

NOTICE OF FILING

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Details of Filing

Document Lodged: Concise Statement
File Number: VID694/2021
File Title: AUSTRALIAN SECURITIES AND INVESTMENT COMMISSION v
AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 25/11/2021 1:28:45 PM AEDT

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

Registrar

Important Information

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

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Concise statement

No. VID of 2021

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

Australian Securities and Investments Commission
Applicant

and

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

A. IMPORTANT FACTS GIVING RISE TO THE CLAIM

1. The respondent (**ANZ**) is one of Australia's major banks and largest listed companies. It provides a range of services and products, including home loans, to consumers.
2. ANZ holds an Australian credit licence (**ACL**) (ACL 234527) granted under Part 2-2 of the *National Consumer Credit Protection Act 2009* (Cth) (**Credit Act**). Under its ACL, ANZ is authorised, among other things, to carry on a business of providing credit, to be a credit provider under a credit contract, and to provide credit assistance to a consumer in relation to a credit contract.
3. ANZ's representatives (within the meaning of s 5 of the Credit Act) include its employees and other persons acting on its behalf.

Home Loan Introducer Program

4. Since 2006, ANZ has had a program called the Mortgage Introducer Program or the Home Loan Introducer Program (**HLIP**).
5. Under the HLIP, ANZ agrees with third parties, under **introducer agreements**, to pay the third party a commission for referring to ANZ a consumer who obtains a new home loan from ANZ. In most cases, ANZ enters into introducer agreements with individuals or bodies corporate who refer consumers directly to ANZ (**introducers**). In some cases, the agreements are with aggregators, which are bodies corporate that pass on referrals from their own network of introducers. Many of the introducers with whom ANZ enters into introducer agreements do not hold ACLs, or act on behalf of ACL holders, and therefore cannot engage in credit activities within the meaning of the Credit Act.
6. The HLIP has been profitable for ANZ. From 2015 to June 2020, more than 50,000 loans were referred to ANZ through the HLIP, resulting in lending to consumers totalling

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

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more than \$18.5 billion. As at September 2018, the HLIP contributed to approximately 10% of the home loans sold by ANZ's branch network in Australia.

Systems for ensuring compliance with the Credit Act

7. Most of the introducer agreements used by ANZ were in a standard form which provided, at all relevant times, that the introducer must not take part in the preparation, submission or execution of loan applications, loan agreements or related documents.
8. Since 2015, ANZ has engaged in various practices, including: specifying particular requirements before an individual or body corporate will be approved as an introducer under the HLIP; incorporating terms in introducer agreements of the kind described in paragraph 7 above; requiring an ANZ employee to be the "relationship owner" for each introducer and to conduct an annual review with the introducer; and providing some training to its representatives about an introducer's role.
9. These practices did not constitute reasonable steps to ensure that, in accepting referrals from third parties, ANZ's representatives complied with the requirements of the Credit Act. In particular, from at least November 2015 until June 2020:
 - 9.1 ANZ did not have a process by which it was capable of monitoring or identifying whether its representatives were accepting information and documents from introducers beyond the consumer's name and contact details, or accepting such information and documents from unlicensed third parties who were not approved introducers, and relying on such information and documents to process loan applications;
 - 9.2 ANZ relied on relationship owners to ensure that introducers complied with their obligations, even though the relationship owners had an incentive to sell home loan products so as to meet their performance indicators and improve their prospects of obtaining greater variable remuneration, and had an interest in not highlighting non-compliance (and therefore a conflict of interest);
 - 9.3 the training that ANZ provided to relationship owners was inadequate to ensure they properly understood their role and their responsibility for ensuring that introducers complied with their obligations; and
 - 9.4 ANZ's management had inadequate oversight of the compliance risks created by the HLIP, including the risk of its representatives accepting information and documents from third parties beyond the consumer's name and contact details.
10. Many of the issues in paragraph 9 were identified by ANZ's internal audit team in September 2016, but remained unresolved when a further HLIP review was conducted in April 2018. In June 2020, ANZ's internal audit team identified ongoing deficiencies, despite the measures that ANZ introduced after August 2018 to address these issues.

