, a notice in the terms set out in the Annexure to this Order in Arial font no less than 10 point (Written Notice), by:

(a) for a period of no less than 90 days, maintaining a link to a PDF and/or webpage copy of the Written Notice in a visible area of ANZ's website home page (https://www.anz.com.au/personal/) and news room (https://www.anz.com.au/newsroom), ensuring that the link to the notice is identified by text as follows: "Notice Ordered by the Federal Court of Australia".

(b) for a period of no less than 90 days, maintaining a link to a PDF copy of the Written Notice in a visible area of ANZ's secure online banking login page (https://login.anz.com/internetbanking), ensuring that the link to the notice is identified by text as follows: "Notice ordered by Federal Court of Australia"; to be visible to current customers the next five times they visit the page.

8. ANZ pay ASIC's costs of and incidental to the proceeding within 30 days of these orders.

ANNEXURE: PROPOSED FORM OF NOTICE TO BE PUBLISHED BY ORDER OF THE FEDERAL COURT

Notice Ordered by the Federal Court of Australia

The Federal Court of Australia has ordered Australia and New Zealand Banking Group Limited to publish this adverse publicity notice.

[The full notice appears as an annexure to the authenticated order available on the Commonwealth Courts Portal]

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

ORDERS

VID 1211 of 2205

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

BETWEEN:	**AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION** Plaintiff
AND:	**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)** Defendant

ORDER MADE BY: **BEACH J**

DATE OF ORDER: **19 DECEMBER 2025**

DEFINITIONS:

In this Order, the following definitions apply:

(a) **ACL** means ANZ's Australian Credit Licence Number 234527.

(b) **AFSL** means ANZ's Australian Financial Services Licence Number 234527.

(c) **Banking Code of Practice** means the Australian Banking Association's code of conduct, which formed part of the agreements pursuant to which ANZ offered to provide certain products to its individual and small business customers.

(d) **BCCC** means the Banking Code Compliance Committee.

(e) **Bereavement Team** means ANZ's staff who were primarily responsible for handling notifications and requests relating to a deceased customer's accounts.

(f) **Corporations Act** means the *Corporations Act 2001* (Cth).

(g) **Credit Act** means the *National Consumer Credit Protection Act 2009* (Cth).

(h) **Deposit Accounts** means deposit accounts and certain other cash management accounts.

(i) **Fee Obligation** means the obligations arising from clauses 190(a) to (c) in the Banking Code of Practice.

(j) **Loan Accounts** means home loans, business loans, personal loan accounts, overdrafts and credit card accounts.

(k) **14 Day Obligation** means the obligations arising from clauses 190(d) and 191(a) in the Banking Code of Practice.

THE COURT DECLARES THAT:

1. From 15 September 2019 to 30 June 2023, ANZ failed to do all things necessary to ensure that:

   (a) the financial services covered by its AFSL (being the provision of the Deposit Accounts); and

   (b) the credit activities covered by its ACL (being the provision of the Loan Accounts),

   were engaged in efficiently, honestly and fairly, and therefore contravened ss 912A(1)(a) and (5A) of the Corporations Act, and ss 47(1)(a) and (4) of the Credit Act respectively, by, in relation to both the 14 Day Obligation and the Fee Obligation:

   (c) not having any, or any adequate, documented guidance for ANZ's Bereavement Team and other relevant staff;

   (d) not having any, or any adequate, training for ANZ's Bereavement Team and other relevant staff;

   (e) not having any, or any adequate, systems or processes to identify notifications, requests or fees subject to the obligations; and

   (f) not having any, or any adequate, systems or processes to monitor notifications, requests or fees subject to the obligations and report any breach of the obligations in BCCC compliance statement reporting.

AND THE COURT ORDERS THAT:

Pecuniary penalties

2. Pursuant to s 1317G(1)(a) of the Corporations Act and s 167(2) of the Credit Act, within 30 days of the date of these orders, ANZ pay to the Commonwealth of Australia a pecuniary penalty of $35 million in respect of ANZ's contraventions of ss 912A(1)(a) and (5A) of the Corporations Act and ss 47(1)(a) and (4) of the Credit Act referred to in paragraph 1 above.

Adverse publicity order

3. Pursuant to s 1101B(1)(a)(i) of the Corporations Act and s 182(1) of the Credit Act, within 30 days of the date of these orders, ANZ take all reasonable steps to cause to be published, at its own expense, a notice in the terms set out in the Annexure to this Order in Arial font no less than 10 point (Written Notice), by:

   (a) for a period of no less than 90 days, maintaining a link to a PDF and/or webpage copy of the Written Notice in a visible area of ANZ's website home page (https://www.anz.com.au/personal/) and news room (https://www.anz.com.au/newsroom), ensuring that the link to the notice is identified by text as follows: "Notice Ordered by the Federal Court of Australia".

   (b) for a period of no less than 90 days, maintaining a link to a PDF copy of the Written Notice in a visible area of ANZ's secure online banking login page (https://login.anz.com/internetbanking), ensuring that the link to the notice is identified by text as follows: "Notice ordered by Federal Court of Australia"; to be visible to current customers the next five times they visit the page.

Costs

4. Within 30 days of the date of these orders, ANZ pay ASIC's costs of and incidental to the proceeding.

ANNEXURE: PROPOSED FORM OF NOTICE TO BE PUBLISHED BY ORDER OF THE FEDERAL COURT

Notice Ordered by the Federal Court of Australia

The Federal Court of Australia has ordered Australia and New Zealand Banking Group Limited to publish this adverse publicity notice.

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REASONS FOR JUDGMENT

BEACH J:

1 These reasons deal with three of the four cases that I heard over two days concerning proceedings brought by the Australian Securities and Investments Commission against Australia and New Zealand Banking Group Limited concerning contraventions of various provisions of the corporations legislation and credit legislation.

2 These three cases are, first, a case concerning the conduct of the ANZ as to its processes for responding to customer hardship notices, second, a case concerning ANZ's conduct dealing with bonus interest on business accounts and retail accounts and, third, a case concerning the conduct of the ANZ in dealing with deceased estates. The fourth case deals with the ANZ's conduct concerning treasury bonds for which I have published separate reasons (*Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited (Treasury Bonds Case)* [2025] FCA 1592) and in respect of which I have imposed a pecuniary penalty of $135 million.

3 In the three cases that the present reasons address, the parties have jointly put a position seeking that I fix pecuniary penalties in total of $115 million. In my view the pecuniary penalties proposed in each of the three cases are appropriate, producing this total.

4 Now I have proceeded on the basis that the order in which I heard these cases has no significance. Moreover, in terms of the totality principle, I have considered that question in each individual case, but it has not been appropriate to consider the question of totality over the combination of cases given that they arise out of quite different circumstances, conduct and time frames.

5 In terms of the material before me, I have had the benefit of written submissions from the parties of two types. First, I have been provided with fact specific submissions in each case together with a statement of agreed facts and admissions tailored to the specific case (SAFA). Second, I have been provided with some very thorough submissions concerning the relevant statutory provisions and principles applicable to all three cases, which I have modified to some extent but largely accepted.

6 It is appropriate to address that latter topic first, and in doing so it is convenient to begin with some definitions.

Some relevant definitions

7 As the parties have pointed out, many of the provisions that apply in the three proceedings involve the definitions of the statutory terms "financial product", "financial service", "credit activity" and "credit contract". Let me set out the relevant form of these definitions applicable to the contraventions.

"Financial product" and "financial service"

8 At all material times, the *Corporations Act 2001* (Cth) contained the following general definition of "financial product" (s 763A(1)):

> A financial product is a facility through which, or through the acquisition of which, a person does one or more of the following:
>
> (a) makes a financial investment;
>
> (b) manages a financial risk;
>
> (c) makes non-cash payments.

9 In addition to general definitions of "makes a financial investment" (s 763B), "manages a financial risk" (s 763C) and "makes non-cash payments" (s 763D), s 764A specifically includes a "deposit-taking facility made available by an ADI [authorised deposit-taking institution] … in the course of its banking business" (s 764A(1)(i)).

10 At all material times, the Corporations Act contained, relevantly, the following definition of "financial service" (as 766A(1)):

> Subject to paragraph 2(b), a person provides a financial service if they:
>
> …
>
> (b) deal in a financial product;…

11 "Dealing in a financial product" is defined to include "issuing a financial product" and "disposing of a financial product" (s 766C(1)(b)).

12 At all material times, the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act) defined "financial services" in s 12BAB(1)(b) to include where a person deals in a financial product, and s 12BAB(1)(g) to include providing a service that is otherwise supplied in relation to a financial product. The meaning of "dealing" in a financial product is defined in s 12BAB(7)(b) to include "issuing" a financial product. The meaning of financial product is defined in s 12BAA, and includes a facility through which a person (a) makes a financial investment; (b) manages financial risk; (c) makes non-cash payments (s 12BAA(1)).

"Credit activity" and "credit contract"

13 At all material times, the *National Consumer Credit Protection Act 2009* (Cth) (Credit Act) provided that a person engages in a "credit activity" if, inter alia (Credit Act, s 6(1) (items 1 and 4)):

> (a) the person is a credit provider under a credit contract;
>
> (b) the person carries on a business of providing credit, being credit the provision of which the National Credit Code (Credit Code) (being Sch 1 to the Credit Act) applies to; or
>
> (c) the person is a mortgagee under a mortgage.

14 The Credit Act also provided that a person must not engage in a credit activity if the person does not hold an Australian Credit Licence (ACL) authorising the person to engage in the credit activity (s 29(1)).

15 At all material times, the National Credit Code being Schedule 1 to the Credit Act (the Credit Code) provided that a "credit contract" is "a contract under which credit is or may be provided, being the provision of credit to which this Code applies" (s 4). In turn, s 5(1) provided that the Credit Code applied to the provision of credit (and to the credit contract and related matters) if when the credit contract is entered into or (in the case of precontractual obligations) is proposed to be entered into:

> (a) the debtor is a natural person or a strata corporation; and
>
> (b) the credit is provided or intended to be provided wholly or predominantly:
>
> (i) for personal, domestic or household purposes; or
>
> (ii) to purchase, renovate or improve residential property for investment purposes; or
>
> (iii) to refinance credit that has been provided wholly or predominantly to purchase, renovate or improve residential property for investment purposes; and
>
> (c) a charge is or may be made for providing the credit; and
>
> (d) the credit provider provides the credit in the course of a business of providing credit carried on in this jurisdiction or as part of or incidentally to any other business of the credit provider carried on in this jurisdiction.

16 The meaning of "personal, domestic or household purpose" and "predominant purpose" were further defined in s 5(3) and (4), and provisions of credit to which the Credit Code did not apply were specified in s 6.

The "efficiently, honestly and fairly" obligations – Corporations Act, s 912A(1)(a); Credit Act, s 47(1)(a)

17 Each of the proceedings include admitted contraventions of ss 912A(1)(a) and (5A) of the Corporations Act and/or ss 47(1)(a) and (4) of the Credit Act.

18 At all relevant times, s 912A(1)(a) required that the holder of an Australian Financial Services Licence (AFSL) must "do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly".

19 At all relevant times, s 47(1)(a) required that the holder of an ACL must "do all things necessary to ensure that the credit activities authorised by the licence are engaged in efficiently, honestly and fairly".

20 The principles developed in case law on s 912A(1)(a) on the meaning of the phrase "efficiently, honestly and fairly" are equally applicable to s 47(1)(a) in the Credit Act (*Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited* (2023) 169 ACSR 649; [2023] FCA 1150 at [51]; *Australian Securities and Investments Commission v Darranda Pty Ltd (Liability)* [2024] FCA 1015 at [240] per Hespe J).

21 As to the principles guiding the interpretation of s 912A(1)(a), I have set these out in my decision in the *Treasury Bonds Case* [2025] FCA 1592. I adopt that discussion in these reasons.

22 There is no good reason not to apply the observations that I made in *Australian Securities and Investments Commission v AGM Markets Pty Ltd (in liquidation) (No 3)* [2020] FCA 208; (2020) 275 FCR 57 at [505] to [528] that have their genesis in the decision of Foster J in *Australian Securities and Investments Commission v Camelot Derivatives Pty Ltd (in liq)* (2012) 88 ACSR 206 at [69].

23 Clearly, s 912A(1)(a) does not require dishonesty in the traditional or criminal sense. A finding of contravention is determined by reference to objective circumstances. Accordingly, a contravention may be made out even though it is not shown that the contravener engaged in an intentional wrong.

24 And neither does a contravention of the "efficiently, honestly and fairly" standard require a contravention of a separately existing legal duty or obligation, whether statutory, fiduciary, common law or otherwise. The statutory standard itself is the source of the obligation.

25 The words "efficiently, honestly and fairly" must be read as a compendious indication meaning a person who goes about their duties efficiently having regard to the dictates of honesty and fairness, honestly having regard to the dictates of efficiency and fairness, and fairly having regard to the dictates of efficiency and honesty (*Camelot Derivatives* at [69] per Foster J; *Australian Securities and Investments Commission v Avestra Asset Management Limited (In Liquidation)* (2017) 348 ALR 525; [2017] FCA 497 at [191]; *Australian Securities and Investments Commission v Westpac Banking Corporation (No 2)* (2018) 266 FCR 147; [2018] FCA 751 at [2347]; *ASIC v AGM Markets (No 3)* at [506], [517] and [518]; *Australian Securities and Investments Commission v Westpac Banking Corporation (Omnibus)* (2022) 407 ALR 1; [2022] FCA 515 at [60], [64] to [66]; *Australian Securities and Investments Commission v National Australia Bank Ltd* (2022) 164 ACSR 358; [2022] FCA 1324 at [350] to [353] per Derrington J; *Australian Securities and Investments Commission v Commonwealth Bank of Australia* [2022] FCA 1422 at [147] per Downes J).

26 The words "efficiently, honestly and fairly" connote a requirement of competence in providing advice and in complying with relevant statutory obligations. They also connote an element not just of even handedness in dealing with clients but a less readily defined concept of sound ethical values and judgment in matters relevant to a client's affairs.

27 The word "efficient" refers to a person who performs his duties efficiently, requiring that the licensee is adequate in performance, produces the desired effect, is capable, competent and adequate. Inefficiency may be established by demonstrating the performance of a licensee's functions falls short of the reasonable standard of performance that the public is entitled to expect.

28 The word "ensure" imports a forward-looking element into the obligation. It is necessary not only to act efficiently, honestly and fairly from day to day, but to take steps to guard against lapses from that standard by employees or representatives, before any specific instance of non-compliance has arisen (*Australian Securities and Investments Commission v Commonwealth Bank of Australia* [2022] FCA 1422 at [146] and [156] per Downes J).

29 The obligation is primarily directed to the systems and procedures of licensees by which their standards of conduct in the provision of their services are assured (*Australian Securities and Investments Commission v Diversa Trustees Limited* [2023] FCA 1267 at [153] per Button J).

30 The obligation requires that licensees look ahead to how they will be providing the financial services in question, assess what issues may arise that could result in those services not being provided efficiently, honestly and fairly, and design and adopt measures to address the risk of those matters occurring, and (depending on the context) their consequences.

31 The obligation is not static. A licensee cannot establish a procedure at the outset, and hold doggedly to it, no matter the flaws that experience may reveal.

32 Contravention does not rely on any proof of finding of intent. The standard may be unintentionally breached. Contravention is generally a matter of objective analysis, though evidence of the actual intention of the alleged infringer may sometimes be relevant.

33 The standard does not require commercial perfection whereby any possibility of error or mistake is eliminated rather, it is a reasonable standard of performance.

34 Some conduct may be appropriate to assess through a public expectation lens: for example, fees charged for no service, or providing financial advice without consideration of the client's best interests (*Australian Securities and Investments Commission v RI Advice Group Pty Ltd* (2022) 160 ACSR 204; [2022] FCA 496 at [49] per Rofe J).

ASIC Act provisions

35 Sections 12DA and 12DB are contained in Subdivision D of Part 2, Division 2, and prohibit misleading or deceptive conduct, or the making of false or misleading representations, respectively. Section 12DB(1)(e) prohibits false or misleading representations that services have (relevantly) benefits.

36 Section 12DA(1) provided at the relevant time:

> (1) A person must not, in trade or commerce, engage in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive.

37 Section 12DB(1)(e) provided at the relevant time:

> (1) A person must not, in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion by any means of the supply or use of financial services:
>
> …
>
> (e) make a false or misleading representation that services have sponsorship, approval, performance characteristics, uses or benefits; or
>
> …

38 Although the language used in s 12DB(1) ("false or misleading") is different to that used in s 12DA(1) ("misleading or deceptive"), there is no material difference between those expressions in terms of their legal application. The essential question in their application is whether the impugned conduct, viewed as a whole, has a sufficient tendency to lead a person exposed to it into error, informing an erroneous assumption or conclusion about some fact or matter.

39 It is generally accepted that the following subsidiary matters are relevant to the determination of a contravention of ss 12DA and 12DB.

40 First, the question of whether conduct is misleading or deceptive requires an objective standard which the Court must determine for itself.

41 Second, there must be a real and not a remote chance or possibility of it doing so. The test is not whether that possibility is more or less than 50%.

42 Third, conduct which merely causes confusion or uncertainty or wonderment is not, of itself, misleading.

43 Fourth, it is not necessary to prove an intention to mislead or deceive.

44 Fifth, it is unnecessary to prove that the conduct in question actually misled or deceived any person.

45 Sixth, the conduct must be considered as a whole and in context, and it is inappropriate to select particular words or acts which although misleading in isolation do not have that character when viewed in context.