- ████████████████████
11. In about March or April 2017, ANZ entered into an introducer agreement with ██████████ ██████████, who was an introducer with ANZ from about 7 April 2017 to 16 April 2018. ██████████ is the sister of ██████████ (██████████).

12. In about September 2017, ANZ entered into an introducer agreement with [REDACTED], which was an introducer with ANZ from about 3 October 2017 to 16 April 2018. [REDACTED] is [REDACTED] company.
13. Between about March 2017 and April 2018, [REDACTED] and his wife, [REDACTED], referred at least 75 consumers to [REDACTED], an employee of ANZ whose duties included dealing with loan applications. In respect of each of the loan applications identified in rows 1 to 50 of the confidential annexure to the originating application (**Annexure**), [REDACTED] or his wife provided [REDACTED] with information in support of the loan application. The information provided went beyond the consumer's name and contact details; it included payslips, identification documents, contracts of sale, and signed ANZ loan documentation. In respect of each of the loan applications identified in rows 1-3, 6-7, 12, 17, 22, 25, 29, 36, 42 and 46 of the Annexure, the information included fraudulent documents.
14. Each of the loan applications identified in rows 1 to 50 of the Annexure resulted in ANZ advancing a home loan to the consumer. In respect of each of the loan applications identified in rows 1-3, 22, 25 and 42 of the Annexure, ANZ relied inter alia on fraudulent documents in processing the loan application. In respect of each of the loan applications identified in rows 1 to 50 of the Annexure, except the application identified in row 36 of the Annexure, ANZ paid a commission to either [REDACTED] or [REDACTED], as nominated by [REDACTED] or his wife.
15. At the time of the conduct in paragraph 13 above, none of [REDACTED] held an ACL.
[REDACTED]
16. Between about September 2016 and March 2018, [REDACTED] referred at least six consumers to [REDACTED], and at least 18 consumers to [REDACTED] and/or [REDACTED] and [REDACTED] were both employees of ANZ whose duties included dealing with loan applications. [REDACTED] owned [REDACTED], which operated an ANZ mobile lending franchise. Among other things, [REDACTED] was authorised to act as ANZ's agent for the purpose of procuring loan applications. [REDACTED] (whether personally or via his company, [REDACTED]) referred consumers to [REDACTED] in the expectation that [REDACTED] would pay a commission for loan applications referred to [REDACTED] which ANZ accepted, although no such commissions were paid.
17. [REDACTED] provided information in support of the loan applications identified in rows 51 to 56 of the Annexure to [REDACTED], and the applications identified in rows 57 to 69 of the Annexure to [REDACTED]. The information provided went beyond the consumer's name and contact details; it included payslips, identification documents, contracts of sale, and signed ANZ loan documentation. In respect of each of the loan applications identified in rows 51-52, 55, 58, 61, 65 and 67 of the Annexure, the information included fraudulent documents.

18. Further, between February and March 2018, ██████████ assisted each of the consumers referred to in rows 70 to 74 of the Annexure to complete loan application documents, which ██████████ then provided to ██████████.
19. Each of the loan applications identified in rows 51 to 66 and 69 of the Annexure resulted in ANZ advancing a home loan to the consumer. In respect of each of the loan applications identified in rows 52, 55, 58, 61 and 65 of the Annexure, ANZ relied inter alia on fraudulent documents in processing the loan application. ANZ did not pay a commission to ██████████ in respect of the loans. At the time of the conduct in paragraphs 17 and 18 above, neither ██████████ nor any person or entity associated with ██████████ was party to an introducer agreement with ANZ.
20. At the time of the conduct in paragraphs 17 and 18 above, neither ██████████ nor ██████████ a company of which ██████████ was the sole director, held an ACL.