46 Where allegations of false, misleading or deceptive conduct are advanced by reference to members of a class of persons rather than by reference to one or more specific individuals, the question of whether the conduct was, or was likely to be, misleading or deceptive must be objectively determined by reference to the hypothetical ordinary and reasonable member of the class.

47 The question of whether the relevant conduct or statement has a tendency to lead a person into error must be approached at a level of abstraction, considering the likely characteristics of the persons who comprise the relevant class of persons to whom the conduct was directed and considering the likely effect of the conduct of ordinary or reasonable members on the class (*ASIC v Westpac (No 2)* at [2264] to [2266]; *Australian Securities and Investments Commission*

v Dover Financial Advisers Pty Ltd (2019) 140 ACSR 561; [2019] FCA 1932 at [99] per O'Bryan J).

48 In viewing the conduct as a whole, it is necessary to focus on the dominant message conveyed by the conduct to ordinary or reasonable members of the relevant class of persons.

49 Section 12BB(1) of the ASIC Act deems certain representations with respect to future matters to be misleading for the purposes of ss 12DA and 12DB(1)(e) if the person making the representation does not have reasonable grounds for making it. The party (or other person) who made the representation with respect to future matters is taken not to have reasonable grounds unless evidence is adduced to the contrary: s 12BB(2).

50 Now the provisions have similar and overlapping requirements, but the precise elements of each are different. Nevertheless, central to each provision is that there is a representation that was misleading or deceptive or likely to mislead or deceive (s 12DA) or was false or misleading (s 12DB(1)).

51 But one distinction between the provisions is that s 12DA(1) applies to conduct that is misleading or deceptive or likely to mislead or deceive. In contrast, s 12DB(1) only applies to representations that are false or misleading and not also to representations that are only likely to mislead.

52 The principles applicable to determining whether conduct including the making of a representation is misleading or deceptive, or false or misleading, are not controversial.

53 In *ASIC v Westpac (No 2)*, I made various observations at [2259] to [2286]. I have set these out in my reasons in the *Treasury Bonds Case* and do not need to repeat them here.

The "changes on grounds of hardship" obligations – Credit Code, s 72

54 Section 72 of the Credit Code governs aspects of the communications between a credit provider and a debtor where the debtor is facing hardship meeting their obligations under a credit contract entered into on or after 1 March 2013.

55 The key parts of the process under s 72 are as follows.

56 If a debtor considers that he or she is or will be unable to meet his or her obligations under a credit contract, the debtor may give the credit provider notice (a hardship notice) under s 72(1), orally or in writing, of the debtor's inability to meet the obligations.

57 Within 21 days after the day of receiving the debtor's hardship notice, the credit provider may give the debtor notice under s 72(2), orally or in writing, requiring the debtor to give the credit provider specified information within 21 days. If such notice is given, the debtor must comply with the requirement (s 72(3)).

58 After a credit provider receives a hardship notice, s 72(4) requires the credit provider to give the debtor a notice which complies with the requirements of s 72(4)(a) or (b) (as applicable), before the end of the period identified under s 72(5). Section 72(4) is a civil penalty provision. Section 72(4)(a) applies if the credit provider and the debtor have agreed to change the credit contract. Section 72(4)(b) applies if the credit provider and the debtor have not agreed to change the credit contract.

59 The period identified under s 72(5), before the end of which a credit provider must give a debtor a notice which complies with the requirements of s 72(4)(a) or (b) (as applicable), is as follows: (a) if the credit provider does not require information under s 72(2), 21 days after the day of receiving the hardship notice; (b) if the credit provider requires information under s 72(2) but does not receive any information in compliance with the requirement, 28 days after the stated date of the notice under s 72(2); and (c) if the credit provider requires information under s 72(2) and receives information in compliance with the requirement, 21 days after the day of receiving the information.

60 At all material times prior to 15 September 2023, ASIC Class Order [CO 14/41] provided that a credit provider was exempt from complying with s 72(4)(a) (that is, in situations where the credit provider and the debtor have agreed to changes the credit contract), in respect of any credit contract entered into on or after 1 March 2013. ASIC Class Order 14/41 was made under s 203A(3) of the Credit Code. That Class Order was repealed on 15 September 2023 by the *Treasury Laws Amendment (Modernising Business Communications and Other Measures) Act 2023* (Cth), Sch 3, item 40.

61 From 15 September 2023 onwards, s 72(4A) provided that s 72(4) did not apply if the credit provider and the debtor agreed to a change to the credit contract that deferred or otherwise reduced the obligations of the debtor under that contract for a period not exceeding 90 days.

62 Section 175A of the Credit Act commenced on 13 March 2019. It provides:

> (1) If an act or thing is required under a civil penalty provision to be done:
>
> (a) within a particular period; or

(b) before a particular time;

then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).

(2) A person who contravenes a civil penalty provision that requires an act or thing to be done:

(a) within a particular period; or

(b) before a particular time;

commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant pecuniary penalty order is made or any later day).

63 So, s 175A provides that the credit provider's obligation to give a notice under s 72(4) of the Credit Code continues until that act is done (s 175A(1)) and a credit provider who contravenes s 72(4) commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant pecuniary penalty order is made or any later day) (s 175A(2)) (*Australian Securities and Investments Commission v National Australia Bank* [2025] FCA 947 at [26] per Neskovcin J).

64 Section 175A applies in relation to a contravention of s 72(4) of the Credit Code if the conduct constituting the contravention of the provision occurred wholly on or after 13 March 2019 (*National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009* (Cth), Sch 8, Pt 2, s 3).

Principles concerning declaratory relief

65 Further, s 1317E of the Corporations Act provides that the Court must make a declaration of contravention if it is satisfied that a person has contravened one of its civil penalty provisions. Further, for conduct from 13 March 2019, s 12GBA of the ASIC Act has similarly provided that the Court must make a declaration of contravention if it is satisfied that a person has contravened one of its civil penalty provisions (see also ss 322 and 327). Section 166(2) of the Credit Act also so provides.

66 In each of the proceedings, ASIC seeks declarations pursuant to s 21 of the *Federal Court of Australia Act 1976* (Cth), s 1317E of the Corporations Act and/or s 166(2) of the Credit Act and/or s 12GBA of the ASIC Act.

67 The language of s 1317E(1) of the Corporations Act, s 166(2) of the Credit Act and s 12GBA(3) of the ASIC Act is mandatory.

68 I have discussed the relevant principles in the *Treasury Bonds Case* [2025] FCA 1592, and would adopt that discussion in these reasons.

Principles concerning pecuniary penalties

69 As to the proper approach to civil penalty orders which are sought on an agreed basis, one starts by recognising that there is an "important public policy involved in promoting predictability of outcome in civil penalty proceedings" which "assists in avoiding lengthy and complex litigation and thus tends to free the courts to deal with other matters and to free investigating officers to turn to other areas of investigation that await their attention" as the plurality said in *Commonwealth v Director, Fair Work Building Industry Inspectorate* (2015) 258 CLR 482 at [46].

70 As a result, there is generally "very considerable scope" for the parties to civil proceedings to agree upon the appropriate remedy and for the court to be persuaded that it is an appropriate remedy (at [57]).

71 Their Honours went on to state (at [58]):

> Subject to the court being sufficiently persuaded of the accuracy of the parties' agreement as to facts and consequences, and that the penalty which the parties propose is *an* appropriate remedy in the circumstances thus revealed, it is consistent with principle and … highly desirable in practice for the court to accept the parties' proposal and therefore impose the proposed penalty. (original emphasis)

72 A further reason for courts acting upon such submissions is that they are advanced by a specialist regulator able to offer "informed submissions as to the effects of contravention on the industry and the level of penalty necessary to achieve compliance" (at [60]), albeit that such submissions will be considered on the merits in the ordinary way (at [61]).

73 These principles are not confined to agreed submissions on pecuniary penalties but apply equally to agreement on other forms of relief.

74 In civil proceedings there is generally very considerable scope for the parties to civil proceedings to agree upon the appropriate remedy and for the court to be persuaded that it is an appropriate remedy.

75 A further reason for courts acting upon such submissions is that they are advanced by a specialist regulator able to offer "informed submissions as to the effects of contravention on the industry and the level of penalty necessary to achieve compliance", albeit that such submissions will be considered on the merits in the ordinary way (*FWBII* at [60] and [61]).

76 These principles are not confined to agreed submissions on pecuniary penalties but apply equally to agreement on other forms of relief. The High Court's conclusions as to the desirability of acting upon agreed penalty submissions were made in the context of its broader recognition that civil penalties were but one of numerous forms of relief which regulators could choose and pursue as a civil litigant in civil proceedings including by making submissions as to that relief. This is consistent with the long-standing judicial support for agreed positions on declarations, injunctions and the like in civil regulatory proceedings, having regard to the public interest.

77 In considering whether the agreed and jointly proposed penalty is an appropriate penalty, it is necessary to bear in mind that there is no single appropriate penalty. Rather, there is a permissible range of penalties within which no particular figure can necessarily be said to be more appropriate than another. The permissible range is determined by all the relevant facts and consequences of the contravention and the contravenor's circumstances. Where the penalty proposed by the parties is within the permissible range, the Court will not depart from the submitted figure "merely because it might otherwise have been disposed to select some other figure" (*FWBII* at [47]).

78 Let me say something about the statutory power to impose a pecuniary penalty.

79 The following propositions may be stated.

80 First, a person contravened s 912A(5A) of the Corporations Act, which is a civil penalty provision (s 1317E(3)(a)), if the person contravened s 912A(1)(a).

81 Second, a person contravened s 47(4) of the Credit Act, which is a civil penalty provision, if the person contravened s 47(1)(a).

82 Third, s 72(4) of the Credit Code was itself a civil penalty provision.

83 Fourth, s 12DB(1)(e) was a civil penalty provision within the meaning in s 12GBA(6)(b) of the ASIC Act.

84 The Court has power to order that ANZ pay a pecuniary penalty under s 1317G(1)(a) of the Corporations Act, ss 167(1) and (2) of the Credit Act and s 12GBB(3) of the ASIC Act.

85 Section 1317G(6) of the Corporations Act, s 167(3) of the Credit Act and s 12GBB(5) of the ASIC Act provide that in determining the pecuniary penalty, the Court must take into account all relevant matters, including: (a) the nature and extent of the contravention; (b) the nature and

extent of any loss or damage suffered because of the contravention; (c) the circumstances in which the contravention took place; and (d) whether the person has previously been found by a court to have engaged in similar conduct.

86 As to the last of these, whether or not a contravenor can be said to have engaged in "similar conduct" in the past must involve a relatively broad and impressionistic inquiry. The phrase "similar conduct", taken in isolation, cannot be understood as necessitating that the conduct in question constituted a contravention of the same statutory provisions, or even provisions within the same statute (*Australian Securities and Investments Commission v National Australia Bank* [2025] FCA 947 at [72] per Neskovcin J). The concept of "similarity" can be mapped on a spectrum. At one extreme lies instances of identical conduct in breach of precisely the same rule. Along that spectrum will rise and fall the relevance of the prior conduct to the penalty in the case at hand. As the similarity of the instance of conduct diminishes, however, so too might the bearing of this factor on the need for specific deterrence.

87 Now each of the provisions conferring power to impose civil penalties outlined above gives the Court a discretion to order the contravening person to pay the Commonwealth a pecuniary penalty and requires the Court to take into account all relevant matters when determining the amount of the pecuniary penalty.

88 Further, as I have indicated, each section sets out certain non-exhaustive considerations that the Court must have regard to in determining the appropriate pecuniary penalty.

89 Further to these mandated factors associated with contraventions of particular provisions, other augmented *French* factors, in some respects overlapping with the express matters, that have been identified as being potentially relevant in setting a pecuniary penalty in relation to a body corporate have been listed elsewhere (see *Australian Securities and Investments Commission v Westpac Banking Corporation (No 3)* (2018) 131 ACSR 585; [2018] FCA 1701 at [49]). I do not need to set them out.

90 Further, one factor to consider is whether there is a voluntary remediation program that is effective and provides adequate financial compensation to persons affected by the contravention and ameliorates loss or damage otherwise suffered by consumers is a mitigating circumstance in relation to the assessment of penalty. Further, coupled with other factors, a voluntary remediation program can be one aspect of evidence of a corporate culture that is likely to be conducive to compliance and demonstrative of contrition, and so may warrant a

reduction in penalty. But although an effective remediation program may be a mitigating factor on penalty, a willingness to remediate by a financial service licensee who provides financial services to retail clients (and any assessment as to whether that willingness reflects a culture conducive to compliance or contrition) must be considered in the context where that licensee is required by s 912B of the Corporations Act to have arrangements for compensating clients for loss or damage suffered because of breaches of the relevant obligations by the licensee or its representatives.

91 The appropriateness of the amount of a penalty must be assessed by reference to the specific civil penalty provision which has been contravened in light of its context and purpose, and the objects of the relevant statute as a whole (see s 1 of the ASIC Act and s 760A of the Corporations Act concerning Chapter 7).

92 Now the primary purpose for the imposition of a pecuniary penalty under civil penalty regimes is deterrence, both specific and general. The pecuniary penalty imposed must operate to deter the particular contravener who is before the Court from taking future action of a similar kind and also to deter others from doing the same.

93 As I have said on other occasions, the penalty must be at a level that a potentially-offending corporation will see as eliminating any prospect of gain. It is in this way that the statutory object of ensuring the contravention is not regarded as a mere cost of doing business is achieved.

94 In considering the extent to which the penalty achieves deterrence, it is relevant to have regard to a contravener's size and financial position. In this respect, where the contravener is a distinct legal entity within a broader corporate structure, it is appropriate to take into account that broader structure in assessing deterrence, including where the contravener is part of a much larger, internally coordinated and wealthy corporate group. In that regard, the particular importance of the size and resources of the ANZ in setting penalties for entities within it is self-evident.

95 The process of fixing a pecuniary penalty under civil penalty regimes proceeds by way of intuitive synthesis. This calls for a discretionary value judgment based on all relevant factors. The court undertakes a balancing exercise of all the relevant factors, including aggravating and mitigating factors, to ascertain the most appropriate penalty in the case before it. The process requires a holistic consideration of all factors taken together, rather than the consideration of

each factor in a sequential, mathematical process, such as starting from some pre-determined figure and making incremental additions or subtractions for each separate factor.

Maximum penalties

96 Section 1317G(2) of the Corporations Act, s 167A of the Credit Act and s 12GBC of the ASIC Act are to the effect that the pecuniary penalty must not exceed the maximum pecuniary penalty applicable to the contravention of the relevant civil penalty provisions.

97 In *Australian Building and Construction Commissioner v Pattinson* (2022) 274 CLR 450 the plurality rejected the Full Federal Court's "notion of proportionality" (as the plurality described it) in the decision under appeal and the Full Federal Court's approach to the statutory maximum and their focus on the circumstances of the contravention(s) at the expense of the circumstances of the contravener. As the plurality said (at [57]):

> …both the circumstances of the contravener and the circumstances of the contravention may be relevant to the assessment of whether the maximum level of deterrence [scil maximum penalty] is called for.

98 So, "the maximum penalty is intended by the Act to be imposed in respect of a contravention warranting the strongest deterrence within the prescribed cap" (at [58]). And in that regard, one does not "ascertain the extent of the necessity for deterrence by reference exclusively to the circumstances of the contravention" (at [58]).

99 The plurality in *Pattinson* considered that the statutory maximum penalty is "but one yardstick that ordinarily must be applied, and must be treated "as one of a number of relevant factors" (*Pattinson* at [54] citing *Australian Competition and Consumer Commission v Reckitt Benckiser (Australia) Pty Ltd* (2016) 340 ALR 25; [2016] FCAFC 181 at [155] and [156]), to inform the assessment of a penalty of appropriate deterrent value.

100 Their Honours rejected an approach that "[treated] the statutory maximum [penalty] as implicitly requiring that contraventions be graded on a scale of increasing seriousness, with the maximum to be reserved exclusively for the worst category of contravening conduct" (*Pattinson* at [49]).

101 In cases where there are a large number of contraventions, the theoretical maximum penalties may be so high as to not provide a useful quantitative measure. Nevertheless, the theoretical maximum penalties are of some relevance in a general sense in that they highlight the seriousness of the conduct in question.

102 Section 1317G(4) of the Corporations Act, s 167B(2) of the Credit Act and s 12GBCA(2) of the ASIC Act set out the relevant formula for the calculation of the applicable maximum. At all relevant times, s 1317G(4) of the Corporations Act has provided as follows:

> The pecuniary penalty applicable to the contravention of a civil penalty provision by a body corporate is the greatest of:
>
> (a) 50,000 penalty units; and
>
> (b) if the Court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3; and
>
> (c) either:
>
> (i) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision; or
>
> (ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 2.5 million penalty units—2.5 million penalty units

103 At all relevant times, s 167B(2) of the Credit Act and s 12GBCA(2) of the ASIC Act were in relevantly similar terms as s 1317G(4) of the Corporations Act. The penalty specified for s 72(4) of the Credit Code has always relevantly (for the purposes of the Hardship proceeding) been 5,000 penalty units. But instead of referring to "50,000 penalty units", s 167B(2)(a) referred to "the penalty specified for the civil penalty provision multiplied by 10". And instead of referring to "50,000 penalty units", until 23 June 2020, s 12GBCA(2) referred to "20,000 penalty unit": see, s 2 and Schedule 3 of the *Treasury Laws Amendment (2019 Measures No 3) Act 2020* (Cth).

104 The meaning of "annual turnover" of a body corporate during a 12-month period is defined in s 9 of the Corporations Act and s 5(1) of the Credit Act. The ASIC Act does not expressly define that term, but the definition in s 9 of the Corporation Act is taken to apply (s 5(2) of the ASIC Act). Relevantly, for the purposes of each of those enactments, the definition of "annual turnover" includes the sum of the values of all supplies (as defined) made, or likely to be made, by any body corporate related to the body corporate, subject to applicable legislative exclusions.

105 The value of a penalty unit is fixed by s 4AA of the *Crimes Act 1914* (Cth) and was $210 between 1 July 2017 and 30 June 2020, $222 between 1 July 2020 to 31 December 2022, $275 between 1 January 2023 and 30 June 2023, $313 between 1 July 2023 and 6 November 2024, and $330 since 7 November 2024.

106 Where a single contravention extends across a period of time during which the value of a penalty unit changed, in respect of the calculation of the maximum penalty for that contravention, it may be calculated by reference to the highest penalty unit value applicable during that period. However, the fact that a lower penalty amount was applicable at some time during the contravention may be a relevant matter to be taken into account when fixing the penalty.

Multiple contraventions and the question of aggregation

107 Where there are multiple contraventions, with multiple acts and omissions, occurring over a particular period, the Court may group the contraventions together as a single course or courses of conduct. As I said in *ASIC v Westpac (No 3)* at [131] to [134]:

> Now the ASIC Act does not contain any express limitation requiring a course of conduct involving multiple acts or omissions to be treated as a single contravention or to otherwise limit the penalty payable in relation to the contraventions. But rather than imposing separate penalties for each relevant act or omission I may, in an appropriate case, apply the "course of conduct" principle where there is a sufficient interrelationship between the legal and factual elements of the acts or omissions constituting the contraventions. This principle was explained in *Construction, Forestry, Mining and Energy Union v Cahill* (2010) 269 ALR 1; [2010] FCAFC 39 at [39], [41]–[42].
>
> The principle can apply when imposing penalties for multiple contraventions of the ASIC Act. But using this tool of analysis to group contraventions does not make the maximum penalty for one contravention the maximum penalty for a course of conduct as a whole where that course of conduct comprises many separate contravening acts. Further, the principle does not restrict the Court's discretion as to the amount of penalty to be imposed for the course of conduct. Further, the Court is not obliged to apply the principle if the resulting penalty fails to reflect the seriousness of the contravention.
>
> Generally, the principle does not have paramountcy in the process of assessing an appropriate penalty. It cannot operate as a de facto limit on the penalty to be imposed and it cannot unduly fetter the proper application of s 12GBA of the ASIC Act.
>
> In this regard, I repeat what I said in *Australian Competition and Consumer Commission v Hillside (Australia New Media) Pty Ltd (t/as Bet365) (No 2)* [2016] FCA 698 at [21]–[25] to the following effect:
>
> > In determining the appropriate penalty for multiple contraventions, there are two related principles to consider: the "totality" principle and the "course of conduct" principle.
> >
> > As I have explained, the totality principle requires that the total penalty for related offences not exceed what is proper for the entire contravening conduct involved taking into account *all* factors. The principle operates to ensure that the penalties to be imposed, considered as a whole, are just and appropriate.
> >
> > Contrastingly, the "course of conduct" principle gives consideration to whether the contraventions arise out of the same course of conduct to determine whether it is appropriate that a single overall penalty should be

imposed that is appropriate for the course of conduct. It has a narrower focus. The principle was explained in *Construction, Forestry, Mining and Energy Union v Cahill* (2010) 269 ALR 1; 194 IR 461; [2010] FCAFC 39 at [39] per Middleton and Gordon JJ:

> It is a concept which arises in the criminal context generally and one which may be relevant to the proper exercise of the sentencing discretion. The principle recognises that where there is an interrelationship between the *legal and factual elements of two or more offences* for which an offender has been charged, care must be taken to ensure that the offender is not punished twice for what is essentially the same criminality. That requires careful identification of what is "the same criminality" and that is necessarily a factually specific inquiry. Bare identity of motive for commission of separate offences will seldom suffice to establish the same criminality in separate and distinct offending acts or omissions. (emphasis in original)

But even if the contraventions are properly characterised as arising from a single course of conduct, I am not obliged to apply the principle if the resulting penalty fails to reflect the seriousness of the contraventions. The principle does not restrict my discretion as to the amount of penalty to be imposed for the course of conduct. Further, the maximum penalty for the course of conduct is not restricted to the prescribed statutory maximum penalty for any *single* contravening act or omission (ie $1.1 million); the respondents' submission to the contrary is rejected.

Further, the "course of conduct" principle does not have paramountcy in the process of assessing an appropriate penalty. It cannot of itself operate as a *de facto* limit on the penalty to be imposed for contraventions of the ACL. Further, its application and utility must be tailored to the circumstances. In some cases, the contravening conduct may involve many acts of contravention that affect a very large number of consumers and a large monetary value of commerce, but the conduct might be characterised as involving a single course of conduct. Contrastingly, in other cases, there may be a small number of contraventions, affecting few consumers and having small commercial significance, but the conduct might be characterised as involving several separate courses of conduct. It might be anomalous to apply the concept to the former scenario, yet be precluded from applying it to the latter scenario. The "course of conduct" principle cannot unduly fetter the proper application of s 224.

108 There are several matters to note.

109 First, whilst contraventions arising from separate acts ordinarily attract separate penalties, where there is an inter-relationship between the factual and legal matters of two or more contraventions it may be appropriate to group them as a single course of conduct, so as to avoid double punishment in respect of the relevant acts or omissions that comprise the multiple contraventions. But the course of conduct principle is no more than a tool of analysis and does not restrict the Court's discretion as to the amount of the penalty to be imposed. As I said in *Australian Competition and Consumer Commission v Hillside (Australia New Media) Pty Ltd*

(t/as Bet365 (No 2) [2016] FCA 698 at [24] and [25], the course of conduct principle does not have paramountcy in the process of assessing an appropriate penalty. It cannot in itself operate as a de facto limit on the penalty to be imposed for contraventions. Further, its application and utility must be tailored to the circumstances.

110 Second, where there have been discrete episodes, each involving deliberation, then such a grouping may be inapposite, even if they reflect a common theme, strategy or model.

111 Third, even a single strategy involving a single or substantially consistent form of conduct might deny such a grouping where the conduct is directed towards numerous recipients. Further, it is not necessarily the case that a "failure of process" which has an impact at different times, upon different people, at different locations or involving different staff of a defendant must be treated in a global way, though the totality principle may still apply.

112 Multiple contraventions may be treated as one or more "courses of conduct" where there is an interrelationship between the legal and factual elements of each of the offences. Whether separate contraventions should be treated as a course of conduct is a question of fact having regard to the circumstances of the case.

113 The "course of conduct" principle is a tool of analysis which can, but need not, be used in any given case.

114 Where the Court treats multiple contraventions as a single course of conduct, it does not follow that the maximum penalty for the course of conduct is limited to the maximum penalty for a single contravention, or that the Court must impose the cumulative total of each of the penalties (*Australian Competition and Consumer Commission v Get Qualified Australia Pty Ltd (No 3)* (2017) ATPR 42-549 at 44,211-15; [2017] FCA 1125 at [37] and *ASIC v Westpac (No 3)* at [132]). Rather, the course of conduct principle is "a tool to assist the Court in arriving at the appropriate penalty for the contraventions", and the Court retains its discretion to impose the penalty that best reflects the seriousness of the conduct taken as a whole.

Totality

115 Let me say something about the totality principle. In *ASIC v Westpac (No 3)*, I said (at [162]):

> Where multiple penalties are to be imposed upon a particular wrongdoer, the totality principle must be considered. The totality principle means that the total penalty for related offences ought not to exceed what is proper for the entire contravening conduct involved. The totality principle operates as a final check to ensure that the penalties to be imposed on a wrongdoer, considered as a whole, are just and appropriate. In

> determining whether the final penalties are just and appropriate, the correct approach is to start by ascertaining the penalty that would be appropriate for each individual contravention and then to adjust those amounts for reasons of totality. The question of totality is not of significance in the present context.

116 In determining the appropriate penalty for multiple related contraventions the Court will also have regard to the "totality" principle, as a final consideration of whether the cumulative total of the penalty is just and appropriate and not excessive having regard to the totality of the relevant contravening conduct. It enables the Court to consider whether the final penalty is in proportion to the nature, quality and circumstances of the conduct involved. The Court may apply the principle to alter the final penalties to ensure that they are just and appropriate.

Parity

117 Let me also say something about parity. Now differences in the facts and circumstances which underlie different cases mean that there is usually little to be gained by comparing the penalties imposed in other litigation. The parity principle is a doctrine developed in criminal law, the purpose of which is to ensure that like offenders are treated in a like manner. Otherwise, the consistency that is sought is consistency in the application of principle. So, whilst consideration of analogous cases may provide guidance, in all but the co-offender scenario or analogues thereof it is conceptually problematic to look at penalties in other cases to calibrate a figure in the present case when all that one has from the other cases are single point determinations produced by opaque intuitive synthesis. Deconvolution analysis of the single point determinations in order to work out the causative contribution of any particular factor is unrealistic.

118 Differences in the facts and circumstances which underlie different cases mean there is usually little to be gained by comparing the penalties imposed in other cases where the facts differ. However, this does not mean that penalties imposed in other cases are never relevant. Comparable cases may give the Court some broad guidance.

119 But, although consideration of analogous cases may provide guidance to the Court, differences in the facts and circumstances which underlie different cases mean that there is usually little to be gained by comparing the penalties imposed in other litigation (*ASIC v Westpac (Omnibus)* at [140]; *Secretary, Department of Health v Oxymed Australia Pty Ltd* [2021] FCA 1518; (2021) 397 ALR 241 at [187] per Rofe J).

Adverse publicity orders

120 Section 182(1) of the Credit Act gives the Court power to make adverse publicity orders against a person who has contravened a civil penalty provision. An adverse publicity order is defined in s 182(2) of the Credit Act as follows:

> (2) An **adverse publicity** order is an order that:
>
> (a) requires a person to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to; or
>
> (b) requires a person to publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.

121 Analogous powers are contained in s 12GLB(1)(a) of the ASIC Act and s 1101B(1) of the Corporations Act. The Court has a broad discretion as to whether to make such orders.

122 It has been said that the purpose of adverse publicity orders is both punitive and protective, in the sense of dispelling incorrect or false impressions and/or alerting the public and customers to the fact of contravening conduct, and to support the primary orders and assist in preventing repetition of the conduct (*Australian Securities and Investments Commission v National Australia Bank* [2025] FCA 947 at [90] per Neskovcin J).

123 But as Shariff J pointed out last week in *Australian Securities and Investments Commission v Green County Pty Ltd (Penalty)* [2025] FCA 1571, one has to be careful of referring to punitive purpose. He elaborated on the point in the following terms (at [202] to [203]):

> Putting to one side the purpose of adverse publicity orders made under other statutory regimes, I have doubts as to whether it is apposite to characterise the making of such orders under s 182(1) of the NCCP Act as serving a punitive purpose when made in the context of civil penalty contraventions. As the text of s 182(1) makes clear, such orders may be made in the event that person has contravened a civil penalty contravention or has committed an offence against the NCCP Act. As was observed in the *Agreed Penalties Case* at [55] (French CJ, Kiefel, Bell, Nettle and Gordon JJ) in the context of the imposition of a civil penalty, criminal penalties import notions of retribution and rehabilitation, whereas the purpose of a civil penalty is "primarily if not wholly protective in promoting the public interest in compliance": citing *CSR* at 52,152. In *Pattinson*, it was again made clear that criminal notions of punishment (including retribution) have no part to play in the imposition of a civil penalty, though some concerns familiar with "criminal sentencing may usefully be deployed in the enforcement" of civil penalty regimes: see *Pattinson* at [39]–[45]. It must be borne in mind that these observations were made in the context of the imposition of a civil penalty, as opposed to other forms of orders.
>
> I accept that aspects of an adverse publicity order made under s 182(1) of the NCCP Act (which, unlike s 12GLB of the ASIC Act, is not headed as a punitive order) may have characteristics that appear, or are, penal in nature when made in relation to a

> contravention of a civil penalty provision: the order requires the publication of material that is (by definition) adverse to the contravenor; it is the contravenor that is to publish the relevant material and pay the expenses of the publication; and the order requires the contravenor to disclose aspects of their wrongdoing. To that extent, it may be said that such orders are punitive as they may be said to involve a contravenor getting their "just deserts" (by way of public embarrassment, humiliation, censure or opprobrium as a result of having to publish an adverse publicity notice). Such orders may also have a rehabilitative quality to them to the extent that they are cast in a way that requires a contravenor to confront their wrongdoing, publicly admit their conduct and make amends.

124 Let me turn now to discuss the first of the three proceedings.

Proceeding VID1209/2025 – customer hardship notices

125 ANZ has admitted one contravention of ss 47(1)(a) and (4) of the Credit Act and multiple contraventions of s 72(4) of the Credit Code in connection with ANZ's processes for responding to customer hardship notices received through certain channels within the timeframes required by the Credit Code.

126 ASIC and the ANZ join in seeking declarations of contraventions of those provisions, pecuniary penalties for the contraventions and an adverse publicity order.

127 The parties agree that the total amount of the pecuniary penalties that ANZ ought to pay for its contravention of ss 47(1)(a) and (4) of the Credit Act and its contraventions of s 72(4) of the Credit Code is $40 million, divided as follows: (a) in respect of the contravention of ss 47(1)(a) and (4) of the Credit Act, $15 million; and (b) in respect of the contraventions of s 72(4) of the Credit Code, $25 million.

128 ASIC and ANZ have jointly prepared a SAFA setting out facts agreed between the parties pursuant to s 191 of the *Evidence Act 1995* (Cth) and admissions made by ANZ for the purposes of this proceeding.

129 On the basis set out in the SAFA, ANZ admits that, between September 2019 and September 2023, it failed to do all things necessary to ensure that the credit activities authorised by its ACL were engaged in efficiently, honestly and fairly, and therefore contravened ss 47(1)(a) and (4) of the Credit Act, in the following circumstances.

130 First, if a customer gave ANZ a hardship notice, ANZ was required to respond to the hardship notice before the end of the period identified in s 72(5) of the Credit Code, or else it would contravene s 72(4).

131 Second, ANZ relevantly sought to comply with s 72(4) by requiring frontline workers in certain channels to follow certain hardship processes.

132 Third, under those hardship processes, there were certain circumstances where a frontline worker who received a hardship notice provided information and/or forms to enable the customer to submit a hardship form to ANZ's hardship team, but was not required (or in some cases was not able) to connect the customer to ANZ's hardship team, and was also not required to make any record of the customer having given ANZ a hardship notice.

133 Fourth, in each case where such a circumstance occurred, it is likely that ANZ would not have responded to the hardship notice before the end of the period identified in s 72(5), and would therefore have contravened s 72(4).

134 Further, on the basis set out in the SAFA, ANZ admits that, in respect of hardship notices received between May 2022 and September 2024 via the Message Us function on the ANZ App, it failed to respond to hardship notices before the end of the period identified in s 72(5), and therefore contravened s 72(4) of the Credit Code: (a) on the day after the response to the hardship notice was due — on at least 488 occasions and on as many as 668 occasions; and (b) pursuant to s 175A of the Credit Act, on the day after the day referred to above and on each day thereafter until the day on which ANZ responded to the hardship notice — on at least 185,283 occasions and on as many as 248,546 occasions.

135 On the basis of the admitted contraventions, it is said that I should make the declarations and orders set out in the agreed proposed orders. First, declarations are sought of the contravention of ss 47(1)(a) and (4) of the Credit Act, and of the contraventions of s 72(4) of the Credit Code. Second, pecuniary penalties are sought, being $15 million in respect of the contravention of ss 47(1)(a) and (4) of the Credit Act, and $25 million in respect of the contraventions of s 72(4) of the Credit Code. Third, an adverse publicity order is sought.

Contraventions of the Credit Act and Credit Code

136 Between September 2019 and September 2024, ANZ had different frontline channels through which customers could give ANZ a hardship notice within the meaning of s 72(1) of the Credit Code. The relevant channels were the Australian Branch Network, being physical bank branches at which customers could speak to ANZ staff members in person, the Customer Contact Centre (CCC), which relevantly comprised ANZ staff members in call centres to whom customers could speak by telephone (CCC Phone), ANZ staff members who would respond to

messages sent by customers via the Message Us function on the ANZ App, and Mobile Lending which comprised ANZ external lending representatives (the Channels).

137 Message Us did not exist until May 2022. As such, between September 2019 and April 2022, the relevant Channels for the purposes of this proceeding were the Branch Network, CCC Phone and Mobile Lending.

138 The process that a frontline worker who communicated with customers via the Channels was required to follow if they suspected that a customer was in financial difficulty or hardship depended on the Channel in which the frontline worker was working.

139 The relevant hardship processes for the Branch Network and Mobile Lending between September 2019 and September 2023 were materially the same, and can be summarised as follows.

140 Step 1: The frontline worker would identify a "trigger statement" or other "indicator" which might suggest the customer was experiencing a situation of financial difficulty or hardship. The circumstances that would constitute a "trigger statement" or other "indicator" were broader than conduct that would constitute a hardship notice under s 72(1) of the Credit Code. The frontline worker would have a conversation with the customer in relation to their situation. If, in the course of that conversation, the customer indicated that they were financially equipped to manage their situation and able to maintain minimum repayments, there was no need for further action.