B. RELIEF SOUGHT FROM THE COURT

21. The applicant seeks the relief set out in the accompanying originating application.

C. PRIMARY LEGAL GROUNDS FOR THE RELIEF SOUGHT

22. By carrying on a business of providing credit, being credit the provision of which the *National Credit Code* applies to, ANZ engaged in a credit activity within the meaning of s 6 of the Credit Act. ANZ did so under its ACL.
23. The conduct of ANZ's employees, ██████████ and its agent, ██████████, described in paragraphs 13, 17 and 18 above is taken, by reason of s 324(1) of the Credit Act, to have been engaged in by ANZ, as is the conduct of other employees and agents of ANZ who processed loan applications on behalf of ANZ. ASIC also relies on s 175E of the Credit Act.
24. In the course of engaging in the credit activity in paragraph 22 above, ANZ conducted business with ██████████ (the **referrers**). ANZ accepted loan applications from consumers referred by the referrers, used information provided by them in processing the loan applications, and made loans to consumers referred by them. In the case of ██████████ and ██████████, ANZ also paid commissions to entities and persons nominated by the referrers, pursuant to introducer agreements. In the case of ██████████, the referrals were made in the expectation of receiving a commission from ██████████.
25. By engaging in the conduct in paragraphs 13, 17 and 18 above, the referrers were engaging in a credit activity within the meaning of s 6 of the Credit Act, being the provision of a credit service within the meaning of s 7 of the Credit Act: relevantly, providing credit assistance within the meaning of s 8 of the Credit Act; further or alternatively acting as an intermediary within the meaning of s 9 of the Credit Act. The credit assistance was provided by the referrers dealing with the consumers identified in column B of the Annexure and assisting them to apply for a particular credit contract (loan) with ANZ. The referrers acted as intermediaries between ANZ and the consumers identified in column B of the Annexure wholly or partly for the purpose of securing the loans for the consumers. In each case, this occurred as part of, or incidentally to, the business carried on by the referrers, by ANZ and/or by ██████████ (as the case may be).

26. By engaging in the credit activity without a licence, the referrers contravened s 29(1) of the Credit Act.
27. By engaging in a credit activity, in the course of which it conducted business with the referrers who were contravening s 29 of the Credit Act, ANZ contravened s 31(1) of the Credit Act, with respect to each of the loan applications identified in the Annexure.
28. By failing to take reasonable steps to ensure that its representatives complied with s 31(1) of the Credit Act, as described in paragraphs 7 to 10 above, ANZ contravened s 47(1)(e) of the Credit Act.
29. By repeatedly contravening s 31(1) of the Credit Act, and failing to take reasonable steps to ensure that its representatives complied with that provision, ANZ failed to do all things necessary to ensure that credit activities authorised by its ACL were engaged in efficiently, honestly and fairly, and therefore contravened s 47(1)(a) of the Credit Act.

D. ALLEGED HARM

30. The licensing regime in the Credit Act, which includes ss 29, 31 and 47, was introduced to address, among other things, concerns that brokers or intermediaries may misrepresent consumers' financial details so that loans were approved, and commissions paid, when the consumer's true financial position meant a loan should not have been made.
31. By its contraventions of ss 31(1) and 47(1) of the Credit Act, ANZ exposed consumers including those identified in the Annexure to: a risk of wrongful conduct by the referrer, such as the provision of false or incomplete information and possible fraud; and the risk of entering into a credit contract that was not suitable for them, including because the consumers may not have been able to repay the loans, or may not have been able to do so without substantial hardship. In respect of each of the loan applications identified in rows 1-3, 22, 25, 42, 52, 55, 58, 61 and 65 of the Annexure, ANZ's contraventions of ss 31(1) and 47(1) of the Credit Act resulted in ANZ advancing a home loan to the consumer in reliance on fraudulent documents.
32. Further, by its contraventions of ss 31(1) and 47(1) of the Credit Act, ANZ also undermined the effectiveness of the licensing regime in the Credit Act, by facilitating unlicensed persons engaging in credit activities in contravention of s 29(1) of the Credit Act.

Date: 25 November 2021



James Rutherford Docherty
AGS Lawyer

for and on behalf of the Australian Government Solicitor
Solicitor for the Applicant

This concise statement was prepared M Hosking of Counsel and settled by O Bigos QC.

CERTIFICATE OF LAWYER

I James Rutherford Docherty certify to the Court that, in relation to the concise statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 25 November 2021



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Solicitor for the Applicant