141 Step 2: If the customer wished to apply for hardship assistance, the frontline worker would conduct either an "online referral" or a "phone referral" to ANZ's hardship team, depending on the customer's preference.

142 Step 3 (online referral): If the customer's preference was for an online referral to be made, the frontline worker would do one of the following: (a) assist the customer to complete an online hardship form using a computer in the branch or place where the Mobile Lender was meeting the customer, and submit the form online (where the application would be submitted to the hardship team immediately); (b) assist the customer to complete a hard copy hardship form in the branch or where the Mobile Lender was meeting the customer, and send the form to the hardship team by email, fax, internal mail, or external post; or (c) provide the customer with a hard copy hardship form to take away from the branch or Mobile Lender to complete and submit at a later time. In the case of (c), the frontline worker was not required to make any

record of the customer having potentially given a hardship notice, the customer having requested a referral to the hardship team, or the date on which the referral was made to the hardship team.

143 Step 3 (phone referral): If the customer's preference was for a phone referral to be made, the frontline worker would do one of the following: (a) assist the customer to call the hardship team while in the branch or with the Mobile Lender; (b) call the hardship team on behalf of the customer and transfer the customer to a hardship team representative; or (c) provide the customer with the direct phone number of the hardship team to take away from the branch or place where the Mobile Lender was meeting the customer and call later. Again, in the case of (c), the frontline worker was not required to make any record of the customer having potentially given a hardship notice, the customer having requested a referral to the hardship team, or the date on which the referral was made to the hardship team.

144 Further, the relevant hardship process for CCC Phone between September 2019 and September 2023 had materially the same Step 1 and Step 2 as the processes for the Branch Network and Mobile Lending, except that the customer interaction occurred via telephone instead of in person.

145 However, the ways in which the frontline worker was able to conduct an online referral or phone referral at Step 3 of the hardship process were different and more limited, and can be summarised as follows.

146 Step 3 (online referral): If the customer's preference was for an online referral to be made, the frontline worker would do one of the following: (a) tell the customer that the online hardship form could be located by searching "customer connect" or "hardship" on ANZ's website, and completed and submitted online; (b) tell the customer that the online hardship form referred to above could be printed and, once completed, sent to the hardship team via email or mail; or (c) send the customer a link to the online hardship form by text message. In the case of (a), (b) and (c), the frontline worker was not required to make any record of the customer having potentially given a hardship notice, the customer having requested a referral to the hardship team, or the date on which the referral was made to the hardship team.

147 Step 3 (phone referral): If the customer's preference was for a phone referral to be made, the frontline worker would do one of the following: (a) if the customer interaction occurred during the hardship team's operating hours, and the customer wanted to be referred immediately, call

the hardship team on behalf of the customer and transfer the customer to a hardship team representative; or (b) if the customer interaction occurred outside the hardship team's operating hours, or the customer did not want to be referred immediately, give the customer the direct phone number of the hardship team. Again, in the case of (a) and (b), the frontline worker was not required to make any record of the customer having potentially given a hardship notice, the customer having requested a referral to the hardship team, or the date on which the referral was made to the hardship team.

148 Further, the relevant hardship process for Message Us between May 2022 when it was introduced and September 2023 had materially the same Step 1 and Step 2 as the processes for the Branch Network and Mobile Lending, except that the customer interaction occurred via the Message Us function on the ANZ App instead of in person.

149 However, ANZ's processes did not require the frontline worker to conduct an "online referral" at Step 3 of the hardship process. Further, there was only one way for the frontline worker to conduct a "phone referral" at Step 3 of the hardship process, which can be summarised as follows.

150 Step 3 (phone referral): For all customers being referred to the hardship team, the frontline worker would inform the customer that ANZ had a specialist team that was available to assist and then give the customer the direct phone number of the hardship team. The frontline worker was not required to make any record of the customer having potentially given a hardship notice, the customer having requested a referral to the hardship team, or the date on which the referral was made to the hardship team.

Section 47(1)(a) of the Credit Act

151 Between September 2019 and September 2023, if a frontline worker received a hardship notice via the Branch Network or Mobile Lending channel, and a circumstance of the kind described above occurred: (a) the frontline worker was not required to connect the customer to the hardship team immediately; and (b) the frontline worker was also not required to make any record of the customer having given ANZ a hardship notice, (the branch network / mobile lending process gap).

152 Between September 2019 and September 2023, if a frontline worker received a hardship notice via the CCC Phone channel, and a circumstance of the kind described above occurred: (a) the frontline worker was not required to connect the customer to the hardship team immediately;

and (b) the frontline worker was also not required to make any record of the customer having given ANZ a hardship notice, (the CCC phone process gap).

153 Between May 2022 and September 2023, if a frontline worker received a hardship notice via the Message Us channel, and a circumstance of the kind described above occurred: (a) the frontline worker was not able to connect the customer to the hardship team immediately; and (b) the frontline worker was also not required to make any record of the customer having given ANZ a hardship notice, (the Message Us process gap).

154 In each case where the frontline worker received a hardship notice, did not connect the customer to the hardship team immediately, did not otherwise make a referral to the hardship team and did not make any record of the customer having given ANZ a hardship notice, it is likely that ANZ would not have responded to the hardship notice before the end of the period identified in s 72(5) of the Credit Code, and would therefore have contravened s 72(4). However, if the customer subsequently contacted the hardship team after giving a hardship notice to a frontline worker, and ANZ responded within the timeframes under s 72(5) (calculated from the date that the customer initially gave the hardship notice to the frontline worker), then ANZ did not contravene s 72(4).

155 The number of contraventions of s 72(4) caused by the branch network / mobile lending process gap cannot be reliably quantified because ANZ did not maintain records of customer interactions as a matter of process for the Branch Network and Mobile Lending channels.

156 And the number of contraventions of s 72(4) caused by the CCC phone process gap cannot be reliably quantified because, while ANZ did maintain records of customer interactions as a matter of process for that channel in the form of call recordings, those records are not readily able to be reviewed.

157 But it may reasonably be inferred that because of the branch network / mobile lending process gap and the CCC phone process gap, ANZ did contravene s 72(4) in respect of some hardship notices received via those channels between September 2019 and September 2023.

158 By reason of these matters, ANZ admits that it failed to do all things necessary to ensure that the credit activities authorised by its ACL were engaged in efficiently, honestly and fairly, and therefore contravened ss 47(1)(a) and (4) of the Credit Act.

Section 72(4) of the Credit Code

159 The minimum and maximum numbers of contraventions of s 72(4) committed in respect of hardship notices received via the Message Us channel between May 2022 and September 2024 are identified in the schedule to the SAFA, which it is not necessary to reproduce.

160 On each date identified in column C of the schedule, ANZ entered into a credit contract to which the Credit Code applied, for the provision of credit of the type identified in the corresponding row of column B of the schedule, with the customer identified by the reference number in the corresponding row of column A of the schedule.

161 On the dates identified in column D of the schedule, the customer in the corresponding row of column A of the schedule gave ANZ a hardship notice in respect of one or more of the customer's credit contracts referred to in the corresponding row of columns B and C of the schedule for that customer, via the Message Us channel. A customer with more than one credit contract may have given a hardship notice in respect of one credit contract or multiple credit contracts. It is likely that in at least some cases hardship notices were given in respect of multiple credit contracts. Based on the information available to the parties, it is not always possible to tell whether a customer gave a hardship notice in respect of one credit contract or multiple credit contracts.

162 ANZ did not agree with any customer in the schedule: (a) prior to 15 September 2023, to change the customer's credit contract; or (b) on or after 15 September 2023, to change the customer's credit contract by deferring or otherwise reducing the obligations of the customer under the contract for a period not exceeding 90 days within the meaning of s 72(4A).

163 On the dates identified in column G of the schedule, ANZ gave the customer in the corresponding row of column A of the schedule a notice of decision within the meaning of s 72(4). None of those notices of decision were given before the end of the period identified in s 72(5).

164 By reason of these matters, ANZ admits that in respect of each hardship notice identified in the schedule, ANZ contravened s 72(4) of the Credit Code on the day after the date identified in column F of the schedule, and it admits that in respect of each hardship notice identified in the schedule, by operation of s 175A of the Credit Act, ANZ also contravened s 72(4) of the Credit Code on the second day after the date in column F of the schedule and on each day thereafter until the date in column G of the schedule, with the minimum total number of contraventions

identified in columns H and J of the schedule, and the maximum number of contraventions identified in columns I and K of the schedule.

Declarations

165 On the basis of the agreed facts as set out in the SAFA, I accept that ANZ has contravened ss 47(1)(a) and (4) of the Credit Act and s 72(4) of the Credit Code, and it is appropriate that I make the declarations sought.

Civil penalty provisions

166 In my view, and for the following reasons, the proposed total pecuniary penalties of $15 million in respect of the admitted contravention of ss 47(1)(a) and (4) of the Credit Act, and $25 million in respect of the admitted contraventions of s 72(4) of the Credit Code, are appropriate.

Nature, extent and circumstances of the conduct

167 ANZ engaged in a single contravention of ss 47(1)(a) and (4) of the Credit Act. That contravention occurred over a period of four years in respect of the Branch Network, Mobile Lending and CCC Phone channels, and over a period of 16 months in respect of the Message Us channel.

168 The contraventions of s 72(4) of the Credit Code are limited to the Message Us channel because it is not possible to identify whether or on how many occasions the ANZ contravened that provision in respect of customers who submitted hardship notices via the Branch Network, Mobile Lending or CCC Phone channels between September 2019 and September 2023. Having said that, I infer that ANZ did contravene s 72(4) of the Code in respect of some hardship notices received via the Branch Network, Mobile Lending and CCC Phone channels between September 2019 and September 2023. Further, the contraventions of s 72(4) occurred because of the process gaps.

169 In respect of the Message Us channel, ANZ engaged in a large number of contraventions of s 72(4) in respect of hardship notices received by ANZ over a period of 28 months between May 2022 and 28 September 2024. In particular, it engaged in: (a) at least 488, and as many as 668, "initial" contraventions of s 72(4) (that is, contraventions excluding those that arise by operation of s 175A of the Credit Act); and (b) at least 185,283, and as many as 248,546, contraventions of s 72(4) of the Credit Code because of the operation of s 175A of the Credit Act.

170 The contravention of ss 47(1)(a) and (4) of the Credit Act and the contraventions of s 72(4) of the Credit Code were discovered following a targeted review of ANZ's handling of hardship notices conducted by ASIC. I infer that those contraventions may have continued if it were not for ASIC's intervention.

171 The nature of the conduct, in summary, involved ANZ failing to have adequate processes in place for responding to customer hardship notices received through certain channels in certain circumstances, and failing to respond to customer hardship notices received through the Message Us channel within the time period required by s 72(5) of the Credit Code.

172 That conduct occurred in the following circumstances.

173 Deficiencies in ANZ's processes for responding to hardship notices, including the existence of the process gaps, were identified by ASIC and conveyed to ANZ by no later than 30 June 2023.

174 ANZ provided ASIC with an action plan to address those deficiencies on 1 September 2023.

175 ANZ implemented an interim measure on 29 September 2023 (the Tactical Solution), and a permanent measure on 11 December 2023 (the Strategic Solution), to rectify the process gaps.

176 On 15 March 2024, ANZ provided a written statement to ASIC in which it outlined the implementation of the Tactical Solution and Strategic Solution. On 5 June 2024, ASIC informed ANZ that it had concluded a previous enforcement investigation of ANZ's hardship processes that it had commenced in September 2023 without taking any enforcement action, and noted that it understood that ANZ had changed its systems by introducing the Strategic Solution and had enhanced its hardship policies and training for frontline workers.

177 Between 371 and 516 of the initial contraventions of s 72(4) of the Credit Code occurred in respect of hardship notices received by ANZ through the Message Us channel between 29 September 2023 and September 2024, after the Tactical Solution and/or the Strategic Solution had been implemented.

178 In around September 2024, ANZ identified some instances where the Tactical Solution and/or the Strategic Solution had not been followed by some frontline workers in the Message Us channel. This resulted in further training and a manual review process that continued until the end of May 2025, and ASIC recommencing its investigation into these matters.

Impact of the contraventions

179 The contravention of ss 47(1)(a) and (4) of the Credit Act and the contraventions of s 72(4) of the Credit Code were serious and impacted a not insignificant number of customers.

180 In respect of the Message Us channel, between May 2022 and September 2024 the contraventions of those provisions affected 488 customers.

181 In respect of the Branch Network, Mobile Lending and CCC Phone channels, the contravention of ss 47(1)(a) and (4) of the Credit Act likely affected an unknown number of additional customers, and gave rise to an unknown number of additional contraventions of s 72(4) of the Credit Code. Those numbers are unknown because ANZ did not maintain records of customer interactions as a matter of process for the Branch Network and Mobile Lending channels, and ANZ's records of customer interactions for the CCC Phone channel are not readily able to be reviewed.

182 Further, customers affected by the contravention of ss 47(1)(a) and (4) of the Credit Act and the contraventions of s 72(4) of the Credit Code may have experienced both financial and non-financial impacts.

183 As to the financial impacts, payments made by ANZ as part of its remediation program for customers who submitted potential hardship notices via the Message Us channel totalled $92,687.62, which also included an amount for non-financial loss. It is not known how many additional customers were affected in respect of the other channels.

184 As to the non-financial impacts, I infer that the customers affected by ANZ's contraventions considered that they were experiencing financial difficulty at the time they gave ANZ a hardship notice and were unable to meet their obligations under their credit contract.

185 I infer that the failures by ANZ to respond to hardship notices before the end of the period identified in s 72(5) of the Credit Code may have compounded any financial difficulty those customers considered they were experiencing and any associated distress caused by not having their hardship notices responded to for months or years as occurred in the majority of cases.

186 Further, by failing to respond to hardship notices before the end of the period identified in s 72(5) of the Credit Code, ANZ failed to promptly inform each customer of its decision in relation to their hardship notice or the options available to them in relation to their credit contract including the name and details of, and their rights under, the AFCA scheme.

187 Further, of the 488 affected customers: (a) 17 customers made complaints to ANZ in relation to their hardship notice; (b) five customers entered into bankruptcy after they gave a hardship notice to ANZ but before ANZ responded to the notice; and (c) 75 customers were the subject of collection and/or enforcement action by ANZ after they gave a hardship notice to ANZ but before ANZ responded to the notice.

188 Some of the impacts may have been avoided if ANZ had responded to the relevant hardship notices before the end of the period identified in s 72(5) of the Credit Code.

189 In circumstances where ANZ's contravening conduct affected customers who may have been experiencing financial hardship, the non-financial impacts need to be considered as I have in assessing the appropriate penalties.

190 Section 72 of the Credit Code provides an important formal mechanism to protect consumers who may be vulnerable in times of financial hardship. The nature of the vulnerability that the affected customers considered that they were experiencing is suggested by the reasons given by those customers for the hardship notices they gave to ANZ, which included unemployment, medical issues, bereavement, separation and abuse. For customers experiencing vulnerability of those kinds, the impact of being required to pay even a relatively small sum of money under a credit contract may have been significant.

191 Having regard to these matters, in my view the contravention of ss 47(1)(a) and (4) of the Credit Act and the contraventions of s 72(4) of the Credit Code are properly characterised as serious.

Remediation

192 ANZ undertook a remediation program between 2 December 2024 and 27 May 2025. The remediation program included reviewing an "in-scope population" of 1,853 potentially affected customers, from which ANZ identified 587 customers in respect of whom it may have failed to respond to hardship notices before the end of the period identified in s 72(5) of the Credit Code and who were eligible for remediation.

193 In respect of the group of 587 affected customers, ANZ: (a) contacted all of the customers by letter, telephone or both, except for one customer who is now deceased; (b) made remediation payments totalling $92,687.62, which comprised fee reversals, debt waivers, small balance write offs, and payments for non-financial loss; and (c) provided non-financial remediation comprising removing of credit listings, amending credit reports, and sending apology letters.

Maximum penalty

194 The maximum penalty for the contravention of ss 47(1)(a) and (4) of the Credit Act is derived by the following calculations.

195 Under s 167B(2)(c)(ii) of the Credit Act, a maximum penalty of 2.5 million penalty units is applicable for a body corporate where 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the contravention occurred (or began to occur) is more than the value of 2.5 million penalty units.

196 Ten percent of ANZ's annual turnover in each 12-month period since September 2019 (when the contravention of ss 47(1)(a) and (4) relevantly began occurring) has always been greater than the value of 2.5 million penalty units.

197 The value of the penalty unit changed four times between September 2019 and September 2023. The penalty unit value that applied in September 2019 was $210. The penalty unity value that applied in September 2023 was $313.

198 If the lowest penalty unit value applies, the maximum penalty is $525,000,000 (i.e. 2.5 million (penalty units) multiplied by 210 (dollars)), and if the highest penalty unit value applies, the maximum penalty is $782,500,000 (i.e. 2.5 million (penalty units) multiplied by 313 (dollars)).

199 Having regard to the maximum penalty under either approach, it is not necessary to resolve the question as to the applicable penalty unit for the purpose of this proceeding.

200 The precise number of contraventions of s 72(4) of the Credit Code is not known, but is at least 185,771 contraventions, and as many as 249,214 contraventions. For each contravention occurring between: (a) July 2022 and 31 December 2022, the maximum penalty was $555 million; (b) 1 January 2023 and 30 June 2023, the maximum penalty was $687.5 million; (c) 1 July 2023 and 6 November 2024, the maximum penalty was $782.5 million; and (d) 7 November 2024 and July 2025, the maximum penalty was $825 million. It is not necessary to set out the arithmetic.

201 It follows from the above that the total maximum penalty for the contraventions of s 72(4) of the Credit Code is an amount so large as not to be of assistance in the consideration of penalty. Nevertheless, the large number of contraventions and theoretical maximum penalties highlight the seriousness of the conduct in question.

Other matters

202 Let me make four points.

203 First, in considering whether a penalty is sufficient to achieve deterrence, it is relevant to consider the size and financial resources of the contravener. ANZ is one of Australia's major banks and largest listed companies. It reported a statutory profit of $6.595 billion (after tax) for the financial year ending 30 September 2024. As at 30 September 2024, ANZ Group Holdings Limited's market capitalisation was approximately $90.8 billion, and its total assets were approximately $1,229 billion.

204 Second, ASIC does not allege that ANZ deliberately contravened ss 47(1)(a) and (4) of the Credit Act or s 72(4) of the Credit Code.

205 Third, ASIC does not allege that ANZ's senior management were involved in the contravention of ss 47(1)(a) and (4) of the Credit Act or the contraventions of s 72(4) of the Credit Code.

206 Fourth, ANZ engaged constructively with ASIC in advance of the proceeding, including by making admissions in relation to its conduct at the earliest available opportunity, acknowledging liability in respect of the admitted contraventions prior to the filing of an originating process, and engaging with ASIC on the preparation of the SAFA. By its conduct, ANZ has avoided the need for a contested proceeding on liability and relief.

Prior contraventions of the Credit Act, Corporations Act and ASIC Act

207 ANZ has not previously been found by a court to have contravened s 72(4) of the Credit Code. It has, however, been found to have engaged in similar conduct in contravention of ss 47(1)(a) and (4) of the Credit Act and the equivalent s 912A(1)(a) of the Corporations Act on three occasions since 2020.

208 First, in relation to the charging of bank fees, the ANZ contravened s 12CB(1) of the ASIC Act and ss 912A(1)(a) and 912A(1)(c) of the Corporations Act (penalty of $10 million for s 12CB(1) contraventions); *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Ltd (No 3)* [2020] FCA 1421.

209 Second, in relation to conduct concerning misrepresentations to its customers, and its customers not receiving certain benefits, the ANZ contravened ss 12DA(1), 12DB(1)(e) of the ASIC Act and ss 912A(1)(a) and 912A(1)(c) of the Corporations Act and ss 47(1)(a) and 47(1)(d) of the Credit Act (penalty of $25 million for s 12DB(1)(e) contraventions); *Australian*

Securities and Investments Commission v Australia and New Zealand Banking Group Ltd (2022) 164 ACSR 428.

210 Third, in relation to false or misleading conduct concerning the charging of fees and interest, the ANZ contravened s 12DB(1)(g) of the ASIC Act and s 47(1)(a) of the Credit Act (penalty of $15 million for s 12DB(1)(g) contraventions); *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited* [2023] FCA 1150; (2023) 169 ACSR 649.

211 These cases have limited utility in my consideration of the relevant penalties to impose.

Conclusion in respect of the penalty

212 Having regard to the facts and admissions set out in the SAFA and the considerations set out above, in my view the appropriate total pecuniary penalties in this case are $15 million in respect of the contravention of ss 47(1)(a) and (4) of the Credit Act, and $25 million in respect of the contraventions of s 72(4) of the Credit Code.

213 Employing an intuitive synthesis based on all the factors set out above, and having regard to the parties involved and the public interest in giving effect to agreements as to penalty, I am satisfied that the proposed penalty is appropriate. Having regard to the totality of the contravening conduct, any lesser aggregate penalty would not achieve the appropriate deterrent effect. Conversely, any greater penalty would be disproportionate.

Adverse publicity order

214 The agreed proposed orders include an adverse publicity order that requires ANZ to publish on its websites within 30 days of the date of such an order, the "Written Notice" annexed to the agreed proposed orders. The proposed adverse publicity order is appropriate to alert the public and ANZ's customers to the contravening conduct.

Proceeding VID1210/2025 – bonus interest

215 ANZ has admitted contraventions of ss 12DA(1) and 12DB(1)(e) of the ASIC Act and ss 912A(1)(a) and (5A) of the Corporations Act in connection with ANZ's representations as to the payment of, and failures to pay, bonus interest and interest at advertised rates to eligible customers. These contraventions involve the following elements.

216 First, between 15 September 2019 and 31 January 2024, ANZ made false, misleading or deceptive representations that customers who met the eligibility criteria would be paid, and that

ANZ had adequate processes to pay, a specified introductory bonus interest rate for a defined period (acquisition campaign rate). These representations were made on ANZ's website for business accounts and retail accounts when in fact, ANZ did not have reasonable grounds to make those representations, and failed to pay bonus interest to a substantial number of customers. The business accounts were an ANZ Business Online Saver Account, between 5 July 2013 to 9 February 2015 and 11 March 2015 to 1 December 2020, and an ANZ Business Premium Saver Account, between 8 July 2013 to 9 February 2015 and 11 March 2015 to 1 December 2020. The retail account was an ANZ Online Saver Account.

217 Second, throughout the contravention period, ANZ breached its general obligation to do all things necessary to ensure that the financial services it provided were provided efficiently, honestly and fairly, in that it failed to maintain adequate processes to ensure that introductory bonus interest rates were paid, failed to conduct adequate monitoring, failed to investigate and rectify these failures, and engaged in the conduct just outlined.

218 Third, between 27 August 2024 and 17 March 2025, ANZ made false, misleading or deceptive representations that customers would be paid the base and/or bonus interest rates that were promoted on the application form for retail accounts, when in fact, ANZ did not have reasonable grounds to make those representations and failed to pay the promoted base and/or bonus interest rates to a substantial number of customers.

219 ANZ's contraventions were serious, and represent a failure to maintain adequate processes to provide certain benefits to its customers.

220 The parties submit jointly, which submission I have accepted, that the total amount of the pecuniary penalty that ANZ ought to pay is $40 million, comprising $25 million for its contraventions of s 12DB(1)(e) in respect of the bonus interest contraventions, $10 million for its contravention of ss 912A(1)(a) and (5A) in respect of the general obligations contravention, and $5 million for its contraventions of s 12DB(1)(e) in respect of the rate promotion contraventions. In my view, these penalties are appropriate.

221 ASIC and ANZ have jointly prepared a SAFA setting out facts agreed between the parties. On the basis set out in the SAFA, ANZ has made the following admissions.

222 ANZ admits that in trade or commerce and in connection with the supply, or possible supply, of financial services, ANZ made the bonus interest representation and the bonus interest process representation, in circumstances where ANZ did not have reasonable grounds for

making the bonus interest representation and bonus interest process representation by reason of ANZ's knowledge of the bonus interest issue in respect of business and retail accounts from 1 April 2015 and October 2022 respectively, ANZ's failure to take steps to investigate and remedy the bonus interest issue, once known, and the process deficiencies outlined in the SAFA, and in respect of 8,301 customers who opened relevant accounts and satisfied the relevant eligibility criteria but did not receive an acquisition campaign rate, ANZ failed to pay the acquisition campaign rate to those customers due to the process deficiencies.

223 ANZ admits that on each occasion that ANZ made the bonus interest representation in the circumstances referred to above, it engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act and made false or misleading representations that financial services had benefits in contravention of s 12DB(1)(e).

224 Further, ANZ admits that on each occasion that ANZ made the bonus interest process representation in the circumstances referred to above, it engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) and made false or misleading representations that financial services had benefits in contravention of s 12DB(1)(e).

225 Further, by ANZ's conduct during the contravention period, ANZ admits that in failing to maintain adequate processes to apply acquisition campaign rate codes to relevant accounts by reason of the process deficiencies, in failing to conduct adequate monitoring of its processes and therefore not identifying in a timely manner instances of acquisition campaign rate codes not being applied to relevant accounts, in failing to investigate and rectify, in a timely manner, its failure to apply acquisition campaign rate codes to relevant accounts and as referred to above, it breached its obligation to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened ss 912A(1)(a) and (5A) of the Corporations Act.

226 Further, ANZ admits that, during the rate promotion period, in trade or commerce, and in connection with the supply, or possible supply, of financial services, it published base and bonus interest rates in the explanatory notes on the retail account online application form, and on each occasion, represented to customers and prospective customers that the terms of the promoted product provided for the customer to receive the specified base and bonus interest rates (being the rate promotion representation), in circumstances where: (a) the terms of the

promoted product provided for payment by ANZ of rates which were different from those specified in the rate promotion representation; (b) in respect of customers who proceeded to open an account through the application form, ANZ failed to pay the base and bonus interest to those customers in accordance with the rate promotion representation; and (c) ANZ did not have reasonable grounds for making the representations by reason of the fact that at the time it made those representations, it did not have adequate processes to ensure that the correct rates were displayed.

227 By reason of such conduct, ANZ admits that it engaged in conduct which was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) of the ASIC Act and made a false or misleading representation that the services had benefits in contravention of s 12DB(1)(e) of the ASIC Act.

228 On the basis of the admitted contraventions, it is appropriate that I make the following declarations, penalties and other orders.

229 First, declarations of contravention of ss 12DA(1) and 12DB(1)(e) should be made in relation to the bonus interest representation and the bonus interest process representation, and a pecuniary penalty should be imposed for the contravention of s 12DB(1)(e). The appropriate amount is $25 million.

230 Second, a declaration of a contravention of ss 912A(1)(a) and (5A) should be made in relation to ANZ's failure to maintain adequate processes, conduct adequate monitoring of its processes and therefore failing to identify, investigate and rectify in a timely manner the bonus interest issue, and a pecuniary penalty should be imposed. The appropriate amount is $10 million.

231 Third, declarations of contravention of ss 12DA(1) and 12DB(1)(e) should be made in relation to the rate promotion representation, and a pecuniary penalty should be imposed for the contravention of s 12DB(1)(e). The appropriate amount is $5 million.

232 Fourth, I am also prepared to make an order pursuant to s 12GLB(1)(a) of the ASIC Act and s 1101B of the Corporations Act that within 30 days of my order, ANZ cause a notice to be published on its website in a form approved by me.

233 Let me delve more into the facts as set out in the SAFA.

Bonus interest contraventions and general obligations contravention

234 Between 5 July 2013 to 17 March 2025, ANZ promoted offers to pay specified introductory bonus interest for a defined period to eligible customers who opened a relevant account.

235 As part of the offers, ANZ published express statements including between 2013 and 2017, in direct marketing materials being letters to individual customers in relation to retail accounts, from 2017, on its website, anz.com in relation to retail accounts, and between 2013 and 2019, on its website, anz.com in relation to business accounts, to the effect that customers who met the eligibility criteria in respect of the relevant accounts would receive a specified bonus interest rate for a defined period.

236 It is not possible to ascertain precisely how many customers or prospective customers saw the bonus interest statements during the relevant period.

237 Where a customer met the eligibility criteria and opened a relevant account, ANZ was to apply the acquisition campaign rate on top of the ANZ standard variable interest rate applicable at that time for a set period, and after the set period had passed, only the ANZ standard variable interest rate applied.

238 The specific details of each acquisition campaign varied over the relevant period in relation to the particular bonus interest rate, the eligibility criteria, the duration of the bonus interest rate and the method and channels of the bonus interest statements.

239 To apply the acquisition campaign rate, ANZ's systems required that the relevant account be loaded with a particular code when it was opened (acquisition campaign rate code). There were three different ways to open a relevant account and to load the acquisition campaign rate for the purpose of the relevant acquisition campaign: the CAP System, the "iKnow" system, and the "Banker Desktop" system.

240 Although each of these systems were in use during the relevant period, from at least 2013, ANZ's procedure guides and training directed ANZ bankers to use iKnow and Banker Desktop, which had features designed to assist ANZ bankers in loading acquisition campaign rate codes to new accounts for customers who met the eligibility criteria of an acquisition campaign. The iKnow (from April 2016) and Banker Desktop systems had an automatic prompt for the acquisition campaign rate or would automatically load the acquisition campaign rate code for new accounts which met the eligibility criteria.

241 From time-to-time, the CAP System was used by individual ANZ bankers to open relevant accounts and load acquisition campaign rate codes. From April 2016, the CAP System alerted ANZ bankers when a customer met the 6-monthly eligibility criteria, being one of the eligibility criteria during the relevant period. ANZ bankers then undertook their own assessment of whether the customer met the eligibility criteria, and if eligible, the ANZ banker was required to load the relevant acquisition campaign rate code to the customer's account in the CAP System.

242 The CAP System was also used by the Customer Service Operations (CSO) team. The CSO team predominantly used a Macro bulk processing tool for opening retail accounts through the CAP System for applications submitted by customers online through anz.com.

243 During the relevant period, there were deficiencies in ANZ's processes, as a consequence of which it failed to ensure that the acquisition campaign rate code was applied to the relevant accounts. The process deficiencies outlined in the SAFA existed wholly before 15 September 2019 being the commencement of the contravention period. These aspects of the process deficiencies were identified and rectified independently from ANZ's investigations that commenced in October 2022.

244 The process deficiencies existed prior to but were not remedied throughout the bonus interest contravention period, and were ultimately identified and rectified as part of ANZ's investigations that commenced in October 2022. These deficiencies were as follows.

245 The CSO team predominantly used a Macro when opening retail accounts through online applications. The CSO team updated the Macro with the acquisition campaign rate code based on information received from the Everyday Banking team. This created the risk that the Macro would not load the acquisition campaign rate code into the CAP System for customer accounts that met the eligibility criteria if the Everyday Banking team did not inform the CSO team immediately of an acquisition campaign rate change or the CSO team did not update the Macro to reflect the acquisition campaign rate change. This issue affected retail accounts.

246 Where an ANZ banker did not use iKnow or Banker Desktop, or a CSO team member did not use the Macro, and instead opened an account using the CAP System, they were required to load an acquisition campaign rate code, giving rise to occasion for human error in the absence of controls. This issue affected retail accounts and business accounts.

247 From April 2016, as part of the CAP System's automatic assessment of whether a customer met the 6-month eligibility criteria, the CAP System considered all previous accounts, including accounts which may have been opened in error. Although these customers did not technically meet the eligibility criteria, such customers have been included in ANZ's remediation program.

248 The acquisition campaign rates that ANZ represented would be applied to all eligible customers' relevant accounts were not in fact always applied. As a result, some customers did not receive the acquisition campaign rate. This bonus interest issue was caused by the process deficiencies.

249 On 1 April 2015, ANZ became aware that the bonus interest issue affected business accounts through a review undertaken by an external firm. ANZ received a report from that external firm in February 2019. Despite this knowledge, ANZ did not commence an investigation into the root cause of the bonus interest issue at this time, and did not do so until late 2022 after it became aware as a result of separate investigations that the bonus interest issue affected retail accounts.

250 ANZ only became aware of the full extent of the bonus interest issue in 2024.

251 The chronology of ANZ's knowledge of the bonus interest issue in respect of business accounts is as follows.

252 Between 1 April 2015 and 1 December 2020, ANZ was aware that the bonus interest issue affected eligible business accounts.

253 As noted, ANZ became aware that the bonus interest issue affected business accounts in April 2015, and received a report from the external firm in February 2019.

254 The bonus interest issue in respect of business accounts was transitioned to the Find, Investigate, Fix & Remediate Portfolio, which sat within ANZ's Everyday Banking team, to investigate in late 2019.

255 On 22 October 2020, ANZ recorded an "event" in its risk management system (COR system) in relation to concerns that 320 Business Accounts may have been impacted by the bonus interest issue in respect of a sample review period from June to December 2014 (business event).

256 ANZ stopped offering bonus interest rates on business accounts on 1 December 2020.

257 The chronology of ANZ's knowledge of the bonus interest issue in respect of retail accounts is as follows.

258 After becoming aware of the bonus interest issue with respect to the business accounts on 1 April 2015, ANZ did not take steps to determine whether the bonus interest issue affected other accounts such as the retail accounts.

259 ANZ had no knowledge that the bonus interest issue affected the retail accounts until 6 October 2022.

260 In October 2022, ANZ became aware of the bonus interest issue in respect of retail accounts as a result of a forensic report, which had been introduced as part of a broader review that ANZ's Forensics team had been undertaking of credit and bonus interest on certain deposit products. This forensic report did not test business accounts as ANZ had stopped offering bonus interest on these accounts on 1 December 2020.

261 On 11 October 2022, following initial analysis of the forensic reporting results by ANZ's Everyday Banking team, an "event" was recorded in the COR system in relation to the retail accounts (retail event).

262 Between January 2023 and February 2024, ANZ conducted reviews into, and performed work to design a solution to, the business event and retail event. The work undertaken is summarised as follows. In January 2023, ANZ undertook work to identify the root cause of the business event. In February 2023, ANZ commenced work to understand the potential impact of the retail event. In March and April 2023, ANZ further considered the scope of the retail and business events and potential root causes. From May 2023 ANZ ceased further work in relation to the business event. ANZ continued to investigate the retail event as it was still offering bonus interest on retail accounts. Between October and November 2023, ANZ continued to investigate the root causes of, and address, the bonus interest issue.

263 ANZ identified root causes of the bonus interest issue throughout the course of its investigations from January 2023 to October 2023. By April 2023, ANZ identified that a root cause of the bonus interest issue was that an ANZ banker or CSO team member could open a relevant account without loading the acquisition campaign rate code in the CAP System. By September 2023, ANZ identified that a potential root cause of the bonus interest issue for retail accounts was that the Macro had not been updated. By no later than 5 October 2023, ANZ

identified scenarios related to accounts opened and closed on the same day as being a root cause of the bonus interest issue.

264 By the end of 2023, ANZ was in the process of implementing solutions to address the bonus interest issue. This was ultimately done in two parts.

265 First, ANZ implemented what has been described in the material before me as the Tactical Solution. This was an exception reporting process designed to identify potentially eligible customers who did not receive an acquisition campaign rate code because of the process deficiencies and load the acquisition campaign rate code. By December 2023, ANZ commenced design of the Tactical Solution. In January and February 2024, ANZ tested and continued to develop the Tactical Solution. On 5 March 2024, ANZ implemented the Tactical Solution, with effect from 1 February 2024 (in that it applied to eligible retail accounts opened from 1 February 2024).

266 As a result, from 1 February 2024, the Tactical Solution identified and rectified circumstances where: (a) a customer had technically not met the 6-month eligibility criteria (i.e. where a previous eligible account was opened and closed on the same day) and had therefore not received an acquisition campaign rate; (b) the Macro used by the CSO team had not loaded an acquisition campaign rate code; or (c) an ANZ banker or CSO team member had opened a retail account using the CAP System and had not loaded an acquisition campaign rate code (for a customer who met the eligibility criteria).

267 The contravention period ends the day before the Tactical Solution was implemented.

268 Second, ANZ also implemented what has been described in the material before me as the Strategic Solution. This involved a technological change to the CAP System designed to automatically load acquisition campaign rates to eligible retail accounts. Between October and November 2023, ANZ considered the formal technical requirements for the Strategic Solution and consulted stakeholders regarding its impacts. By December 2023, ANZ continued work on the Strategic Solution. And on 15 March 2025, ANZ implemented the Strategic Solution.

269 On 17 March 2025, and following ANZ's internal investigations into the retail event, ANZ stopped offering acquisition campaigns for retail accounts.

Rate promotion contraventions

270 Between 27 August 2024 and 17 March 2025, ANZ failed to apply base variable and/or bonus fixed introductory interest rates applicable for the retail account it had displayed in explanatory notes on two landing pages for an online application form for retail accounts. This occurred in respect of the accounts of around 56,703 customers. 26,917 of those customers' accounts had a balance of more than $0 and were therefore financially impacted.

271 The rate promotion issue arose because ANZ had erroneously hard-coded the base variable and bonus fixed introductory interest rates on the application form as static, rather than dynamic, numbers. ANZ had intended for the base variable rate and bonus fixed introductory interest rate to be dynamic fields that automatically update.

272 This became an issue where there was a change to the promoted rates, as ANZ did not check the interest rates displayed on the application form for accuracy because the rates were understood to be dynamically coded.

273 The two landing pages that displayed the interest rates in the explanatory notes are referred to in the SAFA as the Cross Sell Page and the Landing Page.

274 The landing pages could be accessed through various pages on the ANZ website, including the "bank accounts" product page and the product page for retail accounts, the ANZ app or internet banking by clicking an "Apply Now" button.

275 In some instances, the promoted rates were different from the relevant rate paid by ANZ. The accurate rate was set out on other pages of the ANZ website, including the interest rates page, the "bank accounts" product page and the product page for retail accounts.

276 The differences between the actual rates and the rates that were shown on the two landing pages are contained in the tables set out in the SAFA. For the Landing Page, the actual bonus fixed introductory interest rate was higher than the advertised bonus fixed introductory interest rate for the period from 13 September 2024 to 27 February 2025.

277 For the Cross Sell Page, the updated interest rates were displayed on some pages on the ANZ website through which the Cross Sell Page could be accessed, including the product offers page for ANZ banking and savings accounts.

278 For the Landing Page, the updated interest rates were displayed on the pages on the ANZ website through which the Landing Page was accessed. Those pages included the product

offers page for ANZ banking and savings accounts, savings accounts comparison tools and interest rate comparison tools.

279 ANZ became aware of the rate promotion issue on 17 March 2025 when it updated the application form as part of its decision to stop offering introductory bonus interest on retail accounts.

280 ANZ rectified the rate promotion issue immediately after identifying it. At approximately 1.00pm, it disabled the application form, and at approximately 6.00pm, it restored the application form with the correct interest rates.

281 ANZ implemented a permanent fix to the rate promotion issue by 30 April 2025, when it updated the application form with dynamic coding that caused the interest rates to automatically update when changes to the rates occurred.

282 Following rectification on 30 April 2025, ANZ commenced an internal investigation into the underlying causes of the rate promotion issue and implemented the recommendations arising from that investigation.

Contravening conduct – bonus interest contraventions

283 In circumstances where, during the contravention period, ANZ published the bonus interest statements on the ANZ website, ANZ represented to eligible customers who opened a relevant account and prospective customers to whom ANZ communicated those terms that they would receive a specified bonus interest rate for a specified duration.

284 Further, in circumstances where, during the contravention period, ANZ published the bonus interest statements on the ANZ website, ANZ impliedly represented to eligible customers who opened a relevant account and prospective customers to whom ANZ communicated those terms that ANZ had adequate processes in place to ensure that the proposed bonus interest payments would be made in accordance with the bonus interest representation.

285 The bonus interest representation and the bonus interest process representation were made in circumstances where in respect of 8,301 customers who opened relevant accounts and satisfied the relevant eligibility criteria but did not receive an acquisition campaign rate, ANZ failed to pay the acquisition campaign rate to those customers due to the process deficiencies.

286 To the extent the bonus interest representation or the bonus interest process representation were representations as to future matters, ANZ did not have reasonable grounds for making them

within the meaning of s 12BB(1), due to ANZ's knowledge of the bonus interest issue in respect of business and retail accounts from 1 April 2015 and October 2022 respectively, ANZ's failure to take steps to investigate and remedy the bonus interest issue, once known, and the process deficiencies outlined in the SAFA.

287 It is not in dispute that the representations referred to was conduct engaged in in trade or commerce and in relation to financial services, within the meaning of s 12DA(1). It was not in dispute that there were representations made in trade or commerce and in connection with the supply or possible supply of financial services, within the meaning of s 12DB(1). And it was not in dispute that these were representations that services have benefits within the meaning of s 12DB(1)(e).

288 By reason of the matters above, ANZ admits that, during the bonus interest contravention period, with respect to the bonus interest representation it engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) and it made false or misleading representations that financial services had benefits in contravention of s 12DB(1)(e), and it admits that with respect to the bonus interest process representation it engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1), and it made false or misleading representations that financial services had benefits in contravention of s 12DB(1)(e).

289 A separate contravention of s 12DA(1) and s 12DB(1)(e) arose each time ANZ made the bonus interest representation and bonus interest process representation on the ANZ website in the circumstances described above.

Contravening conduct – rate promotion contraventions

290 In circumstances where, during the rate promotion period, ANZ displayed the promoted rates in explanatory notes on the landing pages, ANZ represented to customers and prospective customers that the terms of the promoted product provided for the customer to receive the promoted rates.

291 In fact, as a result of ANZ's failure to ensure that the promoted rates were coded as dynamic fields, and erroneously hard coding the promoted rates, the terms of the promoted product provided for payment by ANZ of rates which were different from those specified in the rate promotion representation. And in respect of customers who proceeded to open an account

through the application form, ANZ failed to pay the base and bonus interest to those customers in accordance with the rate promotion representation.

292 To the extent the rate promotion representation was a representation as to future matters, ANZ did not have reasonable grounds for making it within the meaning of s 12BB(1), by reason of the fact that each time it made that representation, it did not have adequate processes to ensure that the correct rates were displayed.

293 The rate promotion representation was conduct engaged in in trade or commerce and in relation to financial services, within the meaning of s 12DA(1), was a representation made in trade or commerce and in connection with the supply or possible supply of financial services within the meaning of s 12DB(1), and was a representation that services have benefits within the meaning of s 12DB(1)(e).

294 So, ANZ admits that during the rate promotion period it engaged in conduct that was misleading or deceptive or likely to mislead or deceive in contravention of s 12DA(1) and it made false or misleading representations that financial services had benefits in contravention of s 12DB(1)(e).

295 A separate contravention of s 12DA(1) and s 12DB(1)(e) arose each time ANZ made the rate promotion representation in the application form in the circumstances described above.

Contravening conduct – general obligations contravention

296 ANZ's conduct in failing to take steps to investigate and remedy the bonus interest issue, once known and the existence of the process deficiencies, in circumstances where customers opened relevant accounts and satisfied the relevant eligibility criteria, created risks that ANZ would not in all cases pay to eligible customers, in accordance with the bonus interest representation, a specified bonus interest rate for a specified duration, and ANZ would not ascertain and be in a position to promptly remedy a failure to pay the specified bonus interest.

297 ANZ failed to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened s 912A(1)(a) by failing to maintain adequate processes to apply acquisition campaign rate codes to relevant accounts by reason of the process deficiencies, by failing to conduct adequate monitoring of its processes and therefore not identifying in a timely manner instances of acquisition campaign rate codes not being applied to relevant accounts, and by

failing to investigate and rectify, in a timely manner, its failure to apply acquisition campaign rate codes to relevant accounts.

Declarations

298 I have identified elsewhere the principles that are relevant to declaratory relief under s 21 of the FCA Act, s 12GBA of the ASIC Act and s 1317E of the Corporations Act.

Civil penalty provisions

299 I have already set out the principles that are relevant to s 12DB(1)(e) of the ASIC Act.

300 I have already set out the principles that are relevant to s 912A(1)(a) and (5A) of the Corporations Act.

301 As stated by Hespe J in *Australian Securities and Investments Commission v AustralianSuper Pty Ltd* [2025] FCA 102; (2025) 172 ACSR 615 at [164]:

> It is only conduct occurring wholly on or after the commencement date [13 March 2019] which results in the contravention of s 912A(5A) and which attracts the civil penalty provision. However, the fact that contravening conduct commenced occurring prior to the commencement date and continued after the commencement date does not prevent the determination of a contravention in respect of the conduct that occurred after the commencement date.

302 The contravention period for the agreed ss 912A(1)(a) and (5A) contravention is 15 September 2019 to 31 January 2024. Whilst the conduct the subject of that contravention commenced prior to 13 March 2019, it continued past that date and ceased on 31 January 2024. Accordingly, I am satisfied that the declarations of contravention and pecuniary penalty order can be made in respect of a contravention of s 912A(5A).

303 In my view in the circumstances of this case, a total pecuniary penalty of $40 million is appropriate for ANZ's admitted contraventions of s 12DB(1)(e) of the ASIC Act and ss 912(1)(a) and (5A) of the Corporations Act.

304 First, the proposed pecuniary penalty of $25 million is appropriate for the bonus interest contraventions, being the admitted contraventions of s 12DB(1)(e) of the ASIC Act in respect of the bonus interest representation and the bonus interest process representation.

305 Second, the proposed pecuniary penalty of $10 million is appropriate for the general obligations contravention, being the admitted contravention of ss 912A(1)(a) and (5A) of the ASIC Act.

306 Third, the proposed total pecuniary penalty of $5 million is appropriate for the rate promotions contraventions, being the admitted contraventions of s 12DB(1)(e) of the ASIC Act in respect of the rate promotion representation.

Nature, extent and circumstances of the conduct

307 On each occasion that ANZ made the bonus interest representation and the bonus interest process representation it contravened s 12DB(1)(e) of the ASIC Act. But it is not possible to ascertain the precise number of contraventions.

308 Now whilst the bonus interest contravention period commenced on 15 September 2019, ANZ made the bonus interest representations and the bonus interest process representations over a period of around 10.5 years (July 2013 to January 2024), and made those representations in the following circumstances.

309 First, ANZ published the representations to the public at large on the ANZ website. It is not possible to ascertain how many customers or prospective customers may have seen the representations, but it is conceivable that they reached a large number of customers and prospective customers.

310 Second, ANZ was aware of the bonus interest issue since 1 April 2015 in respect of business accounts, but took until late February 2019 to transition the issue to the relevant team for investigation, and even then, did not broaden those investigations to other accounts offering bonus interest using acquisition campaign rate codes (such as the retail accounts) to ensure the known issue was not affecting other customers within the ANZ.

311 Third, in relation to the business accounts, ANZ failed to undertake any investigation into determining the root causes of the bonus interest issue in respect of the business accounts until January 2023, being after it became aware that the bonus interest issue affected the retail accounts. And in the period from 1 April 2015 to 1 December 2020, when ANZ ceased offering acquisition campaigns on business accounts, ANZ did not identify and remedy the process deficiencies that had affected the business accounts and led to the business event.

312 Fourth, in relation to the retail accounts from 1 April 2015 or alternatively late 2019, after becoming aware of the bonus interest issue in respect of the business accounts, ANZ ought to have conducted an investigation into whether the bonus interest issue affected other accounts offering bonus interest using acquisition campaign rate codes such as the retail accounts. ANZ did not become aware until 6 October 2022 that the bonus interest issue affected the retail

accounts, and only became aware from separate investigations unrelated to the business event. ANZ took from 6 October 2022 to 31 January 2024 to stop the bonus interest issue from affecting the retail accounts. And ANZ took from 6 October 2022 to 31 January 2024 to remedy the process deficiencies in respect of the retail accounts.

313 Now ANZ's knowledge dating back to April 2015 falls outside the bonus interest contravention period. But this is relevant factual context to consider in informing the nature and seriousness of the contravention and in setting the appropriate penalty.

314 The conduct was serious when considering all the circumstances above. By not completing an investigation until late 2023 and delaying rectification of the bonus interest issue until January 2024, ANZ allowed a risk to persist that eligible customers could be deprived of bonus interest in respect of retail accounts that it was represented they would receive, which had the result that, over a longer period of time, a larger number of eligible customers were not paid bonus interest than otherwise would have been the case had ANZ investigated and rectified the issue sooner.

315 Further, concerning the general obligations contravention, ANZ's contravention of ss 912A(1)(a) and (5A) of the Corporations Act was a single contravention. The relevant conduct concerned ANZ's failure to maintain adequate processes to apply acquisition campaign rate codes, and to conduct adequate monitoring of its processes to identify in a timely manner instances where the acquisition campaign rate codes had not been applied, and failing to investigate and rectify, in a timely manner, its failure to apply acquisition campaign rate codes, all while making the bonus interest statements.

316 By engaging in the bonus interest conduct, ANZ failed to uphold a reasonable standard of performance. In these circumstances, ANZ breached its obligation to do all things necessary to ensure that the financial services covered by its financial services licence were provided efficiently, honestly and fairly, and thereby contravened ss 912A(1)(a) and (5A) of the Corporations Act.

317 Further, on each occasion that ANZ made the rate promotion representation it contravened s 12DB(1)(e) of the ASIC Act. It is not possible to ascertain the precise number of contraventions.

318 Now I should say that I accept that it is relevant to the assessment of penalty in mitigation of ANZ's conduct that this conduct occurred over a shorter period of time (around 7 months) and

was rectified on the same day that ANZ became aware of it. Further, following identification of the rate promotion issue, ANZ commenced an internal investigation and implemented the following recommendations arising from that investigation.

319 First, ANZ reviewed interest rates displayed on the ANZ website and confirmed that they were dynamic for each relevant page.

320 Second, to improve engineering processes, ANZ incorporated a more detailed statement of the Deposits Team's requirements for the content of the application form into the "acceptance criteria" in the user guide, which contains step-by-step instructions for making content updates to online application forms. Specifically, the user guide setting out the requirements for the application form was updated to explicitly state the requirement that interest rate fields be dynamically coded. ANZ implemented detailed reviews by developers designed to ensure the Deposits Team's requirements were implemented. ANZ implemented "source code" reviews designed to ensure that the requirement to use dynamic fields was met. ANZ improved the verification tests used to check that interest rates were correctly updated to ensure that dynamic refreshing of interest rates was tested at a system-wide level. And ANZ introduced validation procedures to be undertaken by the Deposits Team whenever a rate change was requested.

321 Third, in relation to ANZ's engagement processes, ANZ implemented an enhancement to its change management process, requiring the Deposits Pricing team to engage with the online applications team to validate that interest rates were being correctly reflected in ANZ's customer-facing systems.

Impact of the contraventions

322 As noted, it is not possible to ascertain precisely how many customers or prospective customers saw the bonus interest statements during the relevant period or the contravention period.

323 But based on assumptions in favour of the customer adopted by ANZ for the purpose of its remediation program, ANZ has ascertained that the following customer accounts are "in scope" for remediation.

324 Between 5 July 2013 and 31 January 2024, around 7.26% of total accounts opened during that period were eligible to receive an acquisition campaign rate. This accounts for $7,854,245.26 in remediation payments reflecting the base amount of bonus interest to a total of 194,487 relevant accounts.

325 And during the contravention period, around 1.49% of total accounts opened during that period were eligible to receive an acquisition campaign rate. This accounts for a total of $143,100.35 in remediation payments reflecting the base amount of bonus interest to a total of 8,301 relevant accounts.

326 I agree with the parties that for the purposes of this proceeding, it is appropriate to proceed on the basis that the figures just outlined represent the best available proxy to determine the number of customer accounts that were impacted by the bonus interest contraventions and the general obligations contravention.

327 The conduct affected a significant number of customers over a long period of time (around 10.5 years), despite the conduct liable to penalty being only a portion of that conduct.

328 Further, as the rate promotion representation was also displayed on the ANZ website, it is not possible to ascertain precisely how many customers or prospective customers saw the rate promotion representation during the rate promotion period.

329 Unlike the bonus interest conduct, the rate promotion conduct affected a larger proportion of ANZ's customers who opened retail accounts during the rate promotion period. Specifically, the conduct affected 46.4% of the total retail accounts opened during the rate promotion period, accounting for $502,083.70 (including time value of the interest amount) in unpaid payments.

330 The conduct affected a significant number of customers, albeit the conduct occurred over a short period of time (around 7 months).

Remediation

331 Significant remediation has occurred which I do not need to further detail.

Maximum penalty

332 The value of a penalty unit changed multiple times during the contravention period and the rate promotion contravention period.

333 If the lowest penalty unit value applies, the maximum penalty, in respect of ss 912A(1)(a) and (5A) of the Corporations Act and s 12DB(1)(e) of the ASIC Act during the contravention period, is $525,000,000 (i.e. 2.5 million (penalty units) multiplied by 210 (dollars)) and, in respect of s 12DB(1)(e) in the rate promotion contravention period, the maximum penalty is $782,500,000 (i.e. 2.5 million (penalty units) multiplied by 313 (dollars)).

334 If the highest penalty unit value applies, the maximum penalty, in respect of ss 912A(1)(a) and (5A) of the Corporations Act and s 12DB(1)(e) of the ASIC Act during the contravention period, is $782,500,000 (i.e. 2.5 million (penalty units) multiplied by 313 (dollars)) and, in respect of s 12DB(1)(e) of the ASIC Act in the rate promotion contravention period, the maximum penalty is $825,000,000 (i.e. 2.5 million (penalty units) multiplied by 330 (dollars)).

335 Having regard to the overall maximum penalty that would apply under either approach, it is not necessary for the purposes of establishing whether the penalty of $40 million is an appropriate penalty, that I resolve the question as to whether the lower or higher penalty unit value applies.

Other matters

336 Let me make four points.

337 First, as I have already said, deterrence is the primary purpose of civil penalties, and the size and resources of the contravening party will therefore be relevant in determining the appropriate penalty. And as I have said, ANZ is a major Australian bank with significant size and resources.

338 Second, ANZ did not deliberately engage in the conduct which resulted in the contraventions that are the subject of this proceeding.

339 Third, ANZ senior management were not involved in the contraventions that are the subject of this proceeding.

340 Fourth, ANZ has engaged constructively with ASIC in advance of this proceeding being commenced, including by making admissions in relation to its conduct at the earliest available opportunity, acknowledging liability in respect of the admitted contraventions prior to the filing of an originating process, and engaging with ASIC on the preparation of the SAFA. By its conduct, ANZ has avoided the need for a contested proceeding on liability and relief.

Prior contraventions of the ASIC Act and the Corporations Act

341 Between 2020 and 2023, ANZ has been found to have engaged in similar conduct in contravention of the Corporations Act and the ASIC Act as follows.

342 First, in relation to the charging of bank fees, the ANZ contravened s 12CB(1) of the ASIC Act and ss 912A(1)(a) and 912A(1)(c) of the Corporations Act (penalty of $10 million for

s 12CB(1) contraventions); *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Ltd (No 3)* [2020] FCA 1421.

343 Second, in relation to conduct concerning misrepresentations to its customers, and its customers not receiving certain benefits, the ANZ contravened ss 12DA(1), 12DB(1)(e) of the ASIC Act and ss 912A(1)(a) and 912A(1)(c) of the Corporations Act and ss 47(1)(a) and 47(1)(d) of the Credit Act (penalty of $25 million for s 12DB(1)(e) contraventions); *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Ltd* (2022) 164 ACSR 428.

344 Third, in relation to false or misleading conduct concerning the charging of fees and interest, the ANZ contravened s 12DB(1)(g) of the ASIC Act and s 47(1)(a) of the Credit Act (penalty of $15 million for s 12DB(1)(g) contraventions); *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited* [2023] FCA 1150; (2023) 169 ACSR 649.

345 These cases have limited utility in my consideration of the relevant penalties to impose.

Conclusion in respect of the penalty

346 In my view an appropriate total pecuniary penalty in this case is $40 million. Employing an intuitive synthesis based on all the factors set out above, I am satisfied that the proposed penalty is an appropriate penalty. Having regard to the totality of the contravening conduct, any lesser aggregate penalty would not achieve the appropriate deterrent effect. Conversely, any greater penalty would be disproportionate. A $40 million total penalty reflects the serious and unacceptable nature of the contraventions.

Adverse publicity orders

347 The agreed proposed orders include an adverse publicity order that requires ANZ to publish on the ANZ website, within 30 days of the date of such an order, the "Written Notice" annexed to the agreed proposed orders. I am satisfied that the proposed adverse publicity order is appropriate to alert the public and ANZ's customers of the contravening conduct.

Proceeding VID1211/2025 – the treatment of deceased estates

348 ANZ has admitted contraventions of ss 912A(1)(a) and (5A) of the Corporations Act and ss 47(1)(a) and (4) of the Credit Act in connection with its failure to have in place adequate

systems, processes and training regarding ANZ's management of requests and fees relating to deceased estates, in accordance with relevant obligations under the Banking Code of Practice.

349 In my view the appropriate pecuniary penalty that ANZ ought to pay for its contraventions is $35 million.

350 ASIC and ANZ have jointly prepared a SAFA setting out facts agreed between the parties pursuant to s 191 of the *Evidence Act 1995* (Cth) and admissions made by ANZ for the purposes of this proceeding.

351 ANZ admits that from 15 September 2019 to 30 June 2023 it failed to do all things necessary to ensure that the financial services covered by its AFSL and the credit activities covered by its ACL were engaged in efficiently, honestly and fairly, and therefore contravened, respectively, ss 912A(1)(a) and (5A) of the Corporations Act and ss 47(1)(a) and (4) of the Credit Act, by, in relation to both the 14 day obligation and the fee obligation.

352 First, it did so by not having any, or any adequate, documented guidance for ANZ's bereavement team staff who were primarily responsible for handling requests relating to deceased customer's accounts and other relevant staff.

353 Second, it did so by not having any, or any adequate, training for ANZ's bereavement team and other relevant staff.

354 Third, it did so by not having any, or any adequate, systems or processes to identify notifications, requests or fees subject to the obligations.

355 Fourth, it did so by not having any, or any adequate, systems or processes to monitor notifications, requests or fees subject to the obligations and report any breach of the obligations in Banking Code Compliance Committee (BCCC) compliance statement reporting. The BCCC was established in 2019 to monitor the compliance of subscribing banks with the Banking Code.

356 Based on the admitted contraventions referred to above, I am satisfied that the following is appropriate.

357 First, a declaration of contravention of ss 912A(1)(a) and (5A) of the Corporations Act and ss 47(1)(a) and (4) of the Credit Act should be made.

358 Second, a pecuniary penalty should be imposed in the appropriate amount of $35 million.

359 Third, an adverse publicity order should be made pursuant to s 1101B(1)(a)(i) of the Corporations Act and s 182(1) of the Credit Act.

The relevant conduct

360 During the period 1 July 2019 to 30 June 2023, ANZ provided a range of financial services and products to its individual and small business customers, including: (a) deposit accounts and certain other cash management accounts; and (b) home loans, business loans, personal loan accounts, overdrafts and credit card accounts.

361 The Banking Code is the Australian Banking Association's code of conduct which was first introduced in 1993 and sets out standards of practice and service for subscribing banks including ANZ to follow when dealing with individual and small business customers, and their guarantors.

362 During the relevant period, the Banking Code formed part of the agreements pursuant to which ANZ offered to provide deposit accounts and loan accounts to its individual and small business customers.

363 During the relevant period, Chapter 45 of the Banking Code (entitled "Helping with deceased estates") contained clauses 190 and 191 which provide as follows (with the underlined words indicating the amendments introduced to the Banking Code on 1 March 2020):

> 190. Once notified of a customer's death we will:
>
> a) identify any fees that are for products and services that can no longer be provided, or will not be provided to the deceased's estate;
>
> b) stop charging those fees;
>
> c) if any fees referred to in paragraph (a) have already been charged since the customer's death – refund those fees; and
>
> d) act on instructions concerning a deceased's account from a person named in a grant of probate or letters of administration within 14 days of receiving the necessary information.
>
> 191. Prior to probate or letters of administration being granted, if we receive a request from a person authorised by a will, a person identified as a next of kin in the death certificate or other official document acceptable to us, or a person who has applied for letters of administration, and on providing a copy of the death certificate, we will, within 14 days of receiving the necessary information:
>
> a) provide access to information about the deceased's account including relevant ongoing fees…

364 The parties before me referred to the obligations arising from clauses 190(d) and 191(a) as the 14 day obligation and the obligations arising from clauses 190(a) to (c) as the fee obligation. I am content to do the same.

365 The 14 day obligation and the fee obligation contained within Chapter 45 of the Banking Code were introduced on 1 July 2019, following the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry and relate to the management of a customer's account(s) in the event of their death.

366 At all relevant times, the BCCC monitored compliance of subscribing banks with the Banking Code.

367 A guidance note issued by the BCCC on 13 September 2019 set out its expectations that subscribing banks including ANZ, inter-alia: (a) have a comprehensive and well-documented framework for monitoring compliance with the promises made in the Banking Code; (b) have a broad range of methods to identify incidents that may be breaches of the Banking Code; and (c) have a mechanism for collating the details of all identified incidents that may include a breach of the Banking Code.

14 day obligation conduct

368 In the period 1 July 2019 to 31 May 2023, ANZ finalised approximately 2,220 deceased estates each month.

369 ANZ typically received differnt types of requests to which the 14 day obligation applied.

370 First, prior to a grant of probate or letters of administration, a request might be made by a person named in a deceased customer's certified death certificate, will, or other relevant document that ANZ provide access to information about the deceased's accounts.

371 Second, after a grant of probate or letters of administration, requests might be made by a person that was the subject of the grant providing instructions relating to an estate to: (a) permit an allowable payment to be made from the deceased's account, for example, to cover funeral expenses; (b) provide account statements; or (c) disburse funds as part of finalising the deceased's estate.

372 Such requests attracted the obligation in clause 190(d) of the Banking Code.

373 ANZ's policies and procedures for responding to such requests were set out in "KnowHow guides" and other documents. At the time of the introduction of Chapter 45 of the Banking Code on 1 July 2019 until December 2022, ANZ did not make any changes to its policies or procedures to specifically address the 14 day obligation. On 28 December 2022, ANZ introduced a dedicated KnowHow guide which stated that "14 day BCOP [Banking Code of Practice] obligations commence from time of notification or when documents are received by ANZ (irrespective of the department that receives them)".

374 The bereavement team managed requests using ASW2, a workflow tool structured around "workbaskets" aligned with ANZ's deceased estate processes. Although tasks allocated to each workbasket were assigned specific completion timeframes, those assigned timeframes were not capable of tracking compliance with the 14 day obligation. Further, compliance with the 14 day obligation was not tracked and regular email summaries did not identify or report on any non-compliance.

375 Prior to 2023 ANZ was not able to identify or record requests that triggered the 14 day obligation, or any non-compliance with the 14 day obligation, other than through manual review of individual cases and their progress through each of the individual workbaskets, which manual review was not undertaken by ANZ during the relevant period. Further, prior to 2023 ANZ did not have a control to monitor and report on requests which triggered the 14 day obligation, or its compliance with the 14 day obligation before that time.

376 In January 2023, ANZ introduced a "BCoP Tag" in ASW2 for requests identified by the bereavement team as triggering the 14 day obligation. In June 2023, ANZ introduced a daily report to monitor requests with the BCoP Tag applied, so that requests at risk of breaching, or that had breached, the 14 day obligation could be identified and actioned.

377 During the relevant period, all ANZ staff were required to undertake mandatory learning modules relevant to their role, which included from August 2019, training on the Banking Code. In January 2020, the Banking Code mandatory learning was updated to include content referrable to parts of Chapter 45 of the Banking Code (including the fee obligation), but not the 14 day obligation.

378 Between 1 July 2019 and January 2023, with the limited exception of training in February 2020 concerning an amendment made to clause 191 of the Banking Code, members of the bereavement team did not receive any training on the 14 day obligation. It was not until early

2023, that ANZ re-designed the bereavement team's training to include a module that addressed Chapter 45 of the Banking Code (new program), including the 14 day obligation, which was rolled out in February and March 2023.

379 During the relevant period, ANZ monitored complaints and events raised on ANZ's risk management system (COR system) for the purpose of reporting compliance with Chapter 45 of the Banking Code in its BCCC compliance statements. However, prior to June 2023, this was not an effective control in respect of the 14 day obligation because ANZ did not have in place a system or control to identify individual breaches of the 14 day obligation.

380 Throughout the relevant period, ANZ had no quality assurance process in place to assess whether the bereavement team's processes were an effective control for managing the risk of ANZ not complying with the 14 day obligation. ANZ's quality assurance framework was updated in June 2023 to incorporate testing for compliance with the obligations in Chapter 45.

381 During the relevant period, ANZ became aware of a number of issues in its systems and processes relating to the 14 day obligation including as follows.

382 In October 2019, a review undertaken by ANZ's Customer Service Operations team found various relevant issues with, and deficiencies in, ANZ's deceased estate practices. In response to those findings, in December 2019, ANZ developed recommendations designed to address those issues and deficiencies. Much of the work to address those recommendations was not completed until several years later, when it was incorporated into a "Bereavement Program" established following a September 2022 internal audit.

383 On 16 December 2021, an event was raised in the COR system concerning delays in processing deceased estate cases. The event identified that ANZ's systems did not allow it to report compliance on the 14 day obligation, and that there was a backlog of cases that would need to be reviewed manually in order to determine whether the 14 day obligation had been breached.

384 By 21 February 2022, ANZ had identified that the bereavement team had a backlog of 7,329 new cases, which it deemed a potential breach of the 14 day obligation and reported to the BCCC in its breach reporting for that period. The backlog was addressed by ANZ by 25 July 2022. The backlog included cases that may have triggered the 14 day obligation and cases that may not have triggered the 14 day obligation.

385 In September 2022, at the request of the BCCC, ANZ conducted an internal audit of the bereavement team's work in which it identified that the 14 day obligation "may not have been met in some instances". The internal audit report found, inter-alia, that there was no control, including exception reporting or quality checking, to ensure that ANZ had complied with the 14 day obligation, procedure documents were considered to be out of date due to lack of periodic review, and did not include relevant "hand-off points" between relevant teams, and various deficiencies in relation to quality assurance, quality control checks and peer review.

Fee obligation conduct

386 On notification of a customer's death, the fee obligation required ANZ to identify, stop charging, and refund (to the extent they had been charged since the customer's death) certain fees, which included categories of fees on credit cards being additional cardholder fees, being fees charged by ANZ for issuing a credit card to someone other than the (deceased) primary cardholder and reward program service fees, being fees which cover the costs associated with managing the relevant rewards program and providing benefits to cardholders, which service fees are in addition to the regular periodic fees for the card, in circumstances where the primary credit cardholder was deceased and the estate would not ordinarily have received a benefit from these services.

387 Upon the introduction of Chapter 45 of the Banking Code on 1 July 2019, ANZ did not make any changes to its policies or procedures to specifically identify and document which fees were the subject of the fee obligation.

388 During the relevant period, ANZ's process was to address fees in two stages. The first stage involved applying fee waivers following notification of a customer's death so as to prevent certain fees and interest from continuing to be charged. The second stage involved the refund of any fees either not blocked by applying a fee waiver, or that had been charged following date of death but prior to notification.

389 Throughout the relevant period, ANZ's approach was generally to waive or refund all fees and interest on certain products charged following the death of the customer, exceeding the requirements of the fee obligation.

390 That said, until June 2023, ANZ's systems, controls and processes could not identify whether fees charged after a customer's death had been waived or refunded. In June 2023, ANZ introduced an automated tool to apply missing fee waivers to deceased customer accounts

identified in exception reporting. This tool did not include any function for refunding fees that had been charged after the date of the customer's death, including impermissible fees.

391 During the relevant period, ANZ's policies and procedures relevant to the fee obligation in respect of credit cards were primarily contained in KnowHow Guides. Until June 2023, ANZ's primary guidance used by the bereavement team for the refund or reversal of fees did not address credit cards, and there was no documented requirement to confirm that all fee reversals had been completed. On 31 May 2023, ANZ updated its primary guidance, including to specifically address credit cards.

392 Throughout the relevant period, ANZ's processes for the refund of fees involved both automated and manual processes. To the extent that ANZ relied on manual processing of refunds, that process was inherently susceptible to human error, requiring reliance on ongoing and regular training and monitoring/quality control checks. In June 2023, ANZ introduced a "Closures Checklist" that required confirmation that fees had been reversed.

393 During the relevant period, from January 2020, the Banking Code mandatory learning included a reference to the fee obligation. But it was not until the roll-out in early 2023 of the new program that the fee obligation was addressed in training provided to the bereavement team.

394 Until 27 October 2022, ANZ did not have overarching documentation of the quality check process in place to assess whether fees had been refunded prior to an estate being finalised. In June 2023, ANZ updated its quality check process to include confirmation that the Closures Checklist had been completed. It was not until June 2023 that ANZ commenced quality assurance checks that tested for Chapter 45 compliance, including compliance with the fee obligation.

395 Issues in relation to ANZ's systems and processes relevant to the fee obligation were brought to light during the relevant period through the following events.

396 On 7 February 2022, an internal event report was lodged regarding fees charged on deceased estate sole accounts (in circumstances where ANZ had been informed of the deceased's death) following identification by a staff member completing a business sample review of accounts. As a result of this report, a working group was established to determine which types of fees and charges could, and could not, be charged to deceased estates.

397 The September 2022 internal audit report noted, inter-alia, that there were instances where fees charged on accounts (cards, personal loans and deposits) post notification of a customer's passing may not have met internal processes intended to support compliance with the Banking Code requirements (relevantly including the fee obligation), roles and responsibilities were not clearly documented or understood, and there was a lack of effective quality assurance or quality controls/checks to ensure cases have been dealt with in accordance with the Banking Code (including the fee obligation) and internal procedural requirements.

Inadequacy of systems, controls and processes in respect of 14 day obligation until June 2023

398 During the relevant period, ANZ did not have in place any, or any adequate, systems, controls or processes to respond to notifications or requests relating to deceased estates in compliance with the 14 day obligation.

399 In particular, from 1 July 2019 until 28 December 2022, ANZ had no documented guidance for ANZ's bereavement team regarding the 14 day obligation. Further, from 1 July 2019 until at least January 2023, ANZ had no systems or processes to identify requests subject to the 14 day obligation. Further, from 1 July 2019 until March 2023, ANZ had no training on the 14 day obligation for ANZ's bereavement team. Further, from 1 July 2019 until June 2023, ANZ had no systems or processes to monitor requests to which the 14 day obligation applied and report breaches of the obligation in BCCC compliance statement reporting.

Scale of contravention in relation to the 14 day obligation

400 ANZ finalised approximately 2,220 deceased estates a month in the period 1 July 2019 to 31 May 2023.

401 ANZ is unable to quantify the precise number of instances where the 14 day obligation was not complied with between September 2019 and June 2023. However, such non-compliance is likely to have been significant.

402 In September 2022, ANZ's internal audit team audited a sample of 51 cases for the period 1 July 2019 to 30 June 2021, which identified there were 28 exceptions relating to 20 estates (39%) where there was non-compliance with the 14 day obligation.

403 For the January to June 2022 reporting period, ANZ reported to the BCCC that it had potentially breached the 14 day obligation in relation to 7,329 cases because of delays in

processing instructions or providing access on deceased estates accounts. ANZ did not retain a record of the 7,329 cases that comprised the 2022 backlog.

404 For the January to June 2023 reporting period, ANZ reported to the BCCC that it had breached the 14 day obligation in relation to 469 estates because of delays in processing instructions or providing access on deceased estates accounts.

405 In the period May to September 2023, ANZ performed daily exception reporting which indicated that there were approximately 95 to 220 breaches, or potential breaches, of the 14 day obligation per month. This indicates substantial non-compliance in that period. The exception reporting may have contained false positives resulting from: (a) ANZ staff incorrectly applying a BCoP Tag to a request that the 14 day obligation did not in fact apply to; or (b) ANZ staff failing to remove the BCoP Tag once a request had been actioned. The proportion of any such false positives is not known.

406 For the July to December 2023 reporting period, ANZ reported to the BCCC that it had breached the 14 day obligation in relation to 753 estates because of delays in processing instructions or providing access on deceased estates accounts.

407 Given ongoing improvements to ANZ's systems since December 2022 and the effects of the 2022 backlog, it is likely that non-compliance with the 14 day obligation was at least as significant before mid-2023.

408 On 24 May 2024, ANZ lodged a reportable situation with ASIC under s 912DAA of the Corporations Act and s 50B of the Credit Act advising of a potential breach of s 912A(1)(a) of the Corporations Act and s 47(1)(a) of the Credit Act, in light of deficiencies in its systems, controls and processes for handling deceased estates.

409 In June 2024, ANZ completed an estate remediation program including with respect to potential breaches of the 14 day obligation. As part of this remediation program, due to the failures with its systems, ANZ has been unable to identify which estates have been affected by breaches of the 14 day obligation. In particular, prior to the introduction of the functionality of the BCoP Tag in January 2023, requests which were subject to the 14 day obligation were not able to be identified as such within ASW2.

410 As part of the remediation program the following has occurred.

411 First, ANZ paid 1,421 estates a total of $667,880.49 (including $69,321.52 to represent time value of money) in connection with interest charges on commercial loans, commercial overdrafts and home loans, on the basis that delays may have contributed to additional interest charges. ANZ has assumed that, wherever a relevant account went into arrears or exceeded its credit limit after ANZ was notified of the customer's death, a delay by ANZ in providing information or acting on instructions from an estate representative may have contributed to that occurrence. However, ANZ did not limit its remediation to only those cases where ANZ's workflow data indicated there may have been a delay.

412 Second, ANZ identified an additional 10,507 estates where no financial loss was identified but the total time to resolve the case exceeded 90 days. The 90 day time period was used as a proxy measure for identifying potential breaches of the 14 day obligation where compliance with the obligation was not specifically monitored by ANZ.

413 Third, ANZ sent letters of apology to 9,137 of the estates identified in the first point. ANZ was not able to identify contact information for 1,370 estates.

414 In circumstances where ANZ did not have any systems, controls and processes in place before December 2022, it is likely that a significant proportion of the estates that received a remediation payment or an apology letter from ANZ were affected by delays in resolving the estate and involved non-compliance with the 14 day obligation.

Customer impact

415 Due to system limitations and deficiencies, ANZ has been unable to identify all customers potentially affected by ANZ's conduct the subject of the proceedings. So, the full extent of customer impact is unknown.

416 In February 2022, ANZ reported a backlog of 7,329 cases. In 2022, ANZ finalised approximately 33,000 cases. The 2022 backlog was identified in or about 21 February 2022 and was cleared by 25 July 2022. During this period, the impact on customers was two-fold. First, those customers who were part of the 2022 backlog experienced delays and the requests subject to the 14 day obligation could not be prioritised, as they could not and were not recorded as being subject to the 14 day obligation in ANZ's systems at the time. Second, during this period, ANZ informed estate representatives that there were delays of 6 to 8 weeks.

417 Between July 2019 and June 2023, ANZ received 2,878 complaints which it has identified as potentially relating to breaches of the 14 day obligation and/or the fee obligation. Customers

complained of difficulties and delays in closing deceased relatives' accounts, and of being charged fees after accounts were closed.

418 ANZ's failure to comply with the 14 day obligation and the fee obligation likely compounded the emotional distress being experienced by representatives managing the estate of a friend or family member who was recently deceased.

Section 912A(1)(a) of the Corporations Act and section 47(1)(a) of the Credit Act

419 In respect of the 14 day obligation, ANZ admits that from 1 July 2019: (a) until 28 December 2022, it had no documented guidance for ANZ's bereavement team regarding the 14 day obligation; (b) until at least January 2023, it had no systems or processes to identify requests subject to the 14 Day obligation; (c) until March 2023, it had no training on the 14 day obligation for ANZ's bereavement team; and (d) until June 2023, it had no systems or processes to monitor requests to which the 14 day obligation applied and report breaches of the obligation in BCCC compliance statement reporting.

420 In respect of the fee obligation, ANZ admits that from 1 July 2019: (a) until June 2023, it had no documented guidance, or no adequate documented guidance, on the fee obligation for ANZ's bereavement team and other relevant staff; (b) until March 2023, it had no training, or no adequate training, on the fee obligation for its bereavement team; (c) until June 2023, it did not have adequate systems or processes to identify, stop and refund fees that were subject to the fee obligation and report breaches of that obligation in BCCC compliance statement reporting; and (d) until June 2023, it did not have adequate systems or processes to record and monitor breaches of the fee obligation.

421 ANZ admits that during the contravening period it failed to do all things necessary to ensure that the financial services covered by its AFSL (being the provision of the deposit accounts) and the credit activities covered by its ACL (being the provision of the loan accounts), were engaged in efficiently, honestly and fairly, and that it therefore contravened ss 912A(1)(a) and (5A) of the Corporations Act and ss 47(1)(a) and (4) of the Credit Act, respectively by, in relation to both the 14 day obligation and the fee obligation not having any or any adequate: (a) documented guidance for ANZ's bereavement team and other relevant staff; (b) training for ANZ's bereavement team and other relevant staff; (c) systems or processes to identify notifications, requests or fees subject to the obligations; and (d) systems or processes to monitor notifications, requests or fees subject to the obligations and report any breach of the obligations in BCCC compliance statement reporting.

Declarations

422 I am satisfied that ANZ has contravened s 912A(5A) of the Corporations Act and s 47(4) of the Credit Act. Accordingly, under s 1317E(1) and s 166(2) respectively, I will make a declaration to that effect.

Civil penalty provisions

423 In respect of the admitted contraventions of ss 912A(1)(a) and (5A) of the Corporations Act and ss 47(1)(a) and (4) of the Credit Act, in my view a total pecuniary penalty of $35 million is appropriate.

Nature, extent and circumstances of contravening conduct

424 ANZ's contraventions of ss 912A(1)(a) and (5A) of the Corporations Act and ss 47(1)(a) and (4) of the Credit Act involved conduct that occurred during the relevant period, which spanned a period of approximately four years.

425 And the nature of the contravening conduct involved ANZ's failure, during the contravening period, to have any, or any adequate, documented guidance in terms of policy or procedure documents, systems, processes or training in relation to the 14 day obligation and the fee obligation. That conduct occurred in circumstances where the relevant obligations in Chapter 45 of the Banking Code were introduced from 1 July 2019 and during the relevant period, ANZ was aware of issues that should have caused ANZ to identify that its systems and processes were inadequate to achieve a reasonable standard of performance in regards to compliance with those obligations.

Impact of the contraventions

426 A consequence of ANZ's failure to maintain adequate systems and processes was that, until January 2023, ANZ was unable to identify in its systems requests to which the 14 day obligation applied. Accordingly, ANZ has not been able to identify the number of times in which (or number of deceased estates in respect of which) it failed to comply with the 14 day obligation. So, the full extent of the impact on the estate representatives is unknown. But the SAFA includes the following agreed facts which shed some light on the impact of ANZ's contraventions.

427 In February 2022, there was a backlog of 7,329 cases. Estate representatives of deceased customers whose cases were part of the backlog experienced delays. Their requests subject to

the 14 day obligation could not be prioritised and may not have been responded to in accordance with the 14 day obligation.

428 During the period between February 2022 and July 2022, ANZ informed estate representatives that there were delays of 6 to 8 weeks in ANZ responding to requests.

429 In September 2022, ANZ conducted an internal audit based on a sample of 51 files. ANZ identified 28 exceptions impacting 20 estates, meaning that the 14 day obligation had not been met in 39% of cases.

430 In its reporting to the BCCC for the period January to June 2023, ANZ reported that it had breached the 14 day obligation in relation to 469 deceased estates. In its reporting to the BCCC for the period July to December 2023, ANZ reported that it had breached the 14 day obligation in relation to 753 customers. ANZ admits that its non-compliance with the 14 day obligation is likely to have been, throughout the relevant period, at least as significant as it was in that six-month period.

431 Until June 2023, ANZ had no systems, controls or processes to monitor requests to which the 14 day obligation applied and report breaches of the obligation in BCCC compliance statement reporting, and to identify or check whether fees charged after a customer's death had been refunded before the estate was finalised.

432 In June 2024, ANZ completed a remediation program including with respect to potential breaches of the 14 day obligation and fee obligation. Due to failures within its systems, ANZ was unable to identify which estates had been affected by breaches of the 14 day obligation and/or the fee obligation.

433 Overall, between July 2019 and June 2023, ANZ received 2,878 complaints which it has identified as potentially relating to breaches of the 14 day obligation and/or the fee obligation. Customers complained of difficulties and delays in closing deceased relatives' accounts, and of being charged fees after accounts were closed. ANZ's failure to comply with the 14 day obligation and the fee obligation likely compounded any emotional distress experienced by representatives managing the estate of a friend or family member who was deceased.

Remediation

434 As part of the remediation program which ANZ completed in June 2024, ANZ undertook the following steps.

435 First, ANZ paid 1,421 estates a total of $667,880.49 in connection with interest charges on commercial loans, commercial overdrafts and home loans on the basis that delays may have contributed to additional interest charges. However, ANZ did not limit its remediation to only those cases where ANZ's data indicated there may have been a delay.

436 Second, ANZ identified an additional 10,507 estates where no financial loss was identified but the total time to resolve the case exceeded 90 days. The 90-day time period was used as a proxy measure for identifying potential breaches of the 14 day obligation where compliance with the obligation was not specifically monitored by ANZ. ANZ sent letters of apology to 9,137 of these 10,507 estates. ANZ was not able to identify contact information for 1,370 estates.

437 Third, ANZ refunded 2,227 impermissible fees charged after 1 July 2019, with a total value of $158,004.29. Those refunded fee amounts were part of a broader program in which ANZ paid 17,556 estates a total of $3,203,443.06 including in relation to fees and interest (and amounts representing the time value of money) where estates may have been impacted by the fee obligation.

Maximum penalty

438 ANZ's annual turnover (within the meaning of s 5 of the Credit Act and s 9 of the Corporations Act) in each 12-month period since September 2019 has been sufficiently high that 10% of that figure is greater than an amount equal to 2.5 million penalty units.

439 The value of a penalty unit changed twice during the contravening period. If the lowest penalty unit value applies, the maximum penalty is $525,000,000 (i.e. 2.5 million (penalty units) multiplied by 210 (dollars)), and if the highest penalty unit value applies, the maximum penalty is $687,500,000 (i.e. 2.5 million (penalty units) multiplied by 275 (dollars)).

440 Having regard to the overall maximum penalty that would apply under either approach, it is not necessary, for the purposes of establishing whether the penalty of $35 million is an appropriate penalty, that I resolve the question as to whether the lower or higher penalty unit value applies.

Other matters

441 Let me make five other points.

442 First, as I have said, ANZ is a major Australian bank.

443 Second, ANZ did not deliberately engage in the conduct which resulted in the contraventions that are the subject of this proceeding.

444 Third, ANZ senior management were not involved in the contraventions that are the subject of this proceeding.

445 Fourth, ANZ has engaged constructively with ASIC in advance of this proceeding being commenced, including by making admissions in relation to its conduct at the earliest available opportunity, acknowledging liability in respect of the admitted contraventions prior to the filing of an originating process, and engaging with ASIC on the preparation of the SAFA. By its conduct, ANZ has avoided the need for a contested proceeding on liability and relief.

446 Fifth, in July 2024, ANZ issued a public statement on its website acknowledging the release of the BCCC's adverse findings and apologising to customers and their families.

Prior contraventions of the Corporations Act and the Credit Act

447 Between 2020 and 2023, ANZ has been found to have engaged in similar conduct in contravention of the Corporations Act and the Credit Act as follows.

448 First, in relation to the charging of bank fees, the ANZ contravened s 12CB(1) of the ASIC Act and ss 912A(1)(a) and 912A(1)(c) of the Corporations Act (penalty of $10 million for s 12CB(1) contraventions); *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Ltd (No 3)* [2020] FCA 1421.

449 Second, in relation to conduct concerning misrepresentations to its customers, and its customers not receiving certain benefits, the ANZ contravened ss 12DA(1), 12DB(1)(e) of the ASIC Act and ss 912A(1)(a) and 912A(1)(c) of the Corporations Act and ss 47(1)(a) and 47(1)(d) of the Credit Act (penalty of $25 million for s 12DB(1)(e) contraventions); *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Ltd* (2022) 164 ACSR 428.

450 Third, in relation to false or misleading conduct concerning the charging of fees and interest, the ANZ contravened s 12DB(1)(g) of the ASIC Act and s 47(1)(a) of the Credit Act (penalty of $15 million for s 12DB(1)(g) contraventions); *Australian Securities and Investments Commission v Australia and New Zealand Banking Group Limited* [2023] FCA 1150; (2023) 169 ACSR 649.

451 These cases have limited utility in my consideration of the relevant penalties to impose.

Conclusion in respect of the penalty

452 Having regard to the facts and admissions set out in the SAFA and the considerations set out above, in my view the appropriate total pecuniary penalty in this case is $35 million.

453 A $35 million total penalty reflects the serious and unacceptable nature of the contraventions, and that it is not to be regarded as a cost of doing business. This sum, together with the declaration that I propose to make and the adverse publicity order, puts a price on the contraventions that is appropriate to deter both repetition by ANZ and contravention by other licensees.

The ANZ's compliance program

454 At the hearing of this matter, I sought from the parties further details of any compliance program currently being undertaken by the ANZ. I have now been provided with further information in the form of an affidavit of Mr Bruce Rush affirmed on 15 December 2025; he is the Managing Director, Physical Channels, at the ANZ. This affidavit provides significant detail as to the terms of the ANZ's current compliance program, which has been agreed with and is being overseen by ASIC.

455 I am content with what has currently been put in place and there is no need for any specific order concerning a compliance program.

Adverse publicity order

456 I will make an adverse publicity order that requires ANZ to publish on its websites within 30 days of the date of such an order an appropriate notice. The proposed adverse publicity order is appropriate to alert the public, and ANZ's customers, to the fact that ANZ engaged in the contravening conduct.

Conclusion

457 In summary in relation to all three cases, and for the foregoing reasons, I will impose penalties on the ANZ totalling $115 million over the three cases and also make the declarations and other orders sought.

I certify that the preceding four hundred and fifty-seven (457) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Beach.

Associate: 

Dated: 19 December 2